



Podgorica, 14 October 2011

## INSTEAD OF POLITICAL, ADOPT THE LEGAL REGULATIONS

**Centre for Civic Education today submitted, to the Committee on Constitutional Affairs and Legislation of the Parliament of Montenegro, a proposal for amendments of the Amendment III by which the Parliament of Montenegro decides on the dismissal of the President of Montenegro, instead of the Constitutional Court, which is unknown in practice in the field of comparative constitutional arrangements.**

Namely, the Constitution of 2007, in the Article 149, prescribes that the Constitutional Court decides whether the President has violated the Constitution. According to the Article 151 the Constitutional Court's decision is final, universally binding and enforceable. In other words: when the Constitutional Court decides that the President has violated the Constitution, his function is terminated by the force of the same.

However, the founders of the Constitution have violated this in the manner unknown to comparative jurisprudence, and by the Article 98, the decision upon the existence or non-existence of the Constitution violations makes the Constitutional Court and it submits it to the Parliament that "may" resolve the President of state if it determines that he has violated the Constitution.

Following the decision of the Constitutional Court that the President of state has violated the Constitution, his mandate should be terminated by the force of the Constitution, because the decision of this court is final.

Instead of this, the Constitutional Court in Montenegro may decide that the President has violated the Constitution, but that does not mean anything since the Assembly, ie. ruling majority is not obliged to follow this decision, because according to the current solution it "may" but even may not resolve him.

In the region, only Montenegro and Serbia have adopted the solution inherent to the partycratic systems, whereby the society but also the state itself loses on its democratic capacity.

The draft amendments to the Constitution, which currently the public discussion is running for, have still remained within the bad legal arrangement, in which the ruling parties take on the role of the Constitutional Court judges, which is unacceptable in a society that needs to be based on a clear division of powers into executive, judicial and legislative.



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The Constitutional Court is the guardian of the Constitution of a country, it protects constitutionality and legality in the country, and precisely for this reason its decisions are final and, therefore, the Parliament, ie. the legislative power can not change them by its, above all, political belief.

CCE calls on the Committee on Constitutional Affairs and Legislation of the Parliament of Montenegro to adopt the solution by which the lawyers-judges of the Constitutional Court are deciding upon the dismissal of the President, instead of, as so far, the representatives of political parties.

The CCE has proposed amendments to the Article 98, paragraph 5 and 6 of the Constitution, and replacement of given solutions with following:

**"The Constitutional Court of Montenegro is deciding upon the impeachment of the President of the Republic by a two-thirds majority of all judges.**

**The Constitutional Court shall decide on the impeachment of the President of the state for violation of the Constitution within 30 days of receipt of the proposal to initiate the impeachment of the president for violation of the Constitution.**

**If the Constitutional Court of Montenegro affirms the impeachment, the President of Montenegro ceases to hold his position by the force of the Constitution. "**

The CCE has already suggested that the Constitution of Montenegro restores the institute of civil initiative by which citizens shall not need the support of parliamentarians for the issues identified as important, and which have acquired the necessary number of signatures, to put them on the agenda on their own, as it was previously defined by the Constitution and which the current Constitution deprived citizens of.

The CCE will continue to analyze the proposed amendments to the Constitution and give its suggestions on the same, as well as to the other provisions of the Constitution, which it finds crucial to the process of state democratization.

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