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TO: Paul Rowland, NDI Representative, Belgrade
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FROM: Patrick Merloe
NDI, Senior Associate for Election Processes

DATE: January 30, 1998

RE: **Montenegro -- Highlights of Comments on the Draft Law on the Election of Councilmen and Deputies**

Introduction

At the request of political and civic leaders in Montenegro, NDI convened a small advisory group of international election law experts to provide comments on the Draft Law on the Election of Councilmen and Deputies (the "Draft Law" or "Law"). NDI is aware of the considerable efforts of international experts preparing comprehensive analysis of the Draft Law under the auspices of the Organization of Security and Cooperation in Europe (OSCE). The NDI advisory group has sought to develop comments to complement the efforts of the OSCE experts. The advisory group's comments are being provided separately, and highlights of the comments are presented below.

The NDI advisory group is chaired by Patrick Merloe, NDI's Senior Associate and Director of Election Programs. The group also includes: Dan Blessington, former Chief Prosecutor of the Bosnia-Herzegovina Election Complaints Appeals Tribunal, OSCE technical advisor to Albania's Central Election Commission and attorney at the United States Federal Election Commission; Henry Berger, United States election law attorney and part of international election evaluation programs in Central and Eastern Europe and Africa; Matthew Frumin, international election expert and participant in election programs in Central and Eastern Europe, newly independent states of the former Soviet Union, Asia, Africa, Middle East and Africa; and Thomas Heinemann, who is an attorney with the law firm of Arnold & Porter, in Washington, D.C., along with Mr. Frumin. Each member of the advisory group contributed their time freely and in their individual capacities. NDI is grateful for each of their valuable contributions, which demonstrate the international community's interest in supporting the democratic process in Montenegro.

NDI is a nonpartisan, nongovernmental organization working to promote democratic institutions and processes in emerging democracies worldwide. As part of its mandate, NDI conducts election programs that focus on constitutional and law reform efforts, pre-election assessments and international and domestic nonpartisan election monitoring. In the past year, NDI has conducted 55 election processes programs around the world, including election law



commentary in Macedonia and domestic nonpartisan election monitoring in Albania, Bosnia-Herzegovina, Croatia and Serbia, as well as international pre-election delegations to Albania and Croatia.

Following an NDI program assessment in Montenegro in November 1997, the Institute agreed to provide commentary on the Draft Law. The parliament's imminent consideration of that legislation, however, precludes NDI from offering a comprehensive analysis of the Draft Law. The Institute did not receive the most recent version of the Law in time to review the changes from the version received by NDI's program assessment mission. All references to provisions of the Draft Law therefore are to the earlier version.

Summary

In several important respects, the Draft Law meets international electoral standards for electoral processes, including the Law's provisions that call for: free, general, equal and direct suffrage, which includes the right to elect and to be elected; the use of a secret ballot; and the enfranchisement of disabled voters, military personnel, and Montenegrins residing abroad.

From NDI's experience in elections in over 50 countries, elections are most successful when the process is fully transparent, an opportunity is provided for the political contestants to have direct participation in electoral bodies and in forming the electoral framework, civic groups are allowed to monitor all aspects of the process and appropriate time periods and requirements are provided for candidate qualification, campaigning, voter education and preparation of electoral administration. There are several areas in these respects where the Draft Law could be improved or refined.

Transparency and Public Confidence

The Draft Law does not explicitly provide for nonpartisan domestic or international election observers. The Law should clearly state that nonpartisan domestic election monitors and international observers, as well as candidates and their agents and representatives, are to have access to each step of the election process. This will greatly increase transparency of the election process and help increase public confidence in the elections. Adding this provision will also bring the Draft Law into compliance with the obligations of each OSCE member state, established by the OSCE's 1990 Copenhagen Document (Paragraph 8), to provide for election observation by foreign and domestic organizations.

Time Allocations

Perhaps the most valuable resource in preparing genuine democratic elections is time. Time is needed by election authorities to set up the electoral apparatus by: identifying sites for polling stations; recruiting and training electoral officials; reviewing candidate qualifications for the ballot; printing ballots and producing other election materials; making logistical and communications arrangements; preparing and correcting voter lists; and other critical tasks. Time is also needed by the political contestants to develop their programs, messages and campaign strategies, select candidates, recruit campaigners, raise funds, reach prospective voters

through various media and numerous other tasks. The Draft Law appears to provide inadequate time for establishing an electoral framework capable of addressing and resolving complex organizational, legal and logistical difficulties that invariably accompany any election and which were, to a degree, evident in the 1997 Montenegrin presidential election. In this regard, the following issues should be addressed.

- Candidate lists are to be submitted no later than 15 days before an election and verified within a three-day period; this would appear not to allow sufficient time (12 days) to finalize the composition and convene all members of the election commissions, which are to include members from parties that submit lists; this also would appear not to allow sufficient time for training commission members so that they can execute their tasks in an informed and proper manner;
- The publication of the consolidated lists of all candidates only 10 days prior to the election affords voters very little time to become acquainted with the contestants and their approach to important issues, which is necessary for voters to make an informed and free choice at the ballot box;
- The announcement of the location of polling stations at least ten days prior to the election and the delivery of notices for the elections to voters five days before the elections do not afford voters sufficient time to identify their polling stations, verify their placement on the voter lists and resolve any related problems.

Voter Registration and Qualification

In most countries, citizens are legally entitled to vote, yet only those who appear on the final electoral registry (voting roll) and produce the necessary identification are actually allowed to cast their ballot. Hence, the registration of persons as voters determines their ability to exercise their right to participate in government through genuine democratic elections. Verification of the lists and determination of qualification to vote is central to the election process. The Draft Law should be strengthened in this respect, and an apparent contradiction between the Law and constitutional provisions should be addressed.

- The voter lists (voting roll) should be made available to political parties, nonpartisan election monitors and to the public in general to ensure that all eligible voters are present on the roll, that no voter appears more than once and that those not eligible to vote do not appear -- ample time should be provided for review;
- The Draft Law should set forth a clear procedure for verifying compliance with the residence requirement for Yugoslav citizens, who are not Montenegrin, in order to establish their eligibility to vote;
- The Yugoslav Constitution (Article 17) provides that Yugoslav citizens shall simultaneously be citizens of one the country's republics; the Draft Law provisions allowing non-Montenegrin citizens of Yugoslavia to vote appear to conflict with Montenegro's constitutional provisions relating to citizens voting and citizens controlling their own government (Montenegro Constitution Articles 2,3,32, and 66); this important apparent contradiction should be resolved.

Fair Electoral Competition

Nondiscrimination is a central principle in providing genuine democratic elections. The ability to exercise civil and political rights free from discrimination on the basis of race, color, sex, language, religion, national or social origin, birth or other status, property or political or other opinion is an internationally recognized fundamental right. This principle provides the basis for ensuring fair electoral competition, often referred to as a "level playing field." At the core of the level playing field concept is the degree of equity political contestants actually obtain in matters such as campaign financing, media access and coverage as well as access to material resources. The Draft Law contains several important provisions concerning these matters, and further clarification and elaboration would strengthen it.

- International standards call for equitable access to state-controlled media, nondiscrimination in private media concerning the purchase of time or space, and for accurate, impartial and balanced coverage of political contestants and election-related matters; the Draft Law includes several provisions in this respect; it would be strengthened if a specific complaint mechanism is added to allow political contestants to seek immediate and effective remedies where the media may have violated their electoral rights;
- Effective electoral competition depends on the availability of material resources, including funding; the Draft Law should be clarified concerning these matters; while provisions cover equitable terms for organizing meetings, using sound equipment, and provisions cover the right to produce posters, leaflets and other campaign materials, there is no provisions on campaign financing sources or disclosure of funding and expenses during the campaign and after the election; the provisions for those who win office does not adequately address campaign financing concerns.

Conclusion

The foregoing comments are offered in the spirit of international cooperation and in the hope that they will be of assistance to those working to advance the democratic process in Montenegro. This memorandum presents highlights of comments on the Draft Law developed by NDI's advisory group. Several important areas, such as comments concerning the composition and powers of the electoral bodies and conduct of voting and vote tabulation, are omitted. The full comments of the advisory group will be provided separately. NDI will continue to follow electoral developments in Montenegro and will remain available to provide further assistance to Montenegrin democrats.