



**IS THIS MOMENT FOR GETTING A TWO-THIRD
MAJORITY FOR ELECTION LEGISLATION, SUPREME
STATE PROSECUTOR AND JUDICIAL COUNCIL?**

TIME OF DIFFICULT COMPROMISES, **IF WE WANT FURTHER TOWARDS THE EU**



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COMMENT

**Who is in
charge?**

WHO IS IN CHARGE?



Photo: Vjesta



By: Vladan Zugić

The attitude of the Montenegrin authorities towards European integration, and in particular towards the EC Non-paper on the state of play regarding Chapters 23 and 24, reminds of a family in which no one talks to anyone.

Prime Minister **Dusko Markovic**, in his first address before the official publication of the non-paper, stated that the report was "generally positive", stressing that he did not read the text in detail. "But, it is certain at this point, I can say, that the Report is generally positive, that it notes serious progress in the negotiation process, and that in this Report, as in the previous one, the EC warns us about some weaknesses, shortcomings that we need to work on", he assessed.

General position. The one that can anyone, from any government, say to an ignorant regiment for any EC document.

Soon afterwards, Montenegrin Chief Negotiator with the EU, **Aleksandar Drljevic**, and Negotiator for Chapters 23 and 24, **Marijana Lakovic Draskovic**, tried to paint into pink rather grey EC report.

Drljevic's main message says – the EC Non-paper is encouraging because it is a message that the accession negotiations process has not been stopped and that the state remains in the EU focus. Point missed. We should be encouraged that the EC drafted the Report at all, which no one even questioned!?

Lakovic Draskovic says that the EC noted clear progress in overcoming the challenges recorded in the EC Report from May within the areas of media freedom, anti-corruption and human trafficking. The progress may have been noted, but it is not clear. Particularly in the area of media freedom.

Moreover, the Negotiator for Chapters 23 and 24 disagrees with the EC's position that this was the third and not the second term of office of the President of the Supreme Court, **Vesna Medenica**. "This issue, as well as some others, will be the subject of further discussions with European partners, and I believe that, by making a legal argument, we will convince them that such positions are not based on facts but on impressions and misperceptions of a part of the public."

They will convince Brussels that they are wrong. That will be hard, really hard. Just as they couldn't convince Brussels that **Sreten Radonjic** was doing his job "brilliantly" at the Agency for Prevention of Corruption. But instead of Radonjic, who is the first victim of *non-paper*, only his armchair was sacrificed. And with a delay of at least a year.

Then on the stage, not the European one, but the one in Bemax Hall, at the Congress of his Democratic Party of Socialists (DPS), the President of that party and the state, **Milo Djukanovic**, comes out. In the turbo folk or pop music performer style, he said that "it would be easier if we had on the other side a partner who encourages." As if this EC Working Document, whose essential message is that Montenegro has not met the interim benchmarks for Chapters 23 and 24 yet, is not sufficiently motivating.

And, of course, for the lack of progress in the fight against corruption, media freedom, judicial independence, prevention of money laundering is blamed Brexit and migrants, while "major power centres have essentially stopped or prolonged over the long term" enlargement policy that Brussels affirms. "The EU is facing consequences of crises, migration, Brexit, and there is still no indication of the direction in which direction could develop the scenario of overcoming Europe's endangered global competitiveness." Just in case, he added that the vision of the Europeanisation of Montenegro does not lose its importance: "EU membership remains our strategic goal, with full awareness that its achievement will not depend on our political will and commitment to reform."

And then finally, the unjustifiably neglected star of the evening. Deputy Prime Minister and Minister of Justice, **Zoran Pazin**, at the session of the Rule of law Council, attended also by the Head of the EU Delegation, **Aivo Orav**, said: "We are at the phase that requires the institutions in charge of the rule of law to demonstrate much more accountability in their work, individual and institutional quality and clear track record within their respective areas. This will not be possible if all the competent institutions do not demonstrate accountability at all levels, starting with the heads of institutions, up to each official and every employee."

Pazin emphasized that there was no space for any slowdown in the performance of duties or mere satisfaction with formal statistics, but that the results must be substantial, so that they can be felt by the citizens themselves, through improvement of legal certainty, as the most important attribute of the rule of law. I subscribe to each one.

But I am just wondering if they are talking to each other in that house and who is in charge.

The ignorant Markovic, the Eurosceptic Djukanovic or the promising Pazin.

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By: Rialda Ramusović



Is this the moment to reach two-thirds agreement in the Parliament of Montenegro on electoral legislation, the new Supreme State Prosecutor (SSP) and four members of the Judicial Council from the category of esteemed lawyers? Can these serious problems that are burdening Montenegrin society on its way to the European Union (EU) be solved in a package?

This question arises in view of the mandate of the Parliamentary Committee for Comprehensive Electoral Legislation Reform, and bearing in mind that two-thirds, or 54 of 81 MPs, are required to adopt amendments to the electoral legislation. Also, the EC Non-paper on the state of play regarding Chapters 23 and 24 recall that the SSP and four members of the Judicial Council are in acting

state with critical reflection to the current affairs and some developments within judiciary.

The Parliament, as noted in the Non-paper, "still needs" to appoint four members of the Judicial Council from amongst esteemed lawyers after the term of office of those members of the Council expired in July 2018 and new members were not elected.

"Senior appointments in the judiciary in the course of 2019, such as the re-appointment of the President of the Supreme Court for a third mandate despite the Constitutional limitation of two terms; and re-appointments of court presidents that have already served the maximum two terms laid down in the 2015 Law on Judicial Council, raise concerns with regard to Judicial Council's interpretation of

the Constitution and the applicable legislation", notes the Non-paper.

Furthermore, there is reminder the mandate of SSP, namely **Ivica Stankovic**, expired in October 2019, and that after the first unsuccessful competition due to the lack of candidates, the Prosecutorial Council appointed the outgoing SSP as acting one until the election of a new SSP.

"It is important that Montenegro does not reverse earlier achievements on judicial reform, and that it continues further building track records, in particular on fight against corruption, while ensuring genuine independence of all the respective institutions, including the Anti-Corruption Agency. A credible, independent and effective institutional response to the recent allegations of corruption and illegal political party financing is needed," says the EC in the summary of the Non-paper on the state of affairs in the two most important negotiation chapters.

These chapters do not address the issue of confidence into electoral process, as one of the most important preconditions for Montenegro's further progress. Currently, an Interim Committee on Comprehensive Electoral Legislation Reform is working in the Parliament. In its composition, apart of the representatives of the ruling coalition, there are representatives of the Democratic Montenegro, the Social Democratic Party (SDP) and part of the independent MPs, which provides two thirds in total. Outside this process there is part of the MPs led by the Democratic Front (DF), who could again, with the Democratic Party of Socialists (DPS), provide required majority to pass the electoral legislation and heads of the judiciary.

Although no one wants to give an explicit answer to whether these issues can be addressed in the package, the impression is that political parties are aware that the problems of electoral legislation, the election of the SSP and members of the Judicial Council can no longer be pushed under the rug.

The Head of the DPS MP club, **Nikola Rakocevic**, believes that the time of agreement is coming, and that systemic solutions for further democratization of a society that requires a two-thirds majority must be viewed outside the context of political and party opportunism.



Photo: B. Pejović

"A constructive dialogue between the authorities and the opposition is only possible if the opposition leaves the blackmail platform," Rakocevic assessed.

"The ruling majority is ready for this type of dialogue with the opposition. Whether it will come to this depends, first and foremost, on the maturity of our political alternative, which sees 2/3 of the decision-making opportunity in the context of potential political trade, rather than as an agreement on a solution that should essentially lead to an increase in public confidence into institutions. The ruling coalition has shown willingness to reach an agreement, which we demonstrated when, a year ago, we adopted the Decision on establishment of the Comprehensive Electoral Reform Committee, as well as its amendments in July this year, in which we accepted all the suggestions from opposition, with sincere intention to create together an even better electoral environment," Rakocevic stated for *European Pulse*.

He believes that all MPs have been offered quality solutions to fill the Judicial Council from the category of eminent lawyers, which have received support only from the ruling party.

Rakocevic called on "dissatisfied opposition members" to encourage and call lawyers they believe have sufficient credibility when they are not already satisfied with the DPS bid.

The Secretary General of Democratic Montenegro, **Boris Bogdanovic**, believes that the messages that can be heard these days by relevant representatives of the international community are both encouraging and concerning.



Photo: B. Pejović



"One can clearly conclude that Montenegro's European path is endangered, but also conditioned by European and fair elections, that requires comprehensive reforms of electoral and other legislation," Bogdanovic told for *European Pulse*.

He considers that the current electoral legislation was adopted by the agreement and political trade of the DPS and the DF, and that it gave Djukanovic and the DPS an initial advantage of several seats over the opposition, within dozen of election processes at the local and state level, and after which has become subject of intense criticism by domestic and expert international public.

"We should no longer allow any subsequent electoral process to be carried out on the basis of this electoral legislation, which will be subject to unprincipled, unfair, and therefore illegal political trade. Finally, it is time to say "stop" to both of these actors, and together with our international partners, provide such electoral conditions that guarantee equal treatment of all participants in election race," underlines Bogdanovic.

Bogdanovic said the agreement meant that the two sides would be "halfway" there.

"Within the implementation of the electoral process there should be less fraud than in the last few decades. We, in Democratic Montenegro, believe that this is not the solution. Montenegro either has or does not have fair electoral environment", he stated.

Bogdanovic states that this is not only the moment when the electoral and other legislation is to be radically reformed and time to solve the problem of the Supreme State Prosecutor's Office and the Judicial Council, but also the last moment before the alarm, which could lead to the blockade of the institutions of the system and boycotts of the next parliamentary elections by relevant opposition political entities.

Photo: S. Prelević



The Deputy President of the Social Democratic Party (SDP), **Rasko Konjevic**, considers that the Parliament has no political authority.

"The fact that we have acting state for quite some time illustrates political and institutional crisis. Constitutional solutions that imply an agreement on the Judicial Council and the election of the SSP are part of the political achievement that the EC has recommended to us through the expert opinion of the Venice Commission. It is often forgotten that these Constitutional changes were the precondition for opening accession negotiations. Also, during 2013 and 2014, we were able to implement these constitutional provisions. So, it is not a problem in

these provisions, but in the authorities that want to impose certain individuals without agreement. These constitutional provisions do not allow party cadres but professionals who will have the support of both the authorities and the opposition", explains Konjevic.

Konjevic states that the SDP is ready to vote in favour of all decisions involving serious proposals for both the Judicial Council and the election of the SSP.

"The confirmation for that is that we will vote in favour of the proposal for the new Ombudsman, because it is an excellent one, with personal and professional authority, which we were ready to support in the election of Constitutional Court judges. It is the responsibility of the authorities to open serious dialogue, and their legal obligation to open call for applications for members of the Judicial Council, which they do not do", Konjevic told for *European Pulse*.

The Parliament, ad he added, has become an institution without the political authority of those who formally run it.

"In serious countries, dialogue on such issues would be conducted under the auspices of Parliament. Unfortunately, the Speaker of the Parliament does not do this. So much for political authority", concludes Konjevic.

DF MP and Chairman of the Parliamentary Committee on European Integration, **Slaven Radunovic**, says that the issue of electoral law reform is a problem whose resolution, as he points out, can shake up decades of leverage by the ruling party.



Photo: B. Pejović

"This regime, shaken by the affairs and internal conflicts, could easily relent in the face of intense joint pressure by opposition and citizens from the streets or the intervention of the international community. The best way would be an action of both of these factors. Personally, I think we need to rely more on domestic forces, because it has often happened that important international political factors, guided by their particular interests, also neglect the rule of law and democratic needs of Montenegrin citizens", Radunović elaborated for *European Pulse*.

According to him, the judiciary and the prosecution are heavy artillery of the Djukanovic's regime and it is clear to everyone that there will be no free elections as long as they can be annulled by activating "on the button" of some **Milivoje Katnic** or **Suzana Mugosa**.

"Opposition parties simply have to find common ground and to put aside differences in order to pressure the regime to elect those resistant to orders for indictments and cabinet judgments," Radunović assessed.

ACCOMPLISHED A LOT, BUT MORE IMPORTANT IS WHAT AHEAD OF US – **TRACK RECORD**

Photo: mif.gov.me



By: Tanja Ostojić

The author is the Director General of the Directorate for International Cooperation of the Ministry of Interior of Montenegro and Head of the Working Group for Chapter 24

Chapter 24 - Justice, Freedom and Security, in line with the objectives that the European Union is continuously developing in these areas, represents, alongside with Chapter 23, the core of the negotiation process in Montenegro, but also in other EU aspiring countries. Hence, since the opening of this chapter at the end of 2013 to the present, special attention has been given to the results we are achieving in this framework, through sub-areas related to: migration and asylum, visa policy, external borders, judicial cooperation, police cooperation and the fight against organized crime, trafficking in human beings, cooperation in the field of drugs, customs cooperation, and the fight against terrorism and violent extremism.

Although issues related to citizens' security were the focus of all law enforcement institutions before the opening of accession negotiations, after intensifying cooperation and joint analysis with our European partners, through the Action Plan for this Chapter and 38 interim benchmarks, activities and dynamics that would further improve the situation in these sub-areas were identified. Thus, the previous period was marked by large number of reforms, which we have implemented through the institutional, legal and strategic framework to a greater or lesser extent, and which have given new impulse and kind of transformation both to the perception of the challenges we face and to the approach to fight against various security threats. These changes have inevitably led to strengthening of the personnel capacities of the institutions relevant to the negotiation process, in particular the Ministry of the Interior, the Police administration, the prosecution and the courts.

Nowadays, six years after intensive dialogue with the representatives of the European institutions, it is challenging to list all the results we have achieved within Chapter 24. Of course, the most important are those that have led to the adoption of European standards in each individual area, as noted by the Brussels colleague. The goals we initially defined through the Action Plan and set of benchmarks, today have been largely achieved or are being pursued continuously. Hence, we have behind us period which brought laws and strategies based on the EU acquis, new institutions and organizational units that need to give strong response in today's fight with the security challenges. Years of commitment and dedicated work on obligations from the so-called "European agenda" have also contributed to strengthening of inter-institutional co-operation at the state level, but also to strengthening of links with international institutions and specialized agencies of the European Union, especially when it comes to police and judicial co-operation and migration and border management.

However, what is ahead of us is more important than this overview of what has been achieved. And that primarily refers to much greater expectations when it comes to the track record. That is why official and unofficial working papers, in which the European Commission thoroughly assesses everything through its positive and negative marks, represent the best platform on which we base our plans for the coming period, aware of the fact that every new year in the negotiation process will be more demanding than the previous one, with ever-present responsibility that view through the rule of law puts sign on the overall pace of the negotiation process.

Illustration: www.bbc.co.uk



Photo: Private archive

By: Milica Zindović

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“Food apartheid” – Lesson for Montenegro

Following the “Eastern enlargement” in 2004, the distinction between Central Eastern European and Western European countries was formally abolished, as economic and monetary measures were taken to balance the two sides of Europe. Although participation in the single European market should not leave room for any form of discrimination, in recent years, many countries have been shouting for change that requires respect for a single set of policies in all Member States.

The Czech Republic is one of the first countries to refer to its citizens as “second-class citizens”, vehemently condemning

the existing single market rules and pressuring the European Commission to address this issue. Along with the other countries of the Visegrad Group, The Czech Republic pointed to the existence of dual product quality crisis within the EU, referring to the products of the same brand and packaging that are sold at much lower quality in these countries compared to their western equivalents.

Everyone is probably familiar with the example of the famous *Nutella*, which contains much more cocoa in the Western European countries than in the Central Eastern countries, or



fish sticks containing more fish in the Scandinavian countries than in the Czech Republic, Poland, Hungary, etc. Also, if you happen to be stranded in an Austrian supermarket, it is very likely that Lenor's softener will contain a lot more products than a product of the same packaging in Slovakia, but it is equally likely that you will buy it at lower price. This list of products is quite extensive and ranges from groceries, cleaners, and baby products, which makes the situation more delicate.

The big companies' excuses so far have been in direction of adjusting to local consumer preferences, since it is obvious that the Czechs prefer more oil in food than fish or meat, Slovaks prefer palm oil instead of butter, while Poles are loyal fans of artificial sweeteners. However, for those a little more sober, cheaper production costs are still the more obvious reason for this.

Following well-organized campaign by all the Visegrad Group countries, the EU has finally begun to approach this issue more coherently. The previous EC composition tried to position this problem, and its president **Junker** stated that "there can be no second-class citizens in the Union of Equals." Selling inferior products (at often higher prices) in countries with lower living standards is not only about disrespecting the rules and applying discriminatory measures, but also about the lack of unity, solidarity and what seems to be further nurturing of the East-West division.

Consequently, the crisis threatened to deepen the overly

imposed Eurosceptic sentiment, and the EC finally decided to take more concrete measures and tried to introduce a new common methodology for product testing as well as guidance to assist national authorities in the implementation of EU food and consumer legislation. Also, the results of product analysis conducted in 19 EU Member States, as of June this year, indicated that more than a third of products had similar or different composition depending on the country in which they were sold, which only confirmed previous Czech analyzes and accelerated the further struggle for implementation of equal standards.

The Commission has also committed new funds to consumer organizations, in order to identify future discriminatory actions and take further action. On the other hand, the crisis has caused that the countries of the Visegrad Group, anyway inclined to criticize the EC, this time demand greater involvement of the Commission into matters affecting them and their citizens.

The question is, how long does it take for us in the Balkans to become socially responsible, mature and ready to push for changes? Where is this link that brings us all together on common path to the EU and can we act together? Are Montenegrin citizens aware that we ourselves are victims of this "food racism" and that it would be good to learn from the Czech case in this case as well?

In the end, neither German Nutella should be better than Czech, nor Hungarian than Montenegrin.

Neither are we worse off, we just obviously need a boost.

NEGOTIATION STRUCTURE AND COMPARATIVE EXPERIENCES

IS IT TIME TO REFRESH THE MONTENEGRIN NEGOTIATION STRUCTURE?



Prepared by: Ana Puljiz

Montenegro, as the candidate country for European Union (EU) membership, has for a short time, positioned itself as the "leader in the European integration process" in the Western Balkans. During its seven years of negotiations, it has opened 29 negotiation chapters, while three have closed temporarily. However, a [study](#) of the Centre for Civic Education (CCE) indicates that the negotiation process in Montenegro takes significantly longer than was the case with other Member States, which also raises the issue of reflection on the negotiating structure.

The negotiating structure itself has not undergone major changes over the seven years, which is worth considering given the complexity of the process and the lack of expected results. As an incentive, it is important to analyse the practice of countries with which Montenegro once shared the same legal system, some of which are behind Montenegro in the accession process, such as Serbia, and some have successfully completed the negotiation process, such as Croatia and Slovenia. This insight indicates that the Croatia is Montenegrin older twin by negotiating structure, with certain minor but not inevitable and better modifications.

According to the latest available data, the negotiating structure of Montenegro consists of total of 899 members (previously this figure went up to 1,400) coming from different social spheres. After seven years of negotiations, there is visible fatigue within the negotiating structure, outflow of professional staff and reduced level of enthusiasm. This cumbersome apparatus still seemed highly bureaucratic to many, and far from citizens. The levels of responsibility within the negotiating structure themselves are not sufficiently clearly defined at any level other than the political level, and essentially at the political level, that responsibility has never been analysed or opened, with the prevailing narrative being the key to slowing down or accelerating Montenegro's negotiations with the EU. Therefore,

the CCE recommends that the Government of Montenegro assesses the impact of the negotiating structure as a whole and its individual parts and accordingly approach to reorganization that will lead to less bureaucracy and more impact, with clearer lines of accountability, especially in light of the announcement of changes within the EU towards the negotiation process.

Although the Montenegrin authorities emphasize the participation of civil society representatives within the negotiating structure, in practice it has been applied only to working groups for negotiating individual negotiating chapters, formalistically and with very limited influence, as continuously indicated by the civil society organizations themselves, especially those that have a critical approach and expertise. In order for the Government's openness to the civil sector to be adequately effective in the accession process, members of civil society working groups need to be much more respected. Also, opening up of the Rule of Law Council for their participation, whether through full or consultative membership, should be seriously considered.

Finally, the Parliament of Montenegro should be given a more prominent role in the process of European integration, both through strengthening the activities of the competent Committee for European Integration and through a wider scope of involvement of MPs, especially in the direction of communication of the process to different publics, especially towards citizens. After seven years, we have not corrected the problems in the long-standing negotiating structure. If the Government of Montenegro does not take decisive steps to improve the apparatus negotiating for a long time to come, 'leader in the region', will remain only a letter on the paper.

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