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# Montenegro's Constitution of 2007

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- Preamble
- Motives for writing constitution
- Source of constitutional authority

# Preamble

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Stemming from:

The decision of the citizens of Montenegro to live in an independent and sovereign state of Montenegro, made in the referendum held on May 21, 2006;

The commitment of the citizens of Montenegro to live in a state in which the basic values are freedom, peace, tolerance, respect for human rights and liberties, multiculturalism, democracy and the rule of law;

The determination that we, as free and equal citizens, members of peoples and national minorities who live in Montenegro: Montenegrins, Serbs, Bosniacs, Albanians, Muslims, Croats and the others, are committed to democratic and civic Montenegro;

The conviction that the state is responsible for the preservation of nature, sound environment, sustainable development, balanced development of all its regions and the establishment of social justice;

The dedication to cooperation on equal footing with other nations and states and to the European and Euro-Atlantic integrations, the Constitutional assembly of the Republic of Montenegro, at its third sitting of the second regular session in 2007, held on 19 October 2007, adopts THE CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

- Integration of ethnic communities

- Protection of environment

- Regional group(s)

## PART 1. BASIC PROVISIONS

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- Type of government envisioned

### Article 1. The State

Montenegro is an independent and sovereign state, with the republican form of government.

Montenegro is a civil, democratic, ecological and the state of social justice, based on the rule of law.

### Article 2. Sovereignty

Bearer of sovereignty is the citizen with Montenegrin citizenship.

The citizen shall exercise power directly and through the freely elected representatives.

The power not stemming from the freely expressed will of the citizens in democratic election in accordance with the law, can neither be established nor recognised.

### Article 3. State territory

The territory of Montenegro is unified and inalienable.

### Article 4. State symbols

Montenegro shall have a coat of arms, a flag and a national anthem.

The coat of arms of Montenegro shall be the golden double-headed eagle with lion on its chest.

The flag of Montenegro shall be red in color, with the coat of arms in the center and the golden brim.

- National anthem
- National flag

- National flag

- National anthem

The national anthem of Montenegro shall be "Oj svijetla majska zoro".

## Article 5. Capital and Old Royal Capital

- National capital

The capital of Montenegro shall be Podgorica,

The Old Royal Capital of Montenegro shall be Cetinje.

## Article 6. Human rights and liberties

Montenegro shall guarantee and protect rights and liberties.

The rights and liberties shall be inviolable.

- Binding effect of const rights

Everyone shall be obliged to respect the rights and liberties of others.

## Article 7. Prohibition of infliction of hatred

Infliction or encouragement of hatred or intolerance on any grounds shall be prohibited.

- General guarantee of equality

## Article 8. Prohibition of discrimination

Direct or indirect discrimination on any grounds shall be prohibited.

Regulations and introduction of special measures aimed at creating the conditions for the exercise of national, gender and overall equality and protection of persons who are in an unequal position on any grounds shall not be considered discrimination.

Special measures may only be applied until the achievement of the aims for which they were undertaken.

- International law
- Customary international law
- Legal status of treaties

## Article 9. Legal order

The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation.

## Article 10. Limits of liberties

In Montenegro, anything not prohibited by the Constitution and the law shall be free.

- Duty to obey the constitution

Everybody is obliged to abide by the Constitution and the law.

## Article 11. Division of powers

The power shall be regulated following the principle of the division of powers into the legislative, executive and judicial.

- Structure of legislative chamber(s)

The legislative power shall be exercised by the Parliament, the executive power by the Government and the judicial by courts.

The power is limited by the Constitution and the law.

The relationship between powers shall be based on balance and mutual control.

Montenegro shall be represented by the President of Montenegro.

- Constitutional interpretation

Constitutionality and legality shall be protected by the Constitutional Court.

Army and security services shall be under democratic and civil control.

## Article 12. Montenegrin citizenship

In Montenegro there shall be a Montenegrin citizenship.

Montenegro shall protect the rights and interests of the Montenegrin citizens.

Montenegrin citizen shall not be expelled or extradited to other state, except in accordance with the international obligations of Montenegro.

- Extradition procedure
- International law
- Power to deport citizens

## Article 13. Language and alphabet

The official language in Montenegro shall be Montenegrin.

Cyrillic and Latin alphabet shall be equal.

Serbian, Bosniac, Albanian and Croatian shall also be in the official use.

- Protection of language use
- Official or national languages

## Article 14. Separation of the religious communities from the State

Religious communities shall be separated from the state.

Religious communities shall be equal and free in the exercise of religious rites and religious affairs.

- Official religion
- Separation of church and state

## Article 15. Relations with other states and international organizations

Montenegro shall cooperate and develop friendly relations with other states, regional and international organizations, based on the principles and rules of international law.

Montenegro may accede to international organizations.

The Parliament shall decide on the manner of accession to the European Union.

Montenegro shall not enter into a union with another state by which it loses its independence and full international personality.

- International law
- International organizations

- Regional group(s)

## Article 16. Legislation

The law, in accordance with the Constitution, shall regulate:

1. the manner of exercise of human rights and liberties, when this is necessary for their exercise;
2. the manner of exercise of the special minority rights;
3. the manner of establishment, organization and competences of the authorities and the procedure before those authorities, if so required for their operation;
4. the system of local self-government;
5. other matters of interest for Montenegro.

## PART 2. HUMAN RIGHTS AND LIBERTIES

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## 1. COMMON PROVISIONS

### Article 17. Grounds and equality

- International law

Rights and liberties shall be exercised on the basis of the Constitution and the confirmed international agreements.

- General guarantee of equality

All shall be deemed equal before the law, regardless of any particularity or personal feature.

- Equality regardless of gender

### Article 18. Gender equality

The state shall guarantee the equality of women and men and shall develop the policy of equal opportunities.

### Article 19. Protection

Everyone shall have the right to equal protection of the rights and liberties thereof.

- Right to appeal judicial decisions

### Article 20. Legal remedy

Everyone shall have the right to legal remedy against the decision ruling on the right or legally based interest thereof.

- Right to counsel

### Article 21. Legal aid

Everyone shall have the right to legal aid.

Legal aid shall be provided by the bar, as an independent and autonomous profession, and by other services.

Legal aid may be provided free of charge, in accordance with the law.

### Article 22. Right to local self-government

The right to local self-government shall be guaranteed.

- Protection of environment

### Article 23. Environment

Everyone shall have the right to a sound environment.

Everyone shall have the right to receive timely and full information about the status of the environment, to influence the decision-making regarding the issues of importance for the environment, and to legal protection of these rights.

Everyone, the state in particular, shall be bound to preserve and improve the environment

### Article 24. Limitation of human rights and liberties

Guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution and to such an extent which is necessary to meet the purpose for which the limitation is allowed, in an open and democratic society.

Limitations shall not be introduced for other purposes except for those for which they have been provided for.

- Emergency provisions

### Article 25. Temporary limitation of rights and liberties

During the proclaimed state of war or emergency, the exercise of certain human rights and freedoms may be limited, to the necessary extent.

- Equality regardless of creed or belief
- Equality regardless of nationality
- Equality regardless of religion
- Equality regardless of political party
- Equality regardless of gender
- Equality regardless of financial status
- Equality regardless of language
- Protection from unjustified restraint
- Right to be free of race
- Freedom of opinion/thought/conscience
- Human dignity
- Right to life
- Freedom of religion
- Protection from false imprisonment
- Right to be free of double jeopardy
- Presumption of innocence in trials

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 offence (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.

## 2. PERSONAL RIGHTS AND LIBERTIES

### Article 26. Prohibition of death penalty

The death penalty shall be prohibited in Montenegro.

### Article 27. Bio-medicine

The right of a person and dignity of a human being with regard to the application of biology and medicine shall be guaranteed.

Any intervention aimed at creating a human being that is genetically identical to another human being, living or dead shall be prohibited.

It is prohibited to perform medical and other experiments on human beings, without their permission.

### Article 28. Dignity and inviolability of persona

The dignity and security of a man shall be guaranteed.

The inviolability of the physical and mental integrity of a man, and privacy and individual rights thereof shall be guaranteed.

No one can be subjected to torture or inhuman or degrading treatment.

No one can be kept in slavery or servile position.

### Article 29. Deprivation of liberty

Everyone shall have the right to personal liberty.

Deprivation of liberty is allowed only for reasons and in the procedure provided for by law.

Person deprived of liberty shall be notified immediately of the reasons for the arrest thereof, in own language or in the language he/she understands.

Concurrently, person deprived of liberty shall be informed that he/she is not obliged to give any statement.

At the request of the person deprived of his/her liberty, the authority shall immediately inform about the deprivation of liberty the person of own choosing of the person deprived of his/her liberty.

The person deprived of his/her liberty shall have the right to the defense counsel of his/her own choosing present at his interrogation.

- Prohibition of capital punishment

- Human dignity

- Right to privacy

- Prohibition of cruel treatment
- Prohibition of torture
- Prohibition of slavery

- Protection from unjustified restraint

- Principle of no punishment without law

- Trial in native language of accused

- Protection from self-incrimination

- Right to counsel



Unlawful deprivation of liberty shall be punishable.

### Article 30. Detention

- Right to pre-trial release

Person suspected with reasonable doubt to have committed a crime may, on the basis of the decision of the competent court, be detained and kept in confinement only if this is necessary for the pre-trial procedure.

- Protection from unjustified restraint

Detainee shall be given the explained decision of detention at the time of being placed in detention or at the latest 24 hours from being put in detention.

- Right to appeal judicial decisions

Detainee shall have the right of appeal against the decision of detention, upon which the court shall decide within 48 hours.

The duration of detention shall be reduced to the shortest possible period of time.

Detention by the decision of first-instance court may last up to three months from the day of detention, and by the decision of a higher court, the detention may be extended for additional three months.

If no indictment is raised by that time, the detainee shall be released.

- Privileges for juveniles in criminal process

Detention of minors may not exceed 60 days.

- Prohibition of cruel treatment

### Article 31. Respect for person

The respect of human personality and dignity in the criminal or other procedure, in case of deprivation or limitation of liberty and during the execution of imprisonment sentence shall be guaranteed.

Any form of violence, inhuman or degrading behavior against a person deprived of liberty or whose liberty has been limited, and any extortion of confession and statement shall be prohibited and punishable.

- Right to fair trial
- Judicial independence
- Right to public trial
- Right to speedy trial

### Article 32. Fair and public trial

Everyone shall have the right to fair and public trial within reasonable time before an independent and impartial court established by the law.

- Protection from ex post facto laws
- Principle of no punishment without law

### Article 33. Principle of legality

No one may be punished for an act that, prior to being committed, was not stipulated by the law as punishable, nor may be pronounced a punishment which was not envisaged for that act.

- Protection from ex post facto laws

### Article 34. More lenient law

Criminal and other punishable acts are stipulated and the punishments for them are pronounced in accordance with the law in force at the time when the act was committed, unless the new law is more favorable for the perpetrator.

- Presumption of innocence in trials

### Article 35. Presumption of innocence

Every one shall be deemed innocent until the guilt thereof has been established by an enforceable court decision.

The accused shall not be obliged to prove the innocence thereof.

The court shall interpret the doubt regarding the guilt to the benefit of the accused.

- Prohibition of double jeopardy

### Article 36. Ne bis in idem

No one may be trialed or convicted twice for one and the same punishable act.

- Trial in native language of accused
- Right to counsel

## Article 37. Right to defense

Every one shall be guaranteed the right to defense, and especially: to be informed in the language he/she understands about the charges against thereof; to have sufficient time to prepare defense and to be defended personally or through a defense attorney of his/her own choosing.

- Protection from false imprisonment

## Article 38. Compensation of damage for illegal action

Person deprived of liberty in an illegal or ungrounded manner or convicted without grounds shall have the right to the compensation of damage from the state.

## Article 39. Movement and residence

The right to freedom of movement and residence shall be guaranteed, as well as the right to leave Montenegro.

Freedom of movement, residence and leaving Montenegro may be restricted if required so for conducting the criminal procedure, prevention of contagious diseases spreading or for the security of Montenegro.

Movement and residence of foreigner citizens shall be regulated by the law.

- Freedom of movement
- Restrictions on entry or exit

## Article 40. Right to privacy

Everybody shall have the right to respect for his/her private and family life.

- Right to privacy

## Article 41. Inviolability of home

Home shall be inviolable.

No one shall enter the dwelling place or other premises against the will of the possessor thereof and search them without a court warrant.

- Right to privacy

The search of premises shall be conducted in the presence of two witnesses.

A person in official capacity may enter other people's dwelling place or other premises without the court warrant and conduct the search without the presence of witnesses if so necessary for the prevention of execution of a criminal offence, immediate apprehension of a perpetrator or to save people and property.

- Regulation of evidence collection

- Regulation of evidence collection

## Article 42. Confidentiality of correspondence

Confidentiality of letters, telephone conversations and other means of communication shall be inviolable.

The principle of inviolability of confidentiality of letters, telephone calls and other means of communication shall be deviated from only on the basis of a court decision, if so required for the purposes of conducting criminal proceedings or for the security of Montenegro.

- Right to privacy
- Telecommunications

## Article 43. Personal data

The protection of personal data shall be guaranteed.

It is prohibited to use personal data for purposes other than those for which they were collected.

Everyone shall have the right to be informed about the personal data collected about him or her and the right to court protection in case of abuse.

- Protection of stateless persons

## Article 44. Right to asylum

A foreign national reasonably fearing from persecution on the grounds of his/her race, language, religion or association with a nation or a group or due to own political beliefs may request asylum in Montenegro.

A foreign national shall not be expelled from Montenegro to where due to his race, religion, language or association with a nation he/she is threatened with death sentence, torture, inhuman degradation, persecution or serious violation of rights guaranteed by this Constitution.

A foreign national may be expelled from Montenegro solely on the basis of a court decision and in a procedure provided for by the law.

## 3. POLITICAL RIGHTS AND LIBERTIES

### Article 45. Electoral right

The right to elect and stand for elections shall be granted to every citizen of Montenegro of 18 years of age and above with at least a two-year residence in Montenegro.

The electoral right shall be exercised in elections.

The electoral right shall be general and equal.

Elections shall be free and direct, by secret ballot.

### Article 46. Freedom of thought, conscience and religion

Everyone shall be guaranteed the right to freedom of thought, conscience and religion, as well as the right to change the religion or belief and the freedom to, individually or collectively with others, publicly or privately, express the religion or belief by prayer, preaches, customs or rites.

No one shall be obliged to declare own religious and other beliefs.

Freedom to express religious beliefs may be restricted only if so required in order to protect life and health of the people, public peace and order, as well as other rights guaranteed by the Constitution.

### Article 47. Freedom of expression

Everyone shall have the right to freedom of expression by speech, writing, picture or in some other manner.

The right to freedom of expression may be limited only by the right of others to dignity, reputation and honor and if it threatens public morality or the security of Montenegro.

### Article 48. Objection of conscience

Everyone shall have the right to objection of conscience.

No one shall be obliged, contrary to own religion or conviction, to fulfill a military or other duty involving the use of arms.

### Article 49. Freedom of press

Freedom of press and other forms of public information shall be guaranteed.

The right to establish newspapers and other public information media, without approval, by registration with the competent authority, shall be guaranteed.

- Minimum age for first chamber
  - Minimum age of head of state
  - Restrictions on voting
  - Eligibility for first chamber
- 
- Claim of universal suffrage
- 
- Secret ballot
- 
- Freedom of religion
  - Freedom of expression
  - Freedom of opinion/thought/conscience

- Freedom of expression
- 
- Right to protect one's reputation
- 
- Right to conscientious objection

- Freedom of press

- Right to protect one's reputation

The right to a response and the right to a correction of any untrue, incomplete or incorrectly conveyed information that violates a person's right or interest and the right to compensation of damage caused by the publication of untruthful data or information shall be guaranteed.

- Freedom of press

## Article 50. Prohibition of censorship

There shall be no censorship in Montenegro.

The competent court may prevent dissemination of information and ideas via the public media if required so to: prevent invitation to forcible destruction of the order defined by the Constitution; preservation of territorial integrity of Montenegro; prevention of propagating war or incitement to violence or performance of criminal offences; prevention of propagating racial, national and religious hatred or discrimination.

- Right to information

## Article 51. Access to information

Everyone shall have the right to access information held by the state authorities and organizations exercising public authority.

The right to access to information may be limited if this is in the interest of: the protection of life; public health; morality and privacy; carrying of criminal proceedings; security and defense of Montenegro; foreign, monetary and economic policy.

- Freedom of assembly

## Article 52. Freedom of assembly

The freedom of peaceful assembly, without approval, with prior notification of the competent authority shall be guaranteed.

The freedom of assembly may be temporarily restricted by the decision of the competent authority in order to prevent disorder or execution of a criminal offence, threat to health, morality or security of people and property, in accordance with the law.

- Freedom of association

## Article 53. Freedom of association

The freedom of political, trade union and other association and action, without approval, by the registration with the competent authority, shall be guaranteed.

No one shall be forced to become a member of an association.

The state supports political and other associations, when there is a public interest to do so.

- Restrictions on political parties

## Article 54. Prohibition of organizing

Political organizing in public bodies shall be prohibited.

- Prohibited political parties

A judge of the Constitutional Court, a judge, a state prosecutor and his deputy, an Ombudsman, a member of the Council of the Central Bank, a member of the Senate of the State Audit Institution, a professional member of the Army, Police and other security services shall not be a member of any political organization.

- Central bank
- Restrictions on the armed forces
- Restrictions on rights of groups
- Ombudsman

- Prohibited political parties

Political organizing and actions of foreign nationals and political organizations with the seat outside of Montenegro shall be prohibited.

- Restrictions on political parties
- Prohibited political parties

## Article 55. Prohibition of operation and establishment

The operation of political and other organizations directed towards forcible destruction of the constitutional order, infringement of the territorial integrity of Montenegro, violation of guaranteed freedoms and rights or instigating national, racial, and religious and other hatred and intolerance shall be prohibited.

The establishment of secret subversive organizations and irregular armies shall be prohibited.

- International organizations

### Article 56. Right to address international organisation

Everyone shall have the right of recourse to international institutions for the protection of own rights and freedoms guaranteed by the Constitution.

- Right of petition

### Article 57. Right of recourse

Everyone shall have the right of recourse, individually or collectively with others, to the state authority or the organisation exercising public powers and receive a response.

No one shall be held responsible, or suffer other harmful consequences due to the views expressed in the recourse, unless having committed a crime in doing so.

## 4. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND LIBERTIES

### Article 58. Property

Property rights shall be guaranteed.

- Right to own property
- Protection from expropriation
- Ownership of natural resources
- Right to establish a business

No one shall be deprived of or restricted in property rights, unless when so required by the public interest, with rightful compensation.

Natural wealth and goods in general use shall be owned by the state.

### Article 59. Entrepreneurship

Freedom of entrepreneurship shall be guaranteed.

- Protection of environment

Freedom of entrepreneurship may be limited only if so necessary in order to protect the health of the people, environment, natural resources, cultural heritage or security and defense of Montenegro.

- Right to transfer property

### Article 60. Right to succession

The right to succession shall be guaranteed.

### Article 61. Rights of foreign nationals

A foreign national may be the holder of property rights in accordance with the law.

### Article 62. Right to work

- Right to work
- Right to safe work environment
- Right to choose occupation

Everyone shall have the right to work, to free choice of occupation and employment, to fair and human working conditions and to protection during unemployment.

### Article 63. Prohibition of forced labor

Forced labor shall be prohibited.

The following shall not be considered forced labor: labor customary during the serving of sentence, deprivation of liberty; performance of duties of military nature or duties required instead of military service; work demanded in case of crisis or accident that threatens human lives or property.

### Article 64. Rights of the employed

- Right to just remuneration
- Right to reasonable standard of living
- Right to rest and leisure

The employed shall have the right to adequate salary.

The employed shall have the right to limited working hours and paid vacation.

- Right to safe work environment

The employed shall have the right to protection at work.

- Limits on employment of children

Youth, women and the disabled shall enjoy special protection at work.

### **Article 65. Social council**

Social position of the employed shall be adjusted in the Social council.

Social council shall consist of the representatives of the trade union, the employers and the Government.

- Right to strike

### **Article 66. Strike**

The employed shall have the right to strike.

The right to strike may be limited to the employed in the Army, police, state bodies and public service with the aim to protect public interest, in accordance with the law.

- Restrictions on the armed forces

### **Article 67. Social insurance**

Social insurance of the employed shall be mandatory.

The state shall provide material security to the person that is unable to work and has no funds for life.

- Right to reasonable standard of living

- State support for the unemployed

- State support for the disabled

### **Article 68. Protection of the persons with disability**

Special protection of the persons with disability shall be guaranteed.

- Right to health care

### **Article 69. Health protection**

Everyone shall have the right to health protection.

A child, a pregnant woman, an elderly person and a person with disability shall have the right to health protection from public revenues, if they do not exercise this right on some other grounds.

- Rights of children
- State support for the elderly
- State support for children
- State support for the disabled

- Protection of consumers

### **Article 70. Consumer protection**

The state shall protect the consumer.

Actions that harm the health, security and privacy of consumers shall be prohibited.

- Regulation of marriage

### **Article 71. Marriage**

Marriage may be entered into only on the basis of a free consent of a woman and a man.

Marriage shall be based on equality of spouses.

- Provision for matrimonial equality

- Right to found a family

### **Article 72. Family**

Family shall enjoy special protection.

Parents shall be obliged to take care of their children, to bring them up and educate them.

Children shall take care of their own parents in need of assistance.

Children born out of wedlock shall have the same rights and responsibilities as children born in marriage.

- Rights of children

- State support for children

### **Article 73. Protection of mother and child**

Mother and child shall enjoy special protection.

The state shall create the conditions that encourage childbirth.

- Rights of children
- Limits on employment of children
- State support for children

## Article 74. Rights of a child

A child shall enjoy rights and freedoms appropriate to his age and maturity.

A child shall be guaranteed special protection from psychological, physical, economic and any other exploitation or abuse.

## Article 75. Education

The right to education under same conditions shall be guaranteed.

Elementary education shall be obligatory and free of charge.

The autonomy of universities, higher education and scientific institutions shall be guaranteed.

## Article 76. Freedom of creation

The freedom of scientific, cultural and artistic creation shall be guaranteed.

The freedom to publish works of science and arts, scientific discoveries and technical inventions shall be guaranteed, and their authors shall be guaranteed the moral and property rights.

## Article 77. Science, culture and arts

The state shall encourage and support the development of education, science, culture, arts, sport, physical and technical culture.

The state shall protect the scientific, cultural, artistic and historic values.

## Article 78. Protection of natural and cultural heritage

Everyone shall be obliged to preserve natural and cultural heritage of general interest.

The state shall protect the national and cultural heritage.

# 5. SPECIAL - MINORITY RIGHTS

## Article 79. Protection of identity

Persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, as follows:

1. the right to exercise, protect, develop and publicly express national, ethnic, cultural and religious particularities;
2. the right to choose, use and publicly post national symbols and to celebrate national holidays;
3. the right to use their own language and alphabet in private, public and official use;
4. the right to education in their own language and alphabet in public institutions and the right to have included in the curricula the history and culture of the persons belonging to minority nations and other minority national communities;
5. the right, in the areas with significant share in the total population, to have the local self-government authorities, state and court authorities carry out the proceedings in the language of minority nations and other minority national communities;
6. the right to establish educational, cultural and religious associations, with the material support of the state;

- Compulsory education

- Free education

- Reference to science
- Right to academic freedom

- Provisions for intellectual property
- Reference to science
- Reference to art

- Right to enjoy the benefits of science
- Reference to art
- Right to culture
- Reference to science

- Right to culture

- Right to self determination
- Integration of ethnic communities

- Protection of language use

- Protection of language use

- Protection of language use

- Right to culture

- Protection of language use

7. the right to write and use their own name and surname also in their own language and alphabet in the official documents;

- Protection of language use

8. the right, in the areas with significant share in total population, to have traditional local terms, names of streets and settlements, as well as topographic signs written in the language of minority nations and other minority national communities;

- First chamber representation quotas

9. the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action;

10. the right to proportionate representation in public services, state authorities and local self-government bodies;

- Protection of language use

11. the right to information in their own language;

12. the right to establish and maintain contacts with the citizens and associations outside of Montenegro, with whom they have common national and ethnic background, cultural and historic heritage, as well as religious beliefs;

13. the right to establish councils for the protection and improvement of special rights.

- Right to culture

### Article 80. Prohibition of assimilation

Forceful assimilation of the persons belonging to minority nations and other minority national communities shall be prohibited.

The state shall protect the persons belonging to minority nations and other minority national communities from all forms of forceful assimilation.

## 6. PROTECTOR OF HUMAN RIGHTS AND LIBERTIES

### Article 81

- Human rights commission

The protector of human rights and liberties of Montenegro shall be independent and autonomous authority that takes measures to protect human rights and liberties.

- International law
- Ombudsman

The protector of human rights and liberties shall exercise duties on the basis of the Constitution, the law and the confirmed international agreements, observing also the principles of justice and fairness.

The protector of human rights and liberties shall be appointed for the period of six years and can be dismissed in cases envisaged by the law.

## PART 3. ORGANIZATION OF POWERS

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### 1. PARLIAMENT OF MONTENEGRO

#### Article 82. Responsibility

The Parliament shall:

1. Adopt the Constitution;
2. Adopt laws;
3. Adopt other regulations and general acts (decisions, conclusions, resolutions, declarations and recommendations);



- Emergency provisions
- Power to declare/approve war
- Budget bills
- Referenda
- Cabinet selection
- Cabinet removal
- Constitutional court removal
- Head of government selection
- Constitutional court selection
- Head of government removal
- Ordinary court judge removal
- Supreme court selection
- Central bank
- Attorney general
- International law
- Treaty ratification
- Secret ballot
- Size of first chamber
- First chamber selection
- Structure of legislative chamber(s)
- Head of government term length
- Term length for first chamber
- Powers of cabinet
- Emergency provisions
- Head of state powers

4. Proclaim the state of war and the state of emergency;
5. Adopt the budget and the final statement of the budget;
6. Adopt the National security strategy and Defense strategy;
7. Adopt the Development plan and Spatial plan of Montenegro;
8. Decide on the use of units of the Army of Montenegro in the international forces;
9. Regulate the state administration system;
10. Perform supervision of the army and security services;
11. Call for the national referendum;
12. Elect and dismiss from duty the Prime Minister and members of the Government
13. Elect and dismiss from duty the President of the Supreme Court, the President and the judges of the Constitutional Court;
14. Appoint and dismiss from duty: the Supreme State Prosecutor and State Prosecutors, the Protector of human rights and liberties (Ombudsman), the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro, the President and members of the Senate of the State Audit Institution, and other officials stipulated by the law;
15. Decide on immunity rights;
16. Grant amnesty;
17. Confirm international agreements;
18. Call for public loans and decide on credits of Montenegro;
19. Decide on the use of state property above the value stipulated by the law;
20. Perform other duties stipulated by the Constitution or the law.

### Article 83. Composition of the Parliament

The Parliament shall consist of the Members of the Parliament elected directly on the basis of the general and equal electoral right and by secret ballot.

The Parliament shall have 81 Members.

### Article 84. Mandate of the Parliament

The mandate of the Parliament shall last for four years.

The mandate of the parliament may cease prior to the expiry of the period for which it was elected by dissolving it or reducing the mandate of the Parliament.

If the mandate of the Parliament expires during the state of war or the state of emergency, the mandate shall be extended for the period of up to 90 days upon termination of the circumstances that have caused such state.

At the proposal of the President of Montenegro, the Government or minimum 25 MP's, the Parliament may reduce the duration of its mandate.

### Article 85. Rights and responsibilities of the Members of the Parliament

Member of the Parliament shall decide and vote according to his/her own conviction.

Member of the Parliament shall have the right to perform the duty of an MP as an occupation.

- Immunity of legislators

## Article 86. Immunity

Member of the Parliament shall enjoy immunity.

Member of the Parliament shall not be called to criminal or other account or detained because of the expressed opinion or vote in the performance of his/her duty as a Member of the Parliament.

No penal action shall be taken against and no detention shall be assigned to a Member of the Parliament, without the consent of the Parliament, unless the Member has been caught performing a criminal offense for which there is a prescribed sentence of over five years of imprisonment.

The President of Montenegro, the Prime Minister and members of the Government, the President of the Supreme Court, the President and the judges of the Constitutional Court, and the Supreme State Prosecutor shall enjoy the same immunity as the Member of the Parliament.

- Head of state immunity
- Head of government immunity

## Article 87. Cessation of mandate of the Member of the Parliament

Mandate of a Member of the Parliament shall cease prior to the expiry of the period for which he/she was elected:

1. By resignation;
2. If he/she was convicted by an enforceable decision of the court to an imprisonment sentence of minimum six months;
3. If he/she was deprived of the ability to work by an enforceable decision;
4. Due to cessation of Montenegrin citizenship;

- Removal of individual legislators

- Removal of individual legislators

## Article 88. Constitution of the Parliament

The first session of the newly elected composition of the Parliament shall be called for by the Speaker of the previous composition of the Parliament and it shall be held within 15 days from the date of publication of the final results of the elections.

- Leader of first chamber

## Article 89. Speaker and Deputy Speaker of the Parliament

The Parliament shall have a Speaker and one or more Deputy Speakers, elected from its own composition for the period of four years.

Speaker of the Parliament shall represent the Parliament, call for the sessions of the Parliament and chair them, take care of the enforcement of the Rules of Procedure of the Parliament, call for elections for the President of Montenegro and perform other affairs stipulated by the Constitution, the law and the Rules of Procedure of the Parliament.

The Deputy Speaker shall substitute the Speaker of the Parliament in the performance of affairs when the Speaker is prevented to do so or when the Speaker entrusts the Deputy Speaker the duty to substitute him.

- Length of legislative sessions

## Article 90. Sessions of the Parliament

The Parliament shall work in regular and extraordinary sessions.

Regular sessions shall be held twice a year.

The first regular session shall start on the first working day in March and shall last until the end of July, and the second one shall start on the first working day in October and shall last until the end of December.

- Extraordinary legislative sessions

Extraordinary session shall be called for at the request of the President of Montenegro, the Government or minimum one third of the total number of Members of the Parliament.

- Extraordinary legislative sessions

## Article 91. Decision-making

- Quorum for legislative sessions

The Parliament shall decide by majority vote of the present Members of the Parliament in the session attended by over one half of the total number of Members, unless otherwise regulated by the Constitution.

- Constitutional court removal
- Cabinet selection
- Power to declare/approve war
- Cabinet removal
- Supreme/ordinary court judge removal
- Head of government removal
- Referenda
- Constitutional court selection
- Ombudsman
- Head of state removal
- Requirements for birthright citizenship
- Head of government selection
- Emergency provisions

With the majority vote of the total number of Members the Parliament shall adopt the laws that regulate: manner of exercise of liberties and rights of the citizens, Montenegrin citizenship, electoral system, referendum, material responsibilities of the citizens, state symbols and use of state symbols, defense and security, the army, establishment, merger and abolition of municipalities; proclaim the state of war and state of emergency; adopt the spatial plan; adopt the Rules of Procedure of the Parliament; decide on calling for the state referendum; decide on the reduction of the mandate; decide on the removal of the President of the Republic from office; elect and dismiss the Prime Minister and members of the Government and decide on the trust in the Government; elect and dismiss the President of the Supreme court, presidents and judges of the Constitutional court; appoint and dismiss the Protector of human rights and liberties.

- Supermajority required for legislation

The Parliament shall decide by a two-third majority of the total number of the Members of Parliament on the laws regulating the electoral system and property rights of foreign nationals.

- Supermajority required for legislation

The Parliament shall decide by a two-third majority of the total number of the Members of Parliament in the first round of voting and by majority of the total number of the Members of Parliament in the second round of voting on the laws regulating the manner of exercising obtained minority rights and the use of Army units in the international forces.

- Dismissal of the legislature

## Article 92. Dissolution of Parliament

The Parliament shall be dissolved if it fails to elect the Government within 90 days from the date when the President of Montenegro proposed for the first time the candidate for the position of the Prime Minister.

If the Parliament does not perform its duties established by the law for a longer period of time, the Government may dissolve the Parliament upon hearing the opinion of the Speaker of the Parliament and the presidents of the caucuses in the Parliament.

- Head of state powers

The Parliament shall be dissolved by the Ordinance of the President of Montenegro.

- Emergency provisions

The Parliament shall not be dissolved during the state of war or state of emergency, if the ballot procedure of no confidence in the Government has been initiated, and in the first three months from its constitution and the three months prior to the expiry of its mandate.

The President of Montenegro shall call for the elections the first day after the dissolution of the Parliament.

- Initiation of general legislation

## Article 93. Proposing laws and other acts

The right to propose laws and other acts shall be granted to the Government and the Member of the Parliament.

- Legislative initiatives by citizens

The right to propose laws shall also be granted to six thousand voters, through the Member of the Parliament they authorized.

- Referenda

The proposal to call for the national referendum may be submitted by: at least 25 Members of the Parliament, the President of Montenegro, the Government or at least 10% of the citizens with the right to vote.

- Veto override procedure
- Approval or veto of general legislation

## Article 94. Proclamation of laws

The President of Montenegro shall proclaim the law within seven days from the day of adoption of the law, that is, within three days if the law has been adopted under a

speedy procedure or send the law back to the Parliament for new decision-making process.

The President of Montenegro shall proclaim the re-adopted law.

## 2. PRESIDENT OF MONTENEGRO

### Article 95. Responsibility

The President of Montenegro:

1. Represents Montenegro in the country and abroad;
2. Commands over the Army on the basis of the decisions of the Defense and Security Council;
3. Proclaims laws by Ordinance;
4. Calls for the elections for the Parliament;
5. Proposes to the Parliament: candidate for the Prime Minister, after consultations with the representatives of the political parties represented in the Parliament; President and judges of the Constitutional Court; Protector of human rights and liberties;
6. Appoints and revokes ambassadors and heads of other diplomatic missions of Montenegro abroad, at the proposal of the Government and after obtaining the opinion of the Parliamentary Committee responsible for international relations;
7. Accepts letters of accreditation and revocation of the foreign diplomats;
8. Awards medals and honors of Montenegro;
9. Grants amnesty;
10. Performs other tasks stipulated by the Constitution or the law.

### Article 96. Election

The President of Montenegro shall be elected on the basis of a general and equal electoral right, through direct and secret ballot.

A Montenegrin citizen residing in Montenegro for minimum 10 years in the past 15 years may be elected for the President of Montenegro.

The Speaker of the Parliament shall call for the elections for the President of Montenegro.

### Article 97. Mandate

The President of Montenegro shall be elected for the period of five years.

The same person may be elected the President of Montenegro maximum two times.

The President of Montenegro shall assume the duty on the date of taking an oath before the Members of the Parliament.

If the mandate of the President expires during the state of war or the state of emergency, the mandate shall be extended for maximum 90 days after the end of circumstances that have caused that state.

The President of Montenegro shall not perform any other public duty.

### Article 98. Cessation of mandate

The mandate of the President of Montenegro shall end with the expiry of time for which he/she was elected, by resignation, if he/she is permanently unable to perform the duty

- Head of state powers
- Name/structure of executive(s)

- Foreign affairs representative
- Designation of commander in chief

- Constitutional court selection
- Head of government selection
- Ombudsman

- Powers of cabinet
- Foreign affairs representative

- Foreign affairs representative

- Power to pardon

- Head of state selection

- Secret ballot

- Eligibility for head of state

- Head of state term length

- Head of state term limits

- Emergency provisions

- Eligibility for head of state

- Head of state removal

of the President and by impeachment.

The President shall be held responsible for the violation of the Constitution.

The procedure to determine whether the President of Montenegro has violated the Constitution shall be initiated by the Parliament, at the proposal of minimum 25 Members of the Parliament.

The Parliament shall submit the proposal to initiate the procedure to the President of Montenegro for plead.

- Constitutional court powers

The Constitutional Court shall decide on existence or non-existence of violation of the Constitution and shall publish the decision and submit it to the Parliament and the President of Montenegro without delay.

The Parliament may impeach the President of Montenegro when the Constitutional Court finds that he/she has violated the Constitution.

- Head of state replacement

### **Article 99. Discharge of duties in case of impediment or cessation of mandate**

In case of cessation of mandate of the President of Montenegro, until the election of the new President, as well as in the case of temporary impediment of the President to discharge his/her duties, the Speaker of the Parliament shall discharge this duty.

- Establishment of cabinet/ministers

## **3. GOVERNMENT OF MONTENEGRO**

- Head of government powers
- Powers of cabinet

### **Article 100. Responsibility**

The Government shall:

1. Manage internal and foreign policy of Montenegro;
2. Enforce laws, other regulations and general acts;
3. Adopt decrees, decisions and other acts for the enforcement of laws;
4. Sign international agreements;
5. Propose the Development plan and Spatial plan of Montenegro;
6. Propose the Budget and the Final Statement of the Budget;
7. Propose the National Security Strategy and Defense Strategy;
8. Decide on the recognition of states and establishment of diplomatic and consular relations with other states;
9. Nominate ambassadors and heads of diplomatic missions of Montenegro abroad;
10. Perform other tasks stipulated by the Constitution or the law.

- International law
- Treaty ratification

- Budget bills

### **Article 101. Decrees with legal power**

During the state of war or the state of emergency, the Government may adopt decrees with legal power, if the Parliament is not able to meet.

The Government shall submit the decrees with legal power to the Parliament for confirmation as soon as the Parliament is able to meet.

- Head of government decree power
- Powers of cabinet
- Emergency provisions

- Name/structure of executive(s)

### **Article 102. Composition of the Government**

The Government shall consist of the Prime Minister, one or more Deputy Prime Ministers and the ministers.

The Prime Minister represents the Government and manages its work.

- Head of government selection

## Article 103. Election

The President of Montenegro proposes the mandator within 30 days from the day of constitution of the Parliament.

- Cabinet selection

The candidate for the position of the Prime Minister presents to the Parliament his/her program and proposes composition of the Government.

The Parliament shall decide simultaneously on the program of the mandator and the proposal for the composition of the Government.

- Outside professions of legislators
- Eligibility for cabinet
- Head of government's role in the legislature

## Article 104. Incompatibility of duties

The Prime Minister and the member of the Government shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

- Cabinet removal

## Article 105. Resignation and impeachment

The Government and the member of the Government may resign from duty.

Resignation of the Prime Minister shall be considered the resignation of the Government.

The Prime Minister may propose to the Parliament to impeach a member of the Government.

- Head of government removal

## Article 106. Issue of confidence

The Government may raise the issue of confidence in it before the Parliament.

- Head of government removal
- Cabinet removal

## Article 107. Issue of no confidence

The Parliament may vote no confidence in the Government.

The proposal for no confidence ballot regarding the Government may be submitted by minimum 27 Members of the Parliament.

- Limits on removing head of government

If the Government gained confidence, the signatories of the proposal shall not submit a new proposal for no confidence ballot prior to the expiry of the 90 days deadline.

- Legislative oversight of the executive

## Article 108. Interpellation

The interpellation to examine certain issues regarding the work of the Government may be submitted by minimum 27 Members of the Parliament.

The interpellation shall be submitted in written form and shall be justified.

The Government shall submit an answer within thirty days from the date of receipt of interpellation.

- Counter corruption commission
- Legislative oversight of the executive

## Article 109. Parliamentary investigation

The Parliament may, at the proposal of minimum 27 Members of the Parliament, establish a Fact-finding Commission in order to collect information and facts about the events related to the work of the state authorities.

- Budget bills
- Head of government removal
- Head of government term length
- Head of government replacement

## Article 110. Cessation of mandate

The Government mandate shall cease: with the expiry of the Parliament mandate, by resignation, when it loses confidence and if it fails to propose the Budget by March 31 of the budgetary year.

The Government whose mandate has ceased shall continue with its work until the election of the new composition of the Government.

The Government whose mandate has ceased shall not dissolve the Parliament.

### **Article 111. Civil service**

The duties of the civil service shall be discharged by the ministries and other administrative authorities.

### **Article 112. Delegation and entrusting of duties**

Individual duties of the civil service may be delegated to the local self-government or other legal person by the law.

Individual duties of the civil service may be entrusted to the local self-government or some other legal entity by the regulation of the Government.

- Municipal government

## **4. LOCAL SELF-GOVERNMENT**

### **Article 113. Manner of decision-making**

In the local self-government the decisions shall be made directly and through the freely elected representatives.

The right to local self-government shall include the right of citizens and local self-government bodies to regulate and manage certain public and other affairs, in their own responsibility and in the interest of the local population.

### **Article 114. Form of local self-government**

The basic form of the local self-government shall be the municipality.

It shall also be possible to establish other forms of local self-government.

### **Article 115. Municipality**

The municipality shall have the status of a legal entity.

Municipality shall adopt the Statute and General Acts.

Authorities of the municipality shall be the Assembly and the President.

### **Article 116. Property-related powers and financing**

The Municipality shall exercise certain property related powers over the state owned assets in accordance with the law.

The Municipality shall have property.

The Municipality shall be financed from its own resources and the assets of the state.

The Municipality shall have a budget.

### **Article 117. Autonomy**

The Municipality shall be autonomous in the performance of its duties.

- Powers of cabinet

The Government may dismiss the municipal Assembly, that is, discharge the President of the municipality from duty, only if the municipal assembly, that is, the President of the municipality, fails to perform the duties thereof for a period longer than six months.

## **5. THE COURT**

## Article 118. Principles of the judiciary

- Judicial independence
- Constitutional interpretation
- International law

The court is autonomous and independent.

The court shall rule on the basis of the Constitution, laws and confirmed and published international agreements.

Establishment of court marshal and extraordinary courts shall be prohibited.

## Article 119. Panel of judges

The court shall rule in panel, except when the law stipulates that an individual judge shall rule.

Lay-judges shall also participate in the trial in cases stipulated by the law.

## Article 120. Publicity of trial

The hearing before the court shall be public and judgments shall be pronounced publicly.

- Right to public trial
- Privileges for juveniles in criminal process

Exceptionally, the court may exclude the public from the hearing or one part of the hearing for the reasons necessary in a democratic society, only to the extent necessary: in the interest of morality; public order; when minors are trialed; in order to protect private life of the parties; in marital disputes; in the proceedings related to guardianship and adoption; in order to protect military, business or official secret; and for the protection of security and defense of Montenegro.

## Article 121. Standing duty

The judicial duty shall be permanent.

The duty of a judge shall cease at his/her own request, when he/she fulfills the requirements for age pension and if the judge has been sentenced to an unconditional imprisonment sentence.

- Ordinary court term length
- Supreme court term length
- Mandatory retirement age for judges

The judge shall be released from duty if he/she has been convicted for an act that makes him unworthy for the position of a judge; performs the judicial duty in an unprofessional or negligent manner or loses permanently the ability to perform the judicial duty.

The judge shall not be transferred or sent to another court against his/her will, except by the decision of the Judicial Council in case of reorganization of courts.

- Supreme/ordinary court judge removal
- Supreme/ordinary court judge removal
- Establishment of judicial council
- Establishment of judicial council

## Article 122. Functional immunity

The judge and the lay judge shall enjoy functional immunity.

The judge and the lay judge shall not be held responsible for the expressed opinion or vote at the time of adoption of the decision of the court, unless this represents a criminal offense.

In the proceedings initiated because of the criminal offense made in the performance of judicial duty, the judge shall not be detained without the approval of the Judicial Council.

## Article 123. Incompatibility of duties

The judge shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

## Article 124. Supreme Court

The Supreme Court shall be the highest court in Montenegro.

The Supreme Court shall secure unified enforcement of laws by the courts.

The President of the Supreme Court shall be elected and dismissed from duty by the

- Structure of the courts
- Supreme court selection
- Supreme/ordinary court judge removal



Parliament at the joint proposal of the President of Montenegro, the Speaker of the Parliament and the Prime Minister.

If the proposal for the election of the President of the Supreme Court fails to be submitted within 30 days, the President of the Supreme Court shall be elected at the proposal of the responsible working body of the Parliament.

- Supreme/ordinary court judge removal
- Supreme court selection
- Ordinary court selection
- Establishment of judicial council

### **Article 125. Election of judges**

A Judge and a president of the court shall be elected and dismissed from duty by the Judicial Council.

The President of the court shall be elected for the period of five years.

The President of the court shall not be a member of the Judicial Council.

- Establishment of judicial council

### **Article 126. Judicial Council**

The Judicial Council shall be autonomous and independent authority that secures autonomy and independence of the courts and the judges.

- Establishment of judicial council

### **Article 127. Composition of the Judicial Council**

The Judicial Council shall have the president and nine members.

The President of the Judicial Council shall be the President of the Supreme Court.

Members of the Judicial Council shall be as follows:

1. four judges elected and dismissed from duty by the Conference of Judges;
2. two Members of the Parliament elected and dismissed from duty by the Parliament from amongst the parliamentary majority and the opposition;
3. two renowned lawyers elected and dismissed from duty by the President of Montenegro;
4. the Minister of Justice.

The President of Montenegro shall proclaim the composition of the Judicial Council.

The mandate of the Judicial Council shall be four years.

- Establishment of judicial council

### **Article 128. Responsibility of the Judicial Council**

The Judicial Council shall:

- Supreme court selection
- Supreme/ordinary court judge removal
- Ordinary court selection

1. elect and dismiss from duty a judge, a president of a court and a lay judge;
2. establish the cessation of the judicial duty;
3. determine number of judges and lay judges in a court;
4. deliberate on the activity report of the court, applications and complaints regarding the work of court and take a standpoint with regard to them;
5. decide on the immunity of a judge;
6. propose to the Government the amount of funds for the work of courts;
7. perform other duties stipulated by the law.

The Judicial Council shall decide by majority vote of all the members.

The Minister of Justice shall not vote in disciplinary proceedings against judges.

## 6. ARMY OF MONTENEGRO

### Article 129. Principles

- International law

The Army shall defend independence, sovereignty and state territory of Montenegro, in accordance with the principles of international law regarding the use of force.

The Army shall be subject to democratic and civil control.

The members of the Army may be part of the international forces.

## 7. DEFENSE AND SECURITY COUNCIL

### Article 130. Responsibility

The Defense and Security Council shall:

1. Make decisions on commanding over the Army;
2. Analyze and assess the security situation in Montenegro and decide to take adequate measures;
3. Appoint, promote and discharge from duty the Army officers;
4. Propose to the Parliament proclamation of the state of war and state of emergency;
5. Propose the use of Army in international forces;
6. Perform other duties stipulated by the Constitution and the law.

- Designation of commander in chief

- Selection of active-duty commanders

- Emergency provisions

- Power to declare/approve war

- Head of state powers

### Article 131. Composition

The Defense and Security Council of Montenegro shall consist of the President of Montenegro, the Speaker of the Parliament and the Prime Minister.

The President of Montenegro shall act as the President of the Defense and Security Council.

- Power to declare/approve war

### Article 132. Proclamation of the state of war

The state of war shall be proclaimed when there is direct danger of war for Montenegro, when Montenegro is attacked or war is declared against it.

If the Parliament is not able to meet, the Defense and Security Council shall adopt the decision to proclaim the state of war and submit it to the Parliament for confirmation as soon as the Parliament is able to meet.

- Emergency provisions

### Article 133. Proclamation of the state of emergency

The state of emergency may be proclaimed in the territory or part of the territory of Montenegro in case of the following:

1. Big natural disasters;
2. Technical-technological and environmental disasters and epidemics;
3. Greater disruption of public peace and order;
4. Violation or attempt to abolish the constitutional order.

If the Parliament is not able to meet, the Defense and Security Council shall adopt the decision to proclaim the state of emergency and submit it to the Parliament for confirmation as soon as it is able to meet.

The state of emergency shall last until the circumstances that have caused it have ceased to exist.

## 8. STATE PROSECUTION

- Attorney general

### Article 134. Status and responsibility

The State Prosecution shall be a unique and independent state authority that performs the affairs of prosecution of the perpetrators of criminal offenses and other punishable acts who are prosecuted ex officio.

- Attorney general

### Article 135. Appointment and mandate

The affairs of the State Prosecution shall be performed by the State Prosecutor.

The State Prosecutor shall have one or more deputies.

The Supreme State Prosecutor and state prosecutors shall be appointed and dismissed from duty by the Parliament.

The Supreme State Prosecutor and state prosecutors shall be appointed for the period of five years.

### Article 136. Prosecutorial Council

The Prosecutorial Council shall ensure the independence of state prosecutorial service and state prosecutors.

The Prosecutorial Council shall be elected and dismissed by the Parliament.

The election, mandate, competencies, organisation and methods of work of the Prosecutorial Council shall be regulated by law.

### Article 137. Functional immunity

State Prosecutor and Deputy State Prosecutor shall enjoy functional immunity and shall not be held responsible for the expressed opinion or decision made in the performance of the duties thereof, unless this represents a criminal offense.

- Attorney general
- Outside professions of legislators

### Article 138. Incompatibility of duties

State Prosecutor and Deputy State Prosecutor shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

## PART 4. ECONOMIC SYSTEM

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- Right to competitive marketplace
- Right to establish a business

### Article 139. Principles

Economic system shall be based on a free and open market, freedom of entrepreneurship and competition, independence of the economic entities and their responsibility for the obligations accepted in the legal undertakings, protection and equality of all forms of property.

### Article 140. Economic area and equality

The territory of Montenegro shall represent a unique (unified) economic area.

The State shall encourage even economic development of all its areas.

- Right to competitive marketplace

It shall be prohibited to obstruct and limit free competition and to encourage unequal, monopolistic or dominant position in the market.

### **Article 141. State property**

Assets in state property shall belong to the state of Montenegro.

- Duty to pay taxes

### **Article 142. Tax obligation**

The state shall be financed from taxes, duties and other revenues.

Every one shall pay taxes and other duties.

Taxes and other duties can be introduced only by law.

- Central bank

### **Article 143. Central Bank of Montenegro**

The Central Bank of Montenegro shall be an independent organization, responsible for monetary and financial stability and banking system operations.

The Central Bank Council shall govern the Central Bank of Montenegro.

The Central Bank Governor shall manage the Central Bank of Montenegro.

### **Article 144. National Audit Institution**

The National Audit Institution of Montenegro shall be an independent and supreme authority of the national audit.

The National Audit Institution shall audit the legality of and success in the management of state assets and liabilities, budgets and all the financial affairs of the entities whose sources of finance are public or created through the use of state property.

The National Audit Institution shall submit an annual report to the Parliament.

The Senate shall manage the National Audit Institution.

## **PART 5. CONSTITUTIONALITY AND LEGALITY**

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- International law
- Legal status of treaties

### **Article 145. Conformity of legal regulations**

The law shall be in conformity with the Constitution and confirmed international agreements, and other regulations shall be in conformity with the Constitution and the law.

### **Article 146. Publication and coming into effect of the regulations**

The law and other regulation shall be published prior to coming into effect, and shall come into effect no sooner than the eighth day from the day of publication thereof.

Exceptionally, when the reasons for such action exist and have been established in the adoption procedure, law and other regulation may come into effect no sooner than the date of publication thereof.

- Protection from ex post facto laws

## Article 147. Prohibition of ex post facto effect (retroactive effect)

Law and other regulation shall not have retroactive effect.

Exceptionally, if required so by the public interest established in the process of law adoption, individual provisions of the law may have retroactive effect.

Provision of the Criminal code may have retroactive effect only if it is more lenient for the perpetrator of a criminal offense.

## Article 148. Legality of individual acts

Individual legal act shall be in conformity with the law.

Final individual legal acts shall enjoy court protection.

- Establishment of constitutional court

# PART 6. CONSTITUTIONAL COURT OF MONTENEGRO

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- Constitutional court powers

## Article 149. Responsibility

The Constitutional Court shall decide on the following:

- International law
- Legal status of treaties
- Constitutional interpretation

1. Conformity of laws with the Constitution and confirmed and published international agreements;
2. Conformity of other regulations and general acts with the Constitution and the law;
3. Constitutional appeal due to the violation of human rights and liberties granted by the Constitution, after all other efficient legal remedies have been exhausted;
4. Whether the President of Montenegro has violated the Constitution,
5. The conflict of responsibilities between courts and other state authorities, between state authorities and local self-government authorities, and between the authorities of the local self-government units;
6. Prohibition of work of a political party or a non-governmental organization;
7. Electoral disputes and disputes related to the referendum, which are not the responsibility of other courts;
8. Conformity with the Constitution of the measures and actions of state authorities taken during the state of war or the state of emergency;
9. Performs other tasks stipulated by the Constitution.

- Regulation of political parties

If the regulation ceased to be valid during the procedure for the assessment of constitutionality and legality, and the consequences of its enforcement have not been recovered, the Constitutional Court shall establish whether that regulation was in conformity with the Constitution, that is, with the law during its period of validity.

The Constitutional Court shall monitor the enforcement of constitutionality and legality and shall inform the Parliament about the noted cases of unconstitutionality and illegality.

- Constitutional interpretation
- Constitutionality of legislation

## Article 150. Initiation of the procedure to assess constitutionality and legality

Any person may file an initiative to start the procedure for the assessment of constitutionality and legality.

The procedure before the Constitutional Court for the assessment of constitutionality and legality may be initiated by the court, other state authority, local self-government authority and five Members of the Parliament.

The Constitutional Court itself may also initiate the procedure for the assessment of constitutionality and legality.

During the procedure, the Constitutional Court may order to stop the enforcement of an individual act or actions that have been taken on the basis of the law, other regulation or general act, the constitutionality, i.e. legality of which is being assessed, if the enforcement thereof could cause irreparable damage.

- Constitutionality of legislation
- Constitutional interpretation

## Article 151. Decision of the Constitutional Court

The Constitutional Court shall decide by majority vote of all judges.

The decision of the Constitutional Court shall be published.

The decision of the Constitutional Court shall be generally binding and enforceable.

When necessary, the Government shall secure the enforcement of the decision of the Constitutional Court.

- Constitutionality of legislation
- International law
- Legal status of treaties
- Constitutional interpretation

## Article 152. Cessation of validity of a regulation

When the Constitutional Court establishes that the law is not in conformity with the Constitution and confirmed and published international agreements, that is, that other regulation is not in conformity with the Constitution and the law, that law and other regulation shall cease to be valid on the date of publication of the decision of the Constitutional Court.

The law or other regulation, i.e. their individual provisions that were found inconsistent with the Constitution or the law by the decision of the Constitutional Court, shall not be applied to the relations that have occurred prior to the publication of the Constitutional Court decision, if they have not been solved by an absolute ruling by that date.

- Eligibility for const court judges

## Article 153. Composition and election

The Constitutional Court shall have seven judges.

The Constitutional Court judge shall be elected for the period of nine years.

The President of the Constitutional Court shall be elected for amongst the judges for the period of three years.

The person enjoying reputation of a renowned legal expert, with minimum 15 years of experience in this profession may be elected to the position of the Constitutional Court judge.

The President and the judge of the Constitutional Court shall not discharge duties of a Member of the Parliament or other public duties or professionally perform some other activity.

- Supreme/ordinary court judge removal

## Article 154. Cessation of duty

- Mandatory retirement age for judges

The duty of the President and the judge of the Constitutional Court shall cease prior to the expiry of the period for which he/she was elected, at his/her own request, when he/she fulfills the requirements for age pension or if he/she was sentenced to an unconditional imprisonment sentence.

The President and the judge of the Constitutional Court shall be released from duty if he/she has been found guilty of an offense that makes him/her unworthy of the duty, if he/she permanently loses the ability to perform the duty or if he/she expresses publicly his/her political convictions.

The Constitutional Court shall establish the emergence of reasons for cessation of duty or release from duty, in its session and shall inform the Parliament of that case.

The Constitutional Court may decide that the President or the judge of the Constitutional Court that penal action has been initiated against shall not perform the duty for the period of duration of that action.

- Constitution amendment procedure

## PART 7. CHANGE OF THE CONSTITUTION

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### Article 155. Proposal for the change of the constitution

The proposal to change the Constitution may be submitted by the President of Montenegro, the Government or minimum 25 Members of the Parliament.

With the Proposal to change the Constitution it may be proposed to change or amend individual provisions of the Constitution or to adopt the new Constitution.

The Proposal to change individual provisions of the Constitution shall contain the indication of the provisions for which change is demanded and the justification.

The Proposal to change the Constitution shall be adopted in the Parliament if two thirds of the total number of Members of the Parliament vote in favor of it.

If the proposal to change the Constitution has not been adopted, the same proposal shall not be repeated prior to the expiry of one year from the day when the proposal was rejected.

### Article 156. Act on the change of the Constitution

Change of the individual provisions of the Constitution shall be made through amendments.

Draft act on the change of the Constitution shall be prepared by the responsible working body of the Parliament.

Draft act on the change of the Constitution shall be adopted in the Parliament if two thirds of all the Members of the Parliaments vote in favor of it.

The Parliament shall submit the adopted Draft act on the change of the Constitution for public hearing, which shall not last less than one month.

After the end of the public hearing, the responsible working body of the Parliament shall define the Proposal of the act on the change of the Constitution.

The act on the change of the Constitution shall be adopted in the Parliament if two thirds of all the Members of the Parliament vote in favor of it.

- Emergency provisions

Change of the Constitution shall not take place during the state of war and the state of emergency.

## Article 157. Confirmation in the referendum

Change of Articles 1, 2, 3, 4, 12, 13, 15, 45 and 157 shall be final if minimum three fifths of all the voters support the change in the national referendum.

- Transitional provisions

## PART 8. TRANSITIONAL AND FINAL PROVISION

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### Article 158. Constitutional law for the enforcement of the Constitution

The Constitutional Law shall be adopted for the enforcement of the Constitution.

The Constitutional Law for the enforcement of the Constitution shall be adopted by the Parliament with a majority vote of all the Members of the Parliament.

The Constitutional Law shall be proclaimed and come into effect concurrently with the Constitution.

## APPENDIX. CONSTITUTIONAL LAW FOR THE IMPLEMENTATION OF THE CONSTITUTION OF THE REPUBLIC OF MONTENEGRO

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### Article 1

Constitution of Montenegro (hereinafter: Constitution) shall enter into force on the day of its promulgation by the Constitutional Parliament of the Republic of Montenegro, unless this Law provides differently with regard to the implementation of certain regulations in the Constitution.

### Article 2

Authorities in Montenegro and other state bodies, organizations and departments and bodies of the local self-government shall continue to work until the end of the period for which they have been elected, within the rights and duties stipulated by the Constitution, unless this Law provides differently.

### Article 3

The State Prosecutor shall continue to work as the State Prosecution until the Law that shall stipulate the position, organisation and work of the State Prosecution, is adopted.

### Article 4

The Defence and Security Council shall be constituted within 10 days as of the day when this Law enters into force.

- International law



## Article 5

Provisions of international agreements on human rights and freedoms, to which Montenegro acceded before 3 June 2006, shall be applied to legal relations that have arisen after the signature.

## Article 6

Laws and other regulations shall remain into force until they have been harmonised with the Constitution within the periods of time stipulated by this Law.

## Article 7

The following laws shall be adopted within two months as of the day when this Law entered into force:

1. Law on Montenegrin citizenship;
2. Law on travel documents of Montenegrin citizens;
3. Law on residence and abiding place of the citizens;
4. Law on identification card;
5. Law on Social Council.

The following laws shall be adopted within six months as of the day when this Law entered into force:

1. Law on Judicial Council and
  - 1.
2. Law on Territorial Organization of Montenegro.

## Article 8

The following shall be harmonised with the Constitution within three months as of the day when this Law entered into force:

1. Law on Election of MPs and deputies;
2. Law on the Election of the President of Montenegro;
3. Law on Electoral Rolls;
4. Law on Courts;
5. Law on State Prosecutor;
6. Law on State Administration;
7. Law on Property of the Republic of Montenegro;
8. Law on Expropriation;
9. Law on Minorities Rights and Freedoms.

## Article 9

Other laws and regulations shall be harmonised with the Constitution within two years as of the day when this Law entered into force, and regulations for the implementation of these laws within time periods stipulated in these laws.

- Requirements for birthright citizenship

- Head of state selection

- Attorney general

- Protection from expropriation

## Article 10

Assemblies of local self-government units shall harmonise their regulations with the Constitution within one year as of the day when this Law entered into force at the latest.

## Article 11

Regulations of the State Union of Serbia and Montenegro shall be applied accordingly, providing they are not contrary to legal order and interests of Montenegro, until adequate regulations of Montenegro are adopted.

## Article 12

- Requirements for birthright citizenship

Every citizen of Montenegro who had a citizenship of some other State apart from the Montenegrin citizenship, on the day of 3 June 2006, shall have the right to keep the Montenegrin citizenship.

Citizen of Montenegro who obtained some other citizenship after 3 June 2006, shall have the right to keep the Montenegrin citizenship until a bilateral agreement is made with the State whose citizenship he obtained, but not longer than one year as of the day when the Constitution of Montenegro was adopted.

## Article 13

As of the day of the promulgation of the Constitution and this Law, the Constitutional Parliament of Montenegro shall continue to work as the Parliament of Montenegro, and the Constitutional Committee shall cease to work.

## Article 14

Elections for the Members of the Parliament of Montenegro shall be held at the latest by the end of 2009.

## Article 15

As of the day when this Law enters into force the name of the official gazette of the Republic of Montenegro shall change into "the Official Gazette of Montenegro".

## Article 16

This Law shall enter into force on the day of its promulgation.

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