

Скупштина Србије и Црне Горе

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Constitutional Charter of the State Union of Serbia and Montenegro

Proceeding from the equality of the two member states, the state of Montenegro and the state of Serbia which includes the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija,

the latter currently under international administration in accordance with UN SC resolution 1244, and on the basis of the Proceeding Points for the Restructuring of Relations between Serbia and Montenegro of 14 March

2002, The National Assembly of the Republic of Serbia, the Assembly of the Republic of Montenegro and the Federal Assembly have adopted the following:

CONSTITUTIONAL CHARTER OF THE STATE UNION OF SERBIA AND MONTENEGRO

I

Name Article 1

The name of the state union shall be Serbia and Montenegro.

Principle of Equality Article 2

Serbia and Montenegro shall be based on the equality of the two member states, the state of Serbia and the state of Montenegro.

Aims Article 3

The aims of Serbia and Montenegro shall be:

- respect for human rights of all persons under its jurisdiction;
- to preserve and promote human dignity, equality and the rule of law;
- to join European structures, particularly the European Union;
- to harmonize regulations and practices with European and international standards;
- to create a market economy based on free enterprise, competition and social justice; and
- to establish and ensure the smooth operation of the common market on its territory, through coordination and harmonization of the economic systems of the member states in line with the principles and standards of the European Union.

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Symbols Article 4

Serbia and Montenegro shall have its flag, anthem and coat-of-arms that shall be regulated by the law of Serbia and Montenegro.

Territory Article 5

The territory of Serbia and Montenegro shall be made up of the territories of the member states of Serbia and Montenegro.

The border of Serbia and Montenegro shall be inviolable.

The border between the member states shall be unchangeable, except by mutual consent.

Seat of the Institutions Article 6

Belgrade shall be the administrative centre of Serbia and Montenegro.

The seat of the Assembly of Serbia and Montenegro and the Council of Ministers shall be in Belgrade and the seat of the Court of Serbia and Montenegro in Podgorica.

Citizenship Article 7

A citizen of a member state shall also be a citizen of Serbia and Montenegro.

A citizen of a member state shall have equal rights and duties in the other member state as its own citizen, except for the right to vote and be elected.

II

The Charter on Human and Minority Rights and Civil Freedoms Article 8

The Charter on Human and Minority Rights and Civil Freedoms, that shall form an integral part of the Constitutional Charter, shall be adopted under the procedure and in the manner stipulated for the adoption of the Constitutional Charter.

Exercise of Human and Minority Rights and Civil Freedoms Article 9

The member states shall regulate, ensure and protect human and minority rights and civil freedoms in their respective territory.

The attained level of human and minority rights, individual and collective and civil freedoms may not be lowered.

Serbia and Montenegro shall monitor the exercise of human and minority rights and civil freedoms and ensure their protection in the case when such protection has not been provided in the member states.

Direct Implementation of International Agreements Article 10

The provisions of international treaties on human and minority rights and civil freedoms applying to the territory of Serbia and Montenegro shall be directly enforced.

III

Principles of Market Economy Article 11

Economic relations in Serbia and Montenegro shall be based on the market economy underpinned by free enterprise, competition, a liberal foreign trade policy and the protection of property.

Serbia and Montenegro shall coordinate the economic systems and harmonize them with the member states.

Common Market Article 12

Serbia and Montenegro shall have a common market.

The smooth operation of the common market shall be the responsibility of the member states.

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Freedom of Movement Article 13

Movement of people, goods, services and capital in Serbia and Montenegro shall be free.

Setting obstacles to the free flow of people, goods, services and capital between the state of Serbia and the state of Montenegro shall be prohibited.

IV

International Entity Article 14

Serbia and Montenegro shall be a single personality in international law and member of international global and regional organizations that set international personality as a requirement for membership.

The member states may be members of international global and regional organizations which do not set international personality as a requirement for membership.

Establishing and Maintenance of International Relations Article 15

Serbia and Montenegro shall establish international relations with other states and international organizations and shall conclude international treaties and agreements. The member states may maintain international relations, conclude international agreements and establish their representative offices in other states if that is not in conflict with the competences of Serbia and Montenegro and the interests of the other member state.

Precedence of the International Law Article 16

The ratified international treaties and generally accepted rules of international law shall have precedence over the law of Serbia and Montenegro and the laws of the member states.

V

Establishing Competences of the State Union of Serbia and Montenegro Article 17

Serbia and Montenegro shall have the competences entrusted to it by the present Constitutional Charter.

The member states may jointly entrust to Serbia and Montenegro the performance of additional duties falling within their respective competence.

Financing of Competences of the State Union of Serbia and Montenegro Article 18

The member states shall secure the financial means for the performance of the entrusted competences and the additional duties of Serbia and Montenegro.

VI

1. ASSEMBLY OF SERBIA AND MONTENEGRO

Competence Article 19

The Assembly of Serbia and Montenegro shall decide on the Constitutional Charter as the highest legal instrument of Serbia and Montenegro in the way laid down by the present Constitutional Charter and shall enact

laws and other instruments governing:

- the institutions established in line with the Constitutional Charter and their operation;
- the enforcement of international law and the conventions laying down the obligations of Serbia and Montenegro to cooperate with international courts;
- the declaration and abolition of the state of war subject to the preliminary approval of the Assemblies of the member states;
- military issues and defence;

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- membership of Serbia and Montenegro as a personality of international law in international organizations and the rights and duties arising from that membership subject to preliminary approval of the competent bodies of the member states;
- the delimitation of the borders of Serbia and Montenegro subject to the preliminary approval of the Assembly of the member state in whose territory the border in question is located;
- issues pertaining to standardization, intellectual property, measurements and precious metals and statistics;
- policy of immigration, granting of asylum, the visa regime and integrated border management in line with the standards of the European Union;
- ratification of international treaties and agreements of Serbia and Montenegro;
- the annual revenues and expenditures required for financing the competences entrusted to Serbia and Montenegro at the proposal of the competent bodies of the member states and the Council of Ministers;
- the prevention and removal of obstacles to the free movement of persons, goods, services and capital within Serbia and Montenegro;
- the election of the President of Serbia and Montenegro and the Council of Ministers;
- the flag, anthem and coat-of-arms of Serbia and Montenegro;

The Assembly of Serbia and Montenegro shall also perform other duties within the competence of Serbia and Montenegro laid down by the present Constitutional Charter.

The Assembly of Serbia and Montenegro shall adopt its Rules of Procedure.

Composition and Election Article 20

The Assembly of Serbia and Montenegro shall be unicameral and made up of 126 deputies of which 91 shall be from Serbia and 35 from Montenegro.

The deputies of the Assembly of Serbia and Montenegro shall be elected from every member state in line with European and democratic standards on the basis of the laws of the member states. During the first 2 years upon

the adoption of the Constitutional Charter the deputies shall be elected indirectly, in proportion to the representation in the National Assembly of the Republic of Serbia and the Assembly of the Republic of Montenegro. At the first elections the deputies shall be elected

from the membership of the National Assembly of Serbia, the Assembly of Montenegro and the Federal Assembly. If a member state holds parliamentary elections in that period, the membership of its delegation in the Assembly of Serbia and Montenegro shall be modified to reflect the outcome of the election. After this initial period, the deputies of the Assembly of Serbia and Montenegro shall be elected by direct ballot. The deputies shall have a 4-year term of office.

President and Vice-President of the Assembly of Serbia and Montenegro Article 21

The Assembly shall elect from among its deputies its President and Vice-President who may not be from the same member state.

Incompatibility of Functions Article 22

The President of the Assembly of Serbia and Montenegro and the President of Serbia and Montenegro may not be from the same member state.

Manner of Decision-Making Article 23

The Assembly of Serbia and Montenegro shall take decisions by a majority vote of the total number of deputies. For a decision to be taken, the majority of the total number of deputies from each member state shall also have to vote for it.

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Freedom of Expression and Immunity Article 24

The deputy shall enjoy the freedom of expression at the Assembly of Serbia and Montenegro and shall have immunity for the words uttered and for other acts he performs in his capacity as deputy.

The deputy may not be called to answer, detained or punished without the approval of the Assembly of Serbia and Montenegro except if found committing a criminal offence punishable by over 5 years in prison.

Apart from deputies, the President of Serbia and Montenegro, the members of the Council of Ministers and the judges of the Court of Serbia and Montenegro shall have immunity as well.

The Right to Submit a Draft Law Article 25

The Council of Ministers, a deputy and the Assembly of the member state may submit a draft law to the Assembly of Serbia and Montenegro.

2. PRESIDENT OF SERBIA AND MONTENEGRO

Competence Article 26

The President of Serbia and Montenegro shall:

- represent Serbia and Montenegro at home and abroad;
- chair the Council of Ministers and administer its work;
- propose to the Assembly of Serbia and Montenegro the members of the Council of Ministers and relief of duty of its members;
- be a member of the Supreme Command Council;
- pass decrees on the appointment and relief of duty of chiefs of diplomatic consular missions of Serbia and Montenegro and receives letters of credence and recall from foreign diplomatic representatives;
- confer awards and other decorations;
- proclaim laws passed by the Assembly of Serbia and Montenegro and the regulations passed by the Council of Ministers;
- call elections for the Assembly of Serbia and Montenegro and
- also perform other duties laid down by the Constitutional Charter.

Election Article 27

The President and the Vice-President of the Assembly of Serbia and Montenegro shall propose to the Assembly a candidate for the President of Serbia and Montenegro.

If the proposed candidate fails to win the requisite number of votes, the President and the Vice-President of the Assembly shall, within 10 days, propose a new candidate. If that candidate, too, fails to poll the requisite number of votes, the Assembly shall be dissolved and

elections shall be called. If the elected President of Serbia and Montenegro is from the same member state as the President of the Assembly of Serbia and Montenegro, the President and the Vice-President of the Assembly of Serbia and Montenegro shall switch their posts. The President of Serbia and Montenegro may not be from the same member state for two consecutive terms.

The procedure for the election and relief of duty of the President of Serbia and Montenegro shall be determined by law.

Accountability Article 28

The President of Serbia and Montenegro shall answer to the Assembly of Serbia and Montenegro.

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The term of Office Article 29

The term of office of the President of Serbia and Montenegro shall last four years.

Termination of Office Article 30

The Serbia and Montenegro President's term of office may cease prematurely by his resignation, relief of duty and the dissolution of the Assembly of Serbia and Montenegro.

The Serbia and Montenegro President's term of office shall cease by his resignation when the Assembly takes note of it.

Relief of Duty Article 31

The Assembly may relieve the President of Serbia and Montenegro of his duty if it is established that he has infringed upon the Constitutional Charter. The infringement of the Constitutional Charter shall be established by

the Court of Serbia and Montenegro. The procedure to establish the infringement of the Constitutional Charter

shall be initiated by the Assembly of Serbia and Montenegro.

Performing Duties Following the Termination of Office Article 32

The President of Serbia and Montenegro whose term of office has ceased due to the dissolution of the Assembly of Serbia and Montenegro shall continue to carry out his duty pending the election of a new President. If the President of Serbia and Montenegro tenders his resignation or is relieved of his duty, his office shall, pending the election of a new President of Serbia and Montenegro, be assumed on a provisional basis by the Vice-President of the Assembly.

3. THE COUNCIL OF MINISTERS

Competence Article 33

The Council of Ministers shall:

- chart and pursue the policy of Serbia and Montenegro in tune with the jointly agreed policy and interests of the member states;
- coordinate the work of the Ministries;
- propose to the Assembly of Serbia and Montenegro the laws and other acts falling within the purview of the Ministries;
- appoint and relieve of duty the heads of diplomatic-consular missions of Serbia and Montenegro and other officials in line with the law;
- pass by-laws, decisions and other general enactments for enforcement of the laws of Serbia and Montenegro and
- perform other executive duties in accordance with the present Constitutional Charter.

The Manner of Representation of Serbia and Montenegro Article 34

The member states shall be represented on a parity basis and on a rotation principle in the representative offices of Serbia and Montenegro to international organizations, the United Nations, the Organization for Security

and Cooperation in Europe, the European Union and the Council of Europe. The manner of representation of the member states in international financial organizations shall be determined by the Council of Ministers subject to the approval of the competent institutions of the member states. The representation of the member states in diplomatic-consular missions of Serbia and Montenegro shall be determined by the Council of Ministers subject to the approval of the competent institutions of the member states.

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Election Article 35

The President of Serbia and Montenegro shall propose to the Assembly of Serbia and Montenegro candidates for Ministers of the Council of Ministers and candidates for the Deputy Minister of Foreign Affairs and Deputy Minister of Defence. Two candidates for Minister shall be from the same member state as the President of Serbia and Montenegro and three shall be from the other member state. The candidates for the Minister of Foreign Affairs and the Minister of Defence shall be from different member states and the same shall apply to their Deputies as well. The Assembly shall vote for the list of candidates for the Council of Ministers. If the list does not obtain the requisite number of votes, the President may propose two more lists of candidates. If a list of candidates does not obtain the requisite number of votes within 60 days as of the date of the proposal of the first list of candidates, the Assembly of Serbia and Montenegro shall be dissolved and elections shall be called. The procedure for the election and the termination of the term of office of the Council of Ministers shall be determined by law.

Manner of Decision-Making Article 36

The Council of Ministers shall pass decisions by a majority vote. If both proposals win the same number of votes, the vote of the President shall be decisive if at least one Minister from the other member state has voted in favour of the decision.

Accountability Article 37

The Council of Ministers shall answer to the Assembly of Serbia and Montenegro.

Term of Office Article 38

The Ministers shall have a 4-year term of office.

The Termination of the Term of Office Article 39

The term of office of the Ministers and their Deputies may cease prematurely by their resignation, by the vote of no confidence or by the dissolution of the Assembly of Serbia and Montenegro. The Ministers and Deputy Ministers whose term of office has been terminated shall discharge their functions pending the election of new ones.

Ministers Article 40

The Minister of Foreign Affairs shall pursue and shall be responsible for the pursuit of the foreign policy of Serbia and Montenegro, shall negotiate international agreements and propose to the Council of Ministers candidates for heads of diplomatic-consular missions of Serbia and Montenegro. The Minister of Foreign Affairs shall coordinate the charting of foreign policy with the competent bodies of the member states.

Article 41

The Minister of Defence shall coordinate and implement the charted defence policy and command the military in accordance with the law and the powers of the Supreme Command Council. The Minister of Defence shall propose to the Supreme Command Council candidates for posts and shall appoint, promote and relieve of duty military officers in line with the law. The Minister of Defence shall be a civilian.

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Article 42

After a period of 2 years, the Ministers of Foreign Affairs and of Defence shall switch posts with their Deputies.

Article 43

The Minister of Foreign Economic Relations shall be responsible for negotiations and coordination of the implementation of international agreements including treaty relations with the European Union and coordination of relations with international economic and financial institutions following the consultation with the competent Ministers of the member states.

Article 44

The Minister for Internal Economic Relations shall be responsible for the coordination and harmonization of the member states' economic systems in order to establish and ensure the smooth operation of the common market including the free movement of people, goods, services and capital.

Article 45

The Minister of Human and Minority Rights shall monitor the exercise of human and minority rights and, together with the competent bodies of the member states, shall coordinate activities for the implementation and compliance with international conventions for the protection of human and minority rights.

4. COURT OF SERBIA AND MONTENEGRO

Jurisdiction Article 46

The Court shall be competent to adjudicate:

- cases between the institutions of Serbia and Montenegro concerning the issues falling within their competence under the Constitutional Charter;
- cases between Serbia and Montenegro and one or both member states or between the two member states concerning issues falling within their purview;
- appeals filed by citizens if no other legal remedies have been stipulated, in the case that an institution of Serbia and Montenegro has interfered with the rights and freedoms that are guaranteed to them by the Constitutional Charter;
- compatibility of the Constitutions of the member states with the Constitutional Charter;
- compatibility of the laws of Serbia and Montenegro with the Constitutional Charter;
- compatibility of the laws of the member states with the law of the Serbia and Montenegro;
- legality of final administrative acts of the institutions of Serbia and Montenegro.

The Court shall take legal positions and give legal opinions on the activities to bring jurisprudence more closely into line.

Members and Election Article 47

The Court of Serbia and Montenegro shall include an equal number of judges from both member states.

The judges of the Court of Serbia and Montenegro shall be elected by the Assembly of Serbia and Montenegro upon the proposal of the Council of Ministers for a period of 6 years.

The judges shall be graduate jurists with at least 15 years of practical experience in that line of activity.

The judges may be elected only once.

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The judges shall be independent in their work and may not be relieved of duty prior to the expiry of the period for which they have been elected, except in cases stipulated by law.

Decisions of the Court Article 48

The decisions of the Court of Serbia and Montenegro shall be binding and without the right of appeal. The Court shall be authorized to put in abeyance the laws, other regulations and acts of the institutions of Serbia and Montenegro that are in conflict with the Constitutional Charter and with the laws of Serbia and Montenegro.

Operation of the Court Article 49

When assessing whether the laws or competences of the member states are in line with the laws and responsibilities of Serbia and Montenegro or whether this is the case between the

member states, the deliberations at the meeting of the Court of Serbia and Montenegro shall also be attended by the judges of the Constitutional Courts of the member states who shall take part in decision-making. When assessing whether the Constitution, laws or competences of a member state is in line with the Constitutional Charter, the laws and competences of Serbia and Montenegro, the deliberations at the meeting of the Court of Serbia and Montenegro shall also be attended by the judges of the Constitutional Court of that particular member state who shall take part in decision-making.

Organization, Functioning and the Manner of Decision-Making Article 50

The organization, functioning and the manner of decision-making of the Court of Serbia and Montenegro shall be regulated by law.

VII

Harmonization of the Legal Instruments Article 51

The Constitutional Charter, the laws and the competences of Serbia and Montenegro and the Constitutions, laws and competences of the member states must be harmonized.

Entry into force Article 52

The laws and other acts of the bodies of Serbia and Montenegro shall come into force not sooner than on the 8th day following their publication. By way of exception, when reasons exist for this as determined under the procedure of the enactment of a particular law or act, it may be stipulated that the laws and other acts of the bodies of Serbia and Montenegro shall come into force not sooner than on the date of their publication.

Retroactive Effect Article 53

The laws and other acts of the bodies of Serbia and Montenegro may not have retroactive effect. By way of exception, particular provisions of the law, if that is mandated by the public interest as determined under the procedure of its enactment, may have retroactive effect.

VIII

Army of Serbia and Montenegro Article 54

Serbia and Montenegro shall have an Army that shall be under democratic and civilian control.

Duty of the Army of Serbia and Montenegro Article 55

The duty of the Army shall be to defend Serbia and Montenegro in line with the present Constitutional Charter and the principles of international law that regulate the use of force.

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The defence strategy shall be adopted by the Assembly of Serbia and Montenegro in accordance with the law.

The Supreme Command Council Article 56

The Supreme Commander of the Army shall be the Supreme Command Council that shall decide on the use of the Army of Serbia and Montenegro. The Supreme Command Council shall include the President of Serbia and Montenegro and the Presidents of the member states. The Supreme Command Council shall take decisions by consensus.

Doing the Military Service Article 57

Conscripts shall do their military service in the territory of the member state whose citizenship they hold. It shall be possible for them also to do this service in the territory of the other member state if they so freely decide.

Conscientious Objection Article 58

A conscript shall be guaranteed the right to conscientious objection.

IX

Property of Serbia and Montenegro Article 59

The property of the Federal Republic of Yugoslavia required for the operation of the institutions of Serbia and Montenegro shall be the property of Serbia and Montenegro. The

property of the Federal Republic of Yugoslavia abroad shall be the property of Serbia and Montenegro. The property of the Federal Republic of Yugoslavia located in the territory of the member states shall be the property of the member states on the territorial principle.

Breaking Away from the State Union of Serbia and Montenegro Article 60

Upon the expiry of a 3-year period, member states shall have the right to initiate the proceedings for the change in its state status or for breaking away from the state union of Serbia and Montenegro. The decision on breaking away from the state union of Serbia and Montenegro shall be taken following a referendum. The law on referendum shall be passed by a member state bearing in mind the internationally recognized democratic standards. Should Montenegro break away from the state union of Serbia and Montenegro, the international instruments pertaining to the Federal Republic of Yugoslavia, particularly UN SC Resolution 1244, would concern and apply in their entirety to Serbia as the successor. A member state that implements this right shall not inherit the right to international personality and all disputable issues shall be separately regulated between the successor state and the newly independent state. Should both member states vote for a change in their respective state status or for independence in a referendum procedure, all disputable issues shall be regulated in a succession procedure just as was the case with the former Socialist Federal Republic of Yugoslavia.

X

Adoption of the Constitutional Charter Article 61

The Constitutional Charter shall be adopted by the National Assembly of the Republic of Serbia and the Republic of Montenegro in an identical text and shall take effect when that text is adopted and promulgated by the Federal Assembly.

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Change of the Constitutional Charter Article 62

The Constitutional Charter shall be changed under the procedure and in the manner in which the Constitutional Charter has been adopted.

XI

Transfer of Rights and Obligations

Article 63

Upon the entry into force of the Constitutional Charter, all the rights and duties of the Federal Republic of Yugoslavia shall be transferred to Serbia and Montenegro in line with the Constitutional Charter.

Enforcement of laws of the Federal Republic of Yugoslavia Article 64

The laws of the Federal Republic of Yugoslavia governing the affairs of Serbia and Montenegro shall be enforced as the laws of Serbia and Montenegro. The laws of the Federal Republic of Yugoslavia governing the affairs other than those of Serbia and Montenegro shall be enforced as the laws of the member states pending the adoption of the new regulations by the member states except for the laws which the Assembly of the member state concerned decides not to enforce.

Harmonization with the Constitutional Charter Article 65

The member states shall amend their Constitutions or adopt new Constitutions in order to harmonize them with the present Constitutional Charter within 6 months as of the date of the adoption of the Constitutional Charter.

Transfer of Competences Article 66

The competence of military courts, Military Prosecutor's Offices and Military Attornies' Offices shall be transferred to the authorities of the member states, in accordance with the law.

XII

Law on the Implementation of the Constitutional Charter Article 67

The Law on the Implementation of the Constitutional Charter shall be adopted in the same manner and concurrently with the Constitutional Charter.