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Accession of the Republic of Montenegro to the Council of Europe

Opinion¹

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

Rapporteur: Mr Serhiy HOLOVATY, Ukraine, Alliance of Liberals and Democrats for Europe

I. Introduction

1. On 6 June 2006, following the declaration of independence by its Parliament on 3 June 2006, the Republic of Montenegro applied for membership of the Council of Europe.
2. On 14 June 2006, in accordance with the procedure provided for in Statutory Resolution (51) 30, the Committee of Ministers asked the Parliamentary Assembly to draw up an opinion on the application.
3. While the procedure followed is customary, the application for membership in question is not, insofar as Montenegro was a member of the Council of Europe in its capacity as a federate entity of the State Union of Serbia and Montenegro from 3 April 2003 until its declaration of independence.
4. The Bureau referred the application to the Political Affairs Committee for report and to the Committee on Legal Affairs and Human Rights for opinion. In a new development, it was also referred to the Monitoring Committee for opinion, for the first time in the case of an accession procedure.
5. The reference to the Monitoring Committee for opinion was appropriate. As a consequence of the particular nature of its status as a former federate entity of the State Union of Serbia and Montenegro, Montenegro was already the subject of an Assembly monitoring procedure.

II. Steps taken

6. The rapporteur wishes to underline from the outset that the preparation of the opinion on accession was based on co-operation with the rapporteurs of the Political Affairs Committee and the Committee on Legal Affairs and Human Rights.
7. The Political Affairs Committee's rapporteur Mr Jean-Charles Gardetto ensured that the two co-rapporteurs were actively involved in the various stages in the process.
8. Together with the rapporteur of the Committee on Legal Affairs and Human Rights, I visited Montenegro from 29 November until 1 December 2006, where we met many members of the government and representatives of Parliament, the judiciary and civil society.
9. We noted the various steps being taken with a view to drafting and adopting a new constitution. However, it seemed to us that the procedure could take several more months or, even a

¹ See Doc. 11204 tabled by the Political Affairs Committee.

year. While sharing the view of the Political Affairs Committee's rapporteur that the content of the constitution Montenegro intends to adopt is decisive, we did not believe it was appropriate to make Montenegro's accession conditional solely upon the prior adoption of its new constitution.

10. However, we did regard as essential a clear commitment by the Montenegrin authorities concerning certain points where the current constitution is either incomplete or incompatible with Council of Europe principles and where lack of agreement or commitment would, in our view, constitute a serious obstacle to Montenegro's accession.

11. We therefore met on 12 January 2007, on the initiative of the Political Affairs Committee's rapporteur, to draw up a list of principles which we regard as a *sine qua non* for accession by the Republic of Montenegro. This list was discussed with the delegation from the Parliament of Montenegro during the part-session of the Assembly in January 2007. All of the relevant political players (government, parliament and political parties, except the Serbian list) have since then agreed to comply with these principles and to have them included in the new constitution.²

12. On the basis of that commitment, we believe that it is justified to invite the Republic of Montenegro to join the Council of Europe.

III. Co-operation in drafting the opinion on accession

13. The opinion on accession adopted by the Political Affairs Committee is the result of the joint efforts of the three co-rapporteurs.

14. It should be underlined here that the co-operation between the rapporteurs was good and enabled me and the rapporteur of the Committee on Legal Affairs and Human Rights to indicate our proposed amendments to the draft opinion while it was being drawn up. Our colleague, Mr Gardetto, took them on board and incorporated them into his draft.

15. That is why the present opinion does not propose any amendments. Having actively participated in the process and been regularly consulted during the various stages of drafting, I endorse the draft opinion presented by the Political Affairs Committee's rapporteur and offer my support.

16. I shall therefore only give some explanations concerning the points in respect of which I made a particular contribution during the drafting of the opinion on accession. I would also like to stress that I fully support the Opinion drafted by my colleague Erik Jurgens on behalf of the Committee on Legal Affairs and Human Rights as regards the protection of Human Rights, the prosecution of war crimes and cooperation with the International Criminal Tribunal for the former Yugoslavia, the urgent need for constitutional reform and the points he made with regard to judicial reform.³ There is therefore no need for me to repeat them here.

IV. Financial means

17. Montenegro is a small and relatively poor country, but independence requires proving itself to be a democratic and economically efficient state. Developing the Parliament in terms of its representative, legislative, and oversight functions is therefore crucial to fulfil the strategic goal of harmonising Montenegrin legislation with European standards and, simultaneously, reinforcing parliamentary practice. This is why I have suggested "to increase as soon as possible the Parliament's budgetary means and its administrative capacity".

18. The same goes for the media: it should be underlined that the independence of the state media in Montenegro needs to be ensured more effectively. They sometimes suffer from political interference in their activity. To this end, it would be desirable if the authorities of Montenegro could speed up reforms concerning the media in order to safeguard their independence, including from the financial point of view. I have therefore proposed to add a sentence that the public service

² See the declaration signed to this effect on 8 February 2007, appended to the Political Affairs Committee's report, Doc. 11204.

³ See opinion of the Committee on Legal Affairs and Human Rights, Doc. 11205 approved on 12 March 2007.

broadcasting system would need to be provided with the financial means to enable it to perform its functions.

V. Local government

19. The existing legislation regarding local self-government is not in line with the European Charter on Local Self-Government. It is therefore urgent that Montenegro ratifies this Charter without delay after its accession to the Council of Europe. I have suggested adding that Montenegro "should strengthen its 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".

VI. Respect for the principle of non-discrimination

20. It should be pointed out that Montenegro still does not have legislation against discrimination. There are merely a small number of non-discrimination provisions in some of the existing laws. A specific law providing for general application of the principles of non-discrimination and equal treatment should be passed. The law should provide that no-one may be discriminated against in any way on any ground such as sex, race, colour, language, religion, sexual orientation, disability, political or other opinion, national or social origin, association with a national minority, property, birth or other status. This wording copies the provisions of Article 14 of the European Convention on Human Rights. I have suggested it might be advisable to add after the word "sex", the words "sexual orientation", as there is now a considerable corpus of case law by the European Court of Human Rights on this subject.

VII. Priority reforms

21. A number of issues set out in the opinion on accession need to be dealt with as a matter of priority by the Montenegrin authorities in the months following accession. It is vital for the country that the new constitution be adopted swiftly, as many necessary legislative reforms, some of them urgent, depend on it.

22. The Monitoring Committee stands ready to assist the authorities in making sure that the necessary reforms are carried out effectively and rapidly.

VIII. Conclusion

23. Like the Political Affairs Committee's rapporteur, I believe that the Republic of Montenegro should be invited to join the Council of Europe.

24. In general terms, I believe that this "re-admission" of Montenegro to the Council of Europe represents a great opportunity for the country to continue with renewed vigour the reforms undertaken between 2003 and 2006 with the Council of Europe's assistance, to complete them and to make sure that they are properly implemented.

Reporting committee: Political Affairs Committee

Committee for opinion: Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)

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Secretariat of the committee: Mrs Ravaud, Mrs Chatzivassiliou, Mrs Odrats