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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**DRAFT LAW ON THE CONSTITUTIONAL COURT**

**OF MONTENEGRO**

## **I. BASIC PROVISIONS**

### **Article 1**

This Law shall regulate the procedure of determining proposals for selection of Judges of the Constitutional Court of Montenegro (hereinafter referred to as the Constitutional Court), dismissal and termination of their function, organization of the Constitutional Court, the proceedings before the Constitutional Court, legal effect of its decisions and other issues relevant for the functioning of the Constitutional Court.

### **Article 2**

The Constitutional Court shall ensure observance and application of the Constitution of Montenegro (hereinafter: the Constitution).

The Constitutional Court shall autonomously and independently decide on matters falling within the scope of its jurisdiction, which are defined by the Constitution.

The Constitutional Court shall not be influenced by anyone while taking decisions over the matters within the scope of its jurisdiction.

### **Article 3**

The work of the Constitutional Court shall be public.

The public nature of the work of the Constitutional Court shall be ensured through the publication of its decisions, the publication of statements from the sessions on the website of the Constitutional Court, as well as by holding public hearings in the proceedings before the Constitutional Court, holding press conferences and otherwise.

### **Article 4**

The funds and conditions for the operation of the Constitutional Court shall be provided by the State.

The Constitutional Court shall dispose of funds allocated in the Budget of Montenegro independently.

### **Article 5**

The Constitutional Court shall adopt Rules of Procedure regulating the manner of work and decision-making of the Constitutional Court, the relationship of the Constitutional Court with the public and international legal cooperation, professional training, as well as other issues of importance for its work [hereinafter: the Rules of Procedure].

The Rules of Procedure shall be published in the "Official Gazette of Montenegro", as well as on the website of the Constitutional Court.

## **II. PRESIDENT AND JUDGES OF THE CONSTITUTIONAL COURT**

### **1. Judges of the Constitutional Court**

#### **Article 6**

President of Montenegro and responsible working body of the Parliament of Montenegro (hereinafter: the proposers) shall issue a public call for the selection of Judges of the Constitutional Court in the "Official Gazette of Montenegro" and in at least one of the print media based in Montenegro.

The proposers shall publish the public call for the selection of Judges to the Constitutional Court on their websites.

The deadline for submitting applications shall be determined by the call, and may not be shorter than 15 days after the public call announcement.

Candidates eligible to apply to the public call shall be those who, along with the application, submit evidence that, in addition to the requirements for a Constitutional Court

Judge, which are prescribed by the Constitution, they also meet the general requirements for work in a state authority.

A person may apply to public calls by both proposers.

The proposers shall publish the list of candidates on their website, and it shall be available to the public for at least ten days from the date of publication.

The proposers shall interview all candidates who have applied to their public call and meet the requirements for the selection of the Constitutional Court Judges and shall, based on the evidence of meeting the requirements and interviews with candidates, prepare a proposal for the selection, which must be reasoned.

The proposal for the selection of Judges shall contain as many candidates as Judges selected under the proposal of the proposer.

In proposing candidates, proposers are required to coordinate their proposals so that a person who applied to public calls by both proposers may be a candidate of only one of them.

The proposers shall submit the proposals for the selection of Judges to the Parliament of Montenegro (hereinafter: the Parliament).

In proposing candidates, proposers are required to take into account the proportional representation of minorities and other minority ethnic groups and gender-balanced representation.

#### Article 7

The Constitutional Court Judges shall take oath before the Parliament.

The Constitutional Court Judges may not assume the office before taking oath.

The wording of the oath shall be as follows: "I swear that I will execute the office of a Constitutional Court Judge honourably, conscientiously and impartially, according to the Constitution and the law".

If a Constitutional Court Judge refuses to take the oath, the decision on the selection shall be repealed, due to the withdrawal.

#### Article 8

Constitutional Court Judges' MP or political organization member status shall cease on the day of appointment.

The term of office of Constitutional Court Judges shall commence on the day of assuming the position.

#### Article 9

Assistant professor, associate professor and professor of law appointed as a Constitutional Court Judge may, outside his employment and to a reduced extent, continue to perform teaching and research work as a university professor of law.

For the purposes of this Law, other scientific and expert activities and membership in the institutes and associations of lawyers, as well as the humanitarian, cultural, sporting and other associations shall not be considered a public function or performing other activities.

#### Article 10

Constitutional Court Judges shall submit a request for termination of office before the expiry of the term for which they were appointed to the Parliament of Montenegro.

If the Parliament does not adopt a decision on the termination of office within 30 days as of the date of request submission, the term of office of Constitutional Court Judges shall terminate with the expiry of that deadline.

The Constitutional Court shall notify the proposer on the fulfilment of conditions for old-age pension, or on the expiration of the term of office of Constitutional Court Judges nominated by the proposer, six months before the fulfilment of the conditions for old-age pension, or before the expiry of the term of office.

The function of a Judge who was sentenced to unconditional imprisonment sentence shall terminate on the day on which the judgment becomes final, which will be communicated to the Parliament and the Constitutional Court by the competent court.

#### Article 11

On his own initiative or at the reasoned initiative of three Judges, declared upon by the Constitutional Court, the President of the Constitutional Court shall submit to the Parliament a reasoned proposal that a Constitutional Court Judge is dismissed from duty if he is convicted of an offense that renders him unfit for duty, if he is permanently incapacitated for the function or if he publicly expressed his political beliefs.

#### Article 12

Where criminal proceedings are instituted against a Constitutional Court Judge, the competent court shall promptly notify the President of the Constitutional Court, or the Secretary-General if the proceedings are instituted against the President of the Constitutional Court himself, who shall then notify the most senior Judge.

After receiving the notice referred to in paragraph 1 of this Article, the President of the Court or the most senior Judge shall immediately convene a session of the Constitutional Court.

In the case referred to in paragraph 1 of this Article, the decision that the Judge shall not exercise his duty during the criminal proceedings against him shall be taken at the session of the Constitutional Court by majority vote of all the Judges, without the participation of the Judge whose exercise of duty is decided upon.

The decision referred to in paragraph 2 of this Article shall be reasoned.

The decision that the Judge shall not exercise his duty during the criminal proceedings against him shall be submitted to the Parliament.

#### Article 13

A Judge or the President of the Constitutional Court shall be removed from proceedings if:

- 1) He is a participant in the proceedings, a legal representative or an attorney of a participant in the proceedings;
- 2) A participant in the proceedings, a legal representative or an attorney of a participant in the proceedings is a blood relative of his to any degree in the direct line, and to the third degree in the lateral line, or his spouse or common-law partner or relative by marriage up to the second degree, regardless of if the marriage has been terminated;
- 3) He has participated in deciding upon the case in court or administrative proceedings.

If the case referred to in paragraph 1 of this Article refers to the President of the Constitutional Court, the session of the Constitutional Court shall, under a reasoned initiative of three Judges, be convened by the most senior Judge.

#### Article 14

A request for removal from proceedings of a Constitutional Court Judge for reasons referred to in Article 13 of this Law may be submitted by the President of the Constitutional Court, a Judge or a participant in the proceedings.

The merits of the request for removal from proceedings of a Constitutional Court Judge shall be decided upon by the Constitutional Court.

President or Judge of the Constitutional Court whose removal from proceedings is requested may not participate in deciding on the request for removal, but shall declare on the request for removal.

#### Article 15

After the expiration of his term of office, a Constitutional Court Judge who is not eligible for age-pension shall be entitled to continue to work in the Constitutional Court as an adviser.

## **2. President of the Constitutional Court**

### Article 16

Session of the Constitutional Court in which the President of the Constitutional Court is appointed shall be chaired by the most senior Constitutional Court Judge.

The Constitutional Court Judges shall each nominate, in writing, two candidates for the President of the Constitutional Court.

Based on the nominations referred to in paragraph 2 of this Article, a list of three candidates with the highest number of nominations shall be prepared, and in the event that there are more than three candidates with the same highest number of nominations, the list shall include all the candidates with the highest number of nominations.

In the event that two or more nominated candidates receive the same highest number of votes, voting shall be repeated only for those candidates.

Decision on the appointment of the President of the Constitutional Court shall be adopted by secret ballot, by a majority vote of all Judges.

### Article 17

President of the Constitutional Court shall represent the Constitutional Court before the authorities and institutions in Montenegro and international bodies, organizations and institutions at home and abroad.

President of the Constitutional Court shall take care of preserving the independent position of the Constitutional Court in relation to all the state authorities.

President of the Constitutional Court shall: convene and preside over the sessions of the Constitutional Court and expert meetings, coordinate the work of the Constitutional Court and perform other duties stipulated in this Law, the Rules of Procedure and other acts of the Constitutional Court.

### Article 18

Term of office of the President of the Constitutional Court shall expire when his mandate of a Constitutional Court Judge expires.

### Article 19

President of the Constitutional Court shall submit a request for termination of office of the President before the expiry of the term for which he was appointed to a session of the Constitutional Court, chaired by the most senior Judge.

If at the session of the Constitutional Court no decision is adopted within 30 days as of the date of request submission, the term of office of the President of the Constitutional Court shall terminate with the expiry of that deadline.

### Article 20

President of the Constitutional Court shall have a deputy who replaces the President of the Constitutional Court in the case of his absence or inability to exercise function and in other cases stipulated by the Rules of Procedure.

The Constitutional Court shall appoint Deputy President at the proposal of the President of the Constitutional Court.

The process of appointing the Deputy President of the Constitutional Court and the duration of his term of office shall be regulated in accordance with the Rules of Procedure.

In the event of expiry of office of the President of the Constitutional Court, until the appointment of the new President, the function of the President shall be performed by the Deputy President of the Constitutional Court, who shall have the rights and duties of the President.

### **III SECRETARY-GENERAL AND THE OFFICE OF THE CONSTITUTIONAL COURT**

#### **2. The Secretary-General and Deputy**

##### Article 21

The Constitutional Court shall have a Secretary-General.

The Secretary-General shall be appointed by the Constitutional Court for a period of five years with the possibility of re-appointment.

The Secretary-General may be a person who meets the general requirements for work in a state authority and who has completed the law faculty and has seven years of work experience in the field of legal affairs.

The Secretary-General shall take care of the preparation and organization of sessions of the Constitutional Court; shall take care of and be responsible for the enforcement of the acts of the Constitutional Court; shall take care of professional development and training of Constitutional Court advisers and other civil servants and state employees, and shall perform professional and other tasks entrusted to him by the Constitutional Court in accordance with this Law and the Rules of Procedure.

If the President of the Constitutional Court evaluates the work of the Secretary-General or the work of Office in the previous two years in a row as not satisfactory, the procedure for his dismissal may be initiated at the session of the Constitutional Court.

##### Article 22

The Secretary-General shall have a deputy.

The provisions on the appointment, conditions for appointment, term of office and the legal status of the Secretary-General shall also apply to his deputy.

#### 2. The Office of the Constitutional Court

##### Article 23

The Constitutional Court shall form the Office of the Constitutional Court (hereinafter: the Office), to perform specialized and other activities, with the Secretary-General managing and being accountable for its work.

Specialized activities within the jurisdiction of the Constitutional Court shall be conducted by Constitutional Court advisers.

The organization, activities and manner of operation of the Office shall be regulated by an act of the Constitutional Court.

##### Article 24

The Constitutional Court advisers shall be employed in the Constitutional Court on the basis of a public announcement.

The Constitutional Court advisers may be persons who have completed the law faculty and have seven years of work experience.

##### Article 25

Administrative, accounting, technical-support and other related activities in the Office of the Constitutional Court shall be performed by servants and employees who exercise their rights and obligations in accordance with the regulations on civil servants and state employees and general acts of the Constitutional Court.

##### Article 26

The Constitutional Court may hire experts in certain fields to carry out specialized activities.

## **IV PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT AND THE LEGAL EFFECT OF ITS DECISIONS**

### **1. Common provisions**

#### *1) Participants in the proceedings*

##### Article 27

Participants in proceedings before the Constitutional Court are:

- 1) In the proceedings for the review of the conformity of laws with the Constitution and ratified and published international treaties or of other regulations and general acts (hereinafter: regulations) with the Constitution and the law – the court, other state authorities, local self-government bodies, five MPs, anyone on whose initiative the proceedings have been initiated and the authority which enacted the law or other regulation that is subject to review;
- 2) In the proceedings on the constitutional complaint – a person submitting the constitutional complaint under Article 60, paragraph 2 of this Law, a state authority or state administration body, local self-government body or a legal entity exercising public powers, against whose act the complaint has been submitted;
- 3) In the proceedings of deciding whether the President of Montenegro has violated the Constitution – the Parliament and the President of Montenegro;
- 4) In the proceedings of deciding on the conflict of jurisdiction – the court and other state authority or local self-government body that accepts or rejects jurisdiction, as well as the person who could not exercise his / her right because of the acceptance or rejection of jurisdiction;
- 5) In the proceedings of deciding on the ban of political parties or non-governmental organizations – the person submitting the proposal referred to in Article 84 of this Law, as well as the political party or non-governmental organization whose ban of activities is decided upon;
- 6) In the proceedings on electoral disputes and disputes related to a referendum – the appellant referred to in Article 89, paragraph 1, Article 94, paragraph 1 and Article 96, paragraph 1 of this Law, as well as the authority in charge of conducting elections, or the authority in charge of conducting the referendum, upon whose electoral activity the proceedings have been initiated;
- 7) In the proceedings on compliance with the Constitution of the measures and actions of state authorities taken during the state of war and the state of emergency – the complainant referred to in Article 99, paragraph 2 of this Law and the authority responsible for taking measures and actions during the state of war and the state of emergency.

#### *2) Initiation of proceedings*

##### Article 28

Applications initiating or instituting proceedings before the Constitutional Court shall be submitted by mail or directly to the Constitutional Court and must be signed.

Applications by fax, telegrams addressed to the Constitutional Court and anonymous applications shall not be considered applications initiating the proceedings or initiating the commencement of proceedings before the Constitutional Court.

Applications and files shall be submitted to the Constitutional Court in triplicate.

Applications initiating or instituting proceedings shall be deemed filed on the day of submission to the Constitutional Court.

If the applications initiating or instituting proceedings have been sent by registered mail, the day of delivery to the post office shall be deemed the day of submission to the Constitutional Court.

Notwithstanding to the above, the application on an electoral dispute, or a dispute in relation to a referendum, shall be submitted directly to the Constitutional Court.

#### Article 30

If an application initiating or instituting proceedings is unintelligible, incomplete, or if it contains deficiencies that prevent corresponding action-taking, the applicant shall be required to rectify these deficiencies within the prescribed deadline.

#### Article 31

The Constitutional Court shall examine the admissibility of motions, initiatives for the review of the constitutionality and legality, the constitutional complaints and complaints in accordance with this Law.

The merits of a constitutional complaint are reviewed in the preliminary proceedings.

#### Article 32

The Constitutional Court shall submit a copy of the motion, initiative, constitutional complaint and complaint to other participants in the proceedings and shall designate a period of time for them to submit the required documents, data and information, as well as a reply or opinion with regard to the allegations and the evidence contained in these applications.

Notwithstanding the above, the Constitutional Court shall not submit for reply or opinion the applications referred to in paragraph 1 of this Article if it finds that there are no procedural requirements for initiating or conducting proceedings.

With regard to the initiative for the review of the conformity of laws with the Constitution and ratified and published international treaties or of other regulations with the Constitution and the law, which is passed by the Parliament, the Constitutional Court may seek the opinion of the Parliament if it considers that it is necessary to make a decision on initiating the proceedings.

#### Article 33

Participants in the proceedings referred to in Article 32, paragraph 1 of this Law shall, within the set period of time, submit to the Constitutional Court the requested documents, data and information, as well as a reply or opinion on the allegations and the evidence contained in the motion, initiative, constitutional complaint and complaint.

At the reasoned request of a party in the proceedings, the Constitutional Court may extend the period referred to in paragraph 1 of this Article.

If the Constitutional Court does not receive the required reply, opinion and other requested data and information within the period referred to in paragraph 1 and paragraph 2 of this Article, the proceedings may continue.

#### Article 34

In addition to the parties in the proceedings, everyone shall be bound to submit to the Constitutional Court, at its request, the documents and information required for the conduct of the proceedings.

#### Article 35

The Constitutional Court shall reject a motion, initiative, constitutional complaint, complaint, or other applications initiating the proceedings:

- 1) When it determines that it is not competent to decide;
- 2) If the applications were not filed within the prescribed period;
- 3) When the applicant does not eliminate the deficiencies that prevent action-taking within the designated period of time;
- 4) When it determines that it has already decided about the same thing;
- 5) When it determines that a motion instituting proceedings is clearly unfounded or based on abuse of law;
- 6) When other preconditions for deciding on the merits of the application do not exist.

#### Article 36

The Constitutional Court shall terminate proceedings based on a motion, initiative, constitutional complaint, complaint, or other applications initiating the proceedings:

- 1) If the applicant withdraws the application;
  - 2) If the applicant (natural person) dies or if the applicant (legal entity) ceases to exist;
  - 3) When other preconditions for the conduct of the proceedings do not exist or cease to exist.
- Notwithstanding the above, the Constitutional Court shall conduct the proceedings in the cases referred to in paragraph 1, item 2 of this Article, if the applicant's heir or legal successor assumes the position of the applicant, or in the case referred to in paragraph 1, item 1 of this Article, when it assesses that the conduct of the proceedings is necessary to ensure respect for the rule of law, or human rights and fundamental freedoms guaranteed by the Constitution.

#### *3) Forms of work of the Constitutional Court*

#### Article 37

The Constitutional Court shall decide on matters within its jurisdiction at the session of all Judges (hereinafter: the session of the Constitutional Court), as well as at a panel session consisting of three Judges (hereinafter: the Panel) when it, in accordance with the Constitution, decides on constitutional complaints.

The Constitutional Court shall also hold regular expert meetings on matters within its jurisdiction which, in addition to the Judges, may be attended by Secretary-General and the Constitutional Court advisers, and the Boards of Judges in which important issues relating to the operation, management and international co-operation of the Constitutional Court are discussed.

President of the Constitutional Court may decide that the case is discussed at the expert meeting of the Judges of the Constitutional Court before a draft decision or decision is sent to the session of the Constitutional Court for taking a decision on the case.

#### Article 38

The session of the Constitutional Court shall be convened and chaired by the President of the Constitutional Court.

The deliberations and voting shall be conducted in a closed session, while the decision shall be made public.

Each Judge may single out his opinion stating the reasons for which he fully or partially agrees with the decision taken, or the reasons for which he is fully or partially against the decision taken. A Judge who has singled out his opinion shall have the right to request that this opinion be published in the "Official Gazette of Montenegro", together with the decision to which it relates.

#### Article 39

The Panel shall have a chairman and two members.

The number of Panels and their scope of work with regard to constitutional complaints shall be determined by the Rules of Procedure. The chairmen and members of the Panel shall be determined by the President of the Constitutional Court, through the annual work schedule.

Panel sessions shall be convened and chaired by the chairman of the Panel.

If the Panel does not reach unanimity or it determines that the case is of broader principal importance for the legal order of Montenegro, the constitutional complaint shall be discussed at an expert meeting of Judges and it shall be decided at the session of the Constitutional Court.

## Article 40

The Constitutional Court shall hold a public hearing when it finds that the holding of a public hearing is necessary, particularly when it is a matter of complex constitutional – legal issue.

Scheduling, holding, and other issues pertaining to the public hearing shall be regulated in more details by the Rules of Procedure.

*4) Acts of the Constitutional Court*

## Article 41

The Constitutional Court shall issue decisions and orders.

The decision or the order of the Constitutional Court shall contain: recitals, disposition and reasoning.

## Article 42

By the decisions, the Constitutional Court shall:

- 1) Determine that the law or some of its provisions are not in compliance with the Constitution and ratified and published international treaties, or that they were not in compliance with the Constitution while they were in force;
- 2) Determine that another regulation or some of its provisions are not in compliance with the Constitution and the law, or that they were not in compliance with the Constitution and the law while they were in force;
- 3) Accept a constitutional complaint for violation of human rights and freedoms guaranteed by the Constitution;
- 4) Determine that the President of Montenegro has violated the Constitution;
- 5) Resolve the conflict of jurisdiction;
- 6) Ban the activities of a political party or non-governmental organization;
- 7) Accept a complaint for violation of rights during elections or during a referendum;
- 8) Decide on the conformity with the Constitution of the measures and actions of state authorities, which were taken during the state of war and the state of emergency;
- 9) Refuse: proposals for the review of unconstitutionality and illegality, proposals for determining if the President of Montenegro has violated the Constitution, proposals for resolving the conflict of jurisdiction and the proposal for ban of work of the political party or non-governmental organization;
- 10) Refuse a constitutional complaint and complaint as unfounded.

## Article 43

By the orders, the Constitutional Court shall:

- 1) Initiate proceedings;
- 2) Suspend the proceedings in the cases determined by this Law;
- 3) Suspend the execution of an individual act or action, repeal the measure of suspension or reject the application for suspension of execution of an individual act or action;
- 4) Refuse the initiative for initiating the proceedings for the review of the constitutionality and legality;
- 5) Refuse a motion, initiative, constitutional complaint, complaint and other applications in the cases referred to in Article 35 of this Law;
- 6) Decide on issues of administering the proceedings.

## Article 44

Original decision or order shall be signed by the President of the Constitutional Court if the decision or order were adopted at the session of the Constitutional Court, and by the chairman of the Panel if the decision or order on the constitutional complaint were adopted at the Panel session. Original decision or order shall make an integral part of case files.

#### Article 45

Decisions of the Constitutional Court, except for orders on constitutional complaints and complaints, shall be published in the "Official Gazette of Montenegro", as well as in the same way in which the act whose constitutionality and legality was decided upon by the Constitutional Court was published.

Decisions on constitutional complaints and complaints, as well as the orders of importance for protecting the constitutionality and legality may also be published in the "Official Gazette of Montenegro". The publication of these decisions or orders shall be decided upon by the Panel session or the session of the Constitutional Court, on the proposal of the Judge Rapporteur.

The decision and the order of the Constitutional Court shall be published on the website of the Constitutional Court in accordance with the Rules of Procedure.

#### Article 46

State authorities, state administration bodies, local self-government bodies and legal persons and other entities exercising public authority shall, within their competence, execute the decisions of the Constitutional Court, and their execution shall, where necessary, be provided by the Government of Montenegro.

The Constitutional Court may determine the manner of execution of the decision and determine the authority that is required to execute a decision in the decision itself.

#### *5) The costs of the proceedings*

#### Article 47

No fees shall be paid in the proceedings before the Constitutional Court.

Participants in the proceedings before the Constitutional Court shall bear their own costs.

Notwithstanding paragraph 2 of this Article, the Constitutional Court may reimburse the costs of other summoned persons and determine compensation for their participation in the proceedings, and in the case of constitutional complaint, may order that they are reimbursed the costs of proceedings before the Constitutional Court by the applicant who filed the constitutional complaint which failed.

## **2. Proceedings for the review of constitutionality and legality**

#### Article 48

The proceedings for the review of compliance of the law with the Constitution and ratified and published international treaties or compliance of other regulations with the Constitution and the law shall be initiated:

- 1) By the submission of a motion by the applicants authorised by the Constitution;
- 2) When upon the initiative the Constitutional Court determines that there are reasons for institution of proceedings;
- 3) When the Constitutional Court determines that there are arguments for institution of the proceedings upon its own initiative, particularly if during the proceedings upon the constitutional complaint the issue of constitutionality and legality is raised of a law or other regulation on the basis of which a particular individual act that is the subject of constitutional complaint was adopted, as well as when during the proceedings for the review of constitutionality and legality the issue of constitutionality or legality is raised of other provisions and other regulations that are related to the provisions which are the subject of the review.

#### Article 49

The motion or the initiative for the review of compliance of a law with the Constitution and ratified and published international treaties or of other regulations with the Constitution and the law shall contain: the title of the law or other regulation, the designation of the

provision that is challenged, title and a number of the Official Gazette in which it has been published, the arguments upon which the motion or the initiative are based, as well as other data of importance for the review of the constitutionality and legality.

If the regulation whose constitutionality or legality is being challenged is not published in the "Official Gazette of Montenegro", a certified copy of the regulation shall be submitted with the motion or initiative, as a rule.

#### Article 50

The proceedings shall be considered initiated on the day of submission of the motion to the Constitutional Court or the date of the order of the Constitutional Court to initiate the proceedings.

#### Article 51

The Constitutional Court shall not accept an initiative when it assesses that there are no grounds to initiate the proceedings.

#### Article 52

In the proceedings for the review of the constitutionality and legality, the Constitutional Court shall not be limited to the motion or initiative.

If the applicant who submitted the motion or initiative withdraws the motion or initiative, the Constitutional Court shall continue the proceedings if it finds grounds for doing so.

#### Article 53

At the request of the entity that adopted the challenged regulation, the Constitutional Court may, before making a decision on the constitutionality and legality, stay the proceedings and allow the entity that adopted the regulation to rectify the unconstitutionality and illegality within a certain period of time.

If the unconstitutionality and illegality is not rectified within the prescribed deadline, the Constitutional Court shall continue the proceedings.

#### Article 54

During the proceedings, the Constitutional Court may order the suspension of the execution of an individual act or action until the final decision, at the request of the applicant that submitted the motion or initiative, if the applicant that submitted the motion or initiative makes it certain that there would be irreparable adverse effects.

#### Article 55

If, in proceedings before a court, the issue of compliance of a law with the Constitution and ratified and published international treaties or of other regulations with the Constitution and the law arises, the court shall stay the proceedings and initiate the proceedings to review the constitutionality and legality of that act before the Constitutional Court.

#### Article 56

In addition to the reasons set forth in Article 38 of this Law, the Constitutional Court shall suspend the proceedings if during the proceedings the law was brought in compliance with the Constitution and ratified and published international treaties or if other regulations were brought in compliance with the Constitution and the law, and the Constitutional Court does not decide that the proceedings should continue because the effects of unconstitutionality or illegality have not been removed.

#### Article 57

If due to the termination of validity of the law for which the Constitutional Court found that it was not in compliance with the Constitution and ratified and published international treaties, or if due to the termination of validity of other regulations for which the Constitutional

Court found that they were not in compliance with the Constitution and the law, a legal gap would be created in the legal system of Montenegro on the day of publication of the decision of the Constitutional Court, the Constitutional Court shall set forth the date of publication of the decision in the "Official Gazette of Montenegro" in its decision and shall inform the relevant state authorities and the public thereof through its website, delivering the decision to participants in the proceedings.

If by the date specified in the decision referred to in paragraph 1 of this Article, the law is brought in compliance with the Constitution and ratified and published international treaties, or if other regulation is brought into compliance with the Constitution and the law, the Constitutional Court shall not publish its decision and shall discontinue the proceedings by an order.

#### Article 58

Regulations adopted for the execution of laws and other regulations that are found not to be in compliance with the Constitution and the law shall not be applied from the date of publication of the decision of the Constitutional Court.

Execution of final and enforceable individual acts adopted on the basis of regulations that can no longer be applied may not be allowed or implemented, and if the execution has already started, it shall be discontinued.

#### Article 59

Anyone whose rights have been violated by a final or enforceable individual act adopted on the basis of a law or other regulation which, under their own initiative, the Constitutional Court decision found not to have been or not to be in compliance with the Constitution, ratified and published international treaties or the law, shall be entitled to require the competent authority to amend the individual act.

The motion for amendment of this final or enforceable individual act adopted on the basis of a law or other regulation which was found by the Constitutional Court decision not to have been or not to be in compliance with the Constitution, ratified and published international treaties or the law may be submitted within six months of the day of publication of the decision in the "Official Gazette of Montenegro", if the period between delivery of the individual act and submission of the initiative to the Constitutional Court has not been longer than one year.

### **3. Proceedings upon the constitutional complaint**

#### Article 60

A constitutional complaint may be filed for violation of human rights or freedoms guaranteed by the Constitution, which was created by an individual act, action or inaction of state authorities, state administration bodies, local self-government body, local government body or legal person or other entity that exercises public authority.

A constitutional complaint may be filed by any person who believes that an individual act, action or inaction of state authorities, state administration bodies, local self-government body, local government body or legal person or other entity that exercises public authority violated his / her human rights or freedoms guaranteed by the Constitution.

A constitutional complaint may be filed after the exhaustion of all effective legal remedies, which implies that the applicant submitting the constitutional complaint has exhausted all legal remedies to which he / she was entitled under the law in proceedings.

#### Article 61

A constitutional complaint shall be filed within 60 days:

- From the date of delivery of the individual act against which a constitutional complaint may be filed in accordance with this law;
- From the date of termination of the current action which violated human rights or freedoms guaranteed by the Constitution, if there is no effective legal remedy against such actions,

- The last day on which the inaction that violated human rights or freedoms guaranteed by the Constitution could have been avoided, if there is no effective legal remedy against such inaction.

In the case of an action or inaction which is continuous for a long time, the constitutional complaint may also be filed during the action or inaction, provided that the applicant provides arguments in the constitutional complaint to explain why the action or inaction results in permanent violation of one of his / her human rights or freedoms guaranteed by the Constitution, what the permanent violation of the right or freedom consisted of, and that he / she proves that there is no effective legal remedy against it in the legal system of Montenegro.

#### Article 62

The Constitutional Court shall allow restoration to original condition to the person who, due to justified reasons, misses the deadline for the submission of a constitutional complaint, if he / she submits a request for restoration to original condition and constitutional complaint within 15 days from the day of expiry of the reason that has caused the deadline to be missed.

After the expiration of the deadline of three months from the day of missing of the deadline referred to in paragraph 1 of this Article, the restoration to original condition cannot be requested.

#### Article 63

The constitutional complaint shall contain: name, permanent or temporary residence and address, or the name and seat of the applicant submitting the constitutional complaint, the reasons for the constitutional complaint with reasoned allegations of violation of human rights or freedoms guaranteed by the Constitution, the application on which the Constitutional Court should decide, and the signature of the applicant, or a person who has been issued a special power of attorney to file a constitutional complaint.

Along with the constitutional complaint, a certified copy of the challenged individual act or judicial decision shall be filed, as well as evidence that legal remedies have been exhausted, the facts on which the claim of the violation of rights and freedoms is based, and other evidence relevant to decision making.

#### Article 64

The constitutional complaint shall not stay the execution of an individual act against which it is filed.

Notwithstanding the above, on the request of the complainant, during the proceedings the Constitutional Court may order the suspension of the execution of an individual act until a final decision is made, if the complainant makes it certain that there would be irreparable adverse effects.

#### Article 65

The constitutional complaint shall also be submitted to the other parties whose rights or obligations would be directly affected by a decision of the Constitutional Court through which it accepts a constitutional complaint. These persons shall have the right to declare on the constitutional complaint within the period of time determined by the Constitutional Court.

#### Article 66

The Constitutional Court shall decide only on the violation of human rights or freedoms guaranteed by the Constitution to which the allegations in the constitutional complaint relate.

#### Article 67

When it determines that a human right or freedom guaranteed by the Constitution has been violated by the challenged individual act, the Constitutional Court shall accept the

constitutional complaint and repeal that act, in whole or partially, and shall send the case for retrial to the body that has adopted the repealed act.

In the case that by the time of rendering the decision of the Constitutional Court the legal effect of the challenged individual act has ceased, the Constitutional Court shall determine the existence of violation by a decision, when it establishes that a human right or freedom guaranteed by the Constitution has been violated.

In the case referred to in paragraph 2 of this Article and in cases where a violation has been committed by an action or inaction, by the decision accepting a constitutional complaint the Constitutional Court shall determine the right of the complainant to seek for damages before the competent court under the general rules of contract law.

Alternative.

Notwithstanding paragraph 1 of this Article, when the Constitutional Court finds that the final court decision violated human rights or freedoms guaranteed by the Constitution, it shall accept a constitutional complaint, state a violation of rights on the basis of which the court proceedings shall be repeated, except in the case referred to in paragraph 2 of this Article.

#### Article 68

The competent authority shall immediately, but no later than 30 days after receipt of the decision of the Constitutional Court, process the case if the Constitutional Court repealed an individual act and sent the case back for retrial.

When the new act is adopted, the competent authority is obliged to respect the legal reasoning of the Constitutional Court stated in the decision and to decide in the repeated proceedings within a reasonable time.

#### Article 69

The decision of the Constitutional Court accepting a constitutional complaint shall have legal effect from the date of delivery to the participants in the process.

### **4. Proceedings of determining whether the President of Montenegro has violated the Constitution**

#### Article 70

The proceedings of determining whether the President of Montenegro has violated the Constitution shall be deemed initiated on the day of admission of the motion at the Constitutional Court.

The motion referred to in paragraph 1 of this Article shall be reasoned and shall contain statements for which it is considered that the President of Montenegro has violated the Constitution.

#### Article 71

The Constitutional Court shall submit the motion referred to in Article 70 of this Law to the President of Montenegro within three days of receipt.

The President of Montenegro shall have the right to declare on the reasons contained in the motion, to provide data and information relevant for the proceedings and decision making, within 15 days after the service of the motion.

#### Article 72

The proceedings of determining whether the President of Montenegro has violated the Constitution shall be urgent.

#### Article 73

In the proceedings of determining whether the President of Montenegro has violated the Constitution, the Constitutional Court shall be limited to the motion.

#### Article 74

The Constitutional Court shall discontinue the proceedings:

- 1) If the Parliament withdraws the act on initiating the proceedings;
- 2) If the term of office of the President of Montenegro ceases during the proceedings.

Notwithstanding paragraph 1, item 2 of this Article, the Constitutional Court shall continue the proceedings if the President of Montenegro requires so.

#### Article 75

The Constitutional Court shall adopt the decision determining whether the President has violated the Constitution at the latest within 45 days of receipt of the motion.

### **5. Proceedings of deciding on the conflict of jurisdiction**

#### Article 76

The Constitutional Court shall resolve the mutual conflicts of jurisdiction between:

- Courts, Parliament and the Government of Montenegro (hereinafter: state authorities),
- State authorities and local-self-government bodies,
- Local self-government bodies.

#### Article 77

The Constitutional Court shall not decide on:

- Conflict of jurisdiction within a branch of power (legislative, executive or judicial),
- Conflict of jurisdiction between the state authorities and local self-government bodies, which is not related to the separation of state and local self-government tasks,
- Conflict of jurisdiction between the local self-government bodies belonging to the municipal assembly, or between the local self-government bodies belonging to the president of municipality.

#### Article 78

The motion for deciding on the conflict of jurisdiction may be submitted by one or more bodies that are in conflict, as well as by a person who cannot exercise his / her rights because of the acceptance or refusal of jurisdiction.

The motion shall be submitted to the Constitutional Court within 15 days of adoption of the decision on the refusal of jurisdiction, provided that the other authority already declined its jurisdiction in the same case before that (negative conflict of jurisdiction).

The motion shall be submitted to the Constitutional Court within 15 days of adoption of the decision on the acceptance of jurisdiction, provided that the other authority has already accepted its jurisdiction in the same case before that or has taken actions which undoubtedly show that it finds itself competent for the case (positive conflict of jurisdiction).

#### Article 79

The motion for deciding on the conflict of jurisdiction includes the name of authority, subject of proceedings, a detailed explanation of the facts and circumstances of the case for which the conflict of jurisdiction occurred and the reasons for which the applicant considers itself incompetent or competent for the case.

Along with the motion, documentation relevant to decision making shall be submitted.

#### Article 80

The body that is in the conflict of jurisdiction with the applicant shall have the right to declare on the motion within the time period determined by the Constitutional Court.

#### Article 81

The Constitutional Court may order that, pending a decision, proceedings before the authorities between which there is a positive conflict of jurisdiction are stayed.

Article 82

When the Constitutional Court determines that there is no conflict of jurisdiction, it shall reject the motion for resolving the conflict of jurisdiction.

When it determines that there is a conflict of jurisdiction, the Constitutional Court shall decide which authority is competent to decide.

Article 83

The decision of the Constitutional Court resolving the conflict of jurisdiction shall have legal effect from the date of delivery to the participants in the proceedings.

**6. Proceedings of deciding on ban of activities of a political party or non-governmental organization**

Article 84

The proceedings of deciding on ban of activities of a political party or non-governmental organization shall be initiated by a motion that, in the framework of their powers, may be submitted by:

- The Protector of Human Rights and Freedoms;
- Defense and Security Council;
- State administration body responsible for the protection of human and minority rights;
- The authority responsible for registration of political parties or non-governmental organizations into the register.

Article 85

The motion for ban of activities of a political party or non-governmental organization shall state the forbidden activity, i.e. the facts and circumstances of unconstitutional activity, which might be the reason for ban of activities of a political party or non-governmental organization.

Article 86

The Constitutional Court may ban the activities of a political party or non-governmental organization if their activity is directed at or has a goal of violent overthrowing of the constitutional order, violation of territorial integrity of Montenegro, violation of guaranteed human rights and freedoms or provoking of racial, religious and other hatred and intolerance.

Article 87

When the Constitutional Court bans the activities of a political party or non-governmental organization, the particular political party or non-governmental organization shall be deleted from the register.

The decision on ban of activities of a political party or non-governmental organization shall be submitted to the particular political party or non-governmental organization and shall have legal effect from the day of submission of the decision of the Constitutional Court to the body in charge of registration into the register of political parties or non-governmental organizations.

**7. Proceedings of deciding upon electoral disputes and disputes related to a referendum**

*1) Proceedings of deciding on violation of law during the election of MPs and councillors*

Article 88

The proceedings of deciding upon a violation of law during the election of MPs and councillors shall be initiated by filing a complaint against the decision of the competent electoral commission, which dismissed or denied the objection.

The complaint referred to in paragraph 1 of this Article shall be submitted within 24 hours of delivery of the decision.

#### Article 89

A complaint may be filed by a voter, candidate for MPs and councillors and the person submitting the electoral list.

A complaint shall also contain the reasons and evidence of a violation of law during the elections.

#### Article 90

The Constitutional Court shall submit a copy of the complaint to the competent electoral commission in order for it to submit its reply, as well as necessary election acts, or documents within a designated period.

#### Article 91

The Constitutional Court shall decide on the complaint referred to in Article 88 of this Law within 96 hours from receipt of the complaint.

#### Article 92

If the irregularities are established in the electoral process, which had a significant impact on the election result, the Constitutional Court shall adopt a decision annulling the entire electoral process or parts of the procedure, which must be precisely specified.

#### Article 93

The decision of the Constitutional Court annulling the entire electoral process or parts of the procedure shall have legal effect from the date of service of the decision of the Constitutional Court to the competent authority.

#### *2) Proceedings of deciding on a violation of law during the election of the President of Montenegro, mayor, and the president of municipality*

#### Article 94

The proceedings of deciding on a violation of law during the election of the President of Montenegro, the mayor of the Capital City and Old Historic Capital, and the president of municipality, shall be initiated by a complaint that may be submitted by a candidate for the President of Montenegro, the mayor of the Capital City and Old Historic Capital, and the president of municipality, as well as by parties nominating candidates.

The complaint referred to in paragraph 1 of this Article shall contain the reasons and evidence of a violation of law during the elections.

#### Article 95

The proceedings referred to in Article 94 of this Law shall be subject to the provisions of this Law relating to the proceedings of deciding on a violation of law during the election of MPs and councillors.

### **8. Proceedings on a violation of law during a referendum**

#### Article 96

The complaint initiating the proceedings of deciding on a violation of law in the course of a referendum may be submitted by a voter and the authority calling for a referendum.

A complaint shall be reasoned and contain the reasons and evidence of a violation.

#### Article 97

The Constitutional Court shall issue a decision on violation of law referred to in Article 96 of this Law within 30 days as of the date of initiation of proceedings.

The decision of the Constitutional Court referred to in paragraph 1 of this Article shall have legal effect from the date of service of the decision to the competent authority.

#### Article 98

The proceedings of deciding on a violation of law during a referendum shall be subject to the provisions of this Law relating to the proceedings of deciding on a violation of law during the election of MPs and councillors.

### **9. Proceedings of deciding on compliance with the Constitution of the measures and actions of state authorities taken during the state of war and the state of emergency**

#### Article 99

Proceedings of deciding on compliance with the Constitution of the measures and actions of state authorities taken during the state of war and the state of emergency shall be initiated by a complaint.

The complaint referred to in paragraph 1 of this Article may be submitted by a person who considers that these measures and actions limit the exercise of his / her individual freedoms and rights beyond the extent necessary to achieve the purpose for which this limitation has been introduced or that they limit the rights that cannot be limited or based on the grounds that cannot be used for limitations according to the Constitution.

The complaint referred to in paragraph 1 of this Article shall be filed within three days of the introduction of measures and actions during the state of war and the state of emergency.

The complaint referred to in paragraph 1 of this Article shall be reasoned and contain the reasons and evidence on the limitation of the exercise of individual human rights and freedoms.

#### Article 100

The Constitutional Court shall adopt the decision determining compliance, or non-compliance of measures and actions referred to in Article 99 of this Law with the Constitution within seven days of receipt of the complaint in the Constitutional Court.

When the Constitutional Court determines non-compliance of measures and actions with the Constitution, it shall repeal the act in whole or in part, or prohibit the action.

#### Article 101

The decision of the Constitutional Court shall have legal effect from the date of submission to the competent authority.

## **V FINANCIAL RESOURCES**

#### Article 104

Funds for the functioning of the Constitutional Court shall be provided in a separate section of the Budget of Montenegro, and shall be determined by the Parliament on the proposal of the Constitutional Court, in accordance with the law (hereinafter: the budget of the Constitutional Court).

The President of the Constitutional Court shall have the right to participate in the work of the session of the Parliament discussing the budget proposal of the Constitutional Court. The proceedings for determining the budget proposal of the Constitutional Court shall be regulated by the Rules of Procedure.

#### Article 105

The Constitutional Court shall dispose of the funds of the budget of the Constitutional Court independently.

The President of the Constitutional Court shall issue orders for the use of funds from the budget of the Constitutional Court and may determine that another authorized officer of the Constitutional Court does the same.

## **VI TRANSITIONAL AND FINAL PROVISIONS**

### Article 106

Proceedings before the Constitutional Court initiated before the entry into force of this Law shall continue under this Law.

### Article 107

Constitutional complaints filed before the entry into force of this Law shall be considered timely, and shall be allowed against individual acts and actions adopted after the entry into force of the Constitution.

### Article 109

The proceedings under constitutional complaints initiated before the Constitutional Court before the entry into force of this Law shall continue under this Law.

### Article 110

The Rules of Procedure of the Constitutional Court shall be harmonized with this Law within 30 days of the date of entry into force of this Law.

### Article 114

With the entry into force of this Law, the Law on the Constitutional Court of the Republic of Montenegro (Official Gazette of Montenegro, number) shall be repealed.

### Article 115

This Law shall enter into force on the eighth day following that of its publication in the "Official Gazette of Montenegro".