

Opinion No. 261 (2007)<sup>1</sup>

Accession of the Republic of Montenegro to the Council of Europe

1. The Republic of Montenegro applied to accede to the Council of Europe on 6 June 2006, three days after its declaration of independence.
2. On 14 June 2006, the Committee of Ministers invited the Parliamentary Assembly to express an opinion on this application, in accordance with Statutory Resolution (51) 30.
3. Following a decision taken on 26 June 2006 by the Bureau of the Assembly, on 5 July 2006 the Parliamentary Assembly asked two eminent legal experts, Mr Kaarlo Tuori, member of the European Commission for Democracy through Law (Venice Commission), and Mr Anthony Bradley, substitute member of the Venice Commission, to assess the conformity of the legal order in the Republic of Montenegro with the fundamental principles of the Council of Europe. Their report was submitted in September 2006.
4. The Assembly acknowledges the special circumstances surrounding the application of the Republic of Montenegro to accede to the Council of Europe, given that it was part of the state union of Serbia and Montenegro, which was a member of the Council of Europe from 3 April 2003 to 3 June 2006.
5. The Assembly examined the situation in the Republic of Montenegro on several occasions when it was part of the state union of Serbia and Montenegro, and has also done so since its independence.
6. In May 2006, an ad hoc Assembly committee observed the referendum on the future state status of the Republic of Montenegro (Serbia and Montenegro) and concluded that, generally, the referendum was conducted in accordance with Council of Europe commitments and standards and with other international standards for democratic electoral processes.
7. On 29 June 2006, the Assembly adopted [Resolution 1514](#) (2006) on the consequences of the referendum in Montenegro.
8. An ad hoc Assembly committee observed the parliamentary elections in Montenegro on 10 September 2006. In its conclusions the ad hoc committee stressed that "the parliamentary elections ... were largely conducted in accordance with the standards of the Council of Europe, and with the other international standards for democratic elections" .
9. In two letters from Mr Miodrag Vlahovic, Minister for Foreign Affairs of Montenegro, to the Secretary General of the Council of Europe, Mr Terry Davis, dated 6 and 12 June 2006, Montenegro made it known that, as a newly independent state, "it would like to establish its successor status to all conventions, charters or agreements of the Council of Europe to which Serbia and Montenegro was party or member, including any partial agreement under the conditions established in each of them, including the financial ones, and which was in force in respect of its territory".
10. The Assembly welcomes the intention of the authorities of the Republic of Montenegro to honour the international treaties and other agreements to which the state union of Serbia and Montenegro was a party. The Assembly is particularly satisfied to note in this connection that Montenegro considers that since 3 June 2006 it is bound by the obligations stemming from the European Convention on Human Rights (ETS No. 5).
11. The Assembly notes that Montenegro is a signatory or party to the so-called open conventions signed and/or ratified when it was part of the state union of Serbia and Montenegro, and, in particular, the Framework Convention for the Protection of National Minorities (ETS No. 157) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126).
12. With regard to the Republic of Montenegro's declaration of succession to the partial agreements of which Serbia and Montenegro was a member, the Assembly notes that the Republic of Montenegro is *ipso facto* party to the Enlarged Partial Agreement establishing the Group of States against Corruption (GRECO), a member of the European Pharmacopoeia, a member of the Partial Agreement on the Youth Card for the Purpose of Promoting and Facilitating Youth Mobility in Europe, a member of the Enlarged Partial Agreement Establishing the European Commission for Democracy through Law (Venice Commission), and a member of the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works (Eurimages).
13. In a decision dated 14 June 2006, the Committee of Ministers decided, as an interim measure, that the Republic of Montenegro could take part as an observer in all the intergovernmental committees of experts in which it expressed an interest and decided that, pending the examination of the Republic of Montenegro's application for membership to the Council of Europe, representatives of the Government of the Republic of Montenegro would be invited to attend the meetings of the Committee of Ministers.
14. The Assembly, for its part, decided in its [Resolution 1514](#) (2006) to allow the participation of an ad hoc delegation of the Parliament of Montenegro in its activities, upon its request, pending a decision on Montenegro's membership of the Council of Europe.

15. The Assembly welcomes the progress Montenegro has already made in many fields and the political will expressed by its authorities to pursue the reform process. This commitment must now be translated into practice through measures to implement and speed up reforms.

16. The Assembly considers that, once Montenegro has joined the Council of Europe, the existing and future specific co-operation and assistance programmes should be targeted to assist it in honouring its commitments and that the Office of the Council of Europe Secretariat in Podgorica should be consolidated to that effect.

17. The Assembly notes and welcomes the declaration of 8 February 2007 regarding the seven minimum principles to be included in the Constitution of the Republic of Montenegro signed by the Prime Minister, the Speaker of Parliament and the heads of the political groups represented in the Parliament of the Republic of Montenegro.

18. The Assembly considers that the inclusion of these seven principles in the constitution forms an integral part of the commitments of the Republic of Montenegro.

19. The Assembly takes note of the letter from the Minister for Foreign Affairs of Montenegro, dated 6 June 2006, as well as the letter received from the President, the Prime Minister and the Speaker of Parliament of Montenegro dated 23 March 2007, and observes that the Republic of Montenegro is determined to honour the following commitments:

19.1. *conventions:*

19.1.1. to confirm in writing, at the latest on the date of accession, that, by virtue of the notification of succession contained in the letters of 6 and 12 June 2006 of the Minister for Foreign Affairs of the Republic of Montenegro to the Secretary General of the Council of Europe, Montenegro considers itself bound, with effect from 6 June 2006, by the European Convention on Human Rights and its Protocols Nos. 1, 4, 6, 7, 12, 13 and 14 (ETS Nos. 9, 46, 114, 117, 118, 187 and CETS No. 194) and the European Convention on the Suppression of Terrorism (ETS No. 90);

19.1.2. to accede to the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2) and its Protocols Nos. 1 and 6 (ETS Nos. 10 and 162) within one year at the latest;

19.1.3. to sign the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200) at the time of its accession and ratify it without delay;

19.1.4. to ratify the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) within one year of its accession;

19.1.5. to sign and ratify, within two years of its accession, the European Convention on the Exercise of Children's Rights (ETS No. 160);

19.1.6. to sign and ratify, within two years of its accession, the European Convention on Nationality (ETS No. 166);

19.1.7. to ratify without delay, and at the latest within two years of its accession, the European Social Charter (revised) (ETS No. 163), and endeavour in the future to pursue a policy in keeping with the principles it sets out;

19.1.8. to ratify within one year of its accession the protocol amending the European Convention on the Suppression of Terrorism (ETS No. 190);

19.1.9. to ratify the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196) within one year of its accession;

19.1.10. to ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) within one year of its accession;

19.1.11. to ratify, within two years of its accession, the Civil Law Convention on Corruption (ETS No. 174);

19.1.12. to sign and ratify, within two years of its accession, the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191);

19.1.13. to ratify the European Charter on Local Self-Government (ETS No. 122) without delay, and at the latest within one year of its accession;

19.1.14. to sign and ratify, within two years of its accession, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its protocols;

19.1.15. to ratify the Convention on Cybercrime (ETS No. 185) and its Additional Protocol (ETS No. 189) within three years of its accession;

19.1.16. in order to ensure the effective prosecution of war crimes and to ensure the best regional co-operation in this respect:

19.1.16.1. to sign and ratify, within two years of its accession, the European Convention on the International Validity of Criminal Judgments (ETS No. 70);

19.1.16.2. to sign and ratify, within two years of its accession, the Convention on the Compensation of Victims of Violent Crimes (ETS No. 116);

19.1.16.3. to sign and ratify, within two years of its accession, the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS No. 82);

19.1.16.4. to review the restrictive declarations contained in the instrument of ratification of the European Convention on Extradition (ETS No. 24), according to which Montenegro shall refuse extradition of its nationals;

19.1.16.5. to ratify, within two years of its accession, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No. 182);

19.2. *constitutional reform:*

19.2.1. to quickly complete constitutional reform and adopt a new constitution within one year at the most, in close co-operation with the Venice Commission and in full compliance with international standards and, in this connection, to include in the constitution the following seven minimum principles already approved in the declaration of 8 February 2007 signed by the Prime Minister, the Speaker of Parliament and the heads of the political groups represented in the Parliament of the Republic of Montenegro;

19.2.1.1. the Republic of Montenegro is a civic state, based on civic principles by which all persons are equal and not on the equality between constituent peoples;

19.2.1.2. the independence of the judiciary must be guaranteed and the imperative of avoiding any decisive role of political institutions in the procedure of appointment and dismissal of judges and prosecutors recognised;

19.2.1.3. in order to avoid conflict of interests, the role and tasks of the public prosecutor should not include both the application of legal remedies for the protection of constitutionality and legality and the representation of the republic in property and legal matters;

19.2.1.4. the efficient constitutional protection of human rights must be ensured. The constitution should provide for the direct applicability of the human and minority rights, as was recognised in the Charter on Human and Minority Rights of Serbia and Montenegro. The constitutional reform therefore needs to provide for at least the same level of protection of human rights and fundamental freedoms as the one provided for in the charter, including with respect to the rights of minorities;

19.2.1.5. capital punishment is prohibited at all times;

19.2.1.6. the constitution should include transitional provisions for the retroactive applicability of human rights protection to past events. It should also include provisions on the retroactive applicability of the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols;

19.2.1.7. the constitution should regulate the status of the armed forces, security forces and intelligence services of Montenegro and the means of parliamentary supervision. It should provide that the position of the commander-in-chief be held by a civilian;

19.2.2. to include also in the constitution:

19.2.2.1. a provision providing for the direct applicability in domestic law of international conventions, in particular in the field of human and minority rights;

19.2.2.2. a provision setting out the right to an effective remedy, as foreseen in Article 13 of the European Convention on Human Rights;

19.2.2.3. the mandate, appointment procedure and guarantees of independence of the ombudsman;

19.2.2.4. a provision maintaining existing laws, unless they are amended through the normal democratic process, in full respect of the principle of legal certainty;

19.2.2.5. provisions defining a state of emergency, how a state of emergency may be declared, the legal effects thereof and the supervisory powers of parliament;

19.2.2.6. a clear definition of local self-government based on the principles of the European Charter of Local Self-Government;

19.3. *domestic legal system:*

19.3.1. to continue to review the compatibility of its existing and future domestic legal standards with the European Convention on Human Rights and Council of Europe standards by drawing on the Organisation's expertise;

19.3.2. to speed up completion of reforms to ensure that courts and public prosecutors are professional and independent and that procedures for appointing and dismissing judges and prosecutors respect the independence of the judiciary;

19.3.3. to take the necessary steps to ensure that the case law of the European Court of Human Rights is taken into account by the domestic courts;

19.3.4. to provide the Constitutional Court and the judiciary as a whole with adequate funding;

19.3.5. in conformity with Article 13 of the European Convention on Human Rights to introduce an effective remedy with regard to the excessive length of proceedings before national courts, aimed at accelerating proceedings or obtaining compensation;

19.3.6. to adopt a law allowing a victim of a violation of the European Convention on Human Rights to ask, in appropriate cases, for the re-examination or reopening of the case at domestic level;

19.3.7. to ensure that anti-corruption legislation is urgently adopted, that GRECO's recommendations and conclusions are implemented and that the administrative capacity in the area of anti-corruption policy is upgraded;

19.3.8. to consolidate the office of the prosecutor for organised crime;

19.3.9. to amend the law on conflict of interest in accordance with European standards and adopt and implement laws on political parties and on their financing, ensuring transparency and accountability;

19.3.10. to increase as soon as possible the parliament's budgetary means and its administrative capacity;

19.3.11. to strengthen the government structures responsible for local self-government, notably with regard to administrative supervision, and to revise the legislation and regulations governing local budgeting, equalisation schemes and the devolution of sectoral responsibilities to the municipalities;

19.3.12. to urgently adopt a law on non-discrimination which guarantees that no one shall be discriminated against on any ground such as sex, race, colour, language, religion, sexual orientation, handicap, political or other opinion, national or social origin, belonging to a national minority, property, birth or other status;

19.3.13. to take all necessary steps to ensure equality between men and women in law, in the family, society, economy and politics;

19.3.14. to take all necessary measures, in particular legislative measures, to implement resolutions and other instruments of the Council of Europe on the protection of children and people with disabilities and integrate those people into society;

19.3.15. to adopt, as soon as possible and in line with Council of Europe standards, the laws on identity documents, on citizenship, on the place of residence and on foreigners;

19.3.16. to revise the electoral law and, in particular, the provision concerning the system for allocating seats to political party lists, to ensure that it does not mislead voters;

19.3.17. to speed up reforms concerning the media in order to safeguard their independence and to ensure the implementation of the law on access to public information;

19.3.18. to provide the public service broadcasting system with the financial means to enable it to perform its functions;

#### 19.4. *human rights:*

19.4.1. to respect the independence of the ombudsman institution and support its activities, not least by means of adequate funding, and act on its recommendations;

19.4.2. to ensure that the laws concerning respect for human rights and minorities are rapidly implemented and that their implementation is monitored by independent institutions;

19.4.3. to take all necessary steps to ensure the permanent, safe and sustainable return of refugees and displaced persons, as well as to ensure compensation for refugee families who have suffered human rights violations;

19.4.4. to adopt all the appropriate measures to implement the asylum legislation in full compliance with the 1951 Geneva Convention and its 1967 protocol;

19.4.5. to issue identity documents to refugees and displaced persons and repeal all discriminatory provisions in the fields of labour, education, access to property rights, legal redress and access to citizenship and health services;

19.4.6. to enact and implement a law on citizenship to prevent statelessness in accordance with the relevant Council of Europe instruments and addressing in particular the situation of displaced persons from Kosovo;

19.4.7. to continue educational reform in order to eliminate all types of discrimination based on ethnic origin and make arrangements to teach the principles of tolerance and respect for others and all their differences in schools;

19.4.8. to implement the strategy and action plan for the integration of Roma;

19.4.9. to improve prison conditions, in particular as regards vulnerable groups such as juvenile offenders and those in need of psychiatric care;

19.4.10. to take measures to ensure the prompt initiation of independent, impartial and effective investigations into allegations of torture or other ill-treatment, in particular allegations made by persons detained by the police, so that perpetrators of such treatment are brought to justice and the victims receive adequate redress without delay;

19.4.11. to step up efforts to combat trafficking in human beings and provide adequate assistance and protection to the victims;

19.4.12. to carry out effective investigations, in accordance with the case law of the European Court of Human Rights, into unsolved cases connected with the armed conflicts in the former Yugoslavia;

19.4.13. to collaborate fully with the International Criminal Tribunal for the former Yugoslavia, especially as regards the search and arrest of the indictees which are still at large, and implement schemes to help the population understand and accept its objectives;

19.5. *honouring of commitments:*

19.5.1. to co-operate fully in implementing Assembly [Resolution 1115](#) (1997) on the setting up of an Assembly committee on the honouring of obligations and commitments by member states of the Council of Europe (Monitoring Committee) and the monitoring procedure introduced pursuant to the Committee of Ministers' declaration of 10 November 1994 (95th Session).

20. In the light of the foregoing, the Assembly considers that Montenegro is able and willing, in accordance with Article 4 of the Council of Europe Statute (ETS No. 1), to fulfil the provisions of Article 3, which sets out the prerequisites for membership of the Council of Europe: "Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council".

21. To ensure that these commitments are honoured, the Assembly has decided to monitor the situation in Montenegro, as from its accession, pursuant to its [Resolution 1115](#) (1997).

22. On the basis of the undertakings set out above, the Assembly recommends that the Committee of Ministers:

22.1. invite Montenegro to become a member of the Council of Europe;

22.2. allocate Montenegro three seats in the Parliamentary Assembly.

23. To enable the Republic of Montenegro to honour its obligations and commitments, the Assembly recommends that the Committee of Ministers:

23.1. enter into a political dialogue in order to step up political, financial and technical support for the necessary reforms;

23.2. establish priority areas for co-operation programmes.

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1. *Assembly debate* on 17 April 2007 (12th Sitting) (see [Doc. 11204](#), report of the Political Affairs Committee, rapporteur: Mr Gardetto; [Doc. 11205](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Jurgens; and [Doc. 11207](#), opinion of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), rapporteur: Mr Holovaty). *Text adopted by the Assembly* on 17 April 2007 (12th Sitting).