

EU Accession and Human Rights: Consequences, tendencies and the role of the civil society in the accession process in Montenegro

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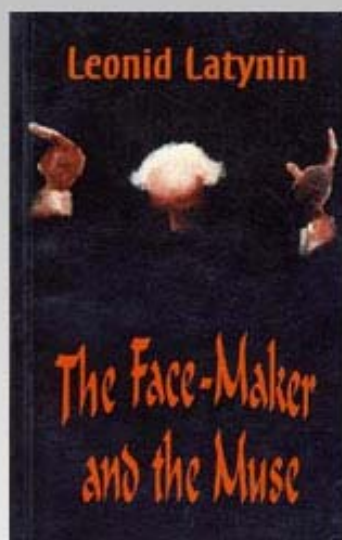
by Nenad Koprivica

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EU Accession and Human Rights: Consequences, tendencies and the role of the civil society in the accession process in Montenegro

by Nenad Koprivica

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Abstract

Following the referendum on the State-Status of Montenegro of 21 May 2006 and the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, the State Union of Serbia and Montenegro was dissolved and Montenegro has become an independent and sovereign state with full international legal personality. The greatest achievement of Montenegro, its citizens and state politics, is that it preserved peace. It remained the only territory where war was not waged.

After the restoration of the statehood independence, Montenegro has the potential to fulfil the European standards faster and more efficiently and thus to approach the candidate status for EU accession. Montenegro now belongs to low debt countries, low inflation rates and high inflows of foreign capital, all of which are important indicators of significant progress towards the club of 25.

The idea of joining EU is one of the most legitimate ideas in Montenegrin public and one of the rare issues where it is possible to reach consensus among warring political options; there is consensus regardless of political orientations, party affiliations, and ideological profile of citizens.

One of the main advantages of independent Montenegro is direct representation of Montenegrin interests in the process of EU association. Direct representation

includes greater amount of support from European funds and programmes for countries in the accession process. As an independent state, Montenegro can get more funds, being a separate subject. Additionally, there is the possibility to secure greater funds from donations, which will now be allocated in line with Montenegrin priorities and needs of its population.

Montenegro could be a good example of gradual integration into the EU, since it represents an example of “Living together in diversity”. Different confessions and nations that have lived together in this region for centuries represent a true recognition of the key principle of European integration «Living together in the diversity»; During the 90’s, Montenegro has succeeded to preserve peace in the country, and it has been opened for all the refugees and displaced persons from the ex-Yugoslavia countries as well as from Kosovo (For example, in 1999 Montenegrin population increased for 20%);

Civil society organizations, next to political parties, have important roles to play to inform the people about the unique and successful EU, which as heads of state said, still has to become even more democratic, transparent and efficient in an enlarged Europe. The civil sector is growingly active in spreading positive energy of the integration process.

There is no doubt that the resolution of the state status issue will change the political dynamics in Montenegro, enabling it to assume responsibility for its own destiny and hopefully proceed quickly along the road of democratic consolidation and EU integration.

Keywords: European Union; Montenegro; human rights; human rights, protection of; regional integrations

Introduction

Following the referendum on the State-Status of Montenegro of 21 May 2006 and the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, the State Union of Serbia and Montenegro was dissolved and Montenegro has become an independent and sovereign state with full international legal personality. A convincing majority of 55.5 per cent voted in favour of independence and 44.5 against, on a turnout of 86.5 per cent of the registered electorate. Montenegro should be praised for its good organisation of the referendum, which took place in accordance with relevant international standards. The greatest achievement of Montenegro, its citizens and state politics, is that it preserved peace. It remained the only territory in the

Balkans war was not waged. By satisfying the aspirations to independence of Montenegro and thus marking the end of the dissolution of the former Yugoslavia as a federation, the outcome of the referendum will contribute to the further regional stabilisation of the Western Balkans. One key item of 'unfinished business' has been removed from the 2006 agenda in the Western Balkans.

The EU's efforts overcame acute political polarisation among key players and brokered acceptable rules of the game, which stimulated exceptionally high voter turnout on the day. One of the strongest reasons for voting 'yes' on the referendum was that independence looked like the surer way of escaping from the frustrating political mess of the status quo and moving forward faster towards EU integration. This opened new space for a Montenegrin national identity, attached to historic territory and traditions, but also aspiring to be modern, to govern itself democratically, and to 'return to Europe'. The key test of independent Montenegro will be whether it fulfils its promise as an inclusive and pluralist nation. This is a national idea that the Albanian, Bosniak and Muslim minorities have not only accepted but helped to shape. The pro-independence majority must show that Montenegro can work just as well for those who identify as Serbs as it can for all other parts of the 'body politic'. In the next period Montenegro will be engaged in drafting a new constitution and reforming its institutions and administrative structures. A process of constructive dialogue will have to be established with the political forces that were in favour of preserving the State Union and continue to refuse to recognise the referendum results and have been boycotting parliament. The best way for the next government to overcome their reservations is to prove that Montenegro can deliver what supporters and opponents of independence alike clearly want: more transparent democratic governance, credible economic reforms that bring prosperity and social justice and faster EU integration. In this regard, the parliamentary elections due in September will be a major test for the democratic viability of the newly independent state.

After the restoration of the statehood independence, Montenegro has the potential to fulfil the European standards faster and more efficiently and thus to approach the candidate status for EU accession. Montenegro now belongs to low debt countries, low inflation rates and high inflows of foreign capital, all of which are important indicators of significant progress towards the club of 25. Improved macroeconomic stability,

inflationary regulation and increased foreign direct investment are just a few of the tangible results from Montenegro's drive to take control of its political, economic and social welfare. Montenegro has adopted the euro and pursued a policy of economic reforms which have already resulted in increased stability and brought a 5% average growth last year. More than 82 percent of state capital has now been privatized. Net foreign direct investment in the first half of 2005 reached €167 million - seven times greater than in the same period in 2004. Credit potential of licensed banks increased by 37 percent in 2005 and the total volume of trade tripled on both Montenegrin stock exchanges. Besides tourism, which is a priority, there are also excellent opportunities in agriculture, food production, industry, mining and wood processing. Tourism is definitely the most strategically important sector of the economy and main priority. In 2001 Government adopted a master plan for the next 20 years, developed in co-operation with European experts. It was decided that the focus should be on sustainable development in tourism with the aim of building high quality destinations. In the World Travel and Tourism Council 2006 list of top ten travels and tourism economies, Montenegro has the highest growth rate for the third year in a row, continuing to use the industry as a key to economic development and job creation. For the period 2007-2016, Montenegro is in first place with annualized real growth put at 10.2 percent. After the referendum, at least one thing is certain - cooperation with the ICTY ceases to be an obstacle on the Montenegrin road to Brussels. From now on, everything is in the hands of the official Podgorica, where they expect to conclude the Stabilisation and Association Agreement by the end of this year. Montenegro has already adopted the euro as its currency and in 2004 it established three new official symbols of identity: a new flag, a national anthem, "Oh the Bright Dawn of May," and national day on July 13, marking the date in 1878 when the Berlin Congress recognized Montenegro as the 27th independent world state. An enviable history of inter-ethnic stability and a burgeoning political and economic climate are harmonizing efforts for EU membership. In the past few years Montenegrin Parliament adopted some 120 EU-compliant laws and regulations and Ministry for European integration has been established. Montenegrin Parliament managed to pass some key reform legislation and began to exercise limited oversight functions. Despite advancing the formalities of integration, the European Union continued to highlight deep-rooted levels of corruption as a key obstacle in Montenegro's accession process.

Overall, Montenegro continues to put in place the necessary legal framework for democratic consolidation, but slow implementation continues to be an obstacle. Problems of implementation are sometimes deliberate, but more often they result from the small-town nature of Montenegrin society, where family, connections and friendships among a population of 670,000 have traditionally governed relationships that the law now seeks to regulate. Although the machinery of the Communist system is being dismantled, the mentality of one-party rule still influences public perceptions and interferes with the development of an open society that respects the rule of law and demands accountability from its elected leaders.

Montenegrin's attitude towards joining the EU

The idea of joining the EU is one of the most legitimate ideas in Montenegrin public and one of the rare issues where it is possible to reach consensus among warring political options; there is consensus regardless of political orientations, party affiliations, and ideological profile of citizens. Center for Democracy and Human Rights MONTENEGRO - CEDEM's regular surveys shows that huge majority of citizens think that Montenegro should be part of the EU, either as an independent state or in the Union with Serbia. All surveys have showed that support to Montenegro joining the EU is of almost plebiscitary character. More than 80% (81.5% - survey from June 2006), of Montenegrin citizens are in favour of accession to EU, so the number of those opposing the Montenegrin membership in EU has been reduced to less than 6 %.

Process of accession to the EU is ongoing although we have different opinions about the roads Montenegro has to take within this process. Different opinions within the public are largely the result of poor information of the citizens about the accession process. Results are showing (table 41) that only 12% of testees are completely informed about negotiations on the accession; with a little less than 50% of testees who are partially informed. On the other hand, little bit less than 30% of testees claim that they are not informed at all and 9% of them do not express interest for this type of information.

Regarding the need for information in respect to future membership in the EU (table 44), it is clear that more than half of interviewers think they need additional information in order to review all the aspects of EU membership. On the contrary, a little more than 1/5 of citizens say they

are not interested in information of the kind. Finally, regarding the information of the kind, citizens primarily expect the Government and its agencies to provide information to them first and then to the media (table 46).

Table 41: Negotiations on Accession Agreement to the EU are currently on the way. Are you, and to what extent informed about that process?

Position	N	%
Yes, completely	122	12.0
Yes, partially	502	49.4
No, not informed at all	301	29.6
Not interested in that type of information	92	9.0
Total	1017	100.0

Table 44: Do you need more information regarding conditions certain country has to fulfil in order to become EU member?

POSITION	N	%
YES	553	54.9
NO	236	23.5
Not interested in information of the kind	217	21.6
Total	1006	100.0

Table 46: Expected sources of information regarding conditions for joining the EU

Sources of information	January 05 %	May 05 %
Representatives of the Government and other state bodies	40.2	39.4
Representatives of political parties	7.6	5.6
Representatives of local government bodies	1.1	1.6
Some NGOs	6.1	4.6
Media	15.7	20.4
Somebody else	2.7	3.0
Not interested in information of the kind	25.2	25.4

European Integration Process in Montenegro

The Western Balkans got another chance. After the sombre projections from last year, when it seemed that European Union is not interested in

further enlargement as France and Netherlands rejected the European constitution, the heads of European states and governments agreed in the last EU summit in Brussels that "capacity of the block to absorb new members should not be a criterion for further enlargements". Discontent of the old EU members, especially its founders France and Netherlands, with the effects of the latest enlargement wave of May 2004 taking in 10 new members of Central and Eastern Europe, was evident in the events around the referendums held in May and June last year. Both politicians and analysts agreed that the failure of the referendum was, among other, the result of a reaction of French and Dutch citizens to the enlargement, as nobody asked them whether they liked the idea of another 10 partners getting the right to decide on the future perspectives of the EU. Another result of the French and Dutch "No" was that the European Parliament (EP) became very important in enlargement issues, more important than earlier. The EU now needs to hear the views of European citizens through the EP before the European Council can decide on the exact date for Bulgaria and Romania. However, the leaders spoke, and they sent a message to the Western Balkans and Turkey that they have a chance now, and that it is only up to them whether they will make use of it. At the same time, it was suggested that this offer is not to come real in too near a future. According to the press, they agreed that "the way citizens experience enlargement" should be taken into account more in the future, "dispelling fears among certain member states, whose citizens have expressed their concern with the issues of employment and migration". However, the president of the European Commission, Jose Manuel Barroso, implied that the countries of Western Balkans and Turkey have something to hope for, explaining that European Union needs Constitution in order to be able to function more efficiently.

At the moment some South Eastern European countries, including Montenegro, do not have contractual relations with the European Union. An SAA is the very first step and a precondition for further steps, such as submitting a membership application and opening negotiations. The process of stabilisation and association has proven its advantages. In 2005, every country made a step forward. This is quite some progress, and a success for the EU policy in this region. However, further successes will not be achieved by raising limitations, but rather by further promotion of this policy. In the case of Bulgaria, Romania or Turkey obtaining candidate status and beginning official negotiations were the real turning points also for the economy and social development. It is at these moments that expectations (also of outside investors) adjust and people

begin to see eventual accession as likely or even inevitable. This starts the virtuous circle of Europeanization that has transformed Spain, Ireland, Portugal, Greece, the Baltic States or Bulgaria in recent decades or years. It would be very important for the whole region that by mid-2007 all countries have SAAs and that all of them are on their way to being official candidates. Croatia is far advanced, Turkey is already negotiating and Macedonia is already a candidate. However, each step by any of these countries helps the others, because it keeps enlargement on the agenda and opens more doors. The EU is known for keeping its promises, and as we have seen in the past year, it has kept its promises to Croatia, Turkey and Macedonia. Regional cooperation and joint lobbying can also help, as they have in advance of the 2003 Thessalonica Summit. Montenegro needs to conclude SAA as soon as possible. It will then submit a formal application for membership as soon as its SAA is concluded.

The Council of EU ministers' decision to give mandate to the European Commission to continue negotiations on Stabilisation and Association Agreement with Montenegro cannot be expected before September. All that has been negotiating so far, while Montenegro was still part of Serbia and Montenegro, will represent a starting point for consolidation and faster finalisation of the Stabilisation and Association Agreement between Montenegro and European Union. During the SAA negotiations, Montenegro and the EU are supposed to agree on deadlines which Montenegro will have to meet in harmonizing its legislation with the EU law, and to define the period within which the whole system (ecology, agriculture, transport, consumer protection, etc.) will be functioning according to the EU rules. Deadlines for opening up the Montenegrin market to the EU products are also on the agenda. The agreement will define classes of EU products which can be allowed on the Montenegrin market immediately, without any customs tariffs, as well as those which will be allowed only after a few years, vulnerable products which are currently subject to high customs, in order to protect the Montenegrin production. On the other hand, right after the Agreement is signed, the EU will open up its market for all products from Montenegro produced according to the European standards, although some of them might be subject to export quotas. The Government already had previously announced that more than half of the text was already agreed upon, the technical communication with EC continued immediately after the referendum, so that the conclusion of the agreement can be expected before the end of the year. According to the rules of procedure, once the agreement proposal has been defined, the Commission forwards it to the

Council of EU Ministers, which is supposed to approve the proposal and issue a new mandate to EC to continue negotiations. The Head of European Commission Delegation in Belgrade, Josep Lloveras, said that Podgorica will soon become a seat of a European Commission office.

Independent, Montenegro will make it faster and easier towards European integration. Everybody with a little background in the complexities of the European Union accession process understands the logic behind this - one small system is more flexible in adjusting to a myriad of standards governing the EU, which every country hoping to become a part of the club - 25 will have to adopt. Within such a small system, it is easier to make decisions, if the process of decision-making is sufficiently coordinated and if the claims of Montenegrin absolute commitment to "overcoming all barriers on the road towards European Union" are indeed backed with stern decision to make it that way. In addition to this, Montenegro is no threat to the European market, because, luckily or otherwise, it lacks strong agricultural production which could cause it to haggle with European Commission over its exports and quotas. Tiny Montenegro is not even a potential exporter of immigrants, having set up border controls in accordance with EU standards, which allow it to await calmly the upcoming negotiations on the visa regime facilitation. Finally, breaking out of the union with Serbia, Montenegro is now free of one of the key political conditions for continuing negotiations on Stabilisation and Association Agreement - it has no further commitments towards the ICTY.

One bright side of the independence is the consensus among the political rivals with respect to European integrations. There used to be an agreement even before, best illustrated by the Declaration on European Integrations, adopted almost unanimously in the Parliament, however, the competing views on the issue of statehood caused disputes with respect to certain legal solutions which were supposed to introduce European standards. After the independence vote, the government will have to approach with additional deal the same problems that the European Commission has identified while Montenegro was still part of the State Union with Serbia. "Independence means more responsibility than before", says the speaker of the European Enlargement Commissionaire, Ms Christina Nagy. In the Feasibility study for Serbia and Montenegro from last April, as well as in the European Commission Report from November 2005, the Montenegrin authorities have been warned about the need to strengthen administrative capacities, decrease the influence of

politics on the judiciary, and clamp on the organised crime and corruption. There is the problem of Montenegrin judiciary, which is not considered entirely professional and free of all political influence, as well as the need to make serious efforts in Montenegro to bring corruption to a reasonable level, to break ties between the organised crime and certain government bodies - according to the EU documents, to improve administrative capacities in all the government sectors - not only in the Ministry for European Integrations... Nagy explained that Montenegro will have to prove that it has sufficient administrative capacity to implement reforms. According to her, the EU expects Montenegro to adopt a new Constitution based on general political consensus, respecting European values and standards.

One of the main advantages of independent Montenegro is direct representation of Montenegrin interests in the process of EU association. Direct representation includes greater amount of support from European funds and programmes for countries in the accession process. As an independent state, Montenegro can get more funds, being a separate subject. Additionally, there is the possibility to secure greater funds from donations, which will now be allocated in line with Montenegrin priorities and needs of its population. Moreover, once the European Commission office is established in Podgorica, representatives of the Montenegrin society, such as the Government, the Parliament, NGOs, media, educational institutions etc, will have a direct contact with EU institutions. Among the advantages of Montenegro with the respect to EU association are the existing low custom tariffs, which should make negotiations with the EU on this issue a lot easier. In Montenegro, only the customs tariffs concerning sensitive domestic agricultural products have been slightly higher, in order to allow the producers to gradually adapt to the highly competitive conditions of the EU single market. Minister for European Integrations, Gordana Djurovic, explained that the restitution of statehood may signal an opportunity for a relaxed visa regime, with a decrease in visa application costs. The administrative capacity of Montenegro for the process of negotiations and implementation of the commitments from the Stabilisation and Association Agreement has been steadily improving, as compared to an earlier period. The focus is not on the length of pre-accession, but rather on the quality of the association process where Montenegro should promote dynamic development of its economy and its society as a whole, while preserving its identity. Strategic development document – Economic Reform Agenda 2002-07 represents a kind of “European Agenda” for Montenegro. Economic reforms are

dynamically and systematically implemented, including also restructuring of companies in the public sector, restitution process, enhancement of property rights protection and incentives in the area of investment policy that enable access to the market and strategic foreign partners bringing new investments and thus stimulate additional employment in Montenegro.

Montenegro should prepare for an effective campaign to explain to EU policy makers and the interested European public the reasons why it is ready for negotiations and how these would advance the European project. This will be a challenge in light of current scepticism in the EU, but it is one that other countries have also overcome in the past. In the coming year Montenegro has an opportunity to redefine its international image, and to prove that it is capable of following in the footsteps of Macedonia and Croatia. If this period is used effectively, and if there emerges a solid domestic consensus behind EU accession, the perspective is encouraging and Montenegro could surprise quiet a few sceptics. The main preconditions for Montenegro in this process are: having a strong, cross-party consensus and willingness to learn from previous candidate. It is both an advantage and a challenge to be a small country with a small administration.

From the beginning of negotiations on the Stabilisation and association agreement until the membership in the EU some eight to ten years must pass. Slovenia started negotiating the accession agreement in 1996, and joined the EU in 2004. Some of the Central and Eastern European countries made it even faster, but eight to ten years is a reasonable period, during which a lot of things can be done. A lot of things will change, and at the end it will be good for us, because these are some standards that have already proven to be beneficial in other countries. It will, of course, depend, also on the readiness in the EU to support the process, financially and otherwise. Except for Romania, Bulgaria and Croatia, every country in the region is looking hopefully towards Brussels, although they are aware, according to the messages of their officials, that they cannot hope for joining this elite club before 2015. After Romania and Bulgaria, who were promised membership in 2008, it is speculated that Croatia could join the EU in 2010, Turkey is still uncertain, while it seems that the Western Balkan countries will most probably join EU en bloc. When, that's a big question. EU must remain committed to the enlargement. There are still strong anti-reform and anti-democratic forces in the Balkan states, where radicals and nationalists could use the opportunity to irresponsibly spread

fears in the population - that EU future is just an illusion. It will definitely not be the first time for certain political groups to base their strategy against reforms on an anti-EU platform. Therefore it is important for the EU to confirm its commitments to the enlargement process and to send a positive message to the Balkan states that they are indeed eligible for EU membership. EU visa policy towards Albania, Bosnia-Herzegovina, Macedonia, Montenegro, Kosovo and Serbia, contributes to the ghettoisation of the region and undermines Balkan efforts for reform and stability. Its sclerotic deficiencies jeopardize the objective of enhanced European integration and damage the countries' European outlook and hopes for eventual EU membership. This is not about emigration, permanent residence or threats to EU jobs but rather liberalizing the limited-term visa regime for certain categories, primarily students, business people and tourists, and making the application process speedier and less painful for all. In 2003, the EU assured the peoples of the region that Brussels would not regard the map of the Union as complete until those countries had joined, but it has not moved on implementing its travel commitment. In order to give the enlargement a new meaning, it is necessary to find another enlargement formula, which would fill up the gap between those for and against the enlargement inside Europe. The enlargement must have a strategic purpose, not an inert tangent. Free trade and opening economies to outside competition help the region. The only real Euro-region in the Balkans that can emerge is when all countries are full members of the EU. Further economic liberalization in the Balkans should also be supported by a European commitment to putting the Western Balkans on the European cohesion map. Cohesion is a central concept in the EU: helping poorer regions catch up, not through transfers of wealth for consumption but through support for investments that raise productivity, develop infrastructure and human capital. The sooner the whole Balkans is part of both the European internal market and its area of cohesion, the better for every European.

The promises made in Thessalonica and confirmed in Salzburg must be honoured, leaving the perspective open for each country to advance in the process of EU association to the best of its abilities. EU must keep supporting the process. This is the best guarantee of peace and stability in the region, and thus on the European continent. When we say that the process of EU enlargement cannot be complete until the countries of the Western Balkans join in, it's not just a phrase, it is the essence. The entire EU project, based upon the need to bring the West European countries together in peace, stability and development instead of war, is directly

applicable in our case, and there is no better solution, neither for us, nor for the EU, than bringing this process to a conclusion.

European standards and Human Rights

European integration in this area is based on a rigorous concept of the protection of fundamental rights. Different Member States have different institutional arrangements for national human rights institutions. The scope of competence, degree of independence, and level of resources of the institutions differ substantially across the Member States. The Council of Europe is now and also in the future the main player in the field of protection of human rights in Europe. Europe "carries along" the core values it is founded upon. Article 6 of the Treaty on European Union contains fundamental values constituting the core of this unusual community including: freedom, democracy, respect of human rights and fundamental freedoms, rule of law, respect for the national identity of all member states. Today we have one borderless Europe, European countries firmly tied to each other in many ways; most of all economically - with fairly high living standards and all that are the key elements of European integration for an ordinary citizen.

Montenegro could be a good example of gradual integration into the EU, since it represents an example of "Living together in diversity". Different confessions and nations that have lived together in this region for centuries represent a true recognition of the key principle of European integration «Living together in diversity»; During the 90's, Montenegro has succeeded to preserve peace in the country, and it has been opened for all the refugees and displaced persons from the ex-Yugoslavia countries as well as from Kosovo (For example, in 1999 Montenegrin population increased for 20%); The 1992 Constitution guarantees fundamental political, civil, and human rights, including freedom of expression, religion, association, and business and property rights, which are respected by the state. There is a commitment expressed by Montenegro in its membership application to respect and implement all the Council of Europe conventions and protocols that had been signed and ratified by the State Union of Serbia and Montenegro. The Parliament adopted a new Law on Courts in 2002; the Law on Criminal Procedure, a new criminal code, and the Law on the Supreme State Prosecutor in 2003; and the Law on Civil Procedure in 2004. Law on Minority Rights has been adopted in May 2006. As with many reforms in Montenegro's 15 years of transition, the challenge begins at the implementation stage. The *2004 Annual Report*

of the Ombudsman noted that 46 percent of complaints related to the length of the judicial process and no enforcement of court decisions, while another 38 percent related to economic, social, and cultural rights. Many judicial delays related to inefficiencies in the court and prosecutorial systems, which should be addressed by full implementation of the previously mentioned laws. In particular, the Administrative Court and the Appellate Court began work in 2005. In its first year, the Administrative Court received 842 unresolved cases from the Supreme Court and registered 1,887 new cases in 2005. By December 31, the court had issued 1,279 decisions. While many cases were minor election-related issues, more than 800 were significant decisions related to the work of public organs. Significantly, for the first time the Administrative Court published all of its decisions on its Web site and in print. Similarly, the Appellate Court will be able to interpret new laws and establish precedents that will make deciding cases easier; it also serves as a second-instance court for decisions of the commercial courts, which have the potential to control the legality of the privatization process. Thus, both the Appellate Court and the commercial courts have the ability to increase the efficiency of the judicial process, to control the work of the executive branch, and to establish a body of precedents that will expedite the judicial process.

The process of appointing judges continues to be an obstacle to the establishment of a truly independent judiciary. According to the Law on Courts, the Judicial Council (made up of six judges, two law professors, and two well-known legal experts) nominates and dismisses judges, and the Parliament confirms the decisions. In the last two years, a number of bench vacancies went unfilled because the Parliament refused to approve certain nominations - some say because the nominee lacked the appropriate political connections, while others suggest objections to the nominee's background. The European Commission and local observers attribute the problem to "the absence of clearly defined criteria for the appointment of judges and prosecutors." Meanwhile, some argue that the responsibility for nomination and dismissal should rest solely with the Judicial Council. It is unlikely that this issue will be resolved before the adoption of a new Constitution. Another obstacle to judicial independence and its depoliticization is the lack of an independent budget for the judicial system. Like the Parliament, the judiciary depends on the government for its budget and for budget transfers, which makes long-term planning difficult. The need to negotiate with the executive and the inability to decide fully on raising salaries or infrastructure investments creates a level of political dependence that can interfere in balancing

powers among the various branches of government. The election of new presidents of the Constitutional Court and Supreme Court was met with accusations of political cronyism, but the new heads quickly started to work on improving court efficiency and accountability. One of the most significant developments was the submission of the *2004 Annual Report on the Work of the Supreme State Prosecutor*, debated publicly in the Parliament in October 2005, which represented the first step toward an effective system of governmental checks and balances. The efforts of the newly established Administrative Court represented another significant development. In 2005, international attention was drawn to a civil suit brought against Montenegro by 27 families from Bosnia and Herzegovina whose relatives were rounded up by the police in Montenegro in May 1992 and deported back to the Foca region, where they were killed. The slow investigation of a case on the deportation of Muslims to Bosnia and Herzegovina in 1992 suggested political interference. The supreme state prosecutor opened a criminal investigation to establish responsibility for the alleged war crime and to help in deciding the civil suit. By the end of June 2006, the criminal case was still under investigation.

Independent Media: Montenegrins enjoy a diverse choice of print and broadcast media. In 2005, the Broadcasting Agency held a successful competition for frequencies. There are three professional journalist associations, as well as an association of broadcasters. The Montenegrin Media Institute, created with international assistance, supports the professional development of journalists and journalistic standards. Although the 2003 criminal code abolished prison sentences for insult, slander and libel, penalties range from €5,000 (US\$4,100) to €10,000 (US\$8,200), which is quite high for individual journalists.

Local Democratic Governance: A major step toward decentralization began with the passage of the Law on Local Self- Government, the Law on the Election of Mayor, and the Law on Local Self-Government Financing in July 2003. In 2006, implementation of new legislation on local self government continued. Many municipalities increasingly reached out to include citizens in decision-making processes. Other local governments had still not enacted the basic provisions of these laws. Furthermore, individual municipalities operate with uncertain funding conditions and are burdened by bloated and politicized bureaucracies. Unfortunately, limited financial resources, bloated bureaucracies and lack of appropriately skilled staff hamper effective operations in a number of municipalities. Currently, municipal government adopts its own budget

and plans for development, construction, urban, capital improvement and environmental projects. It also takes care of social and child welfare, sports and recreation facilities, libraries, communal services, and public transport. As a result of the regular and special local elections held since the enactment of the local government laws, 8 of 21 municipalities now function with a directly elected mayor and an appointed city manager. In each case, these municipal elections registered high levels of participation - as much as 85 percent - as the political parties concentrated their efforts on turning them into a referendum either on Montenegro's state status or on the current government. The 13 other municipalities will hold elections under the new system in 2006. Despite many positive developments, the two biggest continuing obstacles to effective functioning of local government and real decentralization are (1) continued politicization at the local level, producing weak administrations and political polarization; The political polarization that characterizes relations at the republic level filters down to the municipal level, where there is a winner-take-all system based on political patronage. And (2) lack of sufficient and reliable funding.

Corruption: In 2005, the legal framework to combat corruption was strengthened, although much of the adopted legislation and strategies have not yet been implemented. In particular, the government adopted a strategy against corruption and organized crime; new drafts of improved public procurement and conflict of interest legislation are nearly ready for adoption; the Law on Free Access to Information was adopted. The privatization of several large state companies was completed, continuing to reduce the state's involvement in the economy. For the first time, 1,692 public officials submitted reports on their income and property. Nonetheless, most of the political parties failed to comply with the provisions of the Law on Political Party Financing without facing any repercussions. The EU's *Serbia and Montenegro 2005 Progress Report* continued to identify corruption as a "serious concern" and to assess Montenegro's anticorruption activities as "still far from sufficient." While the government adopted a strategy against corruption and organized crime in August, implementation of the strategy had not begun nor was it publicly available by the end of 2005. Fundamentally, Montenegro's system of patronage penetrates deep into the public sector at the republic and local levels and is a key source of corruption for governing as well as opposition parties. A witness protection law adopted in October 2004 has not yet been implemented because of what the EU describes as

“insufficient cooperation between the judiciary and the police and inadequate financial support.”

Electoral Process: Over the years and owing to accusations of fraud, the legal framework for elections has undergone a number of changes with the consensus of all parties.

Geographically, but also historically, Montenegro is a part of Europe. It is therefore logical that it should have one definite and institutionalised tendency to belong to it. The tough road to European membership is essentially a way to attain those, continuously emphasised, but unfortunately often rhetorically misused and abused European Standards.

Role of the NGO's engaged in the European Integration Process

Civil society organizations, next to political parties, have important roles to play to inform the people about the unique and successful EU, which, according to the heads of the state, still has to become even more democratic, transparent and efficient in an enlarged Europe. The civil sector is growingly active in spreading positive energy of the integration process. In Montenegro, since the passage of important legislation in 1999, civil society has enjoyed a more lax, more liberal environment for its development. The most active NGOs are those dealing with public issues and public policy. Their existence is dependent primarily on foreign donations, although the government also allocates substantial funds from the state budget. It is expected that the NGO sector takes on a significant role in the process of European integration. There are two key segments where it is necessary to use the services of the civil sector: a) Writing new laws, the usage of expert base of the NGOs and contacts with foreign experts. It is obvious that the ministries do not have a sufficient number of lawyers who are familiar with the laws of the EU. b) Raising public awareness by the means of a campaign on the importance of the process of integration. In the last few years, the Montenegrin government remained under the constant watch of nongovernmental organizations, which now appear to be more influential than the opposition political parties.

Despite reliance on international funding and weak volunteerism, nongovernmental organizations (NGOs) of all types proliferated in Montenegro because of an NGO law with few restrictions. Nonetheless, the government continued to rely on some NGOs for preparing laws, co-

sponsoring education campaigns, and sharing the burden of social service provision. According to the Ministry of Justice's register of NGOs and political parties, there are close to 3,000 registered NGOs in Montenegro, of which perhaps 100 actually function as real nongovernmental actors. The 1999 Law on NGOs establishes the legal and regulatory framework for domestic and international organizations. At the time of its passage - when the existence of NGOs and their activities were threatened in Croatia, Serbia, and Slovakia - international experts hailed Montenegro's law as the most liberal. Starting from adoption of actual, liberal NGO Law, /from 1999/, the process of formal and actual expansion of NGO sector has begun. Registering an NGO requires the names of five individuals and an address in Montenegro. The law doesn't define grounds for denying registration and gives very few details about revoking registration. It also places few requirements on the NGO sector in terms of financial reporting and, at the same time, provides it with few privileges. The law had anticipated the adoption of a number of sub laws to define tax and reporting obligations related to income and expenditures, but most of these have not come into force. The number of NGOs is dominant within this total number /some 95%/ which tells us about the extremely activist orientation of NGO sector /membership organizations/, but also about the lack of financial potentials. Number of domestic foundations, donating activities and programs of different NGO associations is negligible, so Montenegrin NGO sector is primarily relaying on foreign foundations, which are active in Montenegro. Out of total number of registered NGOs, only 5% are organizations with constant activities and dedicated to public interest. These organizations cover different fields /democracy, culture, humanitarian work, economy, education, ecology etc/ and in essence they represent true leaders of NGO sector. The rest of NGOs doesn't have capacities for everyday work and their activities are limited to sporadic actions within domain of private, special, or public interest. Out of the total number, some 10% goes on charitable unprofitable organizations, whose activity is significantly limited and without sufficient effects. In addition, the greatest number of NGOs does not have funds for more significant work, which only further emphasizes huge difference between registered and active NGO sector. So far, very few NGOs /around 5%/ has ensured economic sustainability and this remains the key problem for Montenegrin unprofitable sector. Connection between commercial and unprofitable sector hasn't been established yet, nor does donations from the state or local governments can provide funds for more significant work and influence of NGOs. Regarding this problem, the most important and

influential NGOs in Montenegro, are the ones, financially viable and with necessary institutional capacity, which they achieved thanks to foreign donors.

Besides direct actors /political parties/, within Montenegrin politics, in different forms and regarding different issues, we also have presence of NGOs and business associations. In capacity of social groups, interested in different areas from domain of public, special or private interest /development of democracy, anti-corruption, tax framework, economic legislature, consumers' protection, education, culture and identity, etc/, these associations are trying to influence legislative processes, ongoing Government activities, and lobbying for certain solutions or desirable directions of certain policies. Political sector, depending on actual interests, cooperates or refuses to cooperate with non-political groups, which are trying to influence Government or Parliamentary decisions. However, activities of interest groups, which *de jure* would be classified as interest groups /regardless of their legal form/ in Montenegro are neither regulated with some special law, nor is their status formally acknowledged. Still, every activity directed toward legal lobbying for purpose of promotion or protection of different general, special or private interests, is allowed in practice. Thus, some NGOs, whose programs are focused on issues of democracy, rule of law, or different transition aspects, are conducting activities that have indirect political effect or temporarily they act as Para political parties.

Since Montenegrin tax law does not provide incentives to the private sector for philanthropy, NGOs derive very little funding from local sources. The republic and municipal governments' budget annually for NGO funding. The Parliament and municipal assemblies have established multiparty committees to manage the distribution of these funds. These committees have limited criteria, and complaints arise every year about favouritism in the distribution process. In 2005, the Committee for Distributing Funds to NGOs in the Parliament received more than 350 grant applications and distributed €289.523,00 (US\$237.409,00) to 157 NGOs in 14 of 21 municipalities, for grants ranging from €300,00 (US\$246,00) to €8.500,00 (US\$6.970,00). Given the challenging economic situation, there is a very limited tradition of volunteerism. In fact, starting an NGO and competing for funds can serve as a method of self-employment. Consequently, only a minority of registered NGOs can be considered effective in terms of research, advocacy, civic education, watchdog activities and other social services. The government is willing to

work with NGOs in most cases to prepare laws, co-sponsor education campaigns and share the burden of providing social services. But public institutions do not respond positively to criticism from NGOs and sometimes ostracize those that are too critical. Equally, opposition political parties often refuse to cooperate with certain NGOs, as the former accuse the latter of being instruments of the government.

In the area of HRE the greatest contribution has civic sector. There are a few non – governmental organizations that are recognized as very important subjects of HRE. These are Center for Civic Education, Montenegrin Helsinki Committee, CEDEM and others. During this year they have realized significant number of courses, workshops, trainings and schools about human rights. Some of them were reserved only for human rights and other were about values of democratic society including, of course, lectures on human rights. Target groups of these alternative forms of education about human rights were very diverse. Some of them were for students, some for NGO activists, teachers, employees in state offices etc. Montenegrin NGOs engaged in area of human rights demand that this subject becomes mandatory, at the high school level, for at least one school year. Significant support in formalizing the civic education in Montenegro, and great cooperation of civil society and state educational institutions, was given by Council of Europe (CoE) and OSCE.

Several municipalities have signed cooperation agreements with local NGOs and have provided an “empty chair” to NGOs to participate in municipal assembly discussions without the right to vote. Some municipalities even open assembly discussions to interested citizens. Additionally, a number of municipalities have recently adopted a rule book with a commitment to publish data every six months on the activities of the municipal assembly and, importantly, on individual councillors. A growing number of municipalities have developed Web sites containing information useful to the public, and municipalities increasingly organize public consultations, especially over contentious issues such as urban planning.

Head of the Department for Montenegro at the European Commission Directorate General Enlargement, Vassilis Maragos, met on 13 June in Podgorica with representatives of the Montenegrin civil sector, where they discussed the role of the civil society in the future association process. The meeting was organised within the Forum of European Integration Schools programme, while Mr Maragos was visiting Montenegro on a working trip

concerning the IPA - new EU programme of pre accession assistance, which is supposed to come into force in 2007. Civil society representatives gave concrete proposals for enhanced cooperation, especially focusing on direct communication between the civil society and the EC, asking that EU funds directed towards this sector to be diversified and the procedures simplified as much as possible, and for the financial distribution to be direct, instead of being channelled through the government institutions. Another topic was the possibility for relaxing the visa regime.

Recommendations

The reform of state administration and the strengthening of its capacities will be the key elements for the future of the European integrations process in Montenegro. Harmonisation with *acquis* and its implementations are primarily within the competence of administration, and the Montenegrin journey to the EU will, consequently, depend on its quality and effectiveness. Administrative capacities required by the Stabilisation and Association Agreement are of a much lower level than those which will be necessary for the start of negotiations for the full EU membership. For Montenegro, developing a stable, efficient and professional public administration is an imperative, together with the reforms which have already been implemented and various programmes of state administration training. The European Commission, in its latest annual report on the progress of Serbia and Montenegro for 2005, noted positive developments in terms of European integrations process in Montenegro, which encompassed numerous new laws, harmonised with the European legislature, as well as the establishment of new and strengthening of the institutions already in place. It also emphasised the importance of the European integrations network in Montenegro, which can serve as a solid basis for the further strengthening of administrative capacities for the rapprochement with EU. However, EC also noted that, in order to implement the European integrations process successfully, every structure involved in this process, as well as cooperation among them, will have to be upgraded further. Consequently, their conclusion was that Montenegro needs a higher level of administrative capacities in order to be successful in the EI process, and they urged for a serious commitment to this issue. Montenegrin authorities started consolidating an efficient public administration already in 2002, through a project titled Reform of the Public Administration in Montenegro (PARIM), funded by EU agencies. Parallel with the public administration reform, there are

bilateral training programmes taking place continuously in cooperation with different partners as well as EU institutions (TAIEX). In 2006, they began with the twinning programme, a joint venture with Slovenia and France, focused on the strengthening of the institutions for the process of European integrations, for a period of 18 months. These projects, designed to enhance building of an efficient system of public administration in Montenegro, will contribute to the acceleration of reforms in the sectors of public governance and thus prepare Montenegro for the future membership in EU.

Getting closer to the European Union also means creating a series of new institutions, as well as a need to involve new experts in the functioning of these institutions, in order to conclude the process successfully. Except for the reform of state administration, another important segment of the capacity building must include educating the right cadre for the functions required by the process of European integrations. This training should be conducted on all levels, including the high officials, managers, interns, as well as the administrative staff of various public institutions. Professional training for the civil servants should enable them to acquire new knowledge on European integrations, and should be focused on practical issues, rather than theory - through analysing experiences of the new EU members and other countries in the region that have already made several steps ahead on the road that Montenegro is yet to travel.

In the Resolution, *adopted by the Assembly* on 29 June 2006, Council of Europe calls on Montenegro:

- To reform its institutions and administrative structures to adapt them to its new status as an independent state in the most efficient and democratic manner, in full co-operation with the Council of Europe and other international organisations;
- To ensure the efficient functioning of parliament and a spirit of constructive and inclusive dialogue between political forces, including those who object to the referendum results;
- To adopt a new Constitution as soon as possible, in full compliance with European standards and in consultation with the Venice Commission;
- To organise and hold free and fair parliamentary elections under international observation;
- To guarantee in law and in practice the rights promised to Serb citizens;

- To guarantee the protection of national minorities;
- To ensure that no protection gaps affect the Internally Displaced Persons (IDPs) present in its territory, including those originating from Kosovo, irrespective of their ethnic origin, as well as refugees, and take all the appropriate steps to avoid statelessness;
- To complete the reform of the judiciary;
- To fight efficiently against corruption, organised crime and trafficking;
- To ensure full co-operation with the International Criminal Tribunal for the former Yugoslavia and pursue programmes aimed at enhancing public understanding and acceptance of its objectives;
- To endeavour to create all the preconditions conducive to the signature of a Stabilisation and Association Agreement (SAA) with the European Union in the nearest possible future.

Finally, the Assembly calls on the European Union:

- To begin negotiations with Montenegro for the conclusion of a Stabilisation and Association Agreement as soon as the relevant conditions are met.

Experiences of the current EU members show that participation in the decision processes of the EU requires active involvement on the part of the local governments, which has finally lead to an increase in administrative capacities of the local governments throughout EU. As for Montenegro, competent local administrations will be crucial for the management of the Instrument for pre accession (IPA), which should come into force by January 2007. The local administration will have to take up the responsibility for applying with their various projects to the EU funds. In order to enable them for this task, the strengthening of the administrative capacities must encompass both the national and the local level. Speaking about administrative capacities, it is extremely important to keep the educated cadre motivated to stay in the service and use their potentials to the maximum. This can be done by increasing the level of professionalism in the entire public administration, where promotions should be driven entirely by the professional capacities and the results achieved, but also by involving these people as much as possible in the process of integrations and exchange of experiences with other countries.

Recommendations:

- (i) opening debate on perspectives of unprofitable sector in Montenegro;
- (ii) encouraging partnership between government and non-government sector;
- (iii) encouraging networking of NGOs /e.g. AKCIJA/ with objective to promote and protect public interest in different social areas;
- (iv) work on improvement of legal framework with goal to define precisely unprofitable position and different status of NGOs, as well as stimulation of commercial sector to invest in unprofitable sector.
- (v) passing the changed and improved NGO Law;
- (vi) providing stabile and more generous sources of public financing for NGO sector;
- (vii) development of stabile and prosperous legal and financial framework for activities of NGOs;
- (viii) providing special position for NGOs, which are of public interest;
- (ix) development of long-lasting conditions for progress of authentic (interest orientated) trade unions and development of business associations;
- (x) defining system frameworks for further development of civil society and permanent encouragement of good practice, which enables strengthening of civic initiatives and favouring of consensual democracy model; strengthening the area of freedom, security and justice.

Entry into the European Union is a clear goal articulated by leaders across Central, Eastern and South Eastern Europe. Yet, at present, a majority of Central, Eastern and SEE jurists perceive European law as having no direct impact on reforms taking place. Existing economic and political democratization will continue to operate in a vacuum unless countries such as Montenegro and others implement a rule of law in accordance with EU standards. To harmonize the current legal systems in these regions with those of the EU countries and to cultivate original legal thinking, it is important to note that focus is not on the duration of association, but on the quality of association process. On that road, Montenegro wants to preserve its identity as well as to enable dynamic development of economy and the society as a whole. Administrative capacity may be a weak point (as emphasised by the Commission's reports), but the organisation and conduct of the referendum showed that,

with firm EU guidance and close monitoring, the Montenegrin authorities can deliver good results. There is no doubt that the resolution of the state status issue will change the political dynamics in Montenegro, enabling it to assume responsibility for its own destiny and hopefully proceed quickly along the road of democratic consolidation and EU integration.

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