

Comments on

the Draft Law on Amendments

to the Law on the Registers

for Permanent and

Temporary Residence



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The Center for Democratic Transition (CDT) is hereby putting forward its observations aimed at improving the Draft Law on Amendments to the Law on the Registers for Permanent and Temporary Residence (the Draft), which the Ministry of the Interior (MoI) has submitted to the Committee on Political System, Judiciary, and Administration (the Committee).

Although the Comprehensive Electoral Reform Committee (the Committee) ultimately fell short of its goals, we believe it essential to maintain our societal contribution by reviewing proposals for legislation that was within its purview and addressing the processes for their potential adoption. However, it is important to emphasize that the CDT's engagement in this public consultation is not to be mistaken for our endorsement of a quasi-electoral reform driven by a surge of unilateral motions, as it cannot possibly replace the serious and diligent work that was required of the Committee, which, regrettably, manifested only in rare and brief intervals.

It is essential to recognize that this Draft is not simply a matter of administrative restructuring of the state; it fundamentally governs the voter register and, consequently, the future political trajectory of the country. Therefore, the adoption of this and other pieces of legislation formerly under the Committee's purview through simple majority outvoting between the government and the opposition should be avoided, as such a path invites political instability and fails to promote trust in the integrity of the elections.

First of all, CDT welcomes the MoI's intention to initiate a public discussion on the permanent residence register – the linchpin of the necessary voter register reform – by launching the procedure for a consultative hearing before the Committee on Political System, Judiciary, and Administration. We hope the Committee will not stop at this one session, but will continue to address this and other relevant topics in an inclusive and transparent manner, in line with standards for amending laws that have a major impact on the electoral process, and seek expert opinions from relevant international institutions, given that the Comprehensive Electoral Reform Committee failed to do so during the July amendments to the Law on the Election of Councilors and Members of Parliament.

In the preamble and the explanatory memorandum of the Draft Law, the MoI justifies the proposed changes by citing the need for alignment with OSCE/ODIHR recommendations. Regrettably, this is the Draft's fundamental flaw – while some recommendations have been appropriately integrated, others remain devoid of clear implementation mechanisms or even run counter to the opinions issued by the OSCE and ODIHR across various electoral cycles. The explanatory memorandum also fails to provide a specific breakdown of recommendations that the MoI believes were successfully integrated during the drafting phase.

MoI notes in the explanatory memorandum that a Working Group for the Audit of the Voter Register was established in 2025, made up of representatives from the MoI, the Parliament of Montenegro, the Union of Municipalities, and the State Election Commission. This constitutes the first breach of the principles underpinning standards of conduct for such occasions, as detailed in several ODIHR opinions, specifically in terms of transparency and the representation of all relevant stakeholders. The individual representatives of the Parliament of Montenegro who participated in the Working Group were not disclosed in the opinion (were they civil servants, MPs, and from which parties?); thus, we call upon the MoI to release this information publicly. As for civil society engagement, organizations with the expertise and knowledge relevant to the voter register subject matter were not invited to take part in this process.

The Draft needs to be amended to prescribe the framework for the external oversight over the auditing of permanent residence register. It is vital to recall that Montenegro employs a passive voter registration system, where the voter register is automatically derived from the permanent residence register, which is why an audit of the permanent residence register is essentially an audit of the voter register itself. It is precisely why this process must be rooted in clearly defined rules, transparent protocols, and the involvement of diverse stakeholders to ensure public confidence in its integrity and impartiality. This means that, alongside MoI representatives, the opportunity for participation must be extended to representatives of both the government and the opposition, as well as civil society, in accordance with international standards and practice.

ODIHR has consistently insisted on such an approach. Its 2024 recommendation for Serbia notes that “to improve the accuracy of the unified voter register and strengthen public confidence, the authorities should facilitate a full audit of the Unified Voter Register and the residence register, to be conducted by independent experts with the participation of relevant stakeholders, including representatives of competent ministries, political parties, and civil society” (ODIHR Priority Recommendation 3/2024). The 2025 ODIHR Opinion on the Laws of Montenegro governing voter registration observes that the domestic legal framework lacks a formal audit mechanism and fails to define the methodology, audit frequency, conditions for its implementation, or the range of institutions and stakeholders required for the process. ODIHR highlights the necessity of establishing a statutory framework for voter register audits, designating responsible institutions and methodologies, ensuring transparency through the inclusion of relevant actors and citizen observers, and mandating data protection standards during the audit process.

The vital importance of both internal institutional controls and external oversight by independent actors is demonstrated in the following recommendation: “In order to enhance public trust in the Voter Register, the authorities should consider a comprehensive audit, **for example through conducting field tests, and allow stakeholders to monitor such exercise.**” (ODIHR 2020 Parliamentary Elections Final Report).

MoI notes in the explanatory memorandum that the Draft aims to address concerns raised in the past regarding the inaccuracy and poor maintenance of the voter register. It should be noted that the key reason for distrust in the voter register is that the permanent residence register includes individuals who essentially have not lived in Montenegro for years. As a result, the voter register – being a derivative of this flawed residence register– likewise fails to meet the required standards of accuracy.

The principal recommendation in the ODIHR Opinion on the Laws of Montenegro governing voter registration states: “It is recommended to introduce **a clear legal mechanism for conducting field verifications** of all residence records and establishing a framework for **systematic audits of the permanent residence** and voter registers, to ensure their accuracy.”

The rationale further specifies: “Articles 15 and 15a of this Law authorize the Ministry of Interior to request a field verification by the police when there is suspicion regarding the validity of a permanent residence declaration. If the declared residence lacks sufficient substantiation, the MoI may cancel the registration. However, this provision **applies exclusively to new registrations or changes of residence, and not to permanent residences established and registered earlier.** The current Law does not establish a mechanism for field verifications of long-standing residence records to detect systematic inaccuracies in permanent residence data.”

The Draft partially addresses this recommendation, as it expands the scope of verification to include previously registered permanent residences, providing a basis for action when a non-reported change of residence is suspected. This only partially overcomes the limitations of the current law, which applied almost exclusively to new registrations and changes of residence. While being a notable step in the right direction, the proposed provision still falls short of the systematic audit of permanent residence and the voter register as called for by international standards.

The Draft mandates field checks “upon suspicion,” implying that grounds for suspicion must be identified for tens – if not hundreds – of thousands of individuals before any action is taken. In contrast, a systematic audit involves verifying every permanent residence in Montenegro within a specific timeframe, through established procedures and with adequate protection of rights, to identify the scale of any abuse of voting rights. A “suspicion-based” approach to verification will fall short of comprehensive efforts to cleanse the voter register, and remain vulnerable to political abuse.

The MoI’s Draft clearly did not envisage a systematic audit, as witnessed in the explanatory memorandum’s claim that no additional funding is required for its implementation. A systematic permanent residence audit is an extensive, long-term, and logistically and financially intensive undertaking that is entirely untenable without a substantial funding. Regardless of which entity gets tasked with carrying out these verifications (the proposal to delegate these tasks to the police will be discussed further below) will not be able to perform them effectively without financial backing.

For over a decade now, CDT has been advocating for the introduction of field verifications to effectively resolve permanent residence register discrepancies. We have also been emphasizing that major technical and substantive issues could arise during the field control process; therefore, revisions to the residence legislation must be meticulously researched to account for diverse potential scenarios (especially with citizens temporarily or permanently residing abroad on different grounds and those without a clear legal status in the host countries where they actually reside and work). The current Draft fails to articulate these critical details.

While the MoI did establish legal prerequisites for field-based residence controls in the Draft – a move that is overall a positive development – some segments of this framework exhibit major shortcomings. In several instances, these provisions run counter to international standards governing voter registers and permanent residence.

Article 6 of the Draft mandates the police to perform field checks of address accuracy within a 15-day period; should it be determined that the individual is not residing at the registered address, the Ministry issues a decision on their de-registration.

However, the Draft fails to specify the procedure or the methodology for these verifications through transparent procedures and oversight mechanisms, as recommended by ODIHR. It is unclear why the Working Group sidelined the 2021 electoral reform proposals prepared by the MoI in cooperation with relevant stakeholders, which addressed these sensitive issues much more effectively.

Rather than establishing precise procedures, safeguarding the rights of those being subject to checks, and creating a multi-stakeholder oversight mechanism, the Draft grants the police discretionary authority over this task. This provision directly contravenes ODIHR guidelines, which state: “According to the principle of the division of responsibilities, the residence records should

be maintained by an authority that is clearly separate from the police and the verification of the data should preferably be carried out by local authorities, and not the police. **It is therefore recommended to reconsider the involvement of the police in the verification of residence records.**" (ODIHR Opinion on the Laws of Montenegro Governing Voter Registration, 2025).

This is a highly sensitive part of the Draft and the overall process of field verification of permanent residence records which, contrary to ODIHR recommendations, empowers the police to indirectly decide on an individual's right to vote. This provision carries a high risk of political manipulation. If this legislation is to be adopted and implemented, it will likely trigger not only political friction and public pushback but also a surge in legal action against the state before both domestic and international courts.

A clear distinction must be made between two scenarios: misdemeanor sanctions – which may be justifiably warranted for individuals that are negligent, acting in bad faith, or whose behavior and (lack of) administrative culture demonstrate an unwillingness to contribute to a more orderly system; the other one is the stripping individuals of their voter rights in the absence of due process, adequate safeguards, and oversight.

Additionally, **Article 1** of the Draft establishes the legal grounds for cross-referencing data with other official registries where necessary. In our view, this is an important step forward and a useful tool for steering comprehensive field checks. This provision would allow for a more efficient prioritization of individuals slated for field-based verification.

However, our experience gained through the Council for the Auditing of the Voter Register in 2021, under the chairmanship of then-Deputy Prime Minister Dritan Abazovic, suggests that significant legal barriers exist regarding the cross-referencing of data with other registries, as multiple other laws prohibit such data integration. **The Draft's explanatory memorandum lacks a legal analysis into this particular issue, making it unclear whether the MoI is aware of the magnitude of this potential barrier.**

The Draft also fails to define the specific circumstances or grounds that would merit such data matching. It is essential to specify in which cases and on what grounds would this provision be invoked, ensuring that this sensitive process remains free from potential misuse.

It is important to recall that many individuals who have misrepresented their permanent residence do maintain a somewhat active presence in Montenegro. For instance, some utilize local medical services due to lower costs compared to their actual countries of residence. Others claim social welfare benefits based on their registered permanent residence or cross the border frequently enough to be able to argue that Montenegro is indeed their center of vital interests, even though this is not the case. Therefore, cross-referencing data must be viewed only as a supplementary tool to streamline field verifications, which must be comprehensive and check into literally every citizen of Montenegro, as this is the only way to prevent discrimination and ensure equal treatment in the process as described above.

Article 10 of the Draft proposes the insertion of a new Article 37a. However, the existing Article 37 of the current Law – which is not slated for repeal – is in direct conflict with the proposed Article 37a, paragraph 1, intended to amend the current provision.

Thus, Article 37 states that procedures for registering permanent residence and establishing permanent residence initiated before the entry into force of this Law shall be completed according to provisions in effect prior to the enactment of this Law, whereas Article 37a, paragraph 1 mandates that the registration of permanent residence, registration of a change of residence or a change of address, de-registration of permanent residence, and establishing of permanent residence (two out of five procedures are identical to Article 37) shall be concluded pursuant to the provisions of this Draft. These two articles are mutually exclusive.

It remains unclear whether this is a technical oversight in the Draft or an attempted legal maneuvering, however, Article 37a clearly introduces a retroactive effect, which contravenes Article 147 of the Constitution of Montenegro. While the Constitution does allow for limited retroactivity if a specific public interest is established during the legislative process, the Draft's explanatory memorandum fails to identify any such public interest that would justify this constitutional exception.

Additionally, the Draft stipulates that individuals who have not applied for a "new" identity card, or have never submitted a request for the issuance of an identity card, shall be deleted from the permanent residence register *ex officio* on the day the law enters into force, and consequently removed from the voter register. This provision also directly contradicts the standards established by ODIHR across different electoral cycles and allows for disenfranchisement through residence legislation without providing any legal safeguards for the subject of the proceedings.

Indeed, the ODIHR position on such measures was clearly articulated in its opinion on the 2019 elections in North Macedonia: "The automatic exclusion from voter lists of voters whose identification documents expired prior to election day presented a barrier to exercising the right to vote, which is at odds with international standards."

While CDT supports the use of misdemeanor sanctions against individuals who neglect their civic duty, under no circumstances should the refusal to obtain or renew an identity card result in the sanction of disenfranchisement.

Moreover, the 2025 ODIHR Opinion on the Laws of Montenegro Governing Voter Registration states: "It is recommended to explicitly specify in the legislation whether, when, for what period and under which conditions expired identification documents may serve as proof of identity for voting purposes." Yet again, without consulting the opposition or civil society, the drafter has unilaterally introduced a very rigid proposal that allows no grace period – effectively denying the right to vote to those with expired documents. CDT maintains that a decision of such magnitude necessitates a two-thirds parliamentary consensus and must be clearly codified in the Law on the Election of Councilors and Members of Parliament at least six months prior to any election.

The Draft does include commendable provisions that are aligned with international standards and recommendations. Articles 2, 3, 4, 7, 8, and 9 generally set a positive course for addressing existing issues and challenges in the permanent residence and voter registers, and they provide a solid basis for making progress in this process with minor corrections. Specifically, Article 3 of the amendments constitutes a vital legal prerequisite for resolving the issues with the permanent residence register.

Finally, in order to keep this document concise and maintain the focus and readability for the public consultation, we have refrained from addressing every technical detail of the Draft. However, we remain fully prepared to elaborate on these points during the consultative hearing and throughout the upcoming discussions.

CDT advises the Committee on Political System, Judiciary, and Administration to approach this Draft with great care and diligence, as it regulates – or fails to regulate – highly sensitive matters that affect the most fundamental rights citizens hold in a democratic society. After years of advocating for these reforms, we are fully invested in seeing these issues resolved; however, it is equally crucial to recognize that the use of “political force,” power struggles, outvoting, and other instruments and methods often seen in our parliamentary life could be highly detrimental to the upcoming elections and erode citizen trust in the process.

We remain open to any constructive exchange of opinions and further elaboration of our observations so that the proposed Draft can be refined in accordance with international standards, ensuring it gets adopted in a transparent and inclusive process and serves as a valid legal basis for resolving the voter register deficiencies that have persisted in Montenegro for decades.



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