

Montenegro

by Lisa McLean

Capital: Podgorica
Population: 684,736
GDP/capita: US\$3,800
Ethnic Groups: Montenegrin (43.0%), Serb (32.0%),
Bosniak (8.0%), Albanian (5.0%),
other (12.0%)

The economic and social data on this page were taken from the following sources:

GDP/capita, Population: *Transition Report 2006: Finance in Transition* (London, UK: European Bank for Re-construction and Development, 2006).

Ethnic Groups: *CIA World Fact Book 2007* (Washington, D.C.: Central Intelligence Agency, 2007).

Nations in Transit Ratings and Averaged Scores

	Yugoslavia				Montenegro			
	1999	2001	2002	2003	2004	2005	2006	2007
Electoral Process	5.50	4.75	3.75	3.75	3.50	3.25	3.50	3.50
Civil Society	5.25	4.00	3.00	2.75	2.75	2.50	3.00	3.00
Independent Media	5.75	4.50	3.50	3.25	3.25	3.25	3.25	3.50
Governance*	5.50	5.25	4.25	4.25	4.00	n/a	n/a	n/a
National Democratic Governance	n/a	n/a	n/a	n/a	n/a	4.50	4.50	4.50
Local Democratic Governance	n/a	n/a	n/a	n/a	n/a	3.50	3.50	3.25
Judicial Framework and Independence	5.75	5.50	4.25	4.25	4.25	4.25	4.25	4.25
Corruption	6.25	6.25	5.25	5.00	5.25	5.25	5.25	5.50
Democracy Score	5.67	5.04	4.00	3.88	3.83	3.79	3.89	3.93

* With the 2005 edition, Freedom House introduced separate analysis and ratings for national democratic governance and local democratic governance to provide readers with more detailed and nuanced analysis of these two important subjects.

NOTE: The ratings reflect the consensus of Freedom House, its academic advisers, and the author of this report. The opinions expressed in this report are those of the author. The ratings are based on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest. The Democracy Score is an average of ratings for the categories tracked in a given year.

EXECUTIVE SUMMARY

For Montenegro, 2006 was the year for reestablishing state independence for the first time since 1918. As part of that process, Montenegro joined the Organization for Security and Cooperation in Europe (OSCE), the United Nations, Partnership for Peace, and a number of other international bodies as a sovereign country.

For the government, it was also the year for regaining a majority in the Parliament to lead the consolidation of the state and its Euro-Atlantic integration in the coming four years. The long-serving leader of Montenegro, Milo Đukanović, withdrew from the position of prime minister but remained at the helm of the ruling Democratic Party of Socialists (DPS). For the opposition, 2006 was a year of losses and of reorganization of power within its bloc. A new political force—Movement for Changes (PzP)—gained seats in the Parliament and will compete with the traditional parties for leadership of the opposition.

The newly elected Parliament started to use its new rules of procedure and to concentrate on becoming a more effective body, while directly elected mayors took the helm in all 21 municipalities, promising to focus on the problems of all citizens. With the country preoccupied by the referendum, establishing the new state and republic, and local elections, not much progress was made on the substance of Montenegro's political freedoms, although it cannot be denied that the momentous events of 2006 took place without any instability. The people spoke on the issue of state status, are ready to move on, and have high expectations for their political leaders and the new state. The inaction over the last year is unlikely to continue in the years to come, as Montenegrins seek change and an improvement in their standard of living.

National Democratic Governance. In 2006, Montenegro held the long-awaited referendum on state status and became an independent sovereign country with its June declaration of independence, which transpired without any instability. The government created the Ministry of Defense and adopted a national security strategy that saw Montenegro become a member of NATO's Partnership for Peace in December. In the autumn, parliamentary elections ushered in a new government dominated by the DPS, which had ruled since the first multiparty elections in December 1990. The Parliament adopted and began to apply new rules of procedure that open up the chance for it to exercise oversight of the executive. Work began on a new Constitution, although not much progress had been made by the end of the year. For opposition forces, it was a difficult year. The pro-union forces tacitly accepted the outcome of the referendum despite suspicions about irregularities. The parliamentary elections saw the entrance on the political scene of a new opposition

political party, the PzP, and a rearrangement of the traditional opposition bloc. Distrust and divisions between governing and opposition parties dominated 2006 and filtered down to the population. *While significant outstanding issues were resolved at long last, there was little change to the governance processes. Thus Montenegro's rating for national democratic governance remains at 4.50.*

Electoral Process. The electoral framework in Montenegro remained unchanged in 2006. There were no significant barriers to political organizing, ethnic minorities participate in elections and win seats, and public engagement in politics is high, as witnessed by a referendum turnout of 86.5 percent and an election turnout of 71.7 percent. Likewise, there were high levels of party membership, and domestic and international monitoring organizations judged the elections to be free and fair, by and large. Still, accusations of unfairness in elections persisted because of a basic distrust between the governing parties and their opponents, untimely and threatening actions on the part of public officials, and a lack of confidence that the election process will ever produce a rotation of power. The heavy international involvement in the referendum encouraged a certain degree of responsibility within the opposition related to complaints. But lawmakers have ignored the repeated recommendations of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), which are unlikely to mitigate the distrust factor but could improve respect for the law and international practice. *While Montenegrins learned about the nonpartisan management of an election process from the example of the Slovak president of the Republic Referendum Commission, the familiar piecemeal application of the law and ill-advised actions of public figures in the absence of an international authority during the parliamentary elections and unwillingness to address the OSCE's long-standing recommendations demonstrated that there was no real change in electoral management practices in 2006. Thus Montenegro's electoral process rating remains at 3.50.*

Civil Society. Because of infighting and competition among nongovernmental organizations (NGOs) and the large number of entities that use the liberal Law on NGOs to avoid paying taxes, the NGO sector continues to struggle for respect and influence. In 2006, a growing core of strong and recognized NGOs strengthened their reputations in watchdog activities, public policy research and advocacy, and civic education. Groups monitoring the Law on Free Access to Information and the Law on Conflict of Interest have been especially effective in 2006. Still, these groups continue to be dependent on foreign funding without clear prospects for long-term self-sustainability, and advocacy efforts fail when the NGO agenda clashes with the government agenda. Furthermore, the dominance of the referendum and parliamentary elections left a sparse advocacy agenda for NGOs. In the coming year, as the government adopts many key strategies, such as the strategy for sustainable development and Montenegro's Spatial Plan, the opportunity for NGOs to build respect and effect change should increase. But NGOs will also need to address some fundamental problems regarding the weakness of the public funding systems,

volunteerism and philanthropy, and the NGO legal framework. *While watchdog NGOs, in particular, forced the government to take notice, the domination of the referendum and elections left little room for real improvements in this sector. As a result, Montenegro's civil society remains at 3.00.*

Independent Media. While Montenegrins enjoy a diverse choice of print and broadcast media and all media in Montenegro made a concerted effort to be balanced in advance of the referendum, the natural tendency of the media is to value the activities of the authorities over other events in society rather than to evaluate the newsworthiness of daily events or to engage in real investigative reporting. There continue to be problems in the transformation of the former state-owned television station into a genuine public broadcaster. As the most available broadcaster in Montenegro, it was criticized in the aftermath of the referendum for unseemly exultation over the referendum results, when it is charged as a public service media with representing the opinions of both sides, and it demonstrated biases in the run-up to the parliamentary elections. *The lack of commitment to genuine transformation of the state-owned television into a public service station causes Montenegro's independent media rating to worsen in 2006 from 3.25 to 3.50.*

Local Democratic Governance. In 2006, local elections were held in 14 municipalities, and now a directly elected mayor governs in all 21 municipalities. Polarization between the opposed political blocs appeared to lessen with agreements in several municipalities, and the long-opposed DPS and Socialist People's Party even formally created a coalition government in one municipality. The general sense is that the directly elected mayors feel a greater responsibility to the citizens of the respective municipality and that the desired goal of depoliticization at the local level may be strengthened in the coming year. Still, individual municipalities operate with limited funding and are burdened by bloated bureaucracies with limited administrative or financial capacities. *Because of the election in every municipality of a mayor with direct responsibility to the citizens, Montenegro's local democratic governance rating improves from 3.50 to 3.25.*

Judicial Framework and Independence. The court system was heavily criticized by the domestic and international public in 2006. Internationally, concern focused on the method of electing judges, which allows political interference and threatens the independence of the judicial system. The election of judges will be the subject of significant debate in advance of a new Constitution, and the solution to the problem will be a key signal to the international community about the strength of Montenegro's commitment to create an independent judiciary that can combat crime and corruption. In the meantime, both the state prosecutor and ombudsman produced and sent to the Parliament their second annual reports on the judiciary's work. The Parliament adopted the Law on Judicial Education and increased the budgets of the court system and the state prosecutor by more than 50 percent. *Owing to continued*

accusations of political influence on the judiciary and the lack of any significant results, Montenegro's judicial framework and independence rating remains at 4.25.

Corruption. In 2006, there was little progress in the effort to combat corruption. After 13 months, the government adopted an Action Plan to implement the 2005 strategy against corruption and organized crime. Although a number of charges were pressed against high-level managers of public-owned companies, few cases actually entered court procedure, and no verdicts have been rendered. Parts of the government, especially the Agency for Economic Restructuring and Foreign Investment, came under heavy criticism for failing to comply with the Law on Free Access to Information. The Parliament failed once again to rectify grave shortcomings in the Law on Conflict of Interest, demonstrating a lack of political commitment to the fight against corruption. Still, amendments to the Law on Public Procurement that should promote transparency in the process and introduce monetary fines are a positive legislative step. *Given the limited amount of effort made by the Parliament and government to address one of the most challenging problems for Montenegro's political development, Montenegro's corruption rating falls from 5.25 to 5.50.*

Outlook for 2007. The major focus at the beginning of the year will be on Montenegro's new Constitution, where the questions of judicial independence, parliamentary oversight of the executive, civilian control of the military, and a number of other issues will be addressed. A particularly important issue in the Constitution will be the definition of the new state as a multiethnic, multiconfessional state. Addressing this issue may raise ethnic tensions, or political forces may find the maturity to define appropriate solutions that respect society's diversities and build trust. As such, the process of adopting the Constitution, which will require a two-thirds majority in the Parliament or a referendum, will be a significant test of the ability of Montenegro's political forces to overcome their divisions and mutual mistrust. The government will continue to push ahead on its Euro-Atlantic integration and, if serious about this goal, should introduce a raft of legislation to the Parliament and begin to implement these laws. Major items on the agenda for 2007 are the strategy for sustainable development, Montenegro's Spatial Plan, and a strategy for developing roadway infrastructure. In addition, the government intends to adopt a plan for the final privatization of state-owned companies, including the electric company, airline, and airports. For Montenegro, 2007 will be a crossroads—either it speeds ahead with its development or it stalls because of a lack of political will to change some of the fundamental traditions in Montenegrin society.

MAIN REPORT

National Democratic Governance

1999	2001	2002	2003	2004	2005	2006	2007
Y u g o s l a v i a				n/a	4.50	4.50	4.50

For Montenegro, the issue of state status dominated the 2006 agenda and had an impact on improvements in the area of national democratic governance. While major changes were made to the essential definition of Montenegro as a legal entity, secondary changes to the details of democratic governance stalled.

The May 21 referendum, in which 55.5 percent of the population voted for an independent Montenegro, brought about a complete change to the country's defined national democratic governance structure. With the declaration of independence proclaimed on June 3, Montenegro became a sovereign country, bringing to an end the institutions at the level of the State Union of Serbia and Montenegro—namely, the Council of Ministers and the State Union Parliament—and leaving a legal vacuum. In the second half of 2006, Montenegro moved quickly to address this by holding new parliamentary elections for a Constituent Assembly and convening a parliamentary committee to develop a new Constitution in mid-November.

The year began with European Union (EU)–mediated multiparty negotiations on the legal framework for holding a referendum, followed by a 75-day campaign. The referendum outcome and declaration of independence led to an active period of international recognition and admittance into international organizations, like the OSCE and the United Nations, and establishing diplomatic relations. The autumn witnessed regular parliamentary elections and local elections in 14 of 21 municipalities, followed by the establishment of a government and passage of the 2007 budget. Thus it was a year of significant accomplishments for Montenegro in terms of resolving the long-standing question of its state status and of renewing in elections the legitimacy of the Parliament's mandate and, as a consequence, the government's mandate.

Despite the distractions caused by these momentous decisions, both the outgoing and incoming governments made significant progress on European and Euro-Atlantic integration, managing to conclude negotiations on the Stabilization and Association Agreement and to sign onto NATO's Partnership for Peace program before the end of the year. Furthermore, the government managed to maintain macroeconomic stability, increase fiscal revenues by 20 percent more than planned,¹ record 6.5 percent real gross domestic product growth,² attract more than 40 percent of planned investment, end the year with single-digit inflation of 1.7 percent, decrease unemployment, and stabilize the banking sector.³

The establishment of an independent state left Montenegro in legal limbo in many respects. With the June 3 declaration of independence and Decision on the Proclamation of Independence of the Republic of Montenegro, Montenegro took on regulations in effect under the State Union of Serbia and Montenegro until the adoption of its own regulations, insofar as “they are not in conflict with the legal order and interests of the Republic of Montenegro.”⁴ It also began to establish the procedures for assuming matters that had so far been administered by the institutions of the State Union of Serbia and Montenegro.⁵ Thus the 1992 Constitution that defines Montenegro as a republic within the Federal Republic of Yugoslavia remains in force, while the 2003 Constitutional Charter of the State Union is no longer valid, although some of its provisions might apply if “not in conflict” with Montenegro’s legal order and interests.

The new Parliament began the process of drafting a new Constitution by establishing a multiparty, ad hoc Committee for Constitutional Affairs on November 10. But at its first sitting on November 20, the Parliament immediately suspended work when opposition parties refused to participate until the Constitutional Court ruled on their two petitions against laws⁶ related to the adoption of the new Constitution. The opposition argued that the 1992 Constitution had already established a method for changing the Constitution (Articles 117–119), which meant these laws contravened the existing Constitution.

The Constitutional Court stated in its December 6 decision that “independence and the change of Montenegro’s state status does not prescribe changing the Constitution by the procedures to date, but instead proposing a new, first Constitution of an independent state through procedures that the constituent authorities of that state issue. In conformity with the discontinuity of the state status, a process of discontinuity for the Constitution of Montenegro was also brought about.... The cessation of the status of Montenegro as a member republic factually has come to an end as well as the legal basis for implementing those provisions.”⁷ The opposition’s reaction to the Court’s decision was that the Court effectively ruled that the Montenegrin Constitution no longer exists. The decision highlighted for both sides the urgency of adopting a new Constitution, which requires either a two-thirds majority in the Parliament or a majority in a referendum, as ruled by the Constitutional Court.

Despite the historic and divisive decisions of 2006, Montenegro did demonstrate the stability of its governing system. While the international community fretted over the potential for chaos in Montenegro or neighboring countries because of Montenegro’s state status decision, the country managed to agree on a legal framework and hold a referendum free of violent incidents whose outcome the international community immediately recognized.

Throughout this process, opposition parties threw up roadblocks to prevent a referendum, or at least to provoke a delay. Although not easy, the mediation of the EU—through its appointee, Slovak diplomat Miroslav Lajčák—managed to surmount the obstacles leading to the passage of the Law on Referendum on State-Legal Status of the Republic of Montenegro with 80 percent of the votes in the

Parliament and the unanimous Decision on Calling the Republic Referendum on State-Legal Status of the Republic of Montenegro.⁸ The referendum campaign and vote were held in a peaceful atmosphere; the various incidents of vote buying, legal problems with the voter registries, and referendum complaints were handled by the Office of the Supreme State Prosecutor, the courts, and, when necessary, behind-the-scenes mediation on the part of EU representatives.

In the aftermath of the referendum, the Bloc for the No, comprising the Socialist People's Party, the Serbian People's Party, the People's Party, and the Democratic Party of Serbs, refused to acknowledge the results. Reportedly, some opposition parties in the coalition said they would "consider the position of the European Union that announced that the referendum is a finished issue in Montenegro because it does not want to ruin its hard efforts to build an image as a European party."⁹ Any claims of an illegitimate referendum outcome were put aside as all opposition parties engaged in the parliamentary election campaign that followed. The stability of the governing system was demonstrated further in the September 10 parliamentary and local elections, which took place in a peaceful atmosphere and returned the ruling parties—the Democratic Party of Socialists (DPS) and the Social Democratic Party of Montenegro (SDP)—to power with another absolute majority of parliamentary seats.

In 2006, the executive continued as the dominant branch of government, with the legislative and judicial branches remaining weak, underfunded, and understaffed. The European Commission continued to point to the weakness of Montenegro's administrative capacity as a major obstacle to European integration. The government continued to develop measures to address the limited professionalization of the civil service, but the visible effects were negligible in 2006.

The Assembly of the Republic of Montenegro (Parliament) focused on legislation necessary for holding a referendum, creating a new state, managing the state, and meeting international commitments. Beyond that, the Parliament adopted in July new rules of procedure with the support of a wide range of political parties that should "assist the role of the opposition and streamline parliamentary work."¹⁰ Parliamentary sittings in November and December suggested that the intention of the new rules to move legislative discussion from the politically charged arena of the plenary sitting to the more deliberative arena of committees was having some effect.¹¹ In addition, the governing parties allowed opposition members of Parliament (MPs) to assume the chair of two committees, including the important Budget, Economy, and Finance Committee; the new rules also provide for deputy chairs that come from the bloc opposing the chair.

Still, the old habits of both governing and opposition parties did not disappear overnight. The ruling parties repeatedly scheduled urgent parliamentary sittings for specious reasons in order to satisfy the executive's last-minute political priorities,¹² and in an effort to enforce party discipline, they even demanded repeated open votes in two cases where the original vote did not go in favor of the government. Meanwhile, the opposition did not give up its practice of using parliamentary plenary sittings to communicate directly with voters on the immediate political debates of

the moment. But with the new parliamentary mandate, several opposition parties addressed concrete legislation on the agenda to make their larger political points.

The September parliamentary elections introduced a reconfigured opposition bloc. The core of the bloc continues with 34 mandates (or 42 percent of the seats) but includes a new party, Movement for Changes (PzP), with 11 mandates and a new balance of forces within the traditional Serbian bloc of the Socialist People's Party, Serbian People's Party, People's Party, and Democratic Serb Party. The new opposition bloc is eager to use the instruments of control provided in the new rules of procedure and even urge that these instruments be codified into the new Constitution. But several of these instruments require approval of a parliamentary majority, which the opposition alone does not possess. The Parliament's best tool for exercising executive oversight may turn out to be the special session for MP questions of government and a special prime minister hour that must be held once every two months.

Therefore, a continuing problem for Montenegrin governance is the significant dominance of the executive branch and its representatives in the Parliament who campaigned on a slogan of reaching out to all Montenegrins and healing the divisions. By the end of 2006, there was little noticeable proof of this extended hand of friendship from the governing parties, with the important exception of the withdrawal from power of the politically divisive prime minister, Milo Đukanović, who had been the focus of the opposition's wrath in both the referendum and parliamentary election campaigns. While many argued that Đukanović's continued presence on the political scene as party leader meant that he would exercise power from the shadows, even the opposition welcomed the appointment of former minister of justice Želko Šturanović as prime minister. The new cabinet was a mix of new and old faces and will have the job of healing divisions and building trust with the opposition.

But the ruling parties are unlikely to accomplish this if the government does not provide opportunities for the opposition to be involved in the policy debate. Similarly, the opposition needs to participate responsibly in the policy process and use its control powers in the public interest, not as a way to settle scores with current and former members of government.

In regard to democratic and civilian oversight of the military and security services, the changing state status of Montenegro left much of this framework "under construction." On June 21, the Montenegrin government established the Ministry of Defense, named the prime minister as minister of defense until the elections, and adopted a national security strategy. On August 11, President Filip Vujanović named the chiefs of the general staff, and work began to fulfill the conditions of membership in NATO's Partnership for Peace. Boro Vučinić, a civilian, became minister of defense. The president signed the Partnership for Peace membership agreement on December 14, a step that should assist greatly in establishing democratic control of the armed services. In the meantime, the government and Parliament still need to adopt the army doctrine, defense strategy, and Laws on the Army and on Defense.

Electoral Process

1999	2001	2002	2003	2004	2005	2006	2007
Y u g o s l a v i a				3.50	3.25	3.50	3.50

On May 21, 2006, Montenegro held a referendum on state status. The OSCE concluded that the referendum provided Montenegrin citizens “with a genuine opportunity to determine the future course of Montenegro as an independent state.”¹³ Of all elections in Montenegro’s multiparty system, it was probably one of the best run owing largely to the involvement of the international community. Negotiations for the *lex specialis* governing the referendum took a month and a half and required an EU-appointed mediator. In an effort to prevent a boycott of the referendum by State Union preservation advocates, a great deal of energy was put into taking the demands of the opposition seriously and incorporating them into the legislation. Nonetheless, in accepting EU mediation, the government also insisted on full respect for Montenegro’s institutional and legal framework and on dialogue within the institutions.

Based on opposition demands, special provisions were put into legislation on the use of state resources in the campaign, and a special parliamentary committee was established to monitor state resources. Similarly, “relevant European organizations” appointed the head of the Republican Referendum Commission (RRC), Slovak diplomat František Lipka, who would cast a vote only in the event of a tie between the otherwise evenly split commission. Despite the pro-union bloc’s effort to dictate media coverage by public and private outlets, it succeeded only in establishing a parliamentary committee to monitor the media and discuss complaints. The big stumbling block in the negotiations was the majority required to win the referendum. The government had announced that it would go no higher than 41 percent of registered voters, while the union bloc said it would accept nothing less than 50 percent of registered voters, so the EU imposed a requirement that 55 percent of those voting must vote in favor for the question of Montenegro’s independence to carry.

This solution caused consternation inside the independence bloc because it essentially gave the pro-union bloc a 10 percent head start, valued the “no” vote more than the “yes” vote, and left a “gray zone” in the event that “yes” got more than 50 percent but less than 55 percent. While contrary to the concept of one-man-one-vote, the imposed solution took away the incentive to boycott the election and, in fact, encouraged both sides to maximize their respective turnouts. In the end, the law was adopted with the votes of 60 MPs from 6 of 10 parties in the Parliament, and all parties supported the referendum date and question.

Each side in the 75-day campaign was given €1 million (US\$1,282,050), which was used to buy broadcast advertising, billboards, leaflets, T-shirts, and other promotional materials; to hold rallies; and to pay for general campaign expenses, such as staff and travel. On March 10, all media signed a code of conduct in the pre-referendum period that was expected to protect independent editorial policy,

prevent hate speech, and promote independent, objective, fair, and balanced reporting on all parties involved.¹⁴ The Public Service TV and Radio (RTCG) and all private television and radio stations set up debates between representatives of both sides on issues that would be impacted by the state status vote (that is, the economy, armed forces, European integration, and minority rights). In general, there was media diversity, and “actors of both political options got to present their positions in the media. Bias toward either option in any media did not go beyond the boundaries of editorial freedom.... In transmitting the position of ‘yes’ and ‘no,’ the space given to the independence positions surpassed that given to the union position in all of the main news programs.”¹⁵

The independence bloc’s campaign focused on assertions that nothing would change in the country’s relations with Serbia and that an independent Montenegro would in general proceed faster toward Euro-Atlantic integration and economic growth. With the governing parties in the independence bloc, the government’s largesse was in full swing in the run-up to the referendum, providing subsidized credits for housing and small- and medium-sized enterprises, livestock premiums, and salary increases for police, customs, and other state employees.

The opposition bloc, or “no” campaign, focused on the negative consequences of independence for Montenegro, including severed ties to health care, education, and family in Serbia and the prospect of the new state becoming the private fiefdom of a few rich business owners. As the EU suspended Stabilization and Association Agreement negotiations with Serbia and Montenegro at the beginning of May for lack of cooperation with the International Criminal Tribunal for the former Yugoslavia, the union bloc found it hard to convince people that Euro-Atlantic integration was likely to proceed faster in union with Serbia. A large part of the campaign, reflected in the main slogan “There Are Enough of Us to Say No,” was an attempt to encourage the “no” voter to have confidence in the bloc’s ability to win. To promote that confidence, the “no” campaign focused on campaign monitoring rather than promoting its state status option. For example, the “no” bloc set up legal and media monitoring teams in each town for any voters who wished to report instances of vote buying, efforts to manipulate the voter registries, or to put pressure on voters, especially on those working in the public sector.¹⁶

The “no” campaign issued regular accusations of pressure and vote buying. On March 24, the union bloc even managed to find and release publicly videotaped proof of vote buying by the ruling DPS. The tape showed individuals offering to pay a €1,500 (US\$1,923) electric bill for a “yes” vote at an illegally taped private meeting. Stories immediately emerged about a setup, and in a surprisingly quick court procedure, two DPS activists were convicted and sentenced to 8 and 10 months in prison for offering to pay a bill in exchange for a vote, while the alleged videographer was sentenced to 10 months in prison.

By far the most serious incident during the campaign was the April 21 arrest of an opposition member of the RRC for falsifying voters’ requests to be placed on the registry. Allegedly, the RRC member cut corners by forging the signatures of valid voters. The opposition and EU representatives were furious at the arrest of such a

high-level member of the referendum administration. The opposition walked out of the RRC, and the referendum process appeared to be in jeopardy until the police released the member and behind-the-scenes discussions calmed the atmosphere.

As the voter registration period drew to a close, the opposition complained about irregularities on the registries and demanded access to police records of identity cards for comparison. In a highly irregular move that contravened Montenegrin laws governing privacy, a few members of the RRC and international observers were given access to the police records and the opposition was able to reassure itself of the veracity of the voter registries. Still, right up until the announcement of the official results, the pro-union bloc complained repeatedly of vote buying, pressure, and manipulation of the voter registries, which the governing parties claimed was an attempt by the union bloc to establish an alibi for their eventual demise in the referendum.

In the aftermath of the vote, the opposition refused to accept the “yes” result. With the winning side gaining 2,046 more votes than the 55 percent needed, opposition parties alleged ballot box stuffing and double voting in the eastern municipalities of Plav and Rožaje, where they said turnout spiked in the hours just before the polls closed and where they had fewer representatives at polling places. The opposition submitted 241 complaints related to 187 polling stations, most of which the RRC rejected or sent to the Office of the Supreme State Prosecutor. The margin of victory was the equivalent of three polling stations, and it is estimated that some 16,000 diasporic persons returned home to cast their votes. But there is no doubt that the margin of victory was above 50 percent and that the “yes” side obtained almost 46,000 more votes than the “no.”

May 21, 2006, Referendum

Results

Registered Voters	484,718	
Number of Voters Voting	419,240	
Number of Valid Votes	415,663	
Option	Number of Votes	Percentage of Valid Votes
Yes	230,661	55.5
No	185,002	45.5

Source: Republic Referendum Commission, May 31, 2006.

Not all of the positive experiences of the internationally supervised referendum were replicated in the autumn elections. On July 11, the president called parliamentary elections for September 10, along with elections for 13 of 21 municipal assemblies, 13 of 21 mayors, and 2 city assemblies. In addition, the mayor of Žabljak called an extraordinary election for the Žabljak Municipal Assembly for the same day.¹⁷ When the votes had been counted and the results announced, the OSCE/ODIHR judged these elections as “largely in line with OSCE commitments

and other international standards for democratic elections, although a number of reappearing challenges remain to be addressed.”¹⁸

In the rush to hold elections to capitalize on the referendum victory, the ad hoc parliamentary committee set up in June to incorporate OSCE recommendations into the election legislation had barely begun to work before elections were called.¹⁹ The election law was subsequently changed on July 27, a practice not in keeping with international standards. Ruling and opposition parties justified their actions by arguing that the changes were only minor ones.

Next, the prime minister and minister of finance announced that the competing parties would not receive state campaign financing, as prescribed by the Law on Political Party Financing, because budgeted funds had been spent on the referendum campaign. After many public complaints, the government set aside 10 percent of the funds that political parties were entitled to receive in advance of the election, and each of the 12 competing lists got €12,000 (US\$15,384).²⁰ It was never made clear whether the rest of the €2 million (US\$2,564,103) was distributed to parties that gained seats in the elections. At the same time, only one party—the ruling DPS—submitted a report on its income and expenses; this was posted on the Republican Election Commission’s Web site, as prescribed by the Law on Political Party Financing.²¹ Thus, in the end, neither the government nor competing parties felt the need to respect the law.

Additionally, the public service media stated it would offer coverage and debates to parliamentary and nonparliamentary parties on a proportional basis relative to party strengths. While the public media’s effort to filter out lesser-known parties with little chance of gaining votes should be considered a public service, media guidelines contravened provisions in the Law on Election of Councillors and MPs and the Law on Radio Diffusion that provide for equal coverage and participation during the preelection period.²² Another problem with the public service media’s coverage of the campaign was that it took most of its “political” content out of the main news program and deposited it into a special post–nightly news broadcast.²³ The Association of Young Journalists (AYJ) concluded that in both August and the first 10 days of September, “the public service’s main news program reported much more on the authorities than other political subjects and in a dominantly positive context.”²⁴

The campaign was generally calm, a result of the summer period and the parties’ limited resources. On a positive note, there were few complaints about voter registries for the first time, and when the election results were announced, no party refused to accept the result. Still, accusations of vote buying, pressure, and intimidation of voters did not disappear from the scene. In one case, the Port of Bar terminated its contract with the PzP candidate for mayor in the municipality of Bar, claiming that the contract had expired in early 2004. The PzP candidate claimed that his dismissal was punishment, and the OSCE/ODIHR noted that “questions remain about the timing of the decision.”²⁵ In another interestingly timed event, the police questioned PzP leader Nebojša Medojević about tax evasion based on an anonymous tip three days before the election.²⁶

In its final report, the OSCE/ODIHR's 33 recommendations echoed those previously stated over the nine years in which the body has monitored elections in Montenegro. In particular, the ODIHR recommended full respect for all laws related to elections, that candidates not also be members of election commissions, and the elimination of the long-standing Montenegrin practice of allowing political parties to distribute seats on their lists.²⁷ In the September parliamentary elections, there were 12 coalitions and parties competing for 81 seats. With a turnout of 71.7 percent, the results were as follows:

September 10, 2006, Parliamentary Elections

Results

Registered Voters	484,430
Number of Voters Voting	345,757
Number of Valid Votes	338,835

Election List	Previous Number of Mandates	Number of Votes	Percentage of Votes	Number of Mandates
Coalition for European Montenegro—DPS-SDP	38	164,737	48.6	41
Serbian List	4	49,730	14.7	12
Socialist People's Party—People's Party—Democratic Serb Party Coalition	26	47,683	14.1	11
Movement for Changes	—	44,483	13.1	11
Liberals and Bosnian Party	1	12,748	3.8	3
Democratic Alliance in Montenegro—Party of Democratic Prosperity	1	4,373	1.3	1
Democratic Union of Albanians	1	3,693	1.1	1
Albanian Alternative	—	2,656	0.8	1

Source: Republic Election Commission, September 25, 2006, www.rik.cg.yu.

Civil Society

1999	2001	2002	2003	2004	2005	2006	2007
Y	u	g	o	s	l	a	v
				2.75	2.50	3.00	3.00

NGO legislation in Montenegro continues to be among the most liberal—and the most abused—in the region. Registration of an NGO requires the names of

five individuals and a Montenegrin address. The 1999 Law on NGOs defines no reasons for denying registration and gives few details about revoking registration. Given the extremely liberal provisions of the law, Montenegro has more than 3,600 registered NGOs, with 20 to 40 new organizations registering every month.²⁸ An overwhelming majority of them either do not function or are small businesses, such as cafés, taxi companies, consulting firms, schools for foreign language instruction, and kindergartens.²⁹ No more than 200 NGOs can be considered part of the genuine civil society category, and the vast majority are concentrated in Montenegro's capital, Podgorica.

The Law on NGOs defines few regulations for groups, but laws coming from the Ministry of Finance regulate their income and expenses. Registered groups are eligible for a wide range of tax breaks, including exemption from paying value-added tax on their services, profit tax, real estate tax, and property tax. However, as is the case with every employer in Montenegro, NGOs are burdened with heavy taxes on salaries. An NGO that pays an employee €100 (US\$128) must give an additional €65 (US\$83) for taxes and benefits, while on €1,000 (US\$1,282), the taxes and benefits add up to €1,005 (US\$1,288).³⁰ NGOs are hard-pressed to raise that kind of money for salaries and, like others in Montenegro, are tempted to lie about actual earnings. Only a handful of NGOs submit financial reports to the government as required by law, and an even smaller number commission annual audits. In 2007, the Ministry of Finance plans to introduce a flat tax on income and reduce the tax level over several years, which will help the NGO sector as well as the business and public sectors. But pension and health contributions will continue to be a burden for all sectors.

Montenegro continues to develop a core of established civil society organizations focused on watchdog activities, public policy research and advocacy, and education. The most active public policy research organizations are in the field of economics and business and have close ties to the government. In the past year, the Montenegrin Business Alliance lobbied actively and successfully for reducing the income tax and introducing a flat tax, while the Institute for Strategic Studies and Prognosis produced extensive statistics that are used by international organizations like the World Bank and the United Nations Development Programme. Other NGOs have not been as successful in their public policy advocacy because their issues—such as changing legislation on elections, NGOs, gambling, and conflict of interest—were not government priorities. Thus these NGOs demonstrated a certain weakness in their ability to influence government. Admittedly, NGOs were faced with a government focused on delivering independence, a renewed majority in the Parliament, economic development, and establishing a new state in 2006. It would be hard for any group to be heard through that cacophony.

The most successful watchdog organizations in 2006 were those dealing with the Law on Free Access to Information. Two NGOs in particular have flooded every branch of the government with requests for information and have issued regular report cards on the best and worst ministries and other governmental bodies in responding to and respecting the law. Over time, these efforts have helped to improve

government compliance somewhat. However, this type of oversight needs to continue, since respect for the law remains poor, especially in the Agency for Privatization and Economic Restructuring. NGOs are also active in monitoring the Law on Conflict of Interest, urban planning, disability rights, consumer protection, citizen participation in local government decision making, NGO–local government cooperation, and respect for the public service broadcasting legislation. And, of course, several NGOs were active this year in monitoring the referendum, the elections, and media behavior during these two events.

A third group of NGOs is involved in civic education activities on such topics as the referendum, European integration, democracy and human rights, and ecology. In many cases, organizations from all categories are included in government working groups or councils where they comment on public policies and legislation. Still, a number of NGOs have found that commentary and agreement in the public arena of a council or working group is soon reversed when the policy or legislation is returned to the inner halls of government. As a result, NGOs often feel that their participation in these councils is a governmental effort to satisfy international organizations instead of evidence that the government values them and their opinions. According to the Center for the Development of Nongovernmental Organizations, “The work and scope of government bodies where NGOs are included most often are judged to meet sporadically, to not function well, and to be limited in scope.”³¹

In general, NGOs are dependent primarily on international donations, which have declined in the last year. NGOs do not collect membership fees because few are membership-based organizations and because there is no tradition of membership fees in Montenegro. A few NGOs are able to sell their services or publications, but this type of income is minimal. The government sets aside some funds for groups. Part of this money is a direct line item in the republic budget that is distributed through the Parliament, and part is money given through the Ministry of Culture and Ministry of Tourism. Local governments also provide funds to NGOs.

The process for distributing parliamentary funds is subject to great controversy. NGOs eligible for funding are those that deal with human rights, democracy, civil sector development, European integration, social activities, ecology, culture, and education. A parliamentary commission made up of MPs publishes a competition every year to select those that will receive funding, but there are no defined criteria for decision making. In many cases, the commission provides much less than the requested amount without any clear indication of what part of the project the commission wishes to fund. Finally, there is no system to monitor the expenditure of funds or any requirement to submit a report.

In 2006, the media criticized the commission for giving funds to two organizations whose leaders were DPS candidates for municipal councillors and found other instances of NGO connections with ruling parties. After years of constant controversy and discord between civil society and the government, a coalition of the most active NGOs—Cooperation Toward the Goal—was formed in August 2006 to address three fundamental problems: 1) the lack of a formal agreement between

US\$12,820), which is quite high for individual journalists. Nonpayment of fines can result in prison time.

In 2006, the previously defunct Journalists' Self-Regulatory Body was revived, membership on its council was expanded to include a more representative sample of Montenegrin media organizations, and its statutes were revised. Two media monitoring organizations provided detailed reports to the council each week on potential cases of journalistic misconduct in both the print and electronic media. In the run-up to the referendum, the self-regulatory council assessed that the Montenegrin media behaved in a generally correct and professional fashion. Despite some progress in the field, the Journalists' Self-Regulatory Body is still seen as relatively weak and does not incorporate all major print and broadcast media in Montenegro, reducing its influence.³⁴

There is a diversity of opinion and political viewpoints among the print media. The largest-circulation daily tends to be the most neutral and was commended in the run-up to the referendum for its balanced coverage.³⁵ The second largest daily opposes the governing parties, and in the run-up to the referendum it favored continued union with Serbia. The state-owned newspaper is obliged to publish press statements received from any political subject or responsible NGO. In its own reporting, this public service daily favors the government or is neutral. In the period before the parliamentary elections, it was criticized for "strongly promoting" the DPS-SDP coalition and "strongly criticizing" the PzP.³⁶ Finally, the lowest-circulation daily functions as a press agent for the governing parties and their priorities.

Radio and television news broadcasts are neutral or favorable toward the government. Especially in the run-up to the September elections, the public service television station increased its favorable coverage of the government. The opposition point of view also received airtime and was portrayed in a neutral fashion. However, coverage of the opposition was by no means comparable to coverage of the ruling parties and its government and parliamentary leaders.

In fact, there is a strange phenomenon in Montenegrin broadcast media, particularly in public service media, where news editors arrange broadcasts to begin not with the news of the day, but rather with what the president, speaker of the Parliament, prime minister, and/or ministers did or said. In some cases, significant front-page headlines in the daily newspapers do not even make it onto the nightly news. Thus public service media conduct themselves more as the broadcasters of public servants than as servants of the public and its interests. Other private television stations follow the example of public service television, although to a lesser extent.

A new practice developed during the August and September campaign season. Opposition parties took to buying time on private television stations to broadcast talk shows, "debates," and interviews with favorable candidates. The paid nature of these broadcasts was clearly indicated, and there was no apparent violation of the law. But the practice is a worrisome commentary on the state of independent journalism and media in Montenegro. Since opposition parties believe that the news is a one-sided advertisement for the governing parties, they have no choice but to buy their own news. Unfortunately, this news was a one-sided conversation with the

opposition side of the spectrum. In both cases, citizens were denied the opportunity of actual, informed discussions between those of opposed viewpoints. But no one can deny that the public has many opportunities in broadcast and print media to find those viewpoints.

The fact is that both private and public television stations have limited resources. One of the reasons that government coverage dominates the evening news broadcasts (and that statements of opposition parties are given only by the news reader) is that none of the stations have enough cameras or staff to cover all the events in a day. Similarly, stations have taken money to broadcast opposition party programs because they have a limited broadcasting range, limited audience, limited number of advertisers, and, as a consequence, limited income. Radio stations also suffer from limited resources. In contrast, the two largest-circulation dailies do not have this problem and do a brisk business of advertising and distribution.

Investigative journalism in Montenegro is limited for a number of reasons. First, it is difficult to get access to information and reliable facts. Second, few people are willing to go on the record, which diminishes the impact of reporting. Finally, and most important, investigative pieces sometimes result in anonymous threats, lawsuits, or personal verbal attacks in public, although there were no cases of physical assaults on investigative journalists in 2006.

The most preoccupying media development in 2006 was the stalled transformation of the former state television into a public broadcaster. Although the Law on Public Broadcasting of 2003 looked good on paper and was praised by the international community, it has not worked in practice, and the RTCG is still under political control. The RTCG Council and Managing Board have not demonstrated the power or will to make significant changes, and they have violated the Law on Public Broadcasting without any consequences. For example, the RTCG Council has not adopted or made public an RTCG financial report since 2004, and it does not publish reports about its work, as required by law. Its sessions are closed to the public more often than not. The council president attended a preelection political event and sat in the front row, and two council members are government appointees on the boards of public institutions, which is against the spirit of the Law on Public Broadcasting.³⁷

The election of RTCG Council members itself was a problem throughout the year. In February, representatives of the NGO sector and journalist associations accused two nominees of having misused the law by creating NGOs simply to nominate themselves to the council. While both nominees denied the charges and noted that the legal regulations had been respected, one argued that “no one was bothered when other individuals, who were reproached for conflicts of interest, previous and ongoing connections with political parties or other power centers, were elected to the council.”³⁸ When the issue came up for a vote in the Parliament in April, an MP suggested that the vote on the nominations be delayed so that MPs “would not make a mistake while things in the professional journalist associations and the nongovernmental sector had yet to crystallize,”³⁹ which led the two nominees to quietly withdraw their names.

At the end of the year, the NGO sector nominated its representative to the RTCG Council. The Parliament rejected the nomination, stating that the individual was close to one of the opposition parties and would essentially represent that party on the council. The NGO community was outraged and claimed that the law gives the Parliament the right to confirm appointments to the council, not to reject nominees. It is clear that something must change to remove political influence from public service broadcasting, whether that be simply a greater respect for the law or actual changes in the law.

Local Democratic Governance

1999	2001	2002	2003	2004	2005	2006	2007						
Y	u	g	o	s	l	a	v	i	a	n/a	3.50	3.50	3.25

A significant step in the decentralization process began in July 2003 with the passage of the Law on Local Self-Government, Law on the Election of Mayor, and Law on Local Self-Government Financing. Now, each of the 21 municipal governments adopts its own budget and plans for development, construction, urban planning, capital improvement, and environmental development. Among other things, municipal governments take care of social welfare, child welfare, sports and recreation facilities, libraries, communal services, and public transport. Most municipalities, especially those in the north, function with limited financial resources and bloated bureaucracies.

Citizens are permitted by law to participate in local government in numerous ways, including public debates, local referendums, and local elections. Citizens elect their representatives every four years; in 2006, elections occurred in more than 10 municipalities. Under the new laws, there is direct election for municipal mayors, while councillors are elected according to a municipal-wide proportional representation system. On September 10, 13 new mayors and 14 municipal assemblies were elected, so that each of Montenegro's 21 municipalities now has a directly elected mayor. In addition, provisions in the 2005 Law on the Capital City of Podgorica regarding city municipalities within Podgorica and city assemblies went into effect with the September 10 election of city assemblies in Tuzi and Golubovci.

When all the votes had been counted and governing coalitions were established, opposition parties continued to fully control power in 3 municipalities, while the government fully controlled power in 13 municipalities and held the powerful mayoral position in another 4. In a historic agreement reached in late December, the municipality of Kolašin saw the formation of a coalition between the long-opposed DPS and the Socialist People's Party. The experience of previous years caused all parties to put up serious mayoral candidates, and the new crop of mayors appears to be committed to delivering improved services to citizens. Similarly, the political parties have managed to overcome party divisions, and in municipalities with divided governments, there appear to be none of the decision-making obstructions seen

previously in the northern tourist municipality of Žabljak, where local government did not function for nearly two years and there were four elections.

Part of this newfound cooperation comes from an amendment to the Law on Local Self-Government passed in 2005, which transfers the power of appointing the city manager from the municipal assembly to the mayor. Provisions giving the city manager responsibility for appointing the rest of the city administration remained unchanged, as did the provision allowing the mayor to dissolve the assembly if it did not make decisions within its sphere of responsibilities. Heavily criticized at the time by the opposition, the amendment, which “practically put 80 percent of the authority in the hands of the mayor,”⁴⁰ may have contributed to responsible politics in 2006.

The Law on Local Self-Government also provides for citizen initiatives, community and municipal referendums, and citizens’ assemblies to provide public input in local decision making. As an example, several municipalities concentrated on developing their urban plans in 2006, providing regular and vigorous public debates. All municipalities have public Web sites; many are only tourist sites, but several of the more developed municipalities provide up-to-date details about local public services, municipal budget, taxes, and contact information.

In the 2006 turnover of power, the new administrations in some municipalities found that their predecessors had left large debts—a sign of local mismanagement and a lack of state government budget control. The State Audit Institution, established in April 2004, has control over municipal budgets, and in 2006 it audited the final accounts of Nikšić for 2004 and Danilovgrad for 2005. Still, the State Audit Institution had a staff of only 19 people in 2006, which will make it hard to control more municipal budgets.⁴¹ In the past, opposition municipalities have used local government as a source of employment for party sympathizers—in these cases, the staff salaries are a drain on the budget, and the municipality has few skilled employees. However, there is no guarantee that the new DPS-led governments will be more responsible in their hiring practices since there is no tradition of recruitment based on merit and experience.

A draft 2007 budget for one of the better-off municipalities in the poorer, northern part of the country demonstrates the dilemma of municipal independence in Montenegro. While one-third of Bijelo Polje’s municipal income will come from local taxes and fees, more than half of it will come from budget transfers from the Equalization Fund, which is a fund in the national budget for support to the poorer municipalities that have less ability to raise revenue. Then, almost a quarter of that income will be used to pay salaries and other employee benefits, and only one-third will be used for capital investments.⁴² At that rate, development in even a relatively prosperous municipality will take time.

In 2006, the Parliament approved the Law on Communal Taxes, which goes into effect on January 1, 2007. The need for this law came about when large companies complained of being charged exorbitant local taxes by some municipalities. For example, the Electric Company of Montenegro had to make a compulsory payment of €560,000 (US\$717,949) in the municipality of Budva in 2006.⁴³

Thus the law gives parameters for how much tax municipalities can charge. Unless other funds are found to replace the lost revenue from the big companies or unless spending decisions change, municipalities may find themselves strapped for cash in 2007.

Despite these challenges, the new class of mayors from both opposition and ruling parties exhibits a greater sense of responsibility. Opposition mayors no longer refuse to meet with or stand next to a government official from the ruling parties. They clearly understand that they can be more effective mayors if they find a way to cooperate with the national level of governance. Equally, the governing candidates were chosen for their professional management skills. Both sides understand that citizens closely follow municipal management and will harshly judge those who do not deliver. Still, the municipalities have much work ahead to strengthen their administrative capacities, financial management, and public procurement practices.⁴⁴

Judicial Framework and Independence

1999	2001	2002	2003	2004	2005	2006	2007
Y u g o s l a v i a				4.25	4.25	4.25	4.25

The 1992 Constitution guarantees fundamental political, civil, and human rights, including freedom of expression, religion, association, and business and property rights, which are respected by the state. But as noted earlier, the referendum and declaration of independence created a legal vacuum in applying the Constitution. Therefore, the quick adoption of the Constitution in 2007 will be quite important.

Based on the 2002 Law on Courts, there are 15 basic courts for crimes with a maximum sentence of 10 years, 2 high courts for more serious crimes and for appeals from the basic courts, 2 commercial courts, an administrative court, an appellate court that hears high court appeals when the latter operates as a first instance court, the Supreme Court, which deals with questions of law referred to it, and the Constitutional Court.⁴⁵ There are 225 judges working in this court system. In addition, there are 85 prosecutors assigned to the various courts and 1 prosecutor and 1 deputy prosecutor for organized crime.⁴⁶

For the second year in a row (and as required by law), the Office of the Supreme State Prosecutor submitted an annual report to the Parliament on its activities in 2005. In the 2004 and 2005 reports, the Office of the Supreme State Prosecutor criticized the courts for their lengthy investigations and trials, poor decisions, and inadequate sentences. Despite improved relations and communications with the police in the pre-arrest process, the report notes that 47 percent of the 4,933 requests for investigations remained unresolved by the end of 2005: "The data on the number of unresolved investigations leads to the conclusion that in 2005 the courts were behind schedule, even though there were 10.8 percent fewer unresolved investigations compared with 2004. Investigations require quick and efficient processing

because from that depends the quality of the gathered evidence and the outcome of the case.”⁴⁷

Likewise, the 2005 *Report of the Ombudsman* noted that 42 percent of complaints related to the length of the judicial process and nonenforcement of court decisions.⁴⁸ International institutions monitoring Montenegro, such as the Council of Europe and the EU, have consistently pointed to the weak judicial system as a key obstacle to Montenegro’s reform process. A December 2006 poll showed that 51 percent of Montenegrins do not think the courts are independent, 45 percent believe that courts are biased, and 78 percent do not think that court procedures are completed in a reasonable period. Also, only one-third think the work of the courts is public, while another 35 percent think it is not public.⁴⁹ On December 28, when the only suspect in the 2004 murder of a *Dan* journalist was released after the court ruled the prosecutor had not proved the case against the suspect, the reputation of the court system fell even further. Correct or incorrect, the long-awaited conclusion of this two-year trial was a disappointment to many.⁵⁰ After the dust settled, the public was left wondering whether it is the courts, the prosecutors, or the police who are at fault. The prosecution has appealed the decision to the high court.

The president of the Supreme Court has campaigned hard to increase the salaries of judges and others working in the court system. He has also sought greater authority for the judiciary over its budget and hiring processes and wants that authority codified in the new Constitution. However, many argue that the judicial leadership has failed to convince budget officials, the Parliament, or the general public that it deserves this increased authority and responsibility. In 2006, the judiciary did little to address the concerns raised earlier; most often, it reacted to criticism with loud denunciations rather than corrective action. Despite the criticisms, the presidents of the various courts proposed the dismissal of only two judges for “unskilled and unscrupulous” work in 2006. Subsequently, the Administrative Office, which supports the Judicial Council, failed to send the paperwork to the Parliament within the 90-day deadline. While the office took full responsibility for the mistake, it “insisted that the deadline was not obligatory according to its interpretation of the Law on Courts.” A great public furor ensued over this incident, focusing on the court system’s lack of professionalism and seriousness.

The Administrative Office experienced other problems in 2006. After a year of operation, the office had not yet defined its organizational structure so that it could begin hiring based on a competitive system.⁵¹ As a result, those currently working in this new institution were not chosen with regard to clearly defined skills and responsibilities. In December, the recently fired accountant of the Administrative Office was arrested for embezzling €190,000 (US\$243,590). As the investigation progressed, four more people, including the director of the Administrative Office and a judge, were implicated in the scandal.⁵²

The mandate of the Judicial Council expired at the beginning of December 2006. This body (made up of six judges, two law faculty professors, and two well known legal experts) nominates and dismisses judges, and the Parliament confirms the decisions. Equally, the Parliament confirms the nominees of the courts, the law

faculty, and the Lawyers Association, but in December it failed to vote on the nominees for the new Judicial Council. In this process, no effort was made to enlighten the public or the Parliament about the merits of the nominated candidates. There were no stated criteria, and nominating meetings were not open to the public. Thus the body in charge of nominating and requesting the dismissal of the entire judiciary failed in 2006 to create public confidence with professional and transparent procedures.

In fact, the most controversial debate on the new Constitution—outside of the emotional discussions over official language, the church, and state symbols—already centers on the procedure for electing judges. Domestic and international experts argue that the Parliament’s involvement politicizes the appointment and dismissal process and needs to be eliminated. Some experts argue that the appointment process should be left solely to the Judicial Council. But since this body is made up of people from a very tight circle, there is concern that it cannot police itself and needs some form of outside control.

A bright spot in the judiciary is the administrative court. Tasked with protecting citizens’ rights and adjudicating responsibilities in administrative matters, the administrative court’s seven judges continued for the second year in a row to clear away cases. It received 1,628 new cases and issued 1,618 decisions, as well as some 9,000 decisions made on the voters list during the referendum and election periods. It resolved almost 2,400 other cases that were left over from earlier years, and it left 1,458 cases unresolved at year’s end. The president of the administrative court noted that the “work of the state and local administrations has many illegalities in both implementing processes and substantive regulations.... Of all the cases decided, half of the administrative acts were annulled or repealed....”⁵³

A number of the administrative court’s decisions related to the state’s response (or lack thereof) to requests for information in line with the Law on Free Access to Information, which went into effect on December 20, 2005.⁵⁴ The most recent World Bank report notes the importance of the administrative court in strengthening state institutions through its decisions. This same report also notes that the Montenegrin government needs to “strengthen the capacity of the administrative court to render decisions on a timely basis to preserve the integrity of the system. To that end, the staffing resources (either judges or judicial support) should be expanded to help clear the backlog of cases and to keep up with the flow of new cases that come in.”⁵⁵

Confidence in the court system is quite low largely because of the length of court procedures and also because no large cases of corruption or organized crime have ever resulted in a conviction. In 2006, the Law on Judicial Education was adopted and should begin to function in 2007. In addition, the 2007 state budget increased funding for the Office of the Supreme State Prosecutor by 54 percent and by 51 percent for the court system.⁵⁶ These measures could be a sign that judicial reform will soon become a priority.

Corruption

1999	2001	2002	2003	2004	2005	2006	2007		
Y	u	g	o	s	l	a	v	i	a
				5.25	5.25	5.25	5.50		

The European Commission *Progress Report on Montenegro* covering the period from September 2005 to October 2006 again noted that Montenegro's weak administrative infrastructure in the executive, legislative, and judicial branches, as well as at the municipal government level, leaves a large scope for corruption: "Much remains to be done [to upgrade the administrative capacity], notably in the areas of transparency and accountability, financial control, public procurement, and budget management as well as management of public assets and licensing procedures." The report also notes that "the causes of corruption are related to shortcomings in the transition process and the frequent abuse of administrative procedures. The overall legal and administrative framework for the management of public assets contains loopholes that allow corrupt activities to take place."⁵⁷

The best example of a loophole that permits corruption is the long-criticized Law on Conflict of Interest passed in March 2005 that, while prohibiting members of government, judges, and high-level prosecutors from being part of an economic entity owned by the state or local government, introduced amendments that allow all other public officials to serve one economic entity "in exceptional circumstances." At the time of the amendments, the MPs argued that because of their low salaries, they needed to be allowed to participate on one board of a public company. Since adopting the law, the basic MP monthly salary has increased by €200 (US\$256) to approximately €650 (US\$833), which varies depending on years of service and education. Members of boards of directors of public companies are paid as much as €1,500 (US\$1,923) per month to serve on the board. Thus, a governing MP could earn €650 plus €1,500, or €2,150/month (US\$2,756), while opposition MPs who do not have the privilege of serving on such boards (since board membership is part of the governing parties' coalition agreement) are paid only the MP salary. In 2006, high-level directors of three large, state-owned companies were charged with abusing their positions and causing financial damage to the country. At a hearing of the basic court on one of the cases, a member of Parliament—receiving between €250 and €1,500 (US\$321 and US\$1,923) per month as a member of the board of directors—claimed to know nothing about disputed contracts because he had not attended the board meetings where the contracts were approved. Consequently, criticism has mounted against board members of public companies who serve for their own private benefit (that is, for a monthly stipend) rather than to protect the public's assets.⁵⁸

Nonetheless, when a new Law on Conflict of Interest, which had been fully vetted by the Council of Europe, came before the Parliament in July, it failed to get the support of a majority of MPs because it "so obviously violated the Constitution and gave the Commission to Determine Conflict of Interest much more authority

than belonged to it,” especially in terms of financial sanctions for violations of the law.⁵⁹ The international community expressed its disappointment that a chance had been missed to define more clearly the meaning of conflict of interest and to strengthen the sanction provisions.⁶⁰ Given that the only current sanction is the publication of a violator’s name or a request for charges sent to the prosecutor, a number of opposition MPs from the last mandate did not feel sufficiently compelled to file a report of income and assets with the Commission to Determine Conflict of Interest.

On the positive side, the president of the commission, Slobodan Leković, noted that “this law has allowed, for the first time, the building of a database on public officials and their property situation, to issue decisions, to begin procedures, and to name public officials who violate the law.”⁶¹ At the end of the year, the commission announced that it would “begin procedures against” the 38 MPs (47 percent) and “a large number of councillors” who had been required to declare their income and assets 15 days after assuming office but had not done so even after three months.⁶² In addition, the commission sent four cases to the supreme state prosecutor against an MP, a deputy minister, a municipal vice president, and the director of a public company for earning income in an unlawful way. Three of these cases resulted from 51 requests for determination of conflict of interest submitted by the Network for Affirmation of the NGO Sector (MANS). Although the MANS did not agree with many of the issued decisions, its continued requests for opinions pressured the commission to apply the law, and conflicts of interest were established in nine cases. Publicity from those cases—and a desire to avoid negative publicity for themselves—also led six public servants to address the commission to issue an opinion on whether they were in fact involved in a conflict of interest.⁶³

With the passage of the new Law on Public Procurement on July 10, a simpler method and process for public procurement was introduced that should make the system more effective, efficient, and transparent. The new law should also make the process simpler and more secure for the bidder, because the body issuing the tender must now establish in advance objective criteria for evaluating bids, and bids can be filed electronically with less paperwork. For the first time, the new law introduces financial penalties for legal violations.⁶⁴ It is still too early to evaluate the law’s effect on public procurement in Montenegro, but, similar to the situation in 2005, in 2006 the Public Procurement Commission received 108 complaints and adopted decisions in 41 cases, canceling the tenders and ordering a repeat of the procurement process in more than half of the cases.⁶⁵

In late 2005, the public acquired a new tool to train the spotlight on corruption—namely, the Law on Free Access to Information. In 2006, two NGOs, the Association of Young Journalists (AYJ) and the MANS, were especially active in insisting on implementation of this law. From the day it went into force on December 20, 2005, both organizations flooded every government institution with requests for information and issued regular report cards throughout 2006 on the best and worst public bodies in responding to and respecting the law.

From December 20, 2005, until December 31, 2006, the MANS submitted 2,724 requests for free access to information and received 2,634 responses, of which 1,348 (51 percent) were the result of the first request, 533 (20 percent) were the result of a repeated request, 278 (11 percent) were the result of a complaint, and 400 (15 percent) were the result of a repeated complaint. In 2006, the MANS filed 384 appeals to the administrative court, and in a number of cases, the court ruled in the NGO's favor. But the court only nullified the decisions to deny access made by a public institution, whereupon the request had to be resubmitted. The MANS found that when one of its requests was resubmitted, the institution—in particular, the Agency for Economic Restructuring and Foreign Investment—gave the same reason for denying access that the court had earlier nullified.⁶⁶

In fact, the MANS and the AYJ both point to that agency as one of the most difficult when trying to access public information. The agency has claimed that most of the privatization contracts are business secrets. When the administrative court ruled that the MANS should be allowed to see the contracts, restrictions were placed on how the organization could access the information: It was not allowed to take paper and pen into the agency or to use any instrument to photograph or tape the documents.⁶⁷

At a November 30 press conference, the AYJ said that the biggest problem with implementing the law in government institutions was the silence of the administration and disrespect for deadlines. Of the 140 requests filed in November, the AYJ received no answer in 45 cases. Because of dissatisfaction with the answers, the AYJ filed four complaints and three charges and resubmitted two requests. The AYJ identifies the key problems as nonimplementation of the penalty provisions, lack of clarity about who determines the method of accessing information (that is, the requester or the state organ), and the imprecise definition of the procedure's costs. Because of lack of education within the state administration, "exceptions are incorrectly and negatively interpreted so that even banal things such as data on personnel and use of budget funds regarding housing benefits are under the veil of secrecy."⁶⁸

In 2006, although the police brought a number of charges for corruption against managers of state companies, no cases ended in conviction or jail sentences. Most of the charges have not resulted in trials and are still in the investigation stage. The police and state prosecutors blame the judges for drawing out the investigation and procedures, the MANS has blamed the supreme state prosecutor for failing to bring charges, and many note that the Parliament's failure to put on its agenda requests from the prosecutor to remove the immunity of a number of MPs and a minister contributes to a culture of impunity.

This endless cycle of blame exhibits a fundamental problem in the struggle against corruption—the unwillingness to assume responsibility for this important issue. Public officials accept criticism from the international community and express a commitment to eliminate corruption, but the responsible institutions do not appear to be working together to fulfill these promises. In fact, the fight against corruption and organized crime has been more than five years in the making. It began with the January 2001 creation of the Anticorruption Initiative Agency,

whose name was changed to the Directorate for Anticorruption Initiative under the authority of the Ministry of Finance in March 2003.⁶⁹

In July 2005, the government adopted the strategy against corruption and organized crime. Over a year later, in August 2006, the government adopted an Action Plan for implementation of this strategy that provided for the establishment of a national commission for monitoring implementation of the Action Plan and a parliamentary committee as part of the 76 goals and 323 defined measures that are to be undertaken by the end of 2008. A June international conference to discuss the draft Action Plan preceded its adoption, which “a majority of the state institutions that must work to implement the program, as well as representatives of the private sector, did not attend.”⁷⁰ Montenegro’s commitment to the fight against corruption is sure to be tested in 2007 as the country makes a push for EU membership. A more concerted effort on the part of the government, court system, prosecutor, police, Parliament, and public will be necessary for real progress to be made in this field.

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 - ⁵ In addition to assuming responsibility for defense and foreign policy, Montenegro needs to establish its laws on quality infrastructure, such as laws on accreditation, on standardization, on measurements, on technical requirements, and on conformity assessment of products. Source: *Montenegro 2006 Progress Report*, Brussels, Commission of the European Communities, November 8, 2006, p. 23.

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- ¹⁹ The OSCE/ODIHR has long recommended changes in the way mandates on the list are allocated in order to respect the will of the people. It has also urged changes to the home-bound voting process that has undermined confidence in the election process because of the large number who use this method and to the ballot control coupon process that permits a member of the polling board to touch a voter’s ballot after it has been marked.
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