



Montenegro

Anticorruption Agency

No.: 03-03-803/16- 3

Podgorica, 14. 03. 2016

The Anticorruption Agency, based on Article 79 of the Law on Prevention of Corruption (Official Gazette of Montenegro, no. 52/14) and Article 10 of the Agency Statute, acting upon the request no.: 03-03-803/16 of 4 March 2016, filed by the Group of voters - Citizen Action, Municipality of Budva, provides the following

## OPINION

Acting upon the request filed by the Group of Voters - Citizen Action, Municipality of Budva, it was established that presidents of political parties may be public officials, i.e. execute a public function, since in the constitutional democracies and international standards on free elections and freedom of expression this is a fundamental role of political parties. Members of political parties, including its leadership, based on the results of democratic elections strive to be appointed to public functions. This is not in opposition to provisions of the Law on Prevention of Corruption related to limitations, incompatibility and prevention of conflict of interest in execution of public functions. Namely, the purpose of Article 12 of the Law on Prevention of Corruption is to limit execution of public functions in public enterprises and public institutions, as the article title indicates, while on the other hand it is completely to be expected for political party leaders to endeavour to execute public functions and execute them in line with obtained mandates.

**For the purpose of the Law on Prevention of Corruption presidents of political parties are able to be public officials, i.e. they are able to execute a public function.**

The right and possibility for citizens to participate in election of the authorities and shaping of the state as a political community guarantees the electoral right as one of key segments in the entire election system and as one of the basic rights of citizens which is a part of the group of political rights. The above quoted confirms that this right is a part of the first constitutional documents - declarations on the rights of citizens; and currently it is also guaranteed, as a right to vote and a type of citizen participation in management of public affairs, in addition to constitution, in the international legal rights, international conventions and agreements.<sup>1</sup>

In constitutional democracies and under international standards, the electoral right is generally recognised as a basic political right, source of all other political rights and freedoms. In the legal system of Montenegro, this is confirmed by provisions of the Constitution of Montenegro, 3. Chapter - Political rights and freedoms, which actually starts with the electoral right.

Article 45 of the Constitution of Montenegro stipulates that citizens of Montenegro who are 18, with at least two year long residency in the country, are eligible for the right to vote and be elected; that the right to vote is exercised through the elections; that the right to vote is general and equal; that elections are free and direct, and voting secret. Article 2 of the law on election of councillors and representatives is fully aligned with the above described constitutional set up.

It is also important to note that international practice of the European Court of Human Rights, stresses that the electoral right within the meaning of voting and being elected is not absolute. Constitutional and legal experts, noting the practice of this high court forum in the area of international protection of human rights, stress that countries have wide discretionary right **to decide on their own about how this right will be exercised.**

**Most countries in the world, in particular in Europe, have the proportional system of party lists, which is also a part of the election system in Montenegro.** The type of proportional election system, **selected by Montenegro when the multiple party system was reinstated in 1990,** includes the so-called closed list.

In that regard, Article 4 of the Law on election of councillors and representatives stipulates that a councillor or representative are voted for in the constituency based on the political party list (party election list), coalitions of political parties (coalition election list), i.e. group of

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<sup>1</sup> Universal Declaration on Human Rights guarantees the general right of participation in conduct of public affairs of a state, directly or through elected representatives (Article 21, Paragraph 1). The International Covenant on Civil and Political Rights (Official Gazette of SFRY - International Agreements, no. 7/71), in Article 25 provides for guarantees of this right, noting that each citizen has the right and opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. Convention for the Protection of Human Rights and Fundamental Freedoms (Official Gazette of Montenegro - International Agreements, no. 9/03), also regulates the right to free and democratic elections in Article 3 of the Protocol No. 1, through which the signatories commit themselves to hold free elections periodically, with secret vote, under conditions which provide for free expression of the opinion of the people in terms of election of the legislative bodies. This right was further developed through the practice of the European Court of Human Rights in Strasbourg.

voters (election list of a group of voters).

Regulating the rules on the voting procedure, the Law on election of councillors and representatives provides for voters choosing only one election list from the ballot. The vote is cast at the parliamentary election by circling a number in front of the name of the election list for which you vote, i.e. circling the name of the list or first and last name of the chief candidate on the list. This way of voting, so-called categorical ballot voting, which requires votes to categorically express with his/her vote his/her preference regarding a political party, is wide spread in the positive election legislation and represents one of the fundamental and most frequently applied methods of voting in the parliamentary elections, not only in Montenegro but in significant number of the other countries of the region.

Article 39, Paragraph 4 of the Law on election of councillors and representatives, stipulates that political party or a coalition, as the side responsible for submitting the election list (Article 38) sets the order of candidates on the list. This order decides as to who will get the representatives' mandates. Once verified by the state election commission, the order on the list cannot be changed any more. If one of the candidates was elected a representative, but is unable to accept it after the election, due to incompatibility of function (e.g. if he/she is elected for Government Minister) or some other reason, the candidate next in order automatically takes over the place.

The Law on political parties identifies parties as an “**organisation of fee and voluntarily associated citizens** for the purpose of achieving political objectives by use of democratic and peaceful methods”, while the statute of the political party, among other things, regulates composition, authorisations, methods of decision making and mandates of the party bodies; procedure for decisions about candidates and methods of selection of party bodies; procedure for identification of candidates in the procedure of elections for bodies of authority and other bodies.

Given all of the above, as well as the importance of exercising the rights of citizens in the election process, which are guaranteed by the Constitution, to promote democratic principles in this area, the Anticorruption Agency issued the opinion that in the upcoming period **wider consultations are required regarding the possible need to change the election system in Montenegro, with participation of different stakeholders, which would take into consideration current political system, social circumstances and level of development, recent changes in the election laws in other countries in the region, election system effective at the moment and totality of the electoral right and other political rights form the Constitution of Montenegro.**

 **DIREKTOR**  
Sreten Radonjić  
  
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