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

**DRAFT AMENDMENTS**

**TO THE CONSTITUTIONAL PROVISIONS**  
**RELATING TO THE JUDICIARY**

**OF MONTENEGRO**

PROPOSAL

**FIRST SET OF DRAFT AMENDMENTS TO THE CONSTITUTION OF MONTENEGRO**

**Proposed by the Constitutional Issues and Legislative Committee  
of the Parliament of Montenegro**

The Constitutional Issues and Legislative Committee of the Parliament of Montenegro, at the meeting held on 28 May 2012, established the Proposal Amendments to the Constitution of Montenegro and the Proposal Constitutional Law for Implementation of the Amendments to the Constitution of Montenegro.

The subject proposal acts are enclosed for the purpose of their placing in the procedure of the Parliament of Montenegro.

These Amendments shall make an integrated part of the Constitution of Montenegro and shall enter into force on the day of their promulgation.

**Amendment I**

No one may be punished for an act which, prior to being committed, was not stipulated by law or a regulation based on the law as a punishable act, or pronounced a punishment that was not stipulated for such act.

Criminal acts and criminal sanctions may be prescribed solely by a law.

This amendment replaces Article 33 of the Constitution of Montenegro.

**Amendment II  
More lenient regulation**

Criminal and other punishable acts shall be established and relevant penalties imposed in accordance with law or regulation valid at the time when the act is committed, unless the new law or regulation is more lenient for the perpetrator.

**Amendment III**

The Parliament shall:

- elect and release from duty the judges of the Constitutional Court;
- appoint and release from duty: the Protector of Human Rights and Liberties; the Governor of the Central Bank and members of the Council of the Central Bank of Montenegro; president and members of the Senate of the State Audit Institution and other officials as defined by the law.

This amendment replaces items 13 and 14 of Article 82 of the Constitution of Montenegro.

**Amendment IV**

With majority vote of all its Members, the Parliament shall adopt laws regulating the following: manner of exercising liberties and rights of citizens, Montenegrin citizenship, referendum, material responsibilities of citizens, state symbols and use and application of state symbols, defence and security, army; founding, merger and abolition of municipalities; and shall proclaim state of war and state of emergency; adopt spatial plans; pass the Rules of Procedure of the Parliament; make decisions regarding the calling for state referendum; make decisions on

reducing the term of office; make decisions on releasing the president of Montenegro from duty; elect and release Prime Minister and members of the Government from duty and make decisions on confidence in the Government; elect the judges of the Constitutional Court; appoint and release the Protector of Human Rights and Liberties from duty.

This Amendment replaces Article 91 paragraph 2 of the Constitution of Montenegro.

#### **Amendment V**

The President of Montenegro shall:

- propose to the Parliament: 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, the judges of the Constitutional Court and the Protector of Human rights and Liberties.

This Amendment replaces Article 95 item 5 of the Constitution of Montenegro.

#### **AMENDMENT VI 5. JUDICIARY**

This Amendment replaces the title of the section 5. "COURT" in Part 3 – Regulation of authorities.

#### **Amendment VII**

Judicial duty of a judge shall cease and he/she shall be released from judicial duty in the cases and according to the procedure prescribed by the law.

A judge must be released from duty if he/she has been convicted by a legal and binding decision for a criminal act committed by abusing the judicial duty.

This Amendment replaces Article 121 paragraphs 2 and 3.

#### **Amendment VIII**

Supreme Court shall ensure uniform application of laws by courts and perform other activities prescribed by law.

The President of the Supreme Court shall be elected and released from duty by two-third majority of the Judicial Council, at proposal of the Supreme Court General Bench.

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

The same person may be elected the president of the Supreme Court no more than two times.

This Amendment replaces Article 124 paragraphs 2, 3 and 4 of the Constitution of Montenegro.

#### **Amendment IX**

The Judicial Council shall have a president and nine members.

The members of the Judicial Council shall be:

- 1) president of the Supreme Court;
- 2) four judges to be elected and released from duty by the Conference of Judges;
- 3) two renowned lawyers that are elected and released from duty by the Parliament at proposal of the Parliamentary majority and opposition;
- 4) two renowned lawyers that are appointed and released from duty by the President of Montenegro;

5) Minister in charge of judicial affairs.

The President of the Judicial Council shall be elected by the Judicial Council from among its members who do not perform judicial functions, by two-third majority vote of the members of the Judicial Council.

The Minister in charge of judicial affairs may not be elected the president of the Judicial Council.

The vote of the President of the Judicial Council shall be decisive in case of equal number of votes.

The composition of the Judicial Council shall be proclaimed by the President of Montenegro.

The term of office of the Judicial Council shall be four years.

This Amendment replaces Article 127 of the Constitution of Montenegro.

#### **Amendment X**

The Judicial Council shall:

- 1) elect and release from duty the president of the Supreme Court;
- 2) elect and release from duty the president of the Judicial Council;
- 3) elect and release from duty the judge, the president of the court and the lay judge;
- 4) deliberate on the report on the court activity, applications and complaints regarding the work of the court and take a standpoint with regard to them;
- 5) establish the cessation of the judicial duty;
- 6) decide on the immunity of the judge;
- 7) propose to the Government the amount of funds required for the work courts;
- 8) perform other duties as stipulated by the law.

The Judicial Council shall make decisions by majority vote of all its members.

The Minister in charge of judicial affairs shall not vote in the disciplinary proceedings related to accountability of judges.

This Amendment replaces Article 128 of the Constitution of Montenegro.

#### **Amendment XI**

The President and members of the Senate of the State Audit Institution shall enjoy functional immunity and may not be invited to account for an opinion given or a decision made in performing their duties, except in the case of a criminal act."

This Amendment supplements Article 144 of the Constitution of Montenegro.

#### **Amendment XII**

The Constitutional Court shall decide in respect of a constitutional appeal by a council consisting of three judges.

The Council may make only unanimous decisions by all its members. If the Council may not achieve a unanimous decision, the constitutional appeal shall be decided upon by the Constitutional Court in accordance with paragraph 1 of this Article.

This Amendment supplements Article 151 of the Constitution of Montenegro.

### **Amendment XIII**

The Constitutional Court shall have nine judges.

The Judge of the Constitutional Court shall be elected for the period of 12 years.

The judge of the Constitutional Court whose term of office has expired shall continue to perform this duty until a new judge is elected, but no longer than six months.

The judge of the Constitutional Court shall be elected from among renowned lawyers who have turned at least 40 years of age and have 15 years of service in the legal profession.

Judges of the Constitutional Court shall elect from among their composition the president of the Constitutional Court for the period of three years.

The same person may be elected the president of the Constitutional Court only once.

The president and judge of the Constitutional Court may not perform the duty of a Member of the Parliament or other public duty or professionally be engaged in any other activity.

This Amendment replaces Article 153 of the Constitution of Montenegro.

### **Reasoned Statement of the Proposed Solutions**

**Amendment I** ensures that the principle of legality is also applied to the law-based regulations.

**Amendment II** also includes the regulations that are more lenient for the perpetrator. This Amendment is aimed at harmonisation with the amendment of the legality principle defined in the proposed Amendment I.

**Amendment III** amends the scope of competence of the Parliament in the procedure of electing and releasing from the duty the president of the Supreme Court and president of the Constitutional Court. According to this Amendment the election and release from duty of the president of the Supreme Court and the president of the Constitutional Court are not under the scope of competence of the Parliament, which is in line with the requirement for depoliticisation of the election of judicial and constitutional judicial officials.

**Amendment IV** follows the solutions referred to in Amendment III. The election of the president of the Supreme Court and the president of the Constitutional Court is no longer under the scope of competences of the Parliament, therefore this Amendment is to harmonise Article 91 paragraph 2 of the Constitution of Montenegro with such solution. Amendment IV also amends the language so the words "president of the Republic" are replaced by the words "president of Montenegro".

**Amendment V** harmonises Article 95 paragraph 1 item 5 of the Constitution of Montenegro with the solution contained in Amendment III, according to which the president of the Constitutional Court is not elected by the Parliament and therefore he is not proposed to the Parliament by the President of Montenegro.

**Amendment VI** replaces the title of the section "5. Court" into "Judiciary". The title "Court" is inadequate given that the section also regulates the matters of election, composition and scope of competence of the Judicial Council, and thus more adequate term is "Judiciary".

**Amendment VII** prescribes only one reason due to which the judge is released from duty (in case of a legal and binding conviction for a criminal act committed by abusing the judicial duty) while other reasons for release from judicial duty as well as the reasons for termination of judicial duty are to be prescribed by law.

**Amendment VIII** supplements the provision of the Constitution of Montenegro related to the Supreme Court so the competence of the Supreme Court, in addition to ensuring uniform application of law, expands to cover other affairs prescribed by law. The president of the Supreme Court, at proposal of the Supreme Court General Bench elects and releases from duty the Judicial Council by two-third majority and its term of office is five years. The same person may be elected the president of the Supreme Court no more than two times.

**Amendment IX** prescribes that the Judicial Council has ten members, including: the president of the Supreme Court, four judges, two renowned lawyers elected by the Parliament, two renowned lawyers appointed by the President of Montenegro and the minister in charge of judicial affairs. The president of the Judicial Council is elected by the Judicial Council from among its members, who are not performing judicial functions. The minister in charge of judicial affairs may not be elected the president of the Judicial Council. The vote of the president of the Judicial Council is decisive in case of equal number of votes.

**Amendment X** expands the scope of competence of the Judicial Council. The Judicial Council elects and releases from duty the president of the Supreme Court and elects and releases from duty the president of the Judicial Council. The Judicial Council does not determine the number of judges or lay judges in court. Other competences of the Judicial Council are not amended, or the Constitutional provision that the minister in charge of judicial affairs does not vote in the procedure for establishing disciplinary accountability of judges.

**Amendment XI** prescribes that the president and members of the Senate of the State Audit Institution gain functional immunity.

**Amendment XII** prescribes that the Constitutional Court decides in respect of a constitutional appeal in the council consisting of three judges for the purpose of more efficient resolving of constitutional appeals. The decision must be unanimous. Otherwise, the same appeal is decided upon by the Constitutional Court in full composition.

**Amendment XIII** prescribes that the Constitutional Court has nine judges. The term of office of the judge is 12 years. The president of the Constitutional Court is elected by the judges of the Constitutional Court from among the judges of the Constitutional Court. After the expiry of the term of office of the judge of the Constitutional Court, he continues to perform the function until a new judge is elected, but not for the period longer than six months.

**CONSTITUTIONAL LAW FOR IMPLEMENTATION OF AMENDMENTS TO THE  
CONSTITUTION OF MONTENEGRO**

**Article 1**

Amendments to the Constitution of Montenegro (hereinafter referred to as Amendments) shall be applied as of the date they are promulgated by the Parliament of Montenegro, unless otherwise determined by this Law in respect of application of individual amendments.

**Article 2**

of the Supreme Court shall be harmonised with the Amendments within 60 days from the date of their promulgation.

**Article 3**

Regulations related to the Judicial Council shall be harmonised with the Amendments within 30 days from the date of their promulgation.

**Article 4**

Regulations related to the composition of the Constitutional Court, the duration of the term of office of the judges of the Constitutional Court, the election and term of office of the president of the Constitutional Court as well as the procedure related to decision making in respect of constitutional appeals shall be harmonised with the Amendments within 60 days from the date of their promulgation.

**Article 5**

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

## SECOND SET OF DRAFT AMENDMENTS TO THE CONSTITUTION OF MONTENEGRO

Proposed by the SNP

Podgorica, 24 May 2012

### ***Of which:***

Amendments I, II, VI, XIII and XIV **have been agreed upon** by the Working Group of the Constitutional Issues and Legislative Committee;

Amendments III, IV, V, VII, VIII, IX, X, XI, XII and XV **have not been accepted** by the Working Group of the Constitutional Issues and Legislative Committee and they do not make an integrated part of the Proposal Amendments submitted by the Working Group.

### **Amendment I**

No one may be punished for an act which, prior to being committed, was not stipulated by law or a regulation based on the law as a punishable act, or pronounced a punishment that was not stipulated for such act.

Criminal acts and criminal sanctions may be prescribed solely by a law.  
This amendment replaces Article 33 of the Constitution of Montenegro.

### ***Rationale***

*This Amendment ensures that the legality principle also covers criminal acts defined by regulations based on law. This creates Constitutional ground for the regulations based on law to be able to prescribe punishable acts (misdemeanours), while criminal acts and criminal sanctions may be regulated only by law.*

### **Amendment II**

Criminal and other punishable acts shall be established and relevant penalties imposed in accordance with law or regulation valid at the time when the act is committed, unless the new law or regulation is more lenient for the perpetrator.

This amendment replaces Article 34 of the Constitution of Montenegro.

### ***Rationale***

*Amendment II provides for harmonisation of the provisions of Article 34 of the Constitution of Montenegro with the legality principle defined by Amendment I. The principle of application of more lenient laws would also be related to the application of regulations based on law that envisage punishable acts.*

### **Amendment III**

The Parliament shall:

- elect and release from duty the judges of the Supreme Court and the judges of the Constitutional Court;

- appoint and release from duty: the Supreme State Prosecutor, the Protector of Human Rights and Liberties; 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 as defined by the law.



This amendment replaces items 13 and 14 of Article 82 of the Constitution of Montenegro.

**Rationale**

*The Constitution of Montenegro establishes the parliamentary system of organisation of authorities/powers.*

*As a representative authority of all citizens the Parliament has full legitimacy to issue mandate for performance of the most significant judiciary and prosecution functions.*

*In the system of distribution of powers none of the power branches may have full autonomy. The spirit of distribution of powers is reflected in mutual restrictions and controls.*

*Judiciary authorities and prosecution should not have full autonomy in the procedure of electing the president of the Supreme Court, or appointment of the Supreme State Prosecutor.*

*The significance of the function of the President of the Supreme Court, as well as the Supreme State Prosecutor, imposes the need for their election or appointment to remain under the scope of competence of the Parliament, while the establishment of the proposed nominees would be under the sole competence of the bearers of judiciary or prosecution functions.*

**Amendment IV**

With majority vote of all its Members, the Parliament shall adopt laws regulating the following: manner of exercising liberties and rights of citizens, Montenegrin citizenship, referendum, material responsibilities of citizens, state symbols and use and application of state symbols, defence and security, army; founding, merger and abolition of municipalities; and shall proclaim state of war and state of emergency; adopt spatial plans; pass the Rules of Procedure of the Parliament; make decisions regarding the calling for state referendum; make decisions on reducing the term of office; make decisions on releasing the president of Montenegro from duty; elect and release Prime Minister and members of the Government from duty and make decisions on confidence in the Government; appoint and release the Protector of Human Rights and Liberties from duty.

With two-third majority vote of all Members of the Parliament, the Parliament shall decide on election and release from duty of the President of the Supreme Court, the judges of the Constitutional Court, appointment and release from duty of the Supreme State Prosecutor, the laws regulating electoral system and property rights of foreign nationals.

This Amendment replaces Article 91 paragraphs 2 and 3 of the Constitution of Montenegro.

**Rationale**

*Amendment IV determines that qualified – two-third majority vote of all Members of the Parliament is required for making decisions regarding election and release from duty of the President of the Supreme Court, appointment of the Supreme State Prosecutor and election of the judges of the Constitutional Court.*

*This ensures that professional people without any political affiliation would come to the leading positions of the courts and prosecution.*

*Also, qualified majority for election of the judges of the Constitutional Court will ensure that the election of judges of this Court does not depend solely on the will of the majority consisting of the parties in power.*

*Taking into account that according to the proposed amendments: the President of the Supreme Court is elected and released from duty at proposal of the Judiciary Council upon previous opinion of the general bench of the Supreme Court; that the Supreme State Prosecutor is appointed at proposal of the Prosecution Council upon previous opinion of the expanded bench of the Supreme State Prosecution; that proposal of nominees for election of the judges of the Constitutional Court is established in the procedure of public advertisement, there is no concern that there might be any blockade in the decision making by the Parliament.*

#### **Amendment V**

The President of Montenegro shall:

- propose to the Parliament: 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, three judges of the Constitutional Court and the Protector of Human rights and Liberties.

This Amendment replaces Article 95 item 5 of the Constitution of Montenegro.

#### ***Rationale***

*Amendment V establishes that the competence of the President of Montenegro also includes the proposing three judges of the Constitutional Court of Montenegro to the Parliament, given that their election is under the competence of the Parliament according to the Amendment IV.*

#### **Amendment VI**

##### **5. Judiciary**

This Amendment replaces the title of the section 5. "COURT" in Part 3 – Regulation of authorities.

#### ***Rationale***

*This Amendment replaces the title of the section "5. COURT" by the title "5. JUDICIARY", in the third part of the Constitution – Regulation of authorities, which is a more adequate title for judiciary as one of the three branches of power.*

#### **Amendment VII**

Supreme Court shall ensure uniform application of laws by courts and perform other activities prescribed by law.

The President of the Supreme Court shall be elected and released from duty by the Parliament on proposal of the Judiciary Council, with previous opinion of the General Bench of the Supreme Court.

The President of the Supreme Court shall be elected based on public advertisement according to the procedure prescribed by law.

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

The same person may be elected the president of the Supreme Court no more than two times.

This Amendment replaces paragraphs 2, 3 and 4 of Article 124 of the Constitution of Montenegro.

### **Rationale**

*Amendment VII regulates the issues of the competencies of the Supreme Court, manner and procedure of election and duration of the term of office of the President of the Supreme Court of Montenegro.*

*The proposed solution is: Proposal for election and release from duty of the President of the Supreme Court may be submitted only by the bearers of judiciary function (Judiciary Council with previous opinion of the General Bench of the Supreme Court), and the Parliament makes the decision regarding the election and release from duty by two-third majority vote of all Members of the Parliament, thus giving the elected nominee the greatest credibility for performing the most significant judiciary function.*

*The proposed Amendment also establishes the obligation that the election of the President of the Supreme Court is carried out based on public advertisement in the procedure to be prescribed by law, which will provide for full transparency in the work and the possibility of choice among several candidates.*

### **Amendment VIII**

The Judiciary Council shall have a president and nine members.

The members of the Judiciary Council shall be:

- 1) President of the Supreme Court;
- 2) Four judges to be elected and released from duty by the Conference of Judges;
- 3) Two renowned lawyers that are elected and released from duty by the Parliament at proposal of the Parliamentary majority and opposition;
- 4) Two renowned lawyers that are appointed and released from duty by the President of Montenegro;
- 5) Minister in charge of judiciary affairs.

The President of the Judiciary Council shall be elected by the Judiciary Council from among its members who do not perform judiciary functions, by two-third majority vote of the members of the Judiciary Council.

The Minister in charge of judiciary affairs may not be elected the president of the Judiciary Council.

The composition of the Judiciary Council shall be proclaimed by the President of Montenegro.

The term of office of the Judiciary Council shall be four years.

This Amendment replaces Article 127 of the Constitution of Montenegro.

### **Rationale**

*Proposed composition of the Judiciary Council, in line with the opinion and recommendations of the Venice Commission:*

- *ensures balance in the number of the members of the Judiciary Council from among the judges, including the President of the Supreme Court and its members who are not from among the judges (5-5). In this way the possibility is avoided for the members of the Judiciary Council from among judges to make decisions without influencing the decision-making of other members of the Council and vice versa, the possibility is avoided for the members of the Judiciary Council from among judges to be outvoted,*

*which establishes the balance between the autonomy and independence and accountability of judiciary power;*

*-the determination that by two-third majority vote the Judiciary Council elects the President of the Judiciary Council from among its members who do not perform judiciary function (with the exception of the Minister in charge of judiciary affairs) ensures the required link between the judiciary and the society, and avoids the risk of "autocratic governance" of the judiciary.*

*Regarding the fact that the President of the Judiciary Council would be elected from among the members of the Judiciary Council who are not judges, this Amendment does not envisage the solution that the President of the Judiciary Council has the decisive vote in case of the same number of votes, since this could lead to the situation that the members of the Judiciary Council from among the judges are outvoted.*

### **Amendment IX**

The Judiciary Council shall:

- 1) elect and release from duty the President of the Supreme Court;
- 2) elect and release from duty the judge, the president of the court and the lay judge;
- 3) propose three judges of the Constitutional Court;
- 4) deliberate on the report on the court activity, applications and complaints regarding the work of the court and take a standpoint with regard to them;
- 5) establish the cessation of the judiciary duty;
- 6) establish the number of judges and lay judges in court;
- 7) decide on the immunity of the judge;
- 8) propose to the Government the amount of funds required for the work courts;
- 9) perform other duties as stipulated by the law.

The President of the court shall be elected from among judges.

The Judiciary Council shall make decisions by majority vote of all its members.

The Minister of Justice shall not vote in the disciplinary proceedings related to accountability of judges.

This Amendment replaces Article 128 of the Constitution of Montenegro.

### **Rationale**

*Amendment IX regulates the issue of competence of the Judiciary Council.*

*In relation to the current solutions contained in the provisions of Article 128 of the Constitution, the Judiciary Council would have the competence to elect and release from duty the President of the Judiciary Council, while the President of the Court, as the first among the equal, would be elected from among judges.*

*Also, the current constitutional solution that the Judiciary Council establishes the number of judges and lay judges in the court should be retained.*

### **Amendment X**

The activities of the State Prosecutor's Office are performed by executives of the State Prosecutor's Office and state prosecutors.

The Supreme Public Prosecutor is appointed by the Parliament of Montenegro and nominated by the Prosecutorial Council, upon the prior opinion of the Extended Session of the Supreme State Prosecutor's Office.

The Supreme State Prosecutor shall be appointed on the basis of public announcement by the procedure prescribed by law.

The Supreme State Prosecutor and the executives of State Prosecutor's Office are appointed for a term of five years.

The function of the state prosecutor is permanent.

The function of executives of the State Prosecutor's Office and the state prosecutor shall be terminated and they shall be released from performing this function in the cases and following the procedure prescribed by law.

The head of the State Prosecutor's Office and the State prosecutor shall be released from duty if sentenced to unconditional imprisonment by the final verdict.

The same person may be appointed the head of the State Prosecutor's Office for not more than two times.

This Amendment replaces Article 135 of the Constitution of Montenegro.

#### **Rationale**

*The Venice Commission in its Opinion of June 2011 asserted that the Government's Proposal to amend the provisions of the Constitution relating to the prosecution represented a significant improvement in the system of guarantees of independence of the prosecutor.*

*Amendment X regulates the appointment and term of office of state prosecutors, establishes continuity of prosecutorial functions, and prescribes the basic requirements for termination of service and removal of state prosecutors.*

*The proposed solution, for the proposal for the appointment and dismissal of the Supreme Public Prosecutor to be made by holders of prosecutorial functions (Prosecutorial Council at the prior opinion of the Extended session of the Supreme State Prosecutor's Office), and that the decision on the appointment of the supreme state prosecutor shall be adopted by the Parliament by a two-thirds majority vote of all Members of Parliament, gives to the candidate nominated largest credibility to perform this very important function.*

*The proposed Amendment establishes the obligation to appoint the Supreme State Prosecutor on the basis of public advertising, following the procedure to be prescribed by law, which will ensure full transparency in the work and the selection among several candidates.*

#### **Amendment XI**

The Prosecutorial Council shall provide for independence of the State Prosecutor's Office.

The Prosecutorial Council has a chairman and nine members.

Members of the Prosecutorial Council are:

- 1) The Supreme Public Prosecutor;
- 2) Four state prosecutors who are elected by the Extended session of the Supreme State Prosecutor's Office;

- 3) Prosecutors: Two distinguished jurists who are elected and released from duty by the Parliament on the proposal of the parliamentary majority and the opposition;
- 4) Two distinguished jurists appointed and released from duty by the President of Montenegro;
- 5) One representative of the Ministry responsible for Justice, who shall be appointed and released from office by the Minister of Justice.

Chairman of the Prosecutorial Council shall be elected by the Prosecutorial Council from among its members who are not holders of the prosecutorial function, by a two-thirds majority vote of members of the Prosecutorial Council.

Elected Chairman of the Prosecutorial Council shall not be the representative of the Ministry responsible for justice.

Composition of the Prosecutorial Council shall be declared by the President of Montenegro.

The mandate of the Prosecutorial Council shall last for four years.

This Amendment supersedes Article 136 of the Constitution of Montenegro.

### ***Rationale***

*Amendment XI regulates the composition of the Prosecutorial Council.*

*The Venice Commission welcomes the commitment that the composition of the Prosecutorial Council and the competence of this body should become a constitutional category.*

*The proposed solution, the same as for the composition of the Judicial Council, provides for the Prosecutorial Council to have a balanced participation by members of the Prosecutorial Council from the Prosecutor's Office, and its members out of the Prosecutor's Office (5-5); it stipulates that Chairman of the Prosecutorial Council shall be elected by the Prosecutorial Council by a two-thirds majority vote of its members from among the members of Prosecutorial Council who are not prosecutors (except for the representative of the Ministry of Justice), whereby the composition of the Prosecutorial Council is declared by the President of Montenegro. This would amend the existing constitutional solution where the Prosecutorial Council is elected and released from duty by the Parliament.*

### **Amendment XII**

The Prosecutorial Council shall:

- 1) appoint and dismiss executives of the State Prosecutor's Office and State prosecutors;
- 2) determine the termination of office of executives of the State Prosecutor's Office and State prosecutors
- 3) decide on the immunity;
- 4) propose budget for the activities of the State Prosecutor's Office to the Government;
- 5) perform other duties stipulated by law.

The Prosecutorial Council shall decide by majority vote of all members.

This Amendment amends the Chapter 8 - The State Prosecution.

**Rationale**

*Amendment XII governs the jurisdiction of the Prosecutorial Council, which due to the importance of these issues was necessary to be regulated by the proposed Amendment to the Constitution.*

**Amendment XIII**

The President and members of the Senate of the State Audit Institution shall enjoy functional immunity and shall not be found liable for the opinion given or a decision rendered in the exercise of their functions, unless it is a criminal offense.

This Amendment amends Article 144 of the Constitution of Montenegro.

**Rationale**

*Amendment XIII provides that the President and members of the State Audit Institution shall enjoy functional immunity, which in accordance with international documents further strengthens the independence of members of the State Audit Institution.*

**Amendment XIV**

The Constitutional Court decides on constitutional complaints in the panel of three judges. The Council may decide only unanimously and in plenary composition. If the Council does not reach a unanimous decision, the constitutional complaint shall be decided upon by the Constitutional Court in accordance with paragraph 1 of this Article.

This Amendment amends Article 151 of the Constitution of Montenegro.

**Rationale**

*Amendment XIV regulates the manner in which the Constitutional Court shall act when deciding on constitutional complaints of violations of human rights and freedoms guaranteed by the Constitution.*

*The proposed solution is in the function of providing the necessary prerequisites for the efficient operation of the Constitutional Court regarding constitutional complaints filed by citizens.*

*Also, in the opinion of the Venice Commission this amendment to the Constitution is in accordance with European standards.*

**Amendment XV**

The Constitutional Court has nine judges.

Judges of the Constitutional Court shall be elected or appointed for a term of nine years.

A judge of the Constitutional Court whose term has expired shall continue to perform his function until the election and appointment of a new judge and for no longer than six months.

Judges of the Constitutional Court judge shall be elected and dismissed by the Parliament as follows: three judges on the proposal of the President of Montenegro, the three judges on the proposal of the Judicial Council and three judges on the proposal of the competent working body of the Parliament.

Judges of the Constitutional Court shall be elected on the basis of public announcement by the procedure prescribed by law.

Judges of the Constitutional Court shall be elected and appointed from among prominent jurists with at least 15 years of experience in the legal profession.

Judges of the Constitutional Court shall elected President of the Constitutional Court from among their members for a period of three years.

The same person may be elected the President of the Constitutional Court only once.

The President and judges of the Constitutional Court shall not be members of the Parliament or exercise any other public office or perform any professional activity, in accordance with the law.

This Amendment replaces Article 153 of the Constitution of Montenegro.

### **Rationale**

*Amendment XV in connection with Amendment IV provides that:- The Constitutional Court has nine judges;- The right to nominate three candidates for judges of the Constitutional Court is entrusted to the President of Montenegro, the Judicial Council and the competent working body of the Parliament;- That the judges of the Constitutional Court are elected and dismissed by the Parliament, by a qualified two-thirds majority;- That the election of judges is done based on public announcements by the procedure determined by law;- That the judges of the Constitutional Court, from among its members, shall elected President of the Constitutional Court for a period of three years, whereas the same person may be elected President of the Constitutional Court only once.*

*In this way, in accordance with the recommendations of the Venice Commission, necessary reforms shall be implemented regarding the election of judges and the President of the Constitutional Court, in order to secure the independence of judges of the Constitutional Court. The existing Constitutional solution, by which the Parliament, on the proposal of the President of Montenegro, elected judges of the Constitutional Court by a majority vote of all members of Parliament, in the opinion of the Venice Commission is incompatible with European standards, because it fails to ensure the independence of judges of the Constitutional Court and poses a risk for the Court which may have problems in meeting its role of an independent, impartial and neutral body between political power and institutions of the system*

### **NOTE**

Amendment VII, established by a majority vote of the Working Group of the Committee for Constitutional Issues and Legislation, is not acceptable.

This Amendment amends the provisions of paragraph 2 and 3 of Article 121 of the Constitution in a way which provides that the issues of termination of the judicial function and dismissal of judges from performing judicial functions shall be regulated by law, while the Constitution would regulate only one of the grounds for dismissal of judges, and this is the case when a judge is sentenced by the final verdict for a criminal offense committed by abusing the judicial function.

This way, contrary to the position of the Venice Commission, the former concept would be abandoned, that the reasons for the dismissal of judges are established by the Constitution, not the law.

Because of the foregoing the existing provisions of paragraph 2 and 3 of Article 121 of the Constitution should remain, because from the aspect of securing the independence of judges those represent a better solution than that proposed in Amendment VII.

Members of the Working Group of the Committee for Constitutional Issues and Legislation