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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MONTENEGRO**

**URGENT OPINION**

**ON THE LAW ON AMENDMENTS  
TO THE LAW ON THE PRESIDENT**

**Issued on 9 December 2022 pursuant to Article 14a  
of the Venice Commission's Rules of Procedure**

**Endorsed by the Venice Commission  
at its 133<sup>rd</sup> Plenary Session  
(Venice, 16-17 December 2022)**

**On the basis of comments by**

**Mr Nicos C. ALIVIZATOS (Member, Greece)  
Mr Philip DIMITROV (Member, Bulgaria)  
Mr Kaarlo TUORI (former member, Finland)**

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## I. Introduction

1. By letter of 9 November, the President of Montenegro requested an Urgent Opinion of the Venice Commission on the Law on amendments to the Law on the President ([CDL-REF\(2022\)067](#) and [CDL-REF\(2022\)068](#)). The President having vetoed the Law on grounds of alleged unconstitutionality, the urgency lies in the imminent re-examination of the law by parliament in the absence of a functional Constitutional Court. Indeed, should the parliament adopt the law again, the President would have to promulgate it (Art. 94(2) of the Constitution).
2. Mr Nicos Alivizatos (Member, Greece), Mr Philip Dimitrov (Member, Bulgaria) and Mr Kaarlo Tuori (Honorary President of the Venice Commission, former Member, Finland) acted as rapporteurs for this opinion.
3. On 12 November 2022, the Commission's Bureau authorised the preparation of an Opinion through the urgent procedure.
4. On 23 November, the President of the Commission issued a [public statement](#), urging the parliament of Montenegro to elect the four missing judges of the Constitutional Court without further delay.
5. On 29 November 2022, the rapporteurs, together with Ms Simona Granata-Menghini (Secretary of the Venice Commission) and Martina Silvestri from the Secretariat, had online meetings with the President of the Republic, representatives of the parliamentary majority, representatives of the parliamentary opposition, the EU delegation as well as with representatives of the civil society. During the online meetings, representatives of the majority as well as of the opposition expressed their interest in receiving the Venice Commission's opinion as soon as possible, and, in any event, before Parliament reconvenes, on 12 December 2022.
6. This opinion was prepared in reliance on the English translation of the Law on amendments to the Law on the President of Montenegro (hereinafter, the Law). The translation may not accurately reflect the original version on all points.
7. This urgent Opinion was drafted on the basis of comments by the rapporteurs. In line with paragraph 10 of the Venice Commission's Protocol on the preparation of urgent opinions ([CDL-AD\(2018\)019](#)), the draft urgent Opinion was transmitted to the authorities of Montenegro on 8 December 2022 for comments. The comments submitted by the political group "Democratic Front" on 9 December 2022 have been taken into consideration in the opinion. The urgent Opinion was then issued on 9 December 2022, pursuant to the Venice Commission's Protocol on the preparation of urgent opinions, and endorsed at its 133<sup>rd</sup> Plenary Session (Venice, 16-17 December 2022).

## II. Background

### i. The institutional crisis

8. In August 2020, the Democratic Party of Socialists (DPS) lost the elections against a coalition formed by the three parties of For the Future of Montenegro, Peace is Our Nation and In Black and White. DPS had been in power in independent Montenegro uninterruptedly since 2006.
9. In December 2020, the newly elected majority formed a so-called "expert government" led by the Prime Minister Zdravko Krivokapic, giving rise to a form of cohabitation, with the President of the Republic, Mr Djukanovic, directly elected by popular vote, being also the leader of the DPS.

10. On 4 February 2022, the government fell after the parliament backed a vote of no-confidence called by In Black and White and the opposition parties.

11. On 28 April 2022, In Black and White together with the Socialist People's Party and the opposition (DPS), formed a new government, led by Prime Minister Dritan Abazovic, of the In Black and White coalition.

12. On 19 August 2022, also that new government fell, after a vote of no-confidence called by the DPS and smaller parties in the ruling coalition.

13. On 20 September 2022, President Djukanovic proposed that parliament call a snap election after refusing to propose as Prime Minister-designate either the candidate proposed by the majority, Mr Miodrag Lekic, or another candidate of his choice.

14. On 17 October 2022, the Democratic Front (party in the majority) initiated the parliamentary procedure to amend the Law on the President and on 2 November, the parliament adopted the Law, with a rushed procedure and without consulting the President's office, by a majority of 41 votes with no votes from the opposition parties.

15. On 3 November, the Law was submitted to the President for promulgation; the President however returned it to parliament the following day, on the ground that it allegedly violates the constitution.

16. On 9 November, the President asked the Venice Commission to prepare an urgent opinion on the Law which he had vetoed, in the absence of a functioning Constitutional Court.

ii. The failure to elect the four missing judges of the Constitutional Court

17. Since 20 September 2022, the Constitutional Court of Montenegro lacks the quorum for decision-making as there are only three judges out of seven, due to progressive retirement of its members.

18. Earlier, on 27 July 2022, the parliament had failed to elect the missing Constitutional Court members, as none of the 13 proposed candidates received the necessary support in parliament. The election of the judges needs the votes of a two-thirds majority (54 MPs), or a three-fifth majority (48 MPs) in a second-round vote.

19. Again, on 21 October 2022, the parliament did not elect any of the four proposed candidates.

20. On 23 November 2022, the president of the Venice Commission, Claire Bazy Malaurie, urged parliament to elect the four missing judges without any further delay, following equally strong statements by other international actors, such as the EU Spokesperson<sup>1</sup> and the co-rapporteurs of the Parliamentary Assembly of the Council of Europe (PACE) for post-monitoring dialogue with Montenegro.<sup>2</sup>

21. On 28 November 2022, the parliament was scheduled to vote both for the election of four candidates to become judges of the Constitutional Court and for a second adoption of the Law, which would then become final. The two items were postponed to 12 December 2022. While the Constitution sets no time limit for the adoption of a law after it is returned to parliament, Art. 182 of the parliament's rules of procedure provides that "If the President of Montenegro demands that

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<sup>1</sup> [EU Spokesperson on developments in the Parliament and around the Constitutional Court](#), 8 November 2022.

<sup>2</sup> [PACE post-monitoring co-rapporteurs encourage the authorities to adopt a set of crucial reforms](#), 15 July 2022.

the Parliament should repeat the deciding on the law, the President of the Parliament shall include such law in the agenda of the first following sitting of the Parliament.”<sup>3</sup>

### III. Scope of the opinion

22. The opinion request addressed to the Venice Commission concerns the constitutionality of the Law on amendments to the Law on the President of Montenegro. The Commission has not been asked and will therefore refrain from expressing its opinion on the constitutionality of the actions which have led to the current institutional crisis.

23. Constitutionality issues are for Constitutional Courts to decide, when they exist.<sup>4</sup> The Venice Commission has previously made it clear that it is not within its mandate to interfere with the role of a Constitutional Court to assess national legislation against national constitutional norms. In a normal situation, it would indeed be for the Constitutional Court of Montenegro to decide on the constitutionality of this Law. However, the Constitutional Court is paralysed for lack of quorum. The parliament of Montenegro has failed to elect the four missing judges of the Court because the political parties are unwilling to find the necessary compromise for parliament to reach the required qualified majority (two-thirds, and subsequently three-fifths). The Commission has repeatedly stressed that “Constitutional Courts, by their composition, should guarantee independence with regard to different interest groups and contribute towards the establishment of a body of jurisprudence which is mindful of this pluralism. Here, the emphasis is on the independence of the judges and their respect for pluralism, not their “representation” of party interests.”<sup>5</sup> It is a sign of democratic maturity that political parties may agree on mutually accepted candidates to serve on “safeguard institutions”, for the superior state interest of the functioning of the institutions, in the interest of the citizens. Unfortunately, in Montenegro not only the election of constitutional court judges, but also the election of lay members of the Judicial Council has not been done. These are both essential “safeguard institutions” and a democratic state cannot function without them. In particular, the Constitutional Court, under Art. 149(7) of the Constitution, is competent to decide on “electoral disputes: free and fair elections depend therefore on its functioning.” The Venice Commission will therefore, exceptionally, accept to give an opinion on the constitutionality of the Law on amendments to the Law on the President; contrary to the argument of the Democratic Front that by doing so, the Commission violates the competence of the Constitutional Court of Montenegro, thus of the Constitution of Montenegro, the Commission recalls that, unlike the judgments of the Constitutional Court, its opinions are of an advisory nature only. The Commission calls on all the political parties in Montenegro to find the compromises which are essential in a functioning democracy, with no further delay.

24. The Commission is of the view that before analysing the compatibility of the Law in question with the Constitution of Montenegro, it should analyse the events which have led to the current institutional crisis.

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<sup>3</sup> Website of the Parliament of Montenegro: <https://www.skupstina.me/en/rules-of-procedure> (last access on 5 December 2022).

<sup>4</sup> Venice Commission, Opinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, [CDL-AD\(2016\)001](#), para. 130.

<sup>5</sup> Venice Commission, *ibidem*, para. 116.

#### IV. Analysis

##### A. The failure to form a new government

25. The extreme polarisation of the political forces and institutional powers of Montenegro is described in the first key finding of the 2022 EU Report on Montenegro published on 12 October 2022, which reads as follows:

*“As regards the political criteria, political tensions, polarisation, the absence of constructive engagement between political parties and the failure to build consensus on key matters of national interest continued and caused two fractious governments to fall on votes of no-confidence. The proper functioning of Montenegrin institutions has been affected by political volatility, government instability and tensions within the ruling majorities, stalling decision-making processes and reform implementation. The main judicial bodies, including the Constitutional Court, have been operating in an incomplete composition due to the Parliament's inability to elect new members, thus undermining their proper functioning. As of mid-September the Constitutional Court was unable to fulfil its role due to the absence of a quorum, amplifying political uncertainty.”<sup>6</sup>*

26. The divergence between the two political factions has prevented the formation of a government. President Djukanovic informed the Commission that immediately after the fall of the government of Prime Minister Dritan Abazovic on 19 August 2022, he organised consultations with a view to identifying a possible Prime Minister-designate within a deadline of 30 days from the day when the government fell; he referred to Art. 103 of the Constitution on the election of the government (“The President of Montenegro proposes the mandator within 30 days from the day of constitution of the Parliament”). According to the President, not all political parties responded to his invitation to participate in the consultations. He explained that he received the letter of the three blocs in the ruling coalition - For the Future of Montenegro, Peace is Our Nation and In Black and White - proposing Mr Miodrag Lekic for prime minister only on 20 September, that is, a day after the expiry of the 30-day time-limit set in Art. 103 of the Constitution. He therefore refused to propose the candidate to parliament and instead proposed parliament to reduce its mandate and call for early elections (Art. 84(4) of the Constitution provides: “At the proposal of the President of Montenegro, the Government or minimum 25 MPs, the Parliament may reduce the duration of its mandate.”).

27. The representatives of the parliamentary majority claimed that the President had failed to invite “all” political parties to the consultations, which in their view was in breach of the Constitution and prompted them not to participate in the consultations. However, they had found a candidate Prime Minister who would have enjoyed the support of 41 MPs and informed the President about this by a letter of 19 September 2022. The President rejected this nomination because it was not accompanied by the signatures of the 41 supporting MPs. These signatures were sent to the President’s office on 20 September 2022. They do not consider that the 30-day time-limit which Art. 103 imposes after the elections applies to the formation of the government after a vote of non-confidence, and they consider at any rate that it is not peremptory. They also underline that the Constitution does not require to provide the signatures of the supporting MPs. Nor was this the practice, with the exception of the candidature of Prime Minister Krivokapic in 2020. They also argue that Art. 95(5) of the Constitution obliges the President to propose a Prime Minister-designate of his choice. Not doing so creates an institutional deadlock. Proposing the reduction of the mandate of parliament constituted a violation of Art. 84 of the Constitution because that was not the only solution to the crisis, as there was support in parliament for a candidate Prime Minister. Against this background, the parliamentary majority considers that amending the Law on the President in order to define in much clearer terms than the Constitution his or her

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<sup>6</sup> [Key findings of the 2022 EU Report on Montenegro](#), 12 October 2022.

obligations in respect of the formation of the government is the only option to resolve the institutional crisis.

28. The Venice Commission, in a previous opinion related to another member State, has addressed the implications of a constitutional crisis linked with the dissolution of parliament (though in a different constitutional set-up requiring the consent of both the President and parliament) and the question of the President's powers and duties in respect of the dissolution of parliament.<sup>7</sup> As concerns the nature of the President's discretionary powers to dissolve parliament, it observed that a President's discretion is intended to prevent deadlock and to prevent institutional crisis by political negotiation and that the dissolution of Parliament, elected in a fair and free election in expression of the will of the people, is not something that should be tackled in an arithmetical way but in line with the spirit and wording of the Constitution.<sup>8</sup>

29. It is clear that the Constitutional Court would be necessary to provide guidance on "the spirit and wording" of the Constitution of Montenegro, but in the Venice Commission's opinion even more than the Court, it is the principle of loyal cooperation among state institutions which ought to have provided a solution. Montenegro, which is a parliamentary system with a directly elected president,<sup>9</sup> is experiencing for the first time a form of cohabitation; the political antagonism is exacerbated by the institutional opposition between the thin majority in the parliament and a President that, being the leader of the main opposition party, is inevitably perceived as politicised, which does not help overcoming the political crisis, but rather perpetuates the standstill against the general interest of citizens. As the Commission has previously observed, the principle of loyal cooperation between the institutions "is of particular importance in cases where offices, for example that of the President and the Prime Minister, are held by persons with different political backgrounds. Only mutual respect can lead to the establishment of mutually accepted practices, which are in compliance with the European Constitutional Heritage and which enable a country to avoid and serenely overcome crises."<sup>10</sup>

30. The refusal of the President to propose a candidate Prime Minister to form a Government, or to designate the one proposed by the parliamentary majority, the lack of political consultations or the refusal to take part therein, the mutual allegations of unconstitutional behaviours, the threats of parliamentary boycott or of impeachment, the refusal to elect judges of the Constitutional Court, up till the hasty legislative initiative that materialised in the Law amending the Law on the President, are altogether symptoms of a lack of respect for institutions and citizens, as well as of poor political and constitutional cultures.

31. The Venice Commission urges the Montenegrin authorities and political parties to be guided by the principle of loyal cooperation between State organs in the relations between the President of the Republic and the Parliament, but also between different political forces within the Parliament, calling on the responsibility of each individual MP to constructively participate in solving the current impasse and taking the required vital decisions.

32. First and foremost, it is of utmost importance that a fully-fledged Constitutional Court be speedily set up, prior to any significant decision that may impact the institutional (or political)

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<sup>7</sup> Venice Commission, Opinion on the constitutional situation with particular reference to the possibility of dissolving parliament, Republic of Moldova, [CDL-AD\(2019\)012](#).

<sup>8</sup> Venice Commission, *ibidem*, para. 41

<sup>9</sup> Venice Commission, Opinion on the proposal by the President of the Republic to expand the President's powers to dissolve Parliament, [CDL-AD\(2017\)014](#), paras. 20-21.

<sup>10</sup> Venice Commission, Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, [CDL-AD\(2012\)026](#), para. 73.

configuration of the country (i.e., elections, constitutional revision, adoption of legislation on matters of constitutional relevance, etc.).

## **B. Analysis of the Law on amendments to the Law on the President.**

33. The Venice Commission has been requested to express its opinion as to whether the amendments to the Law on the President are compatible with the Constitution. This assessment is twofold: first, it requires an analysis of the relevant constitutional provisions to determine what is regulated by the Constitution; secondly, on the basis of this assessment, the Commission will examine whether the Law under consideration *clarifies* or rather *supplements or contradicts* the Constitution. In the two latter cases, the Law would raise problems of constitutionality because, being an ordinary law, it would change the Constitution with a smaller majority than the one required for its amendment (that is, in the case of Montenegro, with 41 votes instead of 54, which are the votes provided for by Art. 156(3) of the 2007 Montenegrin Constitution). The principle of the supremacy of the Constitution indeed requires that constitutions may only be amended through the procedures and with the majorities prescribed in the Constitution itself.<sup>11</sup> Duly composed and independent constitutional courts are the guarantors of the Constitutions.<sup>12</sup> The Democratic Front argues that the law in question is authorised by Art. 16 of the Constitution which provides that “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, organisation and competences of the authorities and the procedures before those authorities, if so required for their operation; 4. the system of local self-government; 5. other matters of interest for Montenegro”. The Commission stresses that as indicated explicitly in Art. 16, any law rendering a constitutional provision operational must do so in compliance with the Constitution, which means that it cannot change it, and even less contradict it. The Democratic Front also argues this provision has already been used in the past as the basis for regulating the presidential constitutional rights and obligations. The Commission finds however that the Law on the President currently in force is only technical and does not alter the balance of powers in the Constitution (see below). As for the example of the law on the amnesty, the Commission has not had the opportunity of seeing it and is not called to express an opinion on it.

34. In the following analysis, the Venice Commission will also refer to the principle of loyal cooperation between institutions, as recalled in paragraph 29 above.

35. The Commission also stresses that, while a political system may be generally classified as parliamentary or presidential, each Constitution has its own logic and should be interpreted in the light of its own specificities.

36. The Commission observes that the Law on the President currently in force regulates only very technical questions relating to the organisation of the Presidency, such as the President’s spouse’s leave of absence (Art. 12 of the law in force) or the President’s driver’s status. The amendments add substantive rules on the procedure and deadline for the formation of the government, setting out “obligations” for the President.

37. The provisions of the Constitution of Montenegro on the formation of the Government are rather scarce.

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<sup>11</sup> Venice Commission, Report on constitutional amendments, [CDL-AD\(2010\)001](#).

<sup>12</sup> Venice Commission, Opinion on the two Draft Laws amending Law No. 47/1992 on the organisation and functioning of the Constitutional Court of Romania, [CDL-AD\(2006\)006](#), para. 7; op. cit., [CDL-AD\(2016\)001](#), para. 116; Study “The composition of Constitutional Courts”, [CDL-STD\(1997\)020](#), p. 21; and Rule of Law Checklist, [CDL-AD\(2016\)007](#), para. 112.



38. According to Art. 82(12) the parliament shall elect and dismiss from duty the Prime Minister and members of Government. In turn, Art. 95(5) lays down that “the President [...] propose[s] the Prime Minister-designate for composition of the government, after the completion of the discussions with the representatives of political parties represented in the Parliament”. Art. 103 provides that “[t]he President of Montenegro proposes the mandator within 30 days from the day of constitution of the Parliament. The candidate presents to the Parliament his/her programme and proposal for the composition of the Government. The Parliament decides simultaneously on the program and the composition of the Government.”

39. According to the proposed new Art. 7a(2), the 30-day time-limit for proposing the Prime Minister-designate applies to all cases of formation of a new Government. In the Commission’s view, while the provisions in Art. 103 of the Constitution seem to address expressly only the formation of the Government after parliamentary elections, it appears logical that the procedure shall also be followed when a new Government is formed after a vote of no-confidence and in other cases where the mandate of the Prime Minister has ended in accordance with the Constitution. By contrast, the proposed new Art. 7a(3) provides that “[t]he President shall be obliged to propose a new Prime Minister designate no later than 7 days within the 90 days deadline form the proposal of the first Prime Minister-designate if the mandate was returned once or two, or more times”. The Commission notes that this deadline does not find any support in the Constitution.

40. New Art. 7b(1), provides for the President’s obligation to consult “all political parties” and “groups of voters and independent MPs represented in parliament”. This obligation extends the President’s obligation to consult “the political parties represented in the parliament” stipulated in Art. 95(5) of the Constitution. The Democratic Front argues that the Constitution implicitly provides for such extended obligations, because otherwise it would provide the President with the discretion to consult only the parties of his choice. The Commission considers that the wording of the current Constitution grants the President a margin of discretion to be exercised by him or her as a *pouvoir neutre*, and which is mitigated by the need for a vote of confidence in the Prime Minister.

41. According to new Art. 7c(1) “the President shall be obliged to propose the candidate who has received support of majority of the total number of MPs as a Prime Minister-designate to compose the Government”. Paragraph 2 of the same article provides that “if the parliamentary majority has not been achieved for a single Prime Minister-designate, the President may, after repeat consultations pursuant to new Art. 7d of the present Law, propose the designate who has received the largest support in the Parliament”. Finally, new Art. 7f(1) lays down that “if the President does not perform his duties with regard to the procedure of determining the Prime Minister-designate pursuant to the present Law, for the sake of protecting the public interest, the candidate who has received support of majority of the total number of MPs, as established by a petition with signatures, shall be considered a Prime Minister-designate, with all the rights and duties of a Prime Minister-designate proposed by the President”. These provisions clearly contradict the discretionary power which Art. 103 of the Constitution grants the President in the choice (and respectively rejection) of a candidate proposed by the dominant parliamentary party/coalition. New Art. 7f(1) even deprives the President of the constitutional right to propose the candidate. New Art. 24a makes these provisions applicable to the current procedure of formation of the government.

42. Similarly, new Art. 7d (Repeat consultations on a Prime Minister-designate) includes procedural provisions which do not find support in the Constitution.

43. New Art. 7e provides that “the President shall be obliged to issue a decree dismissing the parliament if the parliament fails to appoint the government within 90 days from the day when the President nominated a Prime Minister-designate for the first time pursuant Art. 7a of the present Law”. According to Art. 92(1) of the Constitution, “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". New Art. 7e is therefore in line with the Constitution.

44. As concerns the appointment and revocation of ambassadors, according to Art. 95(6) of the Constitution, "the President 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". The provisions of the proposed new Art. 7h, obliging the President to follow the proposal of the government (and the Parliamentary Committee), find no support in the Constitution and restrict the discretion of the President in an unconstitutional way.

45. The above analysis shows that the Law on amendments to the Law on the President does not only clarify the Constitution, but substantially supplements it and even, at times, contradicts it. The Venice Commission acknowledges that the constitutional provisions on the formation of the government would benefit from additions and anti-deadlock mechanisms. It recalls that in its opinion on the 2007 Constitution, in respect to former draft Art. 100(5), which is identical to current Art. 95(5), it had anticipated the potential risk of standstill in relation to the non-election of the candidate proposed by the President, and had proposed the following solution:

"142. As regards the candidate for Prime Minister (point 5), the wording seems appropriate for the first attempt(s). It could be considered to give to parliament the right to elect a Prime Minister proposed from within parliament if the first or first two candidates proposed by the President are not elected."<sup>13</sup>

46. However, the Venice Commission stresses that any complementary provisions, affecting the system of checks and balances foreseen by the Constitution, should be added by means of constitutional revision, following the procedure described in Art. 156 which requires a qualified majority (two-third), in compliance with the principle of supremacy of the Constitution.

47. The Venice Commission wishes to emphasize once more the importance of the principle of loyal cooperation among state institutions in resolving the present political and constitutional crisis in Montenegro. The crisis cannot be resolved through constitutionally problematic amendments to an ordinary law. Not all the details in the procedure of forming the government can be legally regulated, but much must be left to constitutional conventions. However, these can only develop through observance of the principle of loyal cooperation. If additional legal provisions are needed, they should not be adopted by a simple parliamentary majority, but by a qualified majority, and through an inclusive process that gives room for a public debate. Yet, again, reaching a qualified majority requires adherence to the principle of loyal cooperation. If on the one hand, these provisions of the Law may be considered a pragmatic attempt to complement the lacunae in the Constitution in a manner that would facilitate the formation of a government, on the other hand, the procedural boundaries for constitutional revision must be respected.

48. The Constitution of Montenegro has entrusted the Constitutional Court with monitoring the constitutionality of ordinary laws (Art. 149). In this connection, and in line with the recommendation in the previous section, the Venice Commission stresses once more how important it is to secure the functioning of the Constitutional Court and to appoint in due course new judges to vacant seats.

49. The Venice Commission therefore recommends to the parliament of Montenegro not to adopt the amendments in question through an ordinary law, and therefore not to adopt the Law

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<sup>13</sup> Venice Commission, Interim Opinion on the Draft Constitution of Montenegro, [CDL-AD\(2007\)017](#), para. 142.

on amendments to the Law on the President until the Constitutional Court has become fully operational and can be asked to assess its constitutionality after its adoption.

## V. Conclusion

50. The President of Montenegro has asked the Venice Commission to issue an urgent opinion on the constitutionality of the Law on amendments to the Law on the President of Montenegro, which he has vetoed and returned to parliament. The parliament has scheduled the re-examination of the law for 12 December 2022. Representatives of the parliamentary majority as well as of the parliamentary opposition have also expressed their interest in receiving the Venice Commission opinion prior to the next parliamentary meeting.

51. Constitutionality matters are for constitutional courts to decide, and the Venice Commission does not wish, nor does it have the mandate to interfere with these courts' role. However, the Constitutional Court of Montenegro cannot currently function due to the lack of quorum, and the re-examination of the Law by the parliament is imminent. In this context, the Venice Commission has exceptionally accepted to provide its opinion on the constitutionality of the Law.

52. The Venice Commission has analysed the constitutional provisions on the formation of the government, which are indeed very scarce, and has found that the amendments to the Law on the President do not merely *clarify* these provisions, but rather *supplement* them and even *contradict* them. Art. 156(3) of the 2007 Montenegrin Constitution requires a qualified majority for its amendment. Changing the provisions on the formation of the government through the Law on amendments to the Law on the President, which is an ordinary law, would therefore amount to changing the Constitution with a smaller majority than the one required by the Constitution (41 votes instead of 54).

53. While the Commission acknowledges that the Constitution would benefit from additional regulation on the formation of government, in particular to prevent deadlocks, and understands that the law under consideration represents a pragmatic attempt to solve the institutional impasse, it reiterates that any complementary provisions which affect the system of checks and balances foreseen by the Constitution should be added by means of constitutional revision, following the procedure described in Art. 156 which requires a qualified majority.

54. The Venice Commission deplores the paralysis of the Constitutional Court, which is the result of the unwillingness of the political parties of Montenegro to find constructive compromises. It finds that the Constitutional Court could have provided essential guidance on the interpretation of the constitutional duties of the President and of the parliament. The Commission is of the view however that the current political crisis could have been avoided and could be solved if the authorities of Montenegro were guided by the principle of loyal cooperation between State organs.

55. In conclusion, the Commission recommends not to adopt the amendments in question through an ordinary law, and therefore not to adopt the Law on amendments to the Law on the President until the Constitutional Court has become fully operational and can be asked to assess its constitutionality after its adoption. The Venice Commission calls on the responsibility of the State institutions, on each individual MP and on all the political parties to constructively participate in solving the current impasse and to find the constructive compromises necessary to take the required vital decisions, including and in particular as concerns the election of the judges of the Constitutional Court.