**MONTENEGRO**

**CONSTITUTIONAL COURT OF MONTENEGRO**

Pursuant to Article 159 paragraph 1 of the Constitution of Montenegro ("Official Gazette of Montenegro," 1/2007 and No. 38/2013) and Article 56 of the Law on the Constitutional Court ("Official Gazette of Montenegro," 11/2015), we hereby submit the following

**INITIATIVE FOR REVIEWING THE LEGALITY AND CONSTITUTIONALITY OF THE LAW AMENDING THE LAW ON LOCAL SELF-GOVERNMENT ("Official Gazette of Montenegro" 50/2022 of May 9,2022)**

EXPLANATORY STATEMENT:

1. The Law Amending the Law on Local Self-Government ("Official Gazette of Montenegro" 50/2022) stipulates that the Law on Local Self-Government, ("Official Gazette of Montenegro," No. 2/18, 34/19 and 38/20 ) shall be amended to add a new article after Article 209, to read as follows:

*"Notwithstanding the provision of Article 37, paragraph 1 of this Law, the first subsequent elections for councilors in municipal assemblies of Pljevlja, Rozaje, Plav, Tivat, Budva, Pluzine, Zabljak, Bijelo Polje, Savnik, Bar, Danilovgrad, Kolasin, the Capital City Podgorica and in the Municipal Assembly of Golubovci – municipality within the Capital City, in accordance with this law, shall be held on the same day, and no later than October 30, 2022."*

This provision extends the mandate of the listed municipal assemblies and their councilors beyond the expiration of the four-year period.

1. Article 37 of the Law on Local Self-Government ("Official Gazette of Montenegro," No. 2/18, 34/19, 38/20 and 50/22) prescribes as follows:

*"The term of office of the Parliament shall last for four years.*

*The term of office of the Parliament may be terminated before the expiration of the term for which it was elected, by Parliament or shortening the term of office of the Parliament.*

*If the term of office of the Parliament expires during a state of emergency or emergency situation in accordance with the law, its term of office shall be extended no later than 90 days after the cessation of the circumstances that caused that state or situation.*

*In case of termination of the term of office of the Parliament before the expiration of the term for which it was elected, the President of Montenegro shall call elections on the day following the entry into force of the decision on Parliament, i.e., from the day the decision on shortening the term of office of the Parliament enters into force.*

The Law on Local Self-Government does not provide for the possibility of extending the term of office of assemblies, except in case of a state of emergency or emergency situation, as provided in Article 37, paragraph 3.

1. Law on Election of Councilors and Representatives ("Official Gazette of the Republic of Montenegro," No. 16/2000, 9/2001, 41/2002, 46/2002, 45/2004 US, 48/2006, 56/2006 and "Official Gazette of Montenegro," No. 46/2011, 14/2014, 47/2014, 12 /, 60/, 10/2018 – Decision of the CC and 109/2020), Article 5, paragraph 1 prescribes:

*"The term of office of councilors or representatives shall be four years."*

The Law on the Election of Councilors and Representatives does not provide for the possibility of extending the term of office of councilors.

1. The Law on Election of Councilors and Representatives is a law adopted by a qualified majority, which is prescribed in Article 91, paragraph 3 of the Constitution of Montenegro:

*"The Parliament shall decide by a two-thirds majority of the total number of the Members*

*of Parliament on the laws regulating the electoral system and property rights of foreign*

*nationals."*

Article 91 of the Constitution implicitly defines the hierarchy of legal acts. The greater legal force of certain laws derives from a stricter, i.e., qualified majority, by which they are passed, unlike all other laws that are passed by a simple majority of representatives present in the legislative body.

Laws regulating the electoral system, such as the Law on the Election of Councilors and Deputies, are passed by a two-thirds majority of all deputies (the same majority by which the Constitution is adopted and amended).

1. Article 45 of the Constitution of Montenegro grants the electoral rights to citizens.

Article 25 of the Constitution of Montenegro provides for the possibility of temporary limitation of rights and liberties of citizens:

*"During the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be limited, to the necessary extent. The limitations shall not be introduced on the grounds of sex, nationality, race, religion, language, ethnic or social origin, political or other beliefs, financial standing or any other personal feature.
There shall be no limitations imposed on the rights to: life, legal remedy and legal aid; dignity and respect of a person; fair and public trial and the principle of legality; presumption of innocence; defense; compensation of damage for illegal or ungrounded deprivation of liberty and ungrounded conviction; freedom of thought, conscience and religion; entry into marriage.
There shall be no abolishment of the prohibition of: inflicting or encouraging hatred or
intolerance; discrimination; trial and conviction twice for one and the same criminal offense (ne bis
in idem); forced assimilation.
Measures of limitation may be in effect at the most for the duration of the state of war or
emergency."*

1. Article 17 of the Law on Local Self-Government refers to the similar application of the provisions of this law to the municipality within the Capital, the Capital City and the Old Royal Capital, unless otherwise prescribed by a special law.

The Law on the Capital City ("Official Gazette of the Republic of Montenegro," No. 065/05 and "Official Gazette of Montenegro," No. 088/09, 072/10, 002/16) stipulates in Article 12, paragraph 3 that the term of office of the Capital City Assembly lasts four years.

Article 27, paragraph 3 of this Law prescribes that the term of office of the municipal assembly lasts four years.

The challenged provisions have extended the term of office of the Assembly of the Capital Podgorica and the term of office of the Assembly of the Municipality of Golubovci to a period longer than 4 years.

1. Universally accepted international election standards require periodic elections, i.e., that elections be held at regular intervals established by law.

The requirement that elections be held periodically is explicitly stated in both the Universal Declaration of Human Rights (Article 21, paragraph 3) and the International Covenant on Civil and Political Rights (Article 25b).

Article 3 of the First Protocol no. 1 of the European Convention on Human Rights also states that "t The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

These provisions are not accidental. They clearly emphasize the demands of a sustainable democratic order, which is constantly accountable to the will of the citizens. Although international instruments do not specify a specific periodicity schedule, general discretion restrictions are evident. At the very least, elections must be held often enough to ensure that the government continues to reflect the will of the people, which is the basis of the government's legitimacy.

1. The international legal framework allows only the temporary postponement of elections at the time of the declaration of a state of emergency. Postponement of scheduled elections due to the state of emergency is allowed in certain limited circumstances, but only if and to the extent strictly required by the urgency of the situation. Any such urgency must comply with all strict international standards for such derogations and must not jeopardize democracy itself.

Article 4, paragraph 1, of the International Covenant on Civil and Political Rights provides:

*"In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."*

A State Party may take measures derogating from its obligations under the International Covenant on Civil and Political Rights in accordance with Article 4 only when faced with a situation of extreme and real or imminent danger.

Guided by these principles of international law, both the Constitution of Montenegro and the Law on Local Self-Government envisage the possibility of extending the mandate of representative bodies only in the event of a state of emergency.

1. When the challenged provisions are put into the context of the constitutional and legal frameworks, it becomes apparent that these are provisions represent an attack on the principle of legality embodied in the concept of the hierarchy of legal acts, according to which lower legal norms must be consistent with higher legal norms.

Therefore, in the absence of the required two-thirds majority, instead of amending the Law on Election of Councilors and Representatives, the Parliament of Montenegro, decided to extend the mandate of councilors in several municipal assemblies by means of amending a legal act requiring a smaller majority.

The result is a norm that is in direct conflict with the Law on the Election of Councilors and Representatives, but also with what the essence of Article 91 of the Constitution of Montenegro.

1. When the challenged provisions are put into the context of international law, it becomes clear that the postponement of the local elections did not occur due to any situation that is considered justified in international law.

During the discussion in the Parliament, one could hear the justification that the postponement of the elections is due to the tourist season, which in no case can be considered a state of war or a state of emergency. We remind that the parliamentary elections in 2020 were held during the peak of the tourist season, and during the extraordinary circumstances caused by the pandemic, due to which no state of emergency was declared.

1. The challenged provisions have additional negative implications on the legal system and legal security in general. As mentioned above, they are also in conflict with the Law on the Capital City.

In addition, on May 10, 2022, based on the challenged provisions, the President of Montenegro made a decision on changes to the decisions on calling elections in the municipalities of Tivat, Budva, Plužine, Zabljak, Bijelo Polje, Savnik, Bar, Danilovgrad, Kolasin, Podgorica, and Pljevlja, and scheduled new elections for October 23, 2022.

By doing this, he acted contrary to Article 14, paragraph 2 of the Law on Election of Councilors and Representatives, which stipulates that no less than sixty and no more than one hundred days shall pass between the day of calling for and the day of election of councilors and/or representatives.

1. Based on the above, the submitter of the present Initiative expects that the Constitutional Court, after the procedure, will render a Decision establishing that the Law Amending the Law on Local Self-Government (Official Gazette of Montenegro 50/2022) or a new Article 209a of the Law on Local Self-Government (Official Gazette of Montenegro", No. 2/18, 34/19, 38/20 and 50/22) are in violation of the Law on the Election of Councilors and Representatives, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, Article 3 of the First Protocol to the European Convention on Human Rights and Fundamental Freedoms and the Constitution of Montenegro.

Podgorica, May 11, 2022

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Center for Democratic Transition

Executive Director

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