



## Developing a Minority Policy in Montenegro

*Third Roundtable*

Becici, Montenegro  
March 9-10, 2007

### Introduction

The adoption in May 2006 of Montenegro's first ever Minority Law opened a new chapter in the history of majority-minority relations in Montenegro. PER played an important role in helping the government to formulate the law and especially in helping to establish an intra-parliamentary consensus on its most controversial articles. The agreement of a number of the law's articles was the specific result of PER's initiative to support the development and implementation of a state policy towards ethnic minorities in Montenegro. Funded by the British Embassy in Serbia through the Global Opportunities Fund, and in close cooperation with the Montenegrin Ministry for Protection of Human and Minority Rights and the leadership of the Montenegrin parliament, PER has held two roundtables on the subject in Przno and Kolasin.

The Montenegrin path to minority accommodation has not been without its setbacks, however. In July 2006, two key provisions of the Minority Law were declared unconstitutional by the Montenegrin Constitutional Court. The rejection of these provisions, which guaranteed seats in parliament for representatives of ethnic minorities, was perceived as a clear betrayal by many minority leaders and is an increasing source of tension between them and the majority.

The new Constitution and how it relates to minority rights was the main topic of discussion at PER's third roundtable on "Developing a Minority Policy in Montenegro" held 9-10 March 2007 in Becici. The dialogue ranged from the specific initiative to reinstate the two provisions of the Minority Law through changes in the Constitution to the very concept of Montenegro's new state. The other big issue tackled during the roundtable was the Ministry for Protection of Human and Minority Rights' draft on the "Rules and Instructions for the Elections of Minority Councils" – another key provision of the Minority Law. The following report is a summary of these two discussions and an outline of the agreements reached by the participants on solutions to unresolved questions, as well as a rundown of issues which remain divisive.

### Minority Representation and the New Constitution

Whether or not Montenegro's draft Constitution should be based on a civil or nation state concept (in which Montenegro will be branded as a state of Montenegrins and other ethnic groups who live there (Serbs, Bosnjaks, Albanians, Croats, etc.) are the most relevant and significant points of contention in Montenegro's constitutional debate at present. These issues are of particular relevance to the PER project and its progress, as they are connected to the issue of minority representation in local and state government which is at the heart of the Minority Law in its original form.

As mentioned earlier, Articles 24 and 25, two key provisions of the Minority Law which guaranteed seats in parliament for minorities, were declared unconstitutional by the Montenegrin Constitutional Court. The Constitutional Court's rejection of articles 24 and 25 was unexpected. It was also interpreted as a clear betrayal by minority leaders since the adoption of the law prior to Montenegro's referendum was an agreed upon precondition for securing the minority vote in favor of independence. Given that the ruling of Montenegro's Constitutional Court will remain in effect until the Constitution itself is changed, whether or not these provisions will be included in the new Montenegrin Constitution, set to be adopted in 2007, was the most intensely debated issue at Becici.

One prevalent viewpoint supported by several participants at the roundtable advocated for a "one person – one vote" civil concept in which the Constitution does not provide for guaranteed minority seats in parliament, and instead focuses on individual rather than collective rights. As one participant stated, "Guaranteed seats for minority representatives means that nationality becomes the basis for electoral legislation in a unicameral parliament, which is a clear violation to the democratic principle of one person – one vote."

When advocating for this position, the most recent census (2003) was often used by the participants for corroborative evidence as it clearly outlines Montenegro's lack of an ethnic majority (some participants did, however, speak of a Christian Orthodox majority).<sup>1</sup> From their perspective, because each ethnic group in Montenegro is technically a minority (under 50%), the need for proportional representation in parliament is obsolete and/or discriminatory.

According to one participant, a civil state concept has been recommended by the Council of Europe as the most practical structure given Montenegro's current demographic composition and size. Another participant specifically drew correlation to the U.S. and French models of civil states claiming them as particularly representative of genuine democracies. Speaking for his party, this participant stated that a civil state would, theoretically, create the pre-conditions for a political environment in which all individuals are equal, and unite all the various ethnic groups in Montenegro under one government, one constitution.

The counterargument to the "one person – one vote" premise, vocalized by a number of minority leaders at the roundtable, is based their perception of current political realities in Montenegro which have, according to them, the distinct aura of discrimination towards minority groups in connection with political representation. As one participant stated, "There are ethnic groups in Montenegro that are more equal than others. My people are in an inferior position economically, socially, and even with regards to media exposure." The participant's statement was corroborated by other minority leaders under the general concern that, "whenever we have elections, we never make it."

Those coming from the "Montenegrins and others" state perspective advocated a two chamber parliamentary system in which one chamber would represent all citizens of Montenegro and the other would represent all Montenegro's various ethnic groups. According to some minority leaders in attendance at the roundtable, this system would guarantee that the minority voice is heard at the highest, national level, would give minority representatives a powerful veto, and would dismiss any possibility that minority groups would be entirely out voted.

During the roundtable, the most vocal proponent of the two chamber parliament initiated what he saw as a compromise by stating, "Direct proportionate representation in the parliament and bringing Articles 24 and

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<sup>1</sup> According to the last census (2003), Montenegrins comprise 43.16% of the population, Serbs 31.99%, Bosnjaks 7.77%, Albanians 5.03%, Muslims 3.97%, Croats 1.1% and RAE 0.46%.

25 of the Minority Law back through changes in the Constitution will satisfy minority demands in Montenegro.” This compromise between the civil and nation state concepts is one in which the civil structure incorporates a positive discrimination policy towards its minorities thus guaranteeing them political representation at the national and local levels by reserving a determined number of seats in parliament proportionate to their demographic composition in the country. In essence, maintain the civil state concept but reinstate Articles 24 and 25 of the Minority Law. However, even among those who agree that this arrangement would be the best solution, there is still vast disagreement on how to implement the compromise.

According to one roundtable participant who reported on the Constitutional draft committee’s progress, the issue of direct political representation for minorities has been the most divisive. Their solution was to draft the Constitution in such a way that it provides for an indirect *possibility* of minority direct representation in parliament to be determined later by relevant laws. Hence, the Constitution would provide constitutional basis for reserved parliamentary seats, and the new election law would determine how many seats are reserved for minority groups and how they are filled.

As one participant stated, “It should be left to the law, not the Constitution, to find in the upcoming period a mechanism of safe passage or a certainty that the minorities will find their way to the Montenegrin Parliament.” According to this perspective, a law is a more flexible and adaptable instrument that can be conformed according to the needs of minority groups.<sup>2</sup>

However, there was general consensus among minority representatives that the provisions for minority representation must be reinstated into the Constitution itself if the country is to avoid another battle in the Constitutional Court; or worse yet, alienate moderate minority leaders. The ambiguity of the proposed Constitutional Articles means that there is no guarantee that the laws on minority rights will not change according to the whims of whichever party is in power. One international participant supported this by saying, “What we have learned from our past experience in working in the region is that if there is to be dialogue, it is much better to have it now than tension later on.” There is also grave concern among some leaders that if the problem is not resolved now, the lack of resolution may give various ethnic groups impetus to claim that the Constitution does not apply to them as they had no say in its creation.

Already, as seen at the Becici roundtable, tension is slowly escalating, and minority leaders are expressing feelings of dissatisfaction with the new state’s lack of progress towards minority rights. As one ethnic Albanian representative stated, “We need to come up with a specific solution in Montenegro and I see no such political will for that. There will be consequences in the future. I know [my party] started serious processes in Montenegro, but we will not support it further if there are no legal solutions. We cannot speak about subjectivity and rights of minorities without affirmative action.”

There was no final decision on direct representation reached at the Becici roundtable, but it was an important meeting in that members of parliament were able to see and hear first hand the frustration of minority leaders. This frustration is especially alarming as it may later be considered the first step down the path of deteriorating relations between majority and minority groups in Montenegro. Mutually beneficial majority-minority relations have been the core of Montenegro’s successful model of interethnic accord. Damage to these relations will be the destabilizing factor in this multi-ethnic country.

To offset this regression in interethnic accord, PER will continue its work to strengthen majority-minority dialogue. An important element in bolstering these relations would be the formation of Minority Councils envisaged by the Minority Law. These Councils will produce legitimate institutional

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<sup>2</sup> In order to be adopted the Constitution requires a two-third majority in the parliament, a law only a simple majority.

representation for the country's minorities in their contacts with the government institutions. The legislation to govern the formation of these councils was the second topic of the Becici roundtable.

### Rules for the Formation of Minority Councils

Following PER's second roundtable in Kolasin (June 2-3, 2006) during which relevant actors discussed and agreed on a number of issues pertaining to these Councils, the Ministry for Protection of Human and Minority Rights drafted Rules for Minority Council Formation which were presented to participants at the Becici roundtable – these rules were developed during the winter of 2006-2007 during which the Ministry consulted with PER and experts engaged by PER on this document. A senior official of the Ministry for Protection of Human and Minority Rights presented the draft and asked for the participant's help on certain areas which remain the most problematic. These areas are as follows:

Article 14 of the “Rules and Instructions for the First Elections of Minority Councils” addresses the number of members elected to each council and how many of those members are there due to their parliament, state or local government function.<sup>3</sup> Article 33.5 of the Minority Law states that eligible members *ex officio* are: “members of parliament elected from the minority lists, members of the Government appointed at the proposal of representatives of minority lists, presidents of municipalities in which the majority of the population belongs to the minority, and other members of the parliament and Government, as well as presidents of municipalities from the respective minority who wish to do so, presidents of minority parliamentary parties and presidents of the parliamentary clubs of the minority parties in local assemblies.” Because Article 33.4 of the Minority Law stipulates that “The Council cannot comprise of more than 17 members,” the inevitable conundrum arises of what to do in cases where a minority group has more than 17 members *ex officio*. For example, what if the Albanian minority has 21 officials who ought to be members of the Council due to their elected position?

Several possible solutions to this dilemma were proposed during the roundtable. Some participants suggested setting the minimum number at 17 but leaving the maximum number open. Others recommended providing a range determined by the size of the minority group. Still others advocated for setting a maximum number of members, but changing the terminology from a fixed number to stating “up to” the maximum number allotted. This option bears in mind small minority groups with no members *ex officio* – there is a concern that smaller minority groups, like the Roma who have no members *ex officio*, will have difficulty filling 17 spaces. It is important to note, however, that Roma leaders in attendance at the roundtable insisted that they will be able to produce 17 qualified members.

Some participants even mentioned doing away with a minimum or maximum requirement, and leaving the size of Minority Councils up for each minority group to decide. However, several international participants as well as participants from neighboring countries highly recommended setting a fixed number as the best way to avoid wrangling over legislative legitimacy later on. As one participant stated, “It is better to have fixed numbers. That is what the law prescribes, otherwise we would go back to discussing what the number should be as related to the majority. What happens if when during the mandate for the Council, we have a national election and the number of those who are there in the Council *ex officio* change?”

By raising the maximum number of Council members from 17 to 35, there would be more than enough seats to accommodate all who are members *ex officio* as well as members elected by secret ballot by the minority constituent assembly. However, this solution entails changing Article 33.4 of the already

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<sup>3</sup> The second paragraph of Article 14 states:

*The number of members that are to be elected at the Electoral Assembly shall be determined by subtracting from 17 the number of those members *ex officio* who have accepted their nomination into the Council.*

adopted Minority Law. The compromise reached during the roundtable was to change the Minority Law, set the number for Council members at 35, and to add the sentence: “the Council will decide how many members from then on.” The Ministry has already asked the parliament to approve such a change.

During the discussion on the number of Council members, another dilemma arose. What should be the official recourse of action when a member *ex officio* is unable or unwilling to assume his duties? A participant from a neighboring country cited a specific example in which a member of his Minority Council died, and the Council had to continue through its mandate with fewer members. What if someone who is supposed to serve on the Council because of his function refuses? Will his seat remain empty? Even more problematic, what if the official mandate of a member *ex officio* comes to an end? Does he continue to serve on the Council even though he no longer holds his office? These are just some of the hypothetical problems mentioned during the course of the roundtable.

There was consensus during the roundtable that many of these issues will be resolved according to the rules that each Council adopts upon its formation. However, the Ministry agreed to change the text of the rules by stating that “If the duty of a Council Member comes to an end, the new person will be elected if he is a member of the same minority and accepts membership in the Council. Or, the replacement could be a person who received the largest number of votes at the Electoral Assembly but was insufficient to being elected to the Council in the first place.”

Despite the fact that it was agreed by the majority of the participants at the roundtable in Kolasin that the majority of Council Members should come from the minority lists, several participants raised the issue again, asserting their desire to have the rules stipulate that the majority of Council Members ought to be members *ex officio*. According to their perspective, members *ex officio* will, because of their function, have more political capacity to implement measures decided upon in the Council as well as have the political legitimacy to lobby for each respective minority in parliament or local assemblies.

However, if it is stipulated in law that each Council should have a majority of members *ex officio*, the inevitable problem arises for minority groups like the Roma who have no members in elected offices or Croats who have few members in elected offices – without a majority of members *ex officio* required by law, they will not be able to meet the legal requirements necessary to have a Minority Council. As one international participant stated, “We have to look at those who are less developed politically. ... If there is a law, it has to be applicable to everybody and you have to find a common ground for those who have no functions in the state authority...otherwise it would be discriminatory.”

Another international participant also mentioned that there is the possibility that if the majority of members are there because of their political office, one political ideology or party may dominate a council. This participant stated, “It will be very unfortunate if the Council were to become an opposition to elected members of the minority. It will not serve any good to anyone if two legitimate bodies fight against each other.” In the end, it was the general consensus of the roundtable to keep the decisions made at Kolasin with regards to the composition of Council members. It is worth noting, however, that this is an issue likely to be raised again in the future.

An important part of the discussion related to Article 7 of the rules and the rights of non-governmental organizations (NGOs) to nominate Council members.<sup>4</sup> The concern voiced by several participants was that the rules were giving NGOs a distinct advantage over individuals. As one participant stated, “It is

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<sup>4</sup> Article 7 states:

*Any citizen who declares himself as a person belonging to a minority concerned and provided that his nomination is endorsed by at least 100 persons belonging to the same minority who have right to vote, or he is nominated by one non-governmental organization or association of that minority, shall be eligible to be an elector.*

well known in the Ministry that an NGO can be registered if it only has 5 members.” There was unease that NGOs, especially those only set up formally, may have the possibility to exploit this rule if they are not required to collect the same number of signatures as unaffiliated nominations. In order to preempt the possibility of misuse of Article 7 by NGOs, the Ministry agreed to state that NGOs should collect the same number of signatures as individuals thus equalizing the right to nominate council electors. In doing so, the rules will keep to a majority system for nomination of electors.

There was some confusion at the roundtable as to whether or not these rules were for the first election in Minority Councils or for all elections pertaining to the formation of Minority Councils. According to the Ministry, the “Rules and Instructions for the First Elections of Minority Councils” only apply to the first election as it is stipulated in the Minority Law that each Council will decide its own protocol from there on out. As a participant from the Ministry stated, “All other rules will be adopted by the Councils themselves which will regulate their own future elections. We want to give rights and trust these Councils with adopting their own regulations.”

However, general consensus was reached at the roundtable that should a newly formed Council not perform its function to elect officers or adopt its own protocols within a timely manner, an oversight institution must have the legislative ability to dismiss the dysfunctional Council in lieu of a new one. Speaking from past experience of working with divided minority groups and the turbulence surrounding the creation of functional Councils in a neighboring country, one international participant strongly recommended the need to set a specific period of time during which newly formed Councils must gather and begin their work.

The Ministry agreed to insert into Article 16 of the draft rules the missive that if the Council does not begin its work within 6 months, the Ministry, as the official authority to provide oversight for the proper implementation of the rules, will dismiss the Council and restart the process anew.

Smaller observations which were readily agreed upon during the roundtable related to Articles 2 and 15 of the draft rules. With regards to Article 2, one participant introduced the idea that presidents of municipal assemblies ought to be included on the list of members *ex officio*. The Ministry fully accepted this proposal, but was unable to include the idea at present without first changing the Minority Law.

Pertaining to Article 15 of the rules, the original draft stated that “The President of the Electoral Assembly announces the lists and establishes the ranking number of the candidates on the lists as well as the leaders of the lists, respectively.” An alternative was submitted and accepted by the Ministry in which the lists are announced by an electoral commission created by the electoral assembly. The electoral commission will also determine the list and ranking number of candidates.

At the conclusion of the discussion, the Ministry agreed to move forward with finalizing the draft rules as quickly as possible. As mentioned by several participants, the draft rules are long overdue as, according to the Minority Law, the Councils were supposed to begin forming six months after the Law was adopted. It has now been 10 months, and it is absolutely vital that these Councils be up and running so that they may contribute to the process of helping the Ministry formulate a cohesive minority policy.

## Conclusion

Montenegro has a reputation and a history of maintaining stable and cooperative ethnic relations despite the extreme interethnic turbulence in its region. Ensuring this stability by developing indigenous mechanisms for minority political representation is essential to the peace and security of Montenegro as

well as its successful integration into the EU. There is growing alarm, however, that Montenegro's multiethnic accord might be in jeopardy.

Instead of progressing, the above report shows how there has been some regression on both the part of the government and minority leaders in their dialogue. Past agreements are being rehashed and reevaluated, and cooperation is increasingly being replaced by frustration. Minorities are questioning the government's political will with regards to minority rights.

Several times throughout the roundtable, PER reminded participants of the need to maintain productive and progressive dialogue, for minorities to seek compromises, and for government officials to reward moderate minority representatives seeking unity with governmental institutions. In the words of one PER chair, "The beauty of Montenegrin interethnic accord is that moderates on both sides of the ethnic divide were rewarded for their moderate behavior. If you break that accord and stop rewarding those moderates, those people will lose to extremists who will take their place. Or, you will transform those moderates into extremists because of their frustration."

That said, the roundtable also shows that the basic agreement on the need to institutionalize a policy of minority rights in Montenegro remains strong. The overall majority of speakers reiterated the need for more minority representatives in parliament and in local assemblies, the only difference being whether or not it is based on direct representation.

The other important element which should be taken away from the roundtable is that it is better to have dialogue and disagreement now than tension and discord later. Even though minority policy in Montenegro seems to be progressing at a "two steps forward, one step back" pace, it is still progressing. The Minority Law has been passed and the Ministry perseveres in its attempts to slowly iron out the procedures for its implementation. The framers of the new Constitution are continuing to discuss the role of minority rights and its place in Montenegro's new state. The next steps in this process include the actual facilitation of Minority Councils, and the establishment of the Minority Fund.

## List of Participants

*English Language Alphabetical Order*

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**Gazmend Cuca**, Senior Legal Adviser, Ministry for Human and Minority Rights Protection of Montenegro

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**Sabahudin Delic**, Assistant Minister, Ministry for Human and Minority Rights Protection of Montenegro

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**Amer Halilovic**, Member, Parliament of Montenegro (Bosnjak Party)

**Rafet Husovic**, President, Bosnjak Party

**Laszlo Jozsa**, President, the National Council of the Hungarian Ethnic Minority in Serbia

**Velizar Kaludjerovic**, Chairman, Club of Deputies of the Socialist People's Party, Parliament of Montenegro

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