

THE REFORM OF ELECTORAL LEGISLATION IN MONTENEGRO



Challenges in the work of election
administration bodies and suggestions
for amendments to the election legislation

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This study was created as part of a project supported by the National Democratic Institute (NDI) with the aim of combining in a single publication all of the recommendations for improving the election legislation, proposed by CeMI and other relevant domestic and international election observation organizations between 2016-2020.

The opinions and views expressed in this study represent the opinion of the authors and do not necessarily reflect the official views of the donors.

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I INTRODUCTION AND ACKNOWLEDGMENTS

The Centre for Monitoring and Research (CeMI) is a nongovernmental organization that has been monitoring elections in Montenegro, as well as other countries, for 20 years, through membership in the European Network of Election Monitoring Organizations (ENEMO). CeMI's representative is the Secretary General of ENEMO for the 2017-2021 period, and a member of the GNDEM Board of Directors (2018-2022).

By implementing civic monitoring of elections projects since 2000, CeMI has sought to contribute to democratic conditions for holding transparent, free and fair elections, through civic control of the electoral process in parliamentary, presidential and local elections. In addition to the mission's core expert team responsible for monitoring various segments of the election process and conducting civilian election monitoring, CeMI also formed a network of local coordinators for each municipality, who were in charge of supporting the network of CeMI short-term observers in every municipality. CeMI accredited 1,463 observers to monitor the parliamentary and local elections in 2016. In 2018 presidential elections CeMI accredited 1,340 observers, and in 2020 parliamentary and local elections, CeMI accredited 1,355 observers.

CeMI has prepared a set of priority and other recommendations in final reports of the aforementioned election monitoring projects, most of which have not been adopted due to lack of quality dialogue between political entities.

This study aims to bring together all CeMI recommendations, as well as the recommendations of other relevant domestic and international organizations which have observed electoral processes in Montenegro. As part of the study, CeMI also conducted in-depth interviews with representatives of the election administration, political parties, civil society organizations and international organizations. The study is well-timed, considering that at the end of 2020, through the decision to form the Committee for Comprehensive Electoral Reform, the Parliament started the process of changing the electoral framework. It is our expectation that this study, as well as the recommendations presented within, will be a good basis for electoral reforms, and that, as a non-governmental organization publicly recognized for its expertise in this subject, we will have the opportunity to publicly advocate the adoption of proposed recommendations. Through the work of the Committee for Comprehensive Electoral reform, the Council for Transparency of the Ministry of Interior, as well as the Council for Voter List Control, CeMI will advocate solutions from this study in order to improve the existing electoral legal framework.

For the most part, the structure of the study follows the structure of CeMI's final reports on election monitoring. However, there are some differences. First, this study does not cover the areas of the electoral system and the financing of election campaigns, because those areas will be the subject of different studies. Also, unlike the final report on election monitoring, traditional and social media are not covered because they were analyzed and presented by CeMI in a special report. Finally, the recommendations in this study are more specific compared to the report, i.e., they are presented in the form of proposals for amendments to the law, which facilitates the use of these recommendations by lawmakers.

The Centre for Monitoring and Research – CeMI would like to thank the National Democratic Institute (NDI) for supporting the development of this study. Also, CeMI would like to express its gratitude to the representatives of the election administration, state bodies, political parties, international observation missions and domestic non-governmental organizations for their co-operation during in-depth interviews.

II LEGAL FRAMEWORK

The legal framework governing the electoral process in Montenegro consists of two parts: electoral legislation and other legal acts relevant to the electoral process.

2.1 Electoral legislation

The Constitution¹ and the Law on the Election of Councilors and MPs² are the basic legal documents governing the manner of exercising the right to vote and the procedure for organizing elections at all levels in Montenegro. According to the Constitution, the right to vote is universal and equal, and voting is secret. The Constitution defines that elections are free and direct, and that the right to vote and to be elected belongs to every citizen of Montenegro who has reached the age of 18, and who has a permanent place of residence in Montenegro for at least two years.

The Law on Election of Councilors and MPs regulates the manner and procedure of election of Councilors of the municipal assembly, city municipalities, the Capital and the honorary capital, and members of the Parliament; organization, composition and jurisdiction of the election administration body; proposing and determining the results of voting and distribution of seats; protection of the right to vote; election observers; costs of conducting elections and election propaganda; and other issues of importance for the organization and conduct of elections.

In addition to the Constitution and the Law on the Election of Councilors and MPs, a set of laws in the field of election legislation also includes: The Law on Financing of Political Entities and Election Campaigns;³ The Law on Voters' Register;⁴ The Law on Political Parties⁵ and the Law on Registry of Permanent and Temporary Residence.⁶

The Law on Financing of Political Entities and Election Campaigns regulates: the manner of acquisition and provision of financial assets for regular operation and the election campaign of political entities, the prohibitions and restrictions on disposal with state-owned property, funds and public authorities in the course of campaigns as well as the control, supervision and auditing of financing and financial operations of political entities, to achieve legality and transparency with regard to their operation.

The Law on Voters' Register regulates: the manner of keeping the voter register; the institution responsible for keeping the voter register; the rights of participants and election observers and supervision. The Law on Political Parties regulates: the establishment of a party, party registration, the association and merging of parties, and the termination of a party. The Law on Registry of Permanent and Temporary Residence regulates: the registry of residence, the use and protection of data and supervision.

¹ Constitution of Montenegro ("Official Gazette of Montenegro", No. 1/2007 and 38/2013 - Amendments I-XVI)

² Law on the Election of Councilors and MPs ("Official Gazette of the Republic of Montenegro", No. 16/2000 - consolidated text, 9/2001, 41/2002, 46/2002, 45/2004 - CC decision, 48/2006, 56/2006 - CC decision and "Official Gazette of Montenegro", No. 46/2011, 14/2014, 47/2014 - CC decision, 12/2016 - CC decision, 60/2017 - CC decision, 10/2018 - CC decision and 109 / 2020 - CC decision)

³ Law on Financing of Political Entities and Election Campaigns ("Official Gazette of Montenegro", No. 3/2020 and 38/2020)

⁴ Law on Voter Register ("Official Gazette of the Republic of Montenegro", No. 10/2014, 20/2015, 92/2017, 17/2019 - CC decision and 3/2020)

⁵ Law on Political Parties ("Official Gazette of the Republic of Montenegro", No. 21/04 of 31.03.2004 and "Official Gazette of Montenegro", No. 73/10 of 10.12.2010, 40/11 of 08.08.2011, 59 / 11 (14/12/2011)

⁶ Law on Registry of Permanent and Temporary Residence ("Official Gazette of Montenegro", No. 46/2015)

2.2 Other legal documents relevant to the election process

In addition to the already listed regulations, the laws in the field of broadcasting are also important – the Law on Electronic Media⁷ and the Law on Public Broadcasting Services of Montenegro.⁸

From the criminal liability aspect, the Criminal Code of Montenegro⁹ contains a special chapter which regulates criminal offenses against electoral rights (chapter sixteen). The following criminal offenses are envisaged under this chapter: violation of the right to stand as a candidate, violation of the right to vote, violation of freedom of choice in voting, abuse of voting rights, compilation of incorrect voter lists, prevention of voting, violation of the secrecy of the vote, falsification of voting results, destruction of voting documents, unauthorized use of state property for election purposes, violation of the freedom of choice in the financing of political entities and election campaigns, acceptance of contributions from prohibited sources, and serious crimes against electoral rights. Discovery and prosecution of criminal offenses against electoral rights is the responsibility of the Basic State Prosecutor's Offices.

As legal documents that regulate the organization of parliamentary elections, we can also mention decisions, conclusions and opinions of election administration bodies, primarily the State Election Commission.

An indispensable legal source relevant in the field of electoral legislation reform are Constitutional Court decisions, both in proceedings initiated during the election process, and decisions on initiatives to review whether laws and other legal documents are constitutional. The last in a series of decisions of the Constitutional Court, important for the organization of electoral processes and direct realization of the active voting right of the citizens of Montenegro (on the initiative U-I no. 23/1718), was passed on November 6, 2020. Part of this decision refers to the repeal of the provisions of Article 11 of the Law on the Election of Councilors and MPs, which prescribes that "A voter who has turned 18 years of age, has legal capacity and permanent residence in Montenegro for no less than two years and permanent residence in a municipality, or a borough which is an electoral district for no less than six months prior to the election day shall have the right to vote for and stand as a candidate in election of councilors." This decision will have a direct effect during the local elections in Nikšić. For the first time, the stated provision of the Law about the residential condition for elections at the local level will not apply. In practice, this means that voters residing in another municipality, acquire the right to vote in the municipality of new residence immediately after the change of residence, not after 6 months from the date of change of residence, as was the case before.

⁷ Law on Electronic Media ("Official Gazette of the Republic of Montenegro", No. 46/2010, 40/2011 - other law, 53/2011, 6/2013, 55/2016, 92/2017 and 82/2020 - other law)

⁸ Law on Public Broadcasting Services of Montenegro ("Official Gazette of Montenegro", No. 79/08 and 45/12)

⁹ Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004 - amended and 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - amended, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020)

III ELECTORAL ADMINISTRATION

3.1 The concept and models of electoral administration

In the introductory part of this chapter, we will take a brief look at the theoretical considerations regarding electoral administration, and different types of membership within electoral administration bodies. The basis for this part of the study are the results of the research conducted by the Swedish International Institute for Democracy and Electoral Assistance (International IDEA), whose experts presented, in detail, electoral administration bodies in 217 countries, in a publication about election management – International IDEA Handbook.¹⁰ This part of the study represents a summation and explanation of the classification system of electoral administration bodies, developed by this prestigious international organization.

All the bodies entrusted with the task of deciding on who can participate in the election process, reception and confirmation of nominations for participation in the election process, organization of voting, counting of votes, publishing the results of voting, etc. can be described as election administration bodies, provided that they are recognized as such in the relevant laws. The aforementioned tasks are usually entrusted to various bodies that make up a set of election administration bodies, but there are countries in which the election administration consists of only one body that performs all tasks related to election processes and safeguards the legitimacy of the election process. There is also the possibility of creating different electoral administration bodies for different electoral processes. For example, it is possible to create different bodies for conducting parliamentary elections from bodies for conducting presidential elections or referendums, etc. These bodies may also perform other tasks that assist in the conduct of elections, such as: voter registration, boundary delimitation, voter education and information, media monitoring and election dispute resolution.¹¹

There are different criteria on the basis of which it is possible to classify electoral administration. The most widely accepted classification recognizes three distinct models of electoral administration bodies: 1) independent; 2) governmental and 3) mixed model.¹² By analyzing the electoral legislation, we can deduce which model of electoral administration is in place in any given country.

3.1.1 Independent model

The core characteristic of the independent model is in the conduct of electoral processes by electoral administration bodies that are institutionally independent from the executive branch of the government. Thus, the executive branch formally has no influence on the functioning and work of these bodies, nor are electoral administration bodies accountable to the executive branch. Instead, they are accountable to the legislature or the judiciary, and in some countries to the president. However, as we will see in the next part of this chapter, institutional independence does not guarantee functional

⁷ Law on Electronic Media ("Official Gazette of the Republic of Montenegro", No. 46/2010, 40/2011 - other law, 53/2011, 6/2013, 55/2016, 92/2017 and 82/2020 - other law)

⁸ Law on Public Broadcasting Services of Montenegro ("Official Gazette of Montenegro", No. 79/08 and 45/12)

⁹ Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004 - amended and 47/2006 and "Official Gazette of Montenegro", No. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - amended, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020)

¹⁰ Helena Catt et.al, Electoral Management Design, Revised edition, International Institute for Democracy and Electoral Assistance IDEA, 2014

¹¹ Ibid, p. 5

¹² Rafael López-Pintor, Electoral Management Bodies as Institutions of Governance, Bureau for Development Policy United Nations Development Programme, 2000

independence. Political influence on the work of electoral administration bodies are common in many countries with the independent model of electoral administration, especially in post-communist countries.

In essence, there are several ways that the independent model can manifest, one of which is the “double-independent” model, characterized by the existence of two, mutually accountable electoral administration bodies in charge of conducting the elections – the advisory body, responsible for electoral policy decisions, and the body responsible for conducting and implementing the electoral process. The second, and at the same time the most widespread form of independent model is the pro-party independent model of electoral administration. Membership in this form of electoral administration bodies consists of the representatives of political parties and the judiciary, and they are most often accountable for their work to the legislature or the judiciary. Therefore, in theory, there is no executive influence on the work of these bodies.

Establishing independent electoral administration bodies is one of the recommendations of the Venice Commission. The Code of Good Practice in Electoral Matters states that „Where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level”.¹³

All the Western Balkan countries have opted for the independent model of electoral administration. In addition, some European Union countries use the independent model: Austria, Bulgaria, Estonia, Croatia, Latvia, Lithuania, Malta, Poland, Romania and Slovenia. Although they follow the same model of electoral administration, there are significant differences in the structure, organization and functioning of electoral administration bodies in every country where the independent model is applied.

Table 1: Examples of basic characteristics of the central election administration body in countries using the independent model

Country	Election Administration Body	No. of Members	Term of Office	Type of Membership	Appointment of Members
Montenegro	State Election Commission	11	4 years	Combined	President and the member from among the representatives of the civil sector, NGO and university, who is an expert in electoral law, is appointed by the Parliament, at the proposal of the working body of the Parliament responsible for electing the appointment. Four members of the permanent composition are appointed on the proposal of the parliamentary majority and four on the proposal of the parliamentary opposition. One member is appointed by a representative of a political party, i.e. the submitter of the electoral list for the authentic representation of members of the minority people or the minority national community that received the largest number of votes in the previous elections.

¹³ Code of Good Practice in Electoral Matters, European Commission for Democracy through Law, Venice, 2002., p. 10, available at: <https://rm.coe.int/090000168092af01>

Albania ¹⁴	Central Election Commission	11	Commissioner 7 years	Combined	The Commissioner is elected from among former political officials or cabinets, former executives or former directors of non-profit organizations dealing with elections and human rights; members of the Regulatory Commission are elected from among Albanian nationals who meet the conditions required for the Commissioner; The Appeals and Sanctions Commission consists of former judges, advisers to the Constitutional or High Court, former members of the CEC, former senior executives or lawyers with administrative experience. All members are elected by the Assembly by a two-thirds majority.
Bosnia and Herzegovina ¹⁵	Central Election Commission	7	7 years	Expert	Two members are elected from the ranks of Croats, two from the ranks of Bosniaks, two from the ranks of Serbs and one from the ranks of "others." Candidates are nominated by the Nomination and Election Commission and elected by Parliament, by a two-thirds majority. All candidates are legal experts with experience in conducting elections, and / or election experts.
Croatia ¹⁶	State Electoral Commission	9	Commissions 5 years	Combined	The President of the SEC is the President of the Supreme Court; two vice presidents are elected by the general session of the Supreme Court from among the judges of the Supreme Court, at the proposal of the President of the Supreme Court; one vice president and two members are elected by the Croatian Parliament on the proposal of the majority party / coalition; one vice president and two members are elected by the Croatian Parliament on the proposal of opposition parties / coalitions.
Kosovo ¹⁷	Central Election Commission	11	7 years	Combined	The President is appointed by the President of the State from among the members of the Supreme or Appellate Courts; six members are appointed by the six largest parliamentary groups, which are not entitled to participate in the distribution of reserved seats; one member is appointed by deputies occupying reserved seats for the Kosovo Serb community; three members are appointed by MPs who hold reserved or guaranteed seats for other non-majority communities in Kosovo.

¹⁴ Electoral Code of the Republic of Albania (Approved by Law No. 10 019 of 29 December 2008, amended by Law No. 74/2012 of 19 July 2012 and Law No. 31/2015 of 2 April 2015 and Law No. 101/2020 of 23 July 2020)

¹⁵ Election Law of Bosnia and Herzegovina, ("Official Gazette of BiH", No. 23/2001, 7/2002, 9/2002, 20/2002, 25/2002 - corr., 4/2004, 20/2004, 25/2005, 77/2005, 11/2006, 24/2006, 33/2008, 37/2008, 32/2010, 48/2011 - decision CC, 63/2011 - decision CC, 18/2013, 7/2014, 31/2016, 54/2017 - CC decision and 41/2020)

¹⁶ The Law on the Election of Representatives to the Croatian Parliament (NN 116/99, 109/00, 53/03, 69/03, 167/03, 44/06, 19/07, 20/09, 145/10, 24/11, 93 / 11, 120/11, 19/15, 104/15, 98/19) and the Law on State Election Commission of the Republic of Croatia (NN 44/06, 19/07)

¹⁷ Constitution of the Republic of Kosovo (as amended I-XXIV), available at: <https://tinyurl.com/ewbyppf2>

North Macedonia ¹⁸	State Election Commission	7	2 years	Party	The president and two members are nominated by opposition parties; the vice president and three members are nominated by the ruling political parties. They are elected by a two-thirds majority in Parliament.
Serbia ¹⁹	Republic Election Commission	17	4 years	Combined	The President and 16 members are appointed by the National Assembly of the Republic of Serbia on the proposal of parliamentary groups.

3.1.2 Governmental model

The countries in which the actions of electoral processes are conducted by bodies formed by the institutions of the executive branch of the government belong to the governmental model of election administration. This model is typical for countries with a long democratic tradition in which state institutions enjoy the trust of citizens.

The electoral bodies that conduct the elections in countries of the governmental model are usually ministries (such as the Ministry of Interior) or local authorities, and they are accountable to the executive bodies that established them. These bodies are usually headed by ministers or other high-ranking government officials. Another important characteristic of this model is that in most cases there are no members of election administration, rather, there are only civil servants who perform various administrative and technical tasks within the secretariat. Governmental bodies of electoral administration are financed from the budget of the ministry or local government bodies and are fully financially and functionally dependent on the executive branch.

This model exists in countries such as the USA and the UK, where elections are conducted by local authorities, as well as in countries such as Sweden and Switzerland, where the central election administration body has a coordinating role over local government bodies that are responsible for conducting election activities. Aside from Sweden, EU countries that use the governmental model of electoral administration are: Belgium, the Czech Republic, Denmark, Finland, Greece, Ireland, Italy, Cyprus, Luxembourg and Germany.

In Sweden, for instance, the electoral administration bodies are regulated in the third chapter of the Election Law.²⁰ The structure of these bodies follows the structure of the government, so that they are divided into central, regional, and local election administration bodies. The election administration is decentralized. Bodies at different levels of election administration have different competencies and responsibilities. At the local level, there are election commissions that independently employ and train workers in polling stations (therefore, they are officials, not members, as is the case with election administration bodies of the independent model). At the regional level there are District Administration Boards in charge of counting the votes for the entire region. The central election administration body is the Electoral Authority (Valmyndigheten).

¹⁸ Electoral Code ("Official Gazette of the Republic of Northern Macedonia", No. 40/06, 136/08, 148/08, 155/08, 163/08, 44 / 11,51 / 11, 54 / 11,142 / 12, 31 / 13.34 / 13.14 / 14.30 / 14.196 / 15.35 / 16, 97 / 16.99 / 16.136 / 16, 142 / 16.67 / 17.125 / 17.35 / 18.99 / 18.140 / 18.208 / 18, 27 / 19,98 / 19 and 42/20)

¹⁹ Law on the Election of Members of Parliament ("Official Gazette of the RS", No. 35/2000, 57/2003 - decision of the CPVO, 72/2003 - other law, 75/2003 - amended other law, 18/2004, 101 / 2005 - other law, 85/2005 - other law, 28/2011 - CC decision, 36/2011, 104/2009 - other law, 12/2020 and 68/2020)

²⁰ Election law of Sweden, available at: <https://tinyurl.com/2rtfveej>

Electoral legislation in Germany is codified, i.e., election administration bodies are established and regulated in the Federal Election Code.²¹ According to the Code, there are four levels of electoral administration: federal, land, constituency, and polling districts. At all levels there is a Returning Officer: There is the Federal Returning Officer appointed by the Minister of the Interior and the Federal Electoral Committee at the federal level, then the Land Returning Officer and the Land Electoral Commission, followed by the Constituency Returning Officer and the Constituency Electoral Committee and finally, an Electoral Officer and an Electoral Board for each polling district. In addition, there are special polling boards and election officers for each constituency to determine the results of postal ballots. The composition of election commissions also includes the so-called qualified voters as accessors. The Code also contains a provision according to which members of polling stations and qualified voters may not refuse to participate in the work of the polling board / committee without a justified reason.

3.1.3 Mixed model

The mixed model contains elements of both previous models. The dual structure of electoral administration bodies of the mixed model derives from this combination of elements. This means that the election administration consists of two components, i.e., two election administration bodies that differ in structure, functioning and organization. The first body (independent component) is similar in structure and competencies to the central body of the election administration of the independent model. It is autonomous in its work and it supervises the implementation of all election related activities. The second body (governmental component) is similar in structure and competencies to election administration bodies of the governmental model. It implements its activities under the management of the institution of the executive branch and has all the characteristics of an executive body of the governmental model. It is usually directly in charge of the implementation of the electoral process.

In some countries with a mixed model of election administration, the independent body has very narrow formal legal powers, limited to overseeing the conduct of elections, while in other countries it has broad powers and the ability to monitor the entire election process and evaluate the work of the institutional component of election administration.

This model of electoral administration exists in Japan, and some countries of West Africa (mostly former French colonies such as Mali and Senegal), but also in some parts of the EU, such as: France, The Netherlands, Hungary, Portugal, Slovakia and Spain.

A typical representative of the mixed model is France. The election administration bodies in France are regulated by the Constitution of France²² and the Electoral Code.²³ As an executive body, the Ministry of Interior is responsible for the direct implementation of election activities. The Ministry is also responsible for organizing voting for voters who reside outside of the country. The independent component of the election administration is the Constitutional Council. It has a mostly supervisory role and character. The direct participation of the Constitutional Council in the election process is limited to the registration of presidential candidates and the announcement of elections. Also, it considers and advises in the field of election legislation and decides on election appeals and objections. Aside from that, it receives reports from the judges delegated by the Court of Cassation.

²¹ Federal Elections Act, Version as promulgated on 23 July 1993 (Federal Law Gazette I pp. 1288, 1594), last amended by Article 1 of the Act of 28 October 2020 (Federal Law Gazette I p. 2264), available at: <https://tinyurl.com/v34rgzmn>

²² Constitution of France, available at: <https://tinyurl.com/y74cox49>

²³ Election Law of France, available at: <https://tinyurl.com/7sckeznh>

Table 2: Examples of central election administration bodies of a mixed model in three European Union countries²⁴

Country	Election Administration Body		No. of member	Term of Office	Type of Membership	Appointment of Members
	Governmental Component	Independent Component				
France	Ministry of Interior	Constitutional Council	9	9	Expert	The members of the Constitutional Council are appointed by the President of France and the President of each of the Houses of Parliament (National Assembly and Senate). Former presidents of France are automatically members of this body. The election to this body is preceded by the opinion of the Constitutional Committees of both Houses.
Slovakia ²⁵	Ministry of Interior	State Commission for Elections and Control of Funding of Political Parties	14	4	Expert	10 members are delegated by political parties that gained representation in Parliament in the last elections, in proportion to the number of seats. One member is delegated by the President of the Constitutional Court, the President of the Supreme Court, the State Attorney, and the President of the Supreme Audit Office.
Portugal ²⁶	Ministry of Interior ²⁷	National Election Commission	6	4	Expert	The composition of the National Election Commission includes: one associate of the Supreme Court of Justice, as the President of the Commission, appointed by the Supreme Judicial Council; one citizen of recognized merit appointed by each parliamentary group and one technical advisor appointed by the government's internal affairs, foreign affairs and media sectors.

3.1.4 Structure and composition of electoral administration

Apart from the model of election administration, it is also important to look at their structure. Depending on the model of the election administration, the composition, i.e., the membership in election administration bodies will be different. The governmental model is characterized by the lack of members, and all election tasks are performed by civil servants. In the independent model, the implementation of election activities is entrusted to the election administration, which is institutionally independent from the executive branch, but often with limited participation of various state institutions. In the mixed model of election administration, the management of election activities is mainly implemented by state institutions, while the management of election activities is usually limited to a supervisory role.²⁸

In the independent and mixed model, decision-making is left to the members of the election administration, who can be appointed from among experts (expert type), representatives of political parties (multiparty type) or combination of the two models (combined type). Formally, Montenegro falls in the category of combined type of membership. As pointed out by the experts from the International Institute for Democracy and Electoral Assistance, all three types have certain advantages and disadvantages:²⁹

²⁴ The number of members, term of office, type of membership and election of members refer only to the independent component of the election administration body.

²⁵ The Law on the Conditions for the Exercise of the Right to Vote and on the Amendment of Certain Laws, available at: <https://tinyurl.com/1ktg8woy>

²⁶ Rulebook on the National Election Commission of Portugal: <https://tinyurl.com/10wb7hao>

²⁷ Electoral Law of The Assembly of The Republic of Portugal, available at: <https://tinyurl.com/17c16qnw> ²⁸ Helena Catt et.al., op. cit., p. 110-112

²⁹ Ibid, p. 113

Table 3: Advantages and disadvantages of different types of election administration membership

MEMBERSHIP	ADVANTAGES	DISADVANTAGES
Expert	<ul style="list-style-type: none"> • Impartial and neutral membership promotes the credibility of the EMB • Likely to reject political pressure. • Professionalism of members. • Makes a range of expert knowledge available on the EMB. • Eminent public figure members raise the profile of the EMB. • May have a broad range of professional networks on which the EMB can draw. 	<ul style="list-style-type: none"> • May not always be aware of relevant political factors. • Political actors may have limited access to EMB activities. • May not have good links with critical electoral stakeholders. • Members may need to address conflict of loyalties between the work of the EMB and the views of the organizations they come from. • The best 'experts' may not be willing to serve. • It may be difficult to find 'non-partisan' members in transitional environments.
Multiparty	<ul style="list-style-type: none"> • May promote electoral participation by opposing political forces. • May encourage voter participation. • Enhances electoral transparency. • Ensures political party input to the EMB's policy development. • Ensures links with critical electoral stakeholders. • Brings political experience to the management of electoral processes. 	<ul style="list-style-type: none"> • Members' actions may be motivated by political interest. • May not have appropriate professional experience or qualifications. • May be unwieldy if all parties are represented. • May lack credibility if some parties are excluded or if political parties are not respected. • May find consensus decision-making difficult. • EMB unity may suffer due to public disputes between parties.
Combined	<ul style="list-style-type: none"> • May achieve balance between political and technical considerations. • May encourage participation, and expert members may counterbalance any attempt at partisan actions. • The EMB is transparent to political participants and has some professional credibility. • Both expert knowledge and political input are available to the EMB. • Links with both critical electoral stakeholders and public figures. • Has both political experience and professional networking capacities 	<ul style="list-style-type: none"> • Political and expert elements may have different agendas. • EMB may experience competitive leaking of information between its components. • May be unwieldy if all political and expert elements are represented. • May lack credibility if some parties are excluded. • May find consensus decision-making difficult. • High-calibre experts may not be willing to work with political elements.

3.2 Election Administration in Montenegro

As previously stated, from a formal aspect the election administration in Montenegro belongs to the independent model, and the membership in election administration bodies is of combined type. But the institutional independence that these bodies enjoy is different from “pure independence”. Election administration bodies, despite institutional independence, may be under the influence of political parties and influence of the executive branch. Practice has shown that this also applies to Montenegro. Therefore at the start of this section, we will take a brief look at the history of the election administration in Montenegro, to see how the structure of these bodies and the legal framework by which they were established has changed from the adoption of a multi-party system, until today, and how these changes have contributed to the current state of election administration bodies.

The first election law in Montenegro was passed in 1990, before the first multi-party elections held on December 9th and December 23rd of the same year. It was called “The Law on Election and Revocation of Councilors and MPs”.³⁰ Election administration bodies were established in the second chapter in articles 16-44. The central body in the hierarchy of election administration was the Republic Election Commission (hereinafter: REC). Apart from the REC, there were also municipal election commissions and polling boards.

According to Article 22, the president of the REC was appointed from among the judges of the Supreme Court,³¹ and the Secretary, whose function was permanent, was elected from among the experts on the electoral system. After the Constitution was adopted in 1992, establishing a parliamentary system, Montenegro received a new Law on Election of Councilors and MPs,³² with the support of international organizations (OSCE, ODIHR and EU). The law came into force the same year. This umbrella election law contained the principles on which all subsequent amendments were based. The structure of election administration bodies has been changed in terms of formal criteria for their appointment. Instead of the previous eight members, including the president and secretary of the REC, the new law provided for five members in addition to the president and secretary. After the first Law of Election of Councilors and MPs entered into force, the functioning and organization of election administration bodies have changed several times, but apart from institutional independence, they never managed to achieve “pure independence”, i.e., independence in the process of reaching decisions.

The law was amended in 1996. The most important substantive change in the new text of the law referred to the election of the president of the REC. Namely, the provision that the president of the REC is elected from among the judges of the Supreme Court was changed, and the new solution was that the president and his deputy are to be elected from among prominent judicial office holders. The subsequent amendments further lowered the formal and legal requirements that candidates had to meet for positions in the election administration. Thus, the amendments from 1998³³ and 2000,³⁴ in addition to the structural changes that provide for the REC to work in a permanent composition of 11 members and the expanded composition (one authorized representative of each confirmed electoral list), continued to lower the required conditions for the election of the president and REC members, by stipulating that they be elected among law graduates. Same conditions also apply to the secretary of the REC, who, until then, was the only expert on the electoral system. This represents a sort of “deprofessionalization” of the central election administration body, which opened the way to its politicization.

³⁰ Law on Election and Revocation of Councilors and MPs (“Official Gazette of the Socialist Republic of Montenegro” No. 36/90, of October 3, 1990)

³¹ A judge of the Constitutional Court, Radojko Đurićanin, was appointed the president of the REC („Official Gazette of the Socialist Republic of Montenegro”, No. 37/90 from 9. October 1990)

³² Law on Election of Councilors and MPs (“Official Gazette of Montenegro” No. 49/92, dated 14 October 1992)

³³ Law on Election of Councilors and MPs (“Official Gazette of the Republic of Montenegro”, No. 4/98)

³⁴ Law on the Election of Councilors and MPs (“Official Gazette of the Republic of Montenegro”, No. 16/2000 (consolidated text), 9/01, 41/02, 46/02, 45/04 and “Official Gazette of the FR Y”, No. 73 / 00 and 9/01)

According to the current text of the Law, the election administration is three-tiered. The central election administration body is the State Election Commission (hereinafter: SEC), which is a permanent body consisting of the president, secretary and nine permanent members, as well as one authorized representative of each submitter of the electoral list, in the expanded composition. These members have the right to participate in the work of the SEC and vote on decisions like the permanent members, 20 days prior to the election day. All of the members of the SEC, and their deputies are elected from the ranks of law graduates. An additional condition is prescribed for the president of the SEC. He/she must have at least 10 years of work experience in the legal profession and cannot be a member of the governing body of a political party in the last three years. There is also a special condition regarding the representative from the civil society, NGO sector or university. This member must have published scientific papers and professional articles on the topic of the election process, and he/she must have achieved public recognition in this field and participated in domestic or international monitoring of elections. The president of the SEC is appointed by the Parliament, at the proposal of the working body of the Parliament responsible for election and appointment after the previously conducted contest. The same procedure is prescribed for the member from the ranks of civil society, NGO or university. As for the other members of the permanent composition, four are appointed on the proposal of the parliamentary majority and the other four are appointed on the proposal of the parliamentary opposition. One of the four members appointed at the proposal of the opposition performs the function of the secretary. The right to nominate one member to the permanent composition of the SEC is granted to the political party, i.e., the submitter of the electoral list for authentic representation of members of the minority people or minority national community, which received the largest number of votes in previous elections, while his deputy should be a member of another minority people or minority national community.

The second level of election administration are the 24 municipal election commissions (hereinafter: MEC). The MEC consists of the president and four permanent members, as well as one authorized representative of each submitter of the electoral list in the expanded composition. The president is a party figure from the political party that won the most seats in the previous elections. Two members are appointed on the proposal of the parliamentary opposition, one of whom performs the function of secretary, and the other two members are elected on the proposal of the ruling majority.

At the third level of election administration are the polling boards, which are formed for each polling station. Polling boards are composed of the president and four members. Their responsibilities are determined by drawing lots before voting.³⁵ Each political party represented in the relevant municipal parliament has a number of presidents of polling boards proportional to the representation of board seats in the municipal parliament. Two members of the permanent composition of the polling board are appointed on the proposal of the political party, i.e., coalition that has the majority in the relevant municipal parliament, and two representatives of the two opposition parties (one of each) in the relevant municipal parliament, which won the most seats in the previous elections, or the most votes in case they won the same number of seats.

In the next section we will present specific problems that have, in the last few election cycles, contributed to the dysfunction of election administration bodies as well as to public distrust in their work, thus threatening the legitimacy of election processes.

³⁵ In the last parliamentary elections in Montenegro held on August 30, 2020, there were 1,217 polling stations.

3.3 Challenges in the work of the election administration

3.3.1 Political bias in the work and decision-making of the SEC

The work and decision-making of the State Election Commission often has the outlines of strict politicization that casts doubt on the integrity of the decisions made by the election administration bodies. The recommendations of the Venice Commission, the OSCE / ODIHR, as well as domestic NGOs point out problems in the work of election administration bodies that are directly related to the above principles on which the work of the State Election Commission should be based. The Venice Commission notes, in the Code of Good Practice in Electoral Matters, that “only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.”³⁶ Given that according to the current law, as we have already stated, apart from the SEC president and a member appointed from among the representatives of civil society, other SEC members are appointed by political parties, the practice of politically motivated decisions is not surprising. This problem is also recognized by some of our interlocutors who, through their experience, provided concrete proposals for solving this and other problems in the work of the SEC.

The lack of impartiality and independence from political influence in the work of the SEC can be seen in the way this body made the decision on the preliminary and final results of the 2016 parliamentary elections, where the management of party interests was evident. The problem did not exist only in the way of decision-making among the authorized representatives, but also among the members of the permanent composition of the SEC. Namely, despite the fact that almost all MEC reports were signed by the majority of members, both by government representatives and by opposition representatives, opposition members of the SEC decided to obstruct the work of this body by refusing to accept the election results. Namely, only 15 out of 28 members voted for the announcement of the final election results.³⁷ In this case, the SEC put the announcement of the election results to a vote, which is an example of inadequate interpretation of the provisions of the Law on the Election of Councilors and MPs. Namely, one of the competencies of the SEC pursuant to the provisions of the Law on Election of Councilors and MPs, is to determine the election results by determining the number of votes and the number of seats that belong to each electoral list for the election of MPs. Determining the results is an action that the SEC should perform without its members deciding about the official data obtained by the polling boards and MECs, and which represent a mathematical expression of the conducted elections and the will of the citizens. Putting the announcement of election results to a vote is an example of negative practice in the work of the SEC, which can result in a paradoxical situation where most SEC members vote against election results, which are confirmed by other election administration bodies and which are, in essence, an expression of citizens' electoral will. Therefore, this practice should be terminated as soon as possible in order to relieve the work of the SEC in the post-election period of unnecessary tensions, which are usually related to the moment of announcing the election results.

One of the remarks of certain political entities in the 2016 Parliamentary elections also referred to the subsequent appointment of authorized representatives of electoral lists after election day. These persons did not participate in the work and discussions of the SEC, but were only involved in the voting process. In this way, one gets the impression that political entities see the SEC not as an independent body that should ensure the legitimacy of electoral processes, but as a political body that can be used to gain electoral advantage and achieve other political goals. Therefore, one of the OSCE / ODIHR recommendations to the 2016 election authorities was that consideration should be given to limiting the direct involvement of authorized representatives in the decision-making process.³⁸

³⁶ Code of Good Practice in Electoral Matters, op. cit., p. 26

³⁷ Montenegro, Parliamentary Elections 2016, Final Report of the OSCE/ODIHR Observation Mission, Warsaw, 2017, p. 21

³⁸ Ibid, p. 23

The problem of politically motivated decisions is also mentioned in the OSCE / ODIHR report from the 2018 Presidential elections, which confirms that this is a long-standing problem. Namely, the OSCE / ODIHR report states that „SEC members made decisions along political lines, before and after the election day. In addition, SEC permanent and extended members from the opposition failed to attend the session where a complaint submitted by the opposition candidate challenging the election results was to be heard, resulting in a lack of quorum. To respect the legal deadline for adjudication of complaints, the SEC decided to conduct the session with the six present members without the legally required quorum”.³⁹

The aforementioned case concerns the then presidential candidate Mladen Bojanić, who asked the SEC to annul the election results. The SEC rejected his complaint as inadmissible, explaining that the complaint to the SEC could only be filed against the decisions of the municipal election commissions. Bojanić submitted a constitutional appeal on the SEC's decision, stating as an argument that the SEC did not have the necessary majority to decide on the complaint, because only six out of 10 permanent members were present at the session, i.e., six out of a total of 17 members, considering that the session was not attended by the seven authorized representatives of electoral lists. The Constitutional Court rejected this appeal,⁴⁰ to which Bojanić responded by lodging a complaint to the European Court of Human Rights in Strasbourg, due to discrimination, violation of the right to a fair trial and free elections.

Finally, as the last in a series of examples of political influence on the decision-making process within the SEC, it is necessary to mention the case from December 2020, which attracted special public attention and is related to the process of verifying the mandate of candidates from the “Black on White” electoral list, due to the resignation of an MP from the same electoral list. Namely, in accordance with the provisions of the Law on Election of Councilors and MPs, the mandate of an MP ends on the day of resignation (Article 101) and a candidate is elected in his place according to the list to which he belongs. The deputy informs the President of the Parliament about the submitted resignation, and the President of the Parliament delivers the resignation to all MPs. The Parliament informs the SEC about the termination of the mandate, which should prepare a report on the filling of the parliamentary seat. In this case, after the Parliament of Montenegro submitted information to the SEC on the termination of the mandate of the MP from the “Black on White” list, the SEC did not conduct the procedure of filling the vacant seat. Instead, they decided, by a majority of permanent members, that “the SEC is unable to submit to the Parliament a report on the filling of the parliamentary seat”.⁴¹ This example demonstrates a noticeable lack of understanding of the process of verifying the mandate of the majority of members of the permanent composition of the SEC. According to the current legal solution, the preparation of the report on the filling of the parliamentary seat by the SEC is a declarative, and not a constitutive act. This decision of the SEC was characterized by the public as a political act, aimed at preventing the adoption of amendments to the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities, which was one of the leading sources of political tensions during the election year. Following this decision, the President of “True Montenegro” filed a criminal complaint with the Higher State Prosecutor's Office against the President of the SEC for abuse of office, negligent work in the service and illegal influence. In addition, on January 20, 2021, the Administrative Board of the Assembly initiated a procedure of dismissal of the President of the SEC, Aleksa Ivanović. It is expected that the Parliament will decide on the proposal of the Administrative Board to dismiss the President of the SEC during the first regular spring session. Considering that all MPs of the ruling majority supported this proposal at the session of the Administrative Board, it seems that the dismissal of Ivanović from the position of the SEC president is almost certain. On the other hand, the decision of the SEC conditioned the self-initiated proclamation of the mandate of the MP from the list “Black on White” by the Parliament, which created a basis for submission of initiatives by opposition parties to assess the constitutionality and legality of decisions made by the Parliament during this session, which are currently pending before the Constitutional Court of Montenegro.

³⁹ Montenegro, Presidential Elections 15 April 2018, ODIHR Election Observation Mission, Final Report, OSCE/ODIHR, Warsaw, 2018, p. 6

⁴⁰ Constitutional Court Decision (U-VII No. 17/18), available at: <https://tinyurl.com/3g6n4jpi>

⁴¹ Available at: <https://tinyurl.com/n36n4xc7>

3.3.2 Lack of professionalism of election administration bodies

Election administration bodies in Montenegro should base their work on the principles of independence, impartiality, transparency and professionalism. However, problems in the implementation of electoral processes in Montenegro indicate that the basic principles of the functioning of electoral administration bodies have not been put into practice. One of the key OSCE / ODIHR recommendations that the law should include a provision on the professionalism and impartiality of election administration bodies,⁴² has not yet been adopted. As a consequence, there is a continuous problem of lack of public confidence in the work and decisions of the election administration in Montenegro.

3.3.2.1 Lack of professionalism in the work of the SEC

Based on the previously presented part of the study which describes the development of electoral legislation in Montenegro, we can conclude that the type of membership in the central body of electoral administration, from the adoption of the first electoral law in 1990 to today, has ranged from highly expert to a “quasi-mixed” type that is predominantly partisan. Amendments to the election law, which removed and changed the provisions by which the highest body of the election administration was composed of experts, undoubtedly had a negative impact on independence and impartiality, as well as on the professionalism of the SEC. We cannot ignore that the first president of the REC was a judge of the Supreme Court, and the secretary could only be an electoral system expert. These two important positions were, therefore, performed by legal experts. Amendments to the election legislation gradually introduced amateurism in the work of election administration bodies, up to the current text of the Law on Election of Councilors and MPs from 2016, which does not provide formal-legal criteria that would guarantee professionalism in the work of the SEC. As a condition it is only required that a Bachelor of Laws can be elected as a member of the permanent staff proposed by the political parties. In this way, quality in work, dedication, and ultimately, professionalism, are not guaranteed.

The partial professionalization of the State Election Commission was sought to be ensured by prescribing that the President and Secretary of the State Election Commission perform their duties professionally. In this way it is ensured, at least on paper, that the President and the Secretary are fully committed to the work and functioning of the SEC. Pursuant to the Law on Salaries in the Public Sector of Montenegro, the President and Secretary of the SEC belong to one of the most important groups of jobs (B/11 and B/17). An extremely high job complexity ratio of 20.75 has been set for the President of the SEC, which, for example, corresponds to the job complexity ratio performed by the Chief Special Prosecutor of Montenegro. However, this did not contribute much to the improvement of the overall professionalism in the work of the SEC.

The only exception is a member elected from among civil society representatives. We have already stated that the Law prescribes a special condition for the election of this member to be an expert on issues of election legislation. Indeed, in the Parliamentary elections held in 2016, this function was performed by a person who meets all the conditions, and it can be said that he was also the only member of the SEC who acted in accordance with the principle of professionalism in those elections. Unfortunately, in practice it has been shown that this legal provision is not always a guarantee of professionalism. After the first member of the SEC from the civil sector resigned in October 2016,⁴³ his replacement was not appointed until the next elections, and on April 27, 2018, at the proposal of the Parliament of Montenegro, a person who did not meet all formal statutory conditions was elected as this member, which CeMI noted in its Final report.⁴⁴

The low level of professionalism of SEC members was also felt in the last Parliamentary elections held on August 30, 2020. Namely, the SEC showed an insufficient degree of responsibility in adopting comprehensive and clear recommendations for safe conduct of the elections in the conditions of the COVID-19 pandemic. An indicator of the lack of expertise of the members of this body is reflected in the

⁴² OSCE/ODIHR, Montenegro Parliamentary elections 2016, op. cit., p. 6

⁴³ Source: <https://tinyurl.com/wmb28sxn>

⁴⁴ Civic Monitoring of the Presidential Elections, Montenegro, Final report, CeMI, Podgorica, 2018, p. 11

decision of the Constitutional Court⁴⁵ to revoke some of the technical recommendations adopted at the SEC session, which restricted the right to vote for voters infected with COVID-19 virus or who were in self-isolation. Among other things, the Constitutional Court found in its decision, that the SEC violated the constitutional principle from Article 145 of the Constitution, as well as that by recommending wearing masks, it exceeded its powers, which belong to the Ministry of Health. In addition, as the title of the document says, these are technical recommendations, not rules, which is contrary to Article 66, paragraph 2 of the Law on Election of Councilors and MPs, which stipulates that the SEC establishes “closer rules regarding the polling station.” Apart from its unconstitutionality, therefore, the concept of the adopted document was also incorrect.

In the post-election period in 2020, the process of verification of seats caused special public attention. Namely, the mandate of a deputy ends on the day of resignation (Article 101 of the Law on Election of Councilors and MPs) and if the mandate of a Councilor, i.e., Member of the Parliament from the coalition electoral list ends, the next candidate on the list will be elected in his place. The deputy informs the Speaker of the Parliament about the submitted resignation, and the Speaker of the Parliament delivers the resignation to all members of the Parliament. The Parliament informs the State Election Commission about the termination of the mandate, which should prepare a report on the filling of the parliamentary seat. The majority of members of the permanent composition of the State Election Commission were determined that this report should not be sent in case of resignation of MP Filip Adžić, because, at that time, the number of MPs in the hall was insufficient for a quorum (40 MPs present, one MP was included via video link) which is contrary to the Rules of Procedure of the Parliament. In this example, there is a noticeable lack of understanding of the process of verifying the mandate of the majority of members of the permanent composition of the SEC. According to the current legal solution, the preparation of the report on the filling of the parliamentary seat by the SEC is a declarative, and not a constitutive act. This decision of the SEC was characterized by the public as a political act, aimed at preventing the adoption of amendments to the Law on Freedom of Religion or Belief and the Legal Status of Religious Communities, which was one of the leading sources of political tensions during the election year. Following this decision, the President of “True Montenegro” filed a criminal complaint to the Higher State Prosecutor’s Office against the President of the SEC for abuse of office, negligence in discharging one’s duties and illegal influence.

3.3.2.2. Lack of professionalism in the work of MECs and PBs

Apart from the SEC, the problem of lack of professionalism also exists at other levels of the election administration. In previous election processes, the most irregularities were recorded in the work of municipal election commissions and polling boards. Irregularities in the work of MECs and polling boards generally occur to a similar extent and manifest themselves in a similar way in all electoral processes (with the exception of the Parliamentary and Local elections in 2020, which were marked by numerous irregularities regarding compliance with measures to prevent the spread of COVID-19 virus). The lack of professionalism, according to the experts we spoke to, is largely due to the fact that they are members of the MEC and polling boards of party figures, and that they are often not sufficiently trained for that type of work.

One of the most common irregularities noted by CeMI in previous election cycles refers to the work of these bodies in incomplete composition, oral agreements on the distribution of roles at the polling station, without drawing lots, contrary to the provisions of the Law on Election of Councilors and MPs. Due to the lack of training of the members of the polling boards, there is an improper use of electronic voter identification devices, which is one of the main reasons why the voting process at these polling stations starts with a delay.

We had the opportunity to witness a very problematic situation in a large number of municipalities in the parliamentary and local elections in 2016. The change on the political scene in many municipalities led to problems in the constitution of MECs, because it was not always possible to determine which party or list represents the government or the opposition. The MEC in Ulcinj was not constituted in accordance with the law, as only one of the four members was a representative of

⁴⁵ Constitutional Court Decision (U-II No. 45/20), available at: <https://tinyurl.com/bao2jv9a>

the opposition (SNP). A similar situation occurred in Budva and Kotor, where no SDP representative was included in the MEC, despite the fact that the party was in power, while in Bar the SDP had a seat in the MEC from the ruling coalition's quota, although it was in fact part of the opposition in the local parliament.⁴⁶

The lack of professionalism of the MEC was also evidenced by the ignorance of the provisions of the Law on the Election of Councilors and MPs related to gender equality. Namely, in the parliamentary elections held on August 30, 2020, in the municipalities of Andrijevica and Budva, two electoral lists were submitted that were not in accordance with Article 39a of the Law on the Election of Councilors and MPs. The SNP-NSD electoral list "For the Future of Andrijevica" and the electoral list "Nova Budva - Ilija Gigović" did not comply with the provision of Article 39a, paragraph 2, according to which there must be at least one candidate of the underrepresented gender on the electoral list among every four candidates on the list.⁴⁷

The observed irregularities are largely the result of inadequate work of MEC members and insufficient training and expertise of PB members. For example, training on voting procedures and the use of electronic voter identification devices on election day, organized by the SEC, is not always consistent, with OSCE / ODIHR reports noting problems with inadequate skills and knowledge of educators, but also a lack of interest among participants of these training courses.⁴⁸ Although the education of polling station members was positively assessed by the OSCE / ODIHR mission in the 2018 presidential elections, a large number of members were replaced immediately before the elections by insufficiently trained representatives,⁴⁹ using the legal option provided by Article 35 of the Law on Election of Councilors and MPs, which allows political parties to replace their members in these bodies just 12 hours before the opening of polling stations, and the law does not stipulate an obligation for all members of the polling station committee to complete the necessary training beforehand. A similar conclusion was reached by the ENEMO observation mission in the 2020 Parliamentary elections, whose members criticized the lack of regulatory mechanisms to ensure that all PB members attend training.⁵⁰ The OSCE / ODIHR final report also states that the training was not at a satisfactory level.⁵¹

Problems also exist in the legal norms that regulate the right to membership in polling stations. We can point out the ambiguity and vagueness of the law, which is reflected in the provisions on the composition of polling boards, because the law gives the right to appoint polling board members to two opposition parties based on election results, but the same does not apply to coalitions or lists of groups of citizens. Meanwhile, Article 20 stipulates that a candidate on the electoral lists cannot be a member of election commissions, but it says nothing about the polling boards. This legal ambiguity had its practical consequences in a polling board in Danilovgrad in 2018, when a candidate from an electoral list was also a member of the polling board. In addition to this case, in 2016 the SEC issued a Conclusion stating that a candidate from the list of MPs cannot be the president of the polling board or the vice president, nor a representative or deputy authorized representative, nor an observer at polling stations.⁵² The ambiguity of this conclusion is reflected in the non-existence of a clear prohibition that a deputy cannot be a member of the permanent composition of the polling board. Apart from the ambiguity, the law is contradictory and imprecise in some parts. Namely, Article 35 treats the government and the opposition differently, because it regulates parties but not electoral lists, and it cannot be determined whether the provisions of the article refer to the current composition of the Parliament, or to the composition after the previous elections. Such legislative shortcomings cause real problems in the electoral process and need to be changed.

⁴⁶ Civic Monitoring of Parliamentary and Local Elections - Montenegro 2016, Final Report, CeMI, Podgorica, 2016, p. 18

⁴⁷ Civic Monitoring of Parliamentary and Local Elections - Montenegro 2020, Final Report, CEMI, Podgorica, 2020, p. 60

⁴⁸ OSCE/ODIHR, Montenegro 2016 Final Report, op. cit., p. 8

⁴⁹ OSCE/ODIHR, Montenegro 2018 Final Report, op. cit., p. 7

⁵⁰ European Network of Election Monitoring Organizations ENEMO, International Election Observation Mission Montenegro Parliamentary Elections 2020, p. 20

⁵¹ Montenegro, Parliamentary Elections 30 August 2020, Limited Observation Mission of the Office for Democratic Institutions and Human Rights (ODIHR), Final Report, OSCE/ODIHR, Warsaw, 2020, p. 8

⁵² SEC Conclusion available at: <https://tinyurl.com/7ypm9m39>

3.3.3 Lack of transparency in the work of the SEC

Another common complaint concerns the transparency of the SEC's work. As in the previous election cycle, the last elections in August 2020 did not ensure media presence at SEC sessions, which was justified by reducing the risk of spreading the COVID-19 virus. In addition to CeMI,⁵³ this problem was also pointed out by ENEMO observers, with the recommendation that all sessions be made public and available on the SEC website.⁵⁴ The long-term nature of this problem proves that COVID-19 is not the sole reason for the inability of the media to follow the work of the SEC. This problem was also pointed out in the OSCE / ODIHR reports from 2016⁵⁵ and 2018.⁵⁶ The pandemic, and the challenges associated with it, must certainly not be an excuse for a lack of transparency, especially given that today's technology allows sessions to be broadcast without the presence of media representatives, who may have been able to set up the necessary broadcast equipment before the beginning of the sessions, which would achieve greater transparency without an increased risk of spreading the virus. One of the solutions to be considered is that during the election process, the Parliament of Montenegro makes its spatial capacities available to the SEC. If the SEC could organize work in operating chambers of the Parliament, that would also resolve the problem of lack of a space for media accessing SEC sessions.

3.4 Proposal for the reform of the election administration in Montenegro

As we have already stated, the election administration bodies perform their activities in accordance with the principles of independence, impartiality, transparency and professionalism. In order to fully incorporate these principles into their work, a comprehensive reform of the election legislation is necessary, which includes changes in the composition, organization and functioning of election administration bodies. The proposed model is based on long-standing CeMI recommendations, but also stems from the recommendations of international organizations that have observed the electoral process in Montenegro. The basic idea of this reform is the full professionalization and depoliticization of the SEC and partial professionalization of MECs, as well as changes and amendments to legal provisions that would resolve the previously mentioned problems in the functioning of the organs of the election administration at all levels. The fact that this is the right direction to take is confirmed by the findings obtained by CeMI through interviews with relevant actors who are experts in electoral legislation, and who recognized the aforementioned problems in the work of electoral administration bodies, especially regarding their depoliticization and professionalization.

The first and basic principle on which the work of the SEC is based is independence. Institutional independence is not sufficient to ensure decision-making and the exercise of statutory powers without political influence. It is therefore necessary to amend the Law on Election of Councilors and MPs in the direction of complete depoliticization and professionalization of the SEC which would result in more serious and efficient functioning, while strengthening the capacity of professional services and the established procedures necessary for the planning and operation of these institutions. This would contribute to the realization of the principle of professionalism.

An integral part of the functioning of the SEC should be its impartiality, in the sense that any interest group or political party in Montenegro is not given priority, on any grounds. This principle partly overlaps with the already proposed solution, but in order for the principles of independence, impartiality and professionalism to be fully realized, it is necessary to amend the Law on

⁵² SEC Conclusion available at: <https://tinyurl.com/7ypm9m39>

⁵³ CEMI, Final Report 2020, op. cit., p. 22

⁵⁴ ENEMO Montenegro Final Report, op. cit. p. 18

⁵⁵ OSCE/ODIHR, Montenegro Final Report 2016, op. cit., p. 7

⁵⁶ OSCE/ODIHR, Montenegro Final Report 2018, op. cit., p. 7

the Election of Councilors and MPs. If we take into account that authorized representatives are elected, not in the interest of voters, but in the interest of political entities / electoral lists themselves, we come to the conclusion that such composition of the SEC is extremely dysfunctional and that the basic principles of independence and impartiality are visibly violated, while the lack of professionalism of its members is also noticeable. For these reasons, representatives of confirmed electoral lists should not participate in the work of the SEC in the future and have the right to vote, but only the right to observe the work and inspect SEC documentation. According to our interlocutors, their role should be of a control type, because due to the fact that they are members of political parties they are at the same time participants in the election process, and are therefore guided by the interests of the political option to which they belong.

Transparency of the SEC's work can also be achieved by amending the law by imposing an obligation on the SEC to provide media access to its sessions, as well as an obligation to introduce live coverage of sessions online and / or an obligation to make recordings of sessions available to the public to be downloaded on their website. The experts we spoke with pointed out that the lack of transparency, i.e., the inability of the media to attend SEC sessions, is one of the key problems that partly affects the increased level of politicization of this body and the lack of trust in the work of the SEC. In their opinion, citizens' insight into the way that SEC members make decisions would have a positive effect on the decision-making process itself.

Contribution to solving some of the identified problems can be achieved by adopting a new rulebook on the work of the SEC, which would regulate all disputes from previous election cycles, which may be abused (recording sessions, keeping and adopting minutes during sessions, how to ask a question to vote, the manner of adopting the objection, the number of members necessary to put a certain proposal on the agenda, the length and basis of work breaks, and similar issues).

Some of our interlocutors expressed the view that the MECs should be fully professionalized, and that the number of members should be reduced to three. However, they cite the potentially insufficient number of professional staff but also a lack of political will as problems preventing this solution from materializing. The solution proposed by CeMI seems to be an adequate compromise. Namely, partial professionalization of municipal election commissions would contribute to a higher level of professionalism of this body of election administration. Amendments to the Law on Election of Councilors and MPs should stipulate that the President of the MEC be appointed by the State Election Commission, on the basis of criteria established by law, on the basis of a previously conducted public competition. Professionalization of this member could avoid omissions that lead to the establishment of electoral lists that do not meet the formal and legal requirements for participation in elections, but also faster processing of applications for endangering electoral rights. It is necessary to more precisely and unambiguously regulate the election of MEC members, as well as polling stations, so that it would not depend on political turmoil and decisions of these bodies.

The lack of training of polling station members is a continuing problem, and it is necessary to standardize the way in which trainings for polling station members are conducted, in order to reduce the number of procedural omissions and errors during election day. Given that the largest number of irregularities exist at the level of polling stations, it is necessary to take concrete measures, i.e., legal changes to provide for the obligation to attend training for members of polling stations in order to improve the quality of their work.

Amendments to the Rules of Procedure of Polling Station Committees and the Manual for Training of Polling Station Committees may contribute to the prevention of possible abuse by unauthorized persons at the polling station, since neither the Rules of Procedure of Polling Station Committees nor the Manual for Training of Polling Station Committees prescribe wearing accreditation badges.

3.4.1 State Election Commission

- Amend the Law on the Election of Councilors and MPs, to enable the professionalization of the SEC in such a way that the composition of the commission would consist of 3-5 legal professionals (preferably with an emphasis on the electoral law).
- In the future, representatives of confirmed electoral lists should not participate in the work of the SEC and have the right to vote, but only the right to observe the work and inspect the documentation of the SEC.
- It is necessary to adopt a new Rulebook on the Work of the SEC which would regulate all situations from this and previous election cycles which may be abused (recording sessions, keeping and adopting minutes during sessions, manner of putting a certain issue to the vote, manner of adoption of objections, necessary number of members to put a certain proposal on the agenda, length and basis of work breaks, and similar issues).
- Provide access to SEC sessions to the media.
- It is necessary to introduce live monitoring of sessions via the Internet, especially in the circumstances of a pandemic.

3.4.2 Municipal Election Commissions and Polling Boards

- It is necessary to professionalize the position of the president of the municipal election commission, who would be appointed to that position by the SEC, on the basis of legally determined criteria, after a public competition. Other members would be appointed by political parties according to a similar model.
- Process complaints against violations of electoral rights more quickly, taking into account the urgency necessary to decide on disputes concerning electoral rights.
- It is necessary to more precisely and unambiguously regulate the election of MEC and Polling Board members so that they do not depend on political turmoil and decisions of the MEC or the SEC.
- It is necessary to amend the Law on the Election of Councilors and MPs so that all aspects of the work of polling boards are regulated in detail by law.
- Wearing the accreditation badge is not an obligation in the Rules of Procedure of Polling Boards, nor in the Manual for Training of Polling Boards, so to reduce space for abuse by unauthorized persons, it is necessary to introduce this obligation in the bylaw.
- Indicate to polling boards the importance of working in full composition so that there would be no situations in which the polling station committee consists of four members, and not five as provided by the Law on Election of Councilors and MPs.

IV REGISTRATION OF ELECTORAL LISTS

The provision of Article 43, paragraph 1 of the Law on Election of Councilors and MPs regulates that an electoral list for the election of MPs may be accepted if it has been supported by signatures of at least 0.8% of voters. The provision of Article 43, paragraph 2 of the Law on Election of Councilors and MPs regulates that the electoral list for election of MPs of political parties or groups of citizens who represent a minority nation, or a minority ethnic community may be accepted if supported by signatures of at least 1,000 voters. In line with Article 43, paragraph 3, electoral lists for the election of MPs who represents a minority nation or a minority ethnic community that constitutes up to 2% of the Montenegrin population according to the last population census may be accepted if supported by signatures of at least 300 voters.

According to the current provisions of the Law on the Election of Councilors and MPs, individual candidacies are not allowed, i.e., it is not possible to participate in the elections independently. In this part, the legal provisions should be changed, and individuals should be allowed to participate in the elections independently.

The aforementioned provision was in the focus of the work of the SEC and the Constitutional Court due to the decision on meeting the conditions for the proclamation of the electoral list “SNEŽANA JONICA - SOCIALISTS OF MONTENEGRO – TO LIVE AS YUGOSLAVS”. This is due to the fact that the list was submitted on the basis of the aforementioned provision, and the SEC rejected it with the explanation that Yugoslavs cannot have a minority status, and therefore the right to use affirmative action intended for minority peoples and minority national communities. According to the latest census, 1,154 (0.19%) Yugoslavs live in Montenegro. At the SEC session where this decision was made, seven members (four representatives of opposition parties, one representative of the ruling coalition, a representative of the minority peoples and the president of the commission) voted against proclamation of the list, and four members (three representatives of the ruling coalition and NGO representatives) abstained. This is one of the few examples of voting where the SEC did not reach a unanimous decision. The Constitutional Court, deciding on the initiative of the Socialists of Montenegro, made an almost identical decision as the State Election Commission.⁵⁷ Namely, the constitutional complaint states that the SEC violated the rights of the political party “Socialists of Montenegro”, which derive from Article 48 of the Law on the Election of Councilors and MPs, i.e., the rights from the procedure of proposing and confirming electoral lists, especially in the part of naming, determining and declaring the electoral list, and that the SEC did not explain the reasons and provide evidence for the position that Yugoslavs do not meet the conditions for recognition of their minority status (they simply stated that they do not meet the conditions). After this decision, Snežana Jonica stated that the Constitutional Court and the SEC acted illegally. This is due to the fact that, if the list she holds did not meet the requirements for a minority list, then the SEC should have asked her party for additional signatures to the number required for non-minority lists. The SEC failed to do so.

Without going into the question of the accuracy of the allegation that Jonica’s list had a sufficient number of signatures in case her party was not registered as a minority party, it remains unclear why the SEC did not request additional documentation with missing signatures to the number required for non-minority parties. Also, the decision of the SEC and the decision of the Constitutional Court are not adequately explained, which is a bad precedent, since this is the first case of its kind in the history of election processes in Montenegro and it will serve as a basis for deciding in future similar cases. The decision of the Constitutional Court will essentially determine the electoral practice in the following cases and clear a path for different interpretations and potential discrimination of a smaller number of national minorities.

⁵⁷ Constitutional Court Decision (U-br. VII 1-20), available at: <https://tinyurl.com/3e2abfhn>

In its work so far, the SEC has not determined the credibility of the signatures of support for electoral lists due to lack of capacity to do so, which caused certain irregularities in the procedure of verification of electoral lists. This problem is best illustrated by the 2018 presidential elections. Namely, after an internet check, several citizens reported that their signatures were misused. Among them were politicians, such as Jovan Vučurović from the DF and Vladislav Dajković from “True Montenegro” (Prava Crna Gora).⁵⁸ On January 22nd of 2018, the SEC issued a decision on the required number of signatures of voters to support a candidate for President of Montenegro, which states that the minimum number to support a candidate is 7,933.⁵⁹ In this election cycle, the presidential candidate of Prava Crna Gora, Marko Milačić, who was accused by some political entities of falsifying citizens’ signatures, collected 10,500 signatures,⁶⁰ more than the number of votes he won in that election (9,405).⁶¹ The candidate Hazbija Kalač, whose candidacy was supported by nearly 9,000 voters, won only 2,677 votes. Far fewer votes than the number of signatures was recorded in cases of Vasilije Miličković (1,593 voting) and Dobrilo Dedeić (1,363 votes).

Accordingly, it is clear that the existing system of collecting signatures needs altering. Namely, it is necessary to reduce the number of signatures required for the confirmation of the electoral list, which was also the opinion of our interlocutors. This change, however, should be accompanied by the introduction of mandatory verification of the authenticity of signatures by notaries. In addition, a limit on the price of this service should be introduced so that it is not a limiting factor for the nomination of candidates. In line with the recommendation of the ODIHR and domestic election observation organizations, the ban on one citizen supporting only one list of candidates should be lifted.

The SEC launched an application for the 2018 presidential elections, which citizens can use to check whether their name has been misused in the process of collecting signatures. However, given that the number of citizens whose names were misused in the 2018 presidential election was several hundreds and that the responsibility of any of the actors in the election process has not yet been established, CeMI and other relevant domestic and international organizations have expressed serious doubts about that the misuse of personal data of citizens and falsification of signatures can secure formal conditions for participation in elections. This is evidenced by the results of the 2018 presidential election, which showed that three of the seven presidential candidates had a number of votes that is not even close to the number of signatures collected. Accordingly, we should look at the case law of the European Court of Human Rights (Fournier V. France) which states that it is reasonable to prescribe that election costs should be reimbursed in a proportional system when lists do not receive a minimum of 5% of the vote.

4.1 Key recommendations for improving the conditions for registration of electoral lists

1. Allow individual candidates to participate in elections independently, through the amendment of the Law on the Election of Councilors and MPs.
2. Reduce the number of signatures required for the confirmation of the electoral list with the introduction of mandatory verification of the authenticity of signatures by notaries. Also introduce a limit on the price of this service so that it would not be a limiting factor for the nomination of candidates.
3. Lift the ban that one citizen can support only one electoral list with his signature.
4. Pay special attention to verifying the authenticity of the signature in order to avoid abuse.

⁵⁸ Source: <https://tinyurl.com/mhc537k3>

⁵⁹ Source: <https://tinyurl.com/53apk5s8>

⁶⁰ Source: <https://tinyurl.com/4wsjf28x>

⁶¹ Source: <https://tinyurl.com/c9y6px9h>

V REGISTRATION OF VOTERS

Article 2 of the Law on the Voter Register regulates that the voter register⁶² is a derived electronic database containing personal data of Montenegrin citizens with the right to vote, and a public document that is used only for elections and is kept ex officio. Pursuant to the provisions of this law, the Voter Register as a new database derived from the registry offices is maintained by the Ministry of Interior. The Voter Register is formed on the basis of data from the register of residence, the register of Montenegrin citizens, and the registry of births and deaths, for the announced elections.⁶³

The process of creating a new database derived from the main registers implies combining and cross-referencing the data from the registers in order to obtain a collection of personal data of Montenegrin citizens with the right to vote. The formed Voter Register is later distributed to polling stations, which have access only to that part of the Voter Register for that polling station. Although the manner of keeping the Voter Register is clearly defined in the legislation, the high degree of omissions caused by inadequate implementation of its control is a cause for concern. The latest European Commission Report for Montenegro⁶⁴ also shares this opinion in one of their recommendations, which states the need to revise the complete Voter Register.

The amendments to the Law on the Voter Register from 2019 clearly separates the responsibilities of the Ministry of the Interior and the SEC in the area of monitoring the application of the Law. Article 10 of the Law on Amendments to the Law on the Voter Register, transfers the authority to give an opinion on requests submitted for the purpose of reviewing the application of the Law, from the SEC to the Ministry of Interior.⁶⁵ Article 9 leaves more room for cooperation between the SEC and the Ministry, which is later subject to criminal provisions in case of non-compliance with the amended Article 27. The amendments also define that voter register data may be used only on the basis of the Law on Personal Data Protection,⁶⁶ or subject to the consent of the data subject. However, there is much room for improvement, so it is encouraging that the newly formed Government in its Work Program,⁶⁷ as one of the priorities, mentioned the need to examine the voter register and implement a fundamental reform of the electoral legislation, in order to create conditions for fair and free elections. Of importance for the analysis of this area is the proposal of the Minister of Interior for the establishment of a Council for the Control of the Voter Register, whose task would be primarily to take the voter register and turn it into one of the key segments of the electoral process, instead of a roadblock that it is currently recognized as. This would imply an improvement of the Law on the Voter Register, but also the implementation of recommendations such as the issue of residence and legal capacity to vote, which should be reviewed in accordance with international obligations and good practice. One of the tasks of this advisory body would be to consider whether the current use of electronic devices for voter identification gives satisfactory results, bearing in mind that civil society organizations have noted in several election cycles that the voter register includes persons who are deceased and those living abroad.

⁶² Law on Voter Register ("Official Gazette of the Republic of Montenegro", No. 10/2014, 20/2015, 92/2017, 17/2019 - CC decision and 3/2020)

⁶³ Ibid

⁶⁴ European Commission Montenegro 2020 Report, available at: <https://tinyurl.com/4n767fi5>

⁶⁵ Law on Amendments to the Law on Voter Register ("Official Gazette of Montenegro", No. 3/2020 of January 23, 2020)

⁶⁶ Law on Personal Data Protection ("Official Gazette of Montenegro", No. 79/08 and 70/09)

⁶⁷ Presentation of the Work Program of the Government of Montenegro, Prime Minister-designate Zdravko Krivokapić, 2020, p. 44

5.1 Key Voter Register Problems

5.1.1 Timeliness of data in the Central Voters' Register - the problem of residential conditions

Observing the last three election cycles in Montenegro – the 2016 Parliamentary Elections, the 2018 Presidential Elections and the 2020 Parliamentary Elections, we can see an increase in the number of registered voters. For the 2018 Presidential Elections, 532,599 voters were registered, which is 3,782 more than the number of registered voters in the 2016 Parliamentary Elections, while the number of registered voters for the 2020 Parliamentary Elections is higher by 7,427 voters compared to the 2018 Presidential Elections. The discrepancy between the trend of increasing the number of registered voters on one hand, and the trend population decrease on the other, leads to the weakening of citizens' trust in the accuracy of the Voter Register. Although in some segments the difference in those numbers justifiably leaves room for doubt, for a complete understanding of how the Voter Register is formed it is necessary to understand certain phenomena and concepts.

The biggest problem in the deviating figures of the number of inhabitants and the number of registered voters is the consequence of persons registered in the voter list, who are indisputably citizens of Montenegro, but despite the registered residence do not actually live in Montenegro for a long period of time, and therefore cannot be covered by the census. Unfortunately, the Law on Registry of Permanent and Temporary Residence does not solve this problem, but only deepens it, because it does not provide adequate penalties for persons who have not deregistered their residence. A large number of persons have an illegal permanent residence in Montenegro, because they do not live there. It is precisely this phenomenon that is suspected by part of the political public about the existence of phantom voters.

In order to reduce the number of persons in the Voter Register who do not meet the residency requirement, a stricter penal policy should be introduced when it comes to deregistering residence. Also, if a person is proven to reside in another country, he/she must be removed from the Montenegrin Voter Register.

A citizen whose residence cannot be confirmed by field control is erased from the register of residence and thus from the Central Voter Register. In this part it is necessary to harmonize these procedures with the Law on Administrative Procedure.

Combining cross-referenced databases with databases of other countries would also enable solving the problem of voting by Montenegrin citizens who reside in another country, and thereby violate the provisions of the residential condition, by automatically erasing voters from the Voter Register.

The struggle to increase citizens' trust in the Voter Register began almost 10 years ago with the introduction of erasing from the Voter Register of those who do not live in Croatia and do not have a valid document of that country. So far, according to various stakeholders, despite the initiatives, there has not been sufficient political determination in Montenegro for taking this step or similar steps for tackling this issue.

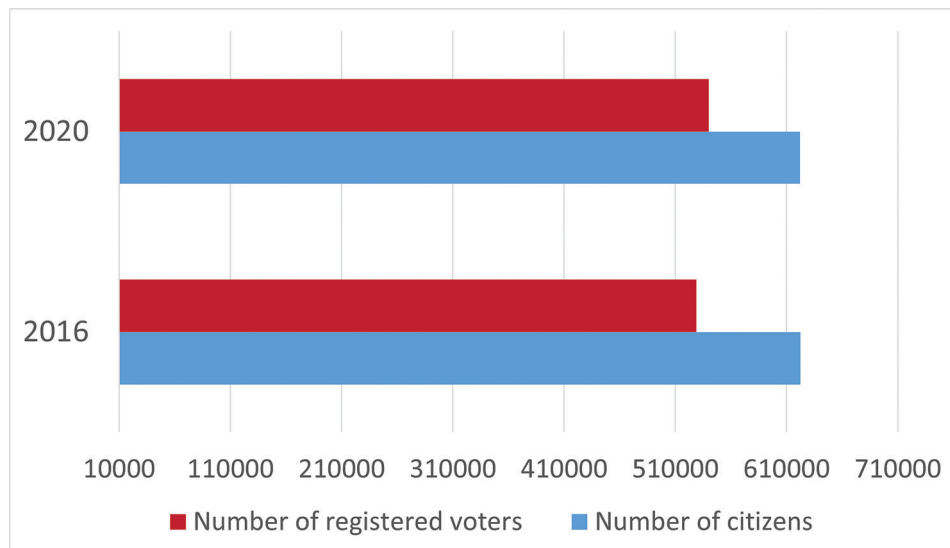
5.1.2 Difference in population and number of voters

Before each election cycle, one of the issues that attracts a lot of attention is the question of comparing the results of the census with the data from the Voter Register. According to the latest population projections published annually by MONSTAT,⁶⁸ Montenegro had a population of 622,028 in mid-2019, of which 486,495 were adults, while the Voter Register for the 2020

⁶⁸ Population estimates and basic demographic indicators 2019, Statistical Office, Podgorica, 2019, available at: <https://ti-nyurl.com/y4kc5xgv>

Parliamentary elections included 540,026 voters. This means that 53,531 more voters are registered than there are adults according to the census. To understand the differences in the data that causes the distrust in the timeliness of the Voter Register, it is necessary to clarify the difference in the data of those two databases.

Graph 1: Overview of the number of citizens and the number of registered voters in 2016 and 2020



The starting point when it comes to identifying irregularities in the Voter Register is to distinguish between the terms “inhabitant who has reached the age of maturity” and “Montenegrin citizen who has reached the age of maturity” and “person who has the right to vote (voter)”. According to Article 45 of the Constitution of Montenegro, a voter is a person who is a citizen of Montenegro, who has reached 18 years of age and has at least two years of permanent residence⁶⁹ in Montenegro. The residency requirement is defined in more detail in the Law on the Election of Councilors and MPs in a way that requires residence in Montenegro for at least two years before the Parliamentary Elections.⁷⁰ It is important to note that, other than death, the right to vote can be lost due to loss of legal capacity, even though the person meets all three conditions. Electoral processes in Montenegro, so far, have shown that there has been no significant progress in combating the registration of deceased persons in the Voter Register. Although one of the key goals of the previous Minister of the Interior within the Government of Electoral Confidence in 2016 was to update the Voter Register and introduce field control of residence, this did not happen. Most often, the accusations of opponents are a result of the insufficient degree of political will to actually take the necessary steps in order to improve the trust of citizens in the Voter Register.

When it comes to the criteria for selecting persons to be included in the Census, these are usually the place of residence and, according to the person himself, the intention to stay in Montenegro for a certain period of time. With this in mind, according to the Census, the total population consists of persons who stated that their usual place of residence is in Montenegro, which means a period of residence of at least one year, as well as persons who stay in Montenegro for less than a year but have intention to stay in Montenegro. We can conclude from this that they are not necessarily citizens of Montenegro, and that it is not necessary for them to have a registered place of residence in Montenegro, even if they may reside there, and therefore these persons are not registered as voters.

According to the recommendations of the European Network of Election Monitoring Organizations ENEMO, the abolition of residence as a criterion would solve the problem of citizens living outside of Montenegro.⁷¹ Also, this change would be in line with international practice, in relation to the

⁶⁹ Permanent and temporary residence are defined by the Law on Registers of Permanent and Temporary Residence (“Official Gazette of Montenegro”, No. 46/2015 of August 14, 2015)

⁷⁰ The Law on Election of Councilors and MPs, op. cit. art. 11

⁷¹ ENEMO Montenegro Final Report 2020, op. cit. p. 21

current criterion that contradicts the standards of the Venice Commission Code of Good Practice in Electoral Matters.⁷² According to this document, all Montenegrin citizens should be allowed to vote in national parliamentary elections, regardless of their place of residence. The residency condition could be requested only in the case of local elections and should not be longer than six months, which corresponds to the solution contained in the Montenegrin election law. However, the residential condition is prescribed by the Constitution of Montenegro, in Article 45,⁷³ so erasing it requires amending the Constitution, which requires a two-thirds majority in Parliament, as well as confirmation in a state referendum by at least three-fifths of the total number of voters.⁷⁴ There is currently no political will in Montenegro to meet the first condition, and even if political will existed, it is more than questionable whether it is possible to achieve this change in a referendum.

The following example is one of the phenomena that contribute to increasing the discrepancy of the number of inhabitants in relation to the number of registered voters, thus deepening the public's mistrust in the accuracy of the Voter Register. These are **persons who were not in Montenegro at the time of the Census, and who do not intend to return to the country in the next year, as well as persons who, due to absence, could not assess the intention to stay abroad, and therefore are not included in the Census. A typical example of these persons are students who are studying abroad, who may have the right to vote and are registered voters, as well as persons who stayed in Montenegro for less than a year during the Census and stated that they do not intend to stay in Montenegro for more than a year, so they are not included in the Census.** Additional work should be done in this area, on timely updating of the Voter Register in relation to the criterion of residence. One of the methods previously proposed by the Center for Monitoring and Research has been conducting periodic field inspection of the residence and its updating, as a more feasible solution. As a long-term solution, we can mention the creation of an up-to-date electronic register of residence of Montenegrin citizens, which would ensure a continuous better accuracy of the Voter Register.

An important difference in the identification of persons entering the Voter Register and those who make up the total population stems from the source of obtaining data for the creation of the database. **The number of inhabitants for the population census is based on the conducted survey, where data is obtained based on the statement from individuals, without verifying their identity, while the Voter Register is compiled exclusively on the basis of personal documents or official data from public registers.** Unlike the survey character of obtaining data from the census, according to the legal presumption, the data in the Voter Register represents an accurate base, considering that they were taken from public registers.

The data from the Voter Register are administrative records that determine the individual rights of citizens. In contrast, although they are statistical in nature and cannot be the basis for determining individual rights and obligations, census data are the basis for determining some minority rights. Thus, the Law on Minority Rights and Freedoms precisely stipulates that in local self-government units in which members of minority peoples and other minority national communities make up the majority or at least 5% of the population, according to the results of the last two consecutive censuses, the language of those minority peoples and other minority national communities is also considered the official language.⁷⁵ The results of the census also play a very important role in determining the status of the electoral list for the election of councilors and MPs belonging to a certain minority people or minority national community, allowing them either a reduced census combined with a guaranteed seat or no census. More precisely, in local

⁷² Code of Good Practice in Electoral Matters, op. cit., p. 14

⁷³ Constitution of Montenegro, op. cit., art. 45 para. 1

⁷⁴ Ibid, art. 155 para. 4

⁷⁵ The provisions of the Law on Minority Rights and Freedoms were used as an argument during the last election cycle in the process of proclaiming the electoral list "SNEŽANA JONICA - SOCIALISTS OF MONTENEGRO - TO LIVE AS YUGOSLAVS". The list, which was submitted on the basis of the provision from Article 43 of the Law on the Election of Councilors and MPs, was rejected by the SEC on the grounds that Yugoslavs cannot have minority status and therefore the right to use affirmative action for minority peoples and minority national communities.

elections the census is not obligatory for “electoral lists of members of a certain (of the same) minority nation or of a certain (of the same) minority ethnic community, whose share is up to 15% in the total population at state level and from 1.5% to 15% in the total population in the territory of a municipality, Administrative Capital or Historic Royal Capital, according to the last population census data for the election of MPs of minority nation or minority ethnic community and allocation of seats among electoral lists of members of a certain (of the same) minority nation or of a certain (of the same) minority ethnic community.”⁷⁶ When it comes to fulfilling this provision, members of the Roma community continue to be in a discriminated position, although the NGO sector has been pointing to this shortcoming for years, calling for the need to ensure the right to a “privileged mandate” for this community, as is the case with other minority communities that have a similar share of the total population.⁷⁷

The discrepancy in the figures when it comes to the total number of citizens covered by the census and those registered in the voter list, however, is mostly contributed by persons registered in the Voter Register, who are indisputably citizens of Montenegro, but despite registered residence they do not actually live in Montenegro for an extended time period, and therefore cannot be included in the census. As the Law on Registry of Permanent and Temporary Places of Residence does not provide for adequate penalties for persons who have not deregistered their residence, this problem is only deepening.

5.1.3 Electronic identification of voters

Montenegrin legislation stipulates that electronic devices for voter identification are used at polling stations,⁷⁸ and that a voter must be electronically identified in order to vote.⁷⁹ Although the voting process has been modernized in this way, further efforts are needed to ensure its proper use. Also, the system that would provide more opportunities with additional efforts and significantly contribute to increasing the level of trust of citizens in the election process is not fully utilized and optimally connected.

The electronic voter identification device contains data on the polling station where it was activated, the date and time, as well as the number of voters at that polling station for certain elections. The electronic device displays voter turnout statistics only for that polling station. By swiping a biometric ID card or passport through the device reader, the data on the voter appears, if he is a registered voter and at that polling station. The device displays a photo of the voter, his last name and first name, unique ID number and address of residence.

Observing the election processes that were conducted according to the model of using devices for electronic voter identification, we can notice the persistence of the problem of training of members of the election administration bodies in their use. During all three previous election cycles, CeMI found that there was insufficient training of polling board members and other election administration bodies on the proper use of the device for electronic identification of voters. Therefore, additional and more detailed education of members of election administration bodies is needed as a starting point for further improvement in this area, which has a significant potential for improving the electoral process in Montenegro.

The problem with the current way of voter identification lies in the insufficient cross-referencing of statistical data contained in electronic devices. The fact that an electronic device at a given polling station contains voter data only from that polling station, excluding the possibility of cross-referencing the data from the entire Voter Register, leaves room for potential abuse in the form of casting multiple votes.

⁷⁶ The Law on Election of Councilors and MPs, op. cit. art. 94

⁷⁷ Centre for Monitoring and Research, Reform of the Electoral Legislation in Montenegro, CeMI, Podgorica, p. 50

⁷⁸ The Law on Election of Councilors and MPs, op.cit., art. 68a para. 1

⁷⁹ Ibid, art. 68a para. 2

5.1.3.1 Experience of electronic voter identification in other countries

Armenia

In mid-2017, the Republic of Armenia made additional efforts to prevent potential election fraud by misrepresenting and abusing voters on the list, by testing voter identification technology using electronic devices for determining the authenticity of voters – VADs. The VADs contained an electronic copy of the complete Voter Register. By scanning the ballot paper, the device would determine whether the voter was registered at that polling station and whether he was already marked in the system as a voter. With the help of the device, the fingerprints of voters were scanned on the day of the election, enabling the verification of whether the collected fingerprints match those recorded in the databases.⁸⁰ Electronic binding of the complete voter list also enables fast electronic registration of voters who have exercised their voting right. The day after election day, lists are released to the public showing data on those who voted.⁸¹ Compared to the Montenegrin model of identification with the AFIS system, the VAD system has significantly contributed to increasing confidence in the electoral system by containing a complete voter database. Further upgrading of the AFIS system should be towards copying the complete Voter Register database to each device. This way, following the example of Armenian model, it would be possible to suppress multiple voting by automatically checking whether the voter in the system was previously identified if he had exercised his/her right to vote.

One observation of CeMI's monitoring mission during the last election process was the improper use of electronic voter identification devices, which remains a challenge since the introduction of the AFIS system in the election process in Montenegro. Although the introduction of VADs in the electoral process of the Republic of Armenia was assessed by the OSCE mission as a very useful tool for building confidence in the integrity of the electoral process, the challenge was its delivery and timely training. However, in the end, the device was used on election day without major problems. The conclusion is that in the case of upgrading the AFIS system in the electoral process in Montenegro, additional efforts should be made to provide adequate training to polling board members.

Moldova

A similar solution in the Republic of Moldova is the State Automated Election Information System (SIAS E). On election day, the CEC uses the system as a network system for voter verification. Devices are deployed at each polling station, checking the identity of voters according to the national voter database, entering those who voted in the database and being able to determine if the voter has already voted. In addition to providing a safeguard against multiple voting, SIAS E serves to transmit voter turnout data and preliminary election results, which are published on the CEC website.⁸²

According to the assessments of domestic and international observation missions during the two election processes in 2019, the SIAS E system functioned very well, with small technical interruptions. Problems during the election day were of a technical nature (shutdown, loss of internet connection) or lack of content (inconsistency between the data in the personal documents of voters with the data listed in the SIAS E system).⁸³

⁸⁰ Source: <https://tinyurl.com/ycjb9pr2>

⁸¹ European Network of Election Monitoring Organizations (ENEMO), Final Report Early Parliamentary Elections Armenia 2018, p. 24, available at: <https://tinyurl.com/1ni5b075>

⁸² European Network of Election Monitoring Organizations (ENEMO), International Election Observation Mission to Moldova, Final Report, 2019, p. 37, available at: <https://tinyurl.com/3mfweznb>

⁸³ Promo-LEX, Observation Mission Parliamentary Elections of February 24, 2019, available at: <https://tinyurl.com/n22wvczq>

5.1.4 Use of the AFIS System in controlling the emergence of double identities

AFIS System is a system for controlling and deduplication of voter fingerprints. This system was active for the first time during the parliamentary elections in 2016, which abolished the spraying of invisible ink on the finger of voters and checking the previously applied ink with a UV lamp.

During the previous two election processes, this system has contributed to eliminating the number of duplicate prints caused by technical omissions, although the problem was negligible. The omissions occurred due to inadequate use of the device, most often by failure to properly clean it after taking the fingerprint of the previous voter. According to the findings obtained by CeMI by conducting interviews with relevant stakeholders, the impression is that the AFIS system failed to provide expected results. More precisely, the original idea of its functioning was not fully realized, so significant results were missing and its upgrade is still pending.

The existing electronic voter identification system and the AFIS system require a detailed upgrade that would lead to a significant increase in citizens' trust in the electoral process. Although the electronic identification system contains data of citizens, together with their photographs from the identification documents, the AFIS system does not compare and conduct the deduplication of photo identity. An upgrade to this model would be the introduction of photo identity verification and thus, additional control of double-registered voters.

When it comes to the use of the AFIS system, a necessary step in the process of using its full functions is to provide adequate and more thorough training for its use. The mentioned step must be taken in any case, regardless of the possibility of making changes and upgrading the existing model.

5.1.5 Problem with invalid identification documents

The issue of voting with an invalid identification document, although present before, was raised due to the impossibility of practicing the established way of working of regional units and branches of the Ministry of the Interior, during the last election process in Montenegro, which were held in the unusual conditions caused by the global COVID-19 pandemic.

What caused the greatest concern in the public was the data on a large number of citizens with expired ID cards after the proclamation of the COVID-19 epidemic, on March 26th of 2020, which until August 4, 2020 amounted to 52,200. According to the data of the Ministry of the Interior, that number would have amounted to 74,871 on the election day, but it is important to mention that of that number, 23,931 voters had a valid passport. The Voter Register also included 6,288 voters who have an old ID card or passport (issued before 2008), and who did not submit a request for a new ID. Among them were 162 voters aged 90 and over. In addition, 1,299 voters who do not have any personal identification documents and did not submit a request for one are registered as voters. The original solution to this problem, and to the problem of 10,000 undelivered ID cards, was to extend the working hours of all regional units and branches of the Ministry of the Interior and to appeal to citizens to submit a request for a new ID card. Although this decision reduced the number of citizens without a valid ID by approximately 23,000, additional efforts were needed. The SEC made such an effort by allowing the Ministry of the Interior's initially rejected request to vote with an invalid identification document. The SEC stated in the explanation, that the only condition for voting with an invalid identification document is that the electronic identification device recognizes it as legal.

Since having a valid ID card is a legal obligation of every adult citizen residing in Montenegro,⁸⁴ it is necessary to take additional steps to reduce the number of citizens without valid documents, regardless of the election cycle.

⁸⁴ The Law on Identity Card ("Official Gazette of Montenegro", No. 12/2007, 73/2010, 28/2011, 50/2012, 10/2014 and 18/2019), art. 2 para. 1

Article 80 of the Law on the Election of Councilors and MPs stipulates that a voter may vote with the help of a biometric ID card or passport. Voting in a different way is not in accordance with the existing legal regulations, so it is necessary to make additional efforts in order to encourage adherence to the law.

As a possible incentive, we can mention introducing favorable conditions for the production of biometric cards to citizens within a certain period of time and free production of personal ID cards to users of social benefits. Also, it is necessary to conduct a media campaign on this topic, in order to encourage citizens who do not have a biometric ID card to receive it as soon as possible. As a measure of explicit prohibition of violation of this provision of the Law, a strict rule should be introduced, not allowing voting for a voter who does not have a valid biometric ID card. Until a valid document is created, with the fulfillment of other conditions, the voter will be classified in the group of inactive voters.

5.2 Key recommendations for improving the Voter Register and the electronic voter identification

- Stricter control of border crossings for the purposes of identification and verification of residential conditions, in order to increase the transparency of the Voter Register by abolishing the right to vote on that basis;
- Introduction of a strict penal policy in case of untimely deregistration of residence;
- Conducting periodic field controls of citizens' residences, which would contribute to combating violations of the residential condition. In this part it is necessary to harmonize all procedures with the Law on Administrative Procedure.
- Defining two categories of voters. Category of active voters – voters who meet all three conditions prescribed for exercising the right to vote, and inactive voters – those without valid identification documents;
- Combining databases with data from other countries in order to record citizens who have a residence in another country and have not deregistered from Montenegro, with special emphasis on countries bordering Montenegro. This would reduce the number of voters who are illegally in the voter register in violation of the residency requirement;
- Improving the AFIS system by introducing a module for deduplication of photo identity, which would prevent voters from voting with multiple documents with the same photo, but different other information;
- Establishment of a reliable online connection between the electronic voter identification device with the central voter register during the election day, in order to ensure the full functionality of this system and theoretically prevent the occurrence of multiple voting of persons with the same identification document;
- Encouraging citizens to make biometric ID cards by providing facilities in a certain period of time for their production and conducting a media campaign on this topic. Providing free ID cards to citizens who replace their existing ID card with a biometric one within a certain period of time (for example three months).
- Informing citizens that they will not be able to vote in elections with old ID cards, but only with a valid biometric ID card and passport. Until a valid document is issued, with the fulfillment of other conditions, the voter will be classified in the group of inactive voters (those who do not have a biometric document - ID card or passport).

VI ELECTION CAMPAIGN

6.1 Problems in the election campaign

The duration of the election campaign is not clearly defined in the current legislative framework. The provisions of the Law on Election of Councilors and MPs stipulate that submitters of electoral lists have the right to conduct the election campaign from the day of confirmation of the electoral list, up to 24 hours before the election day, while, at the same time, the Law on Financing of Political Entities and Election Campaigns, adopted by the Parliament of Montenegro in December 2019, stipulates that the election campaign starts from the day of calling the elections and lasts until the day of announcing the final election results. Consequently, the two key institutions responsible for enforcing these laws, the Agency for Prevention of Corruption (APC) and the SEC, according to published calendars, view the election campaign in different time frames. In addition, amendments to the Law on Financing of Political Entities and Election Campaigns less than nine months before the 2020 election process, violated one of the key international standards that guarantee the credibility of the election process – legal certainty and stability of the law. In particular, the Venice Commission points out that the key elements of the election laws, as well as the electoral system, should not be changed in a period shorter than one year from the day of the elections.⁸⁵

Precise determination of the time frame of the election campaign is of particular importance given the complexity of the circumstances in which the election campaigns for the previous parliamentary elections in 2016 and 2020 took place.

The campaign for the 2016 parliamentary elections was intense in terms of duration, as well as the activities carried out by political entities. The campaign was dominated by foreign policy topics related to European integration, Montenegro's accession to NATO and relations with Russia, and among the techniques used were videos, billboards, door-to-door campaigns and pre-election rallies.

The election campaign for the previous parliamentary elections in 2020 was conducted under COVID-19 circumstances, which made it even more difficult to monitor the campaign due to the need for better control of new ways of communication. Namely, extraordinary circumstances have conditioned the election campaign to be predominantly conducted in the media and on-line space, in relation to traditional ways (e.g., door-to-door campaigns).

Previous political events conditioned by the adoption of the Law on Freedom of Religion served as a basis for creating a pre-referendum atmosphere and creating two opposing blocs, where the ruling coalition insisted on endangering and the need to preserve the state of Montenegro, which is endangered by Greater Serbia interests whose promoters were gathered around DF coalition and to some extent Democrats. Despite the announcements of the Serbian Orthodox Church (SOC) that it will not interfere in the election process, in the last 15 days of the election campaign, the SOC increasingly and openly supported part of the political scene in these parliamentary elections. CeMI warns that this practice is not present in functional democracies, and that the interference of religious communities in the political processes of a country calls into question the principle of secularism, i.e., the separation of religious and public institutions, and can set a worrying precedent.⁸⁶

⁸⁵ Code of Good Practice in Electoral Matters, op. cit., p. 10

⁸⁶ CeMI, Final Report 2020, op. cit., p. 45

What is common for the parliamentary elections in 2016 and 2020, as well as for local elections in this period, is that the election campaign usually begins significantly before the verification of electoral lists – some entities held official conventions for opening the campaign before confirming their electoral list. Also, misuse of state resources can be included in the common characteristics of election campaigns in the past five years in Montenegro. Finally, for the election campaigns in Montenegro in the previous election processes, a significant increase in activities on social networks was noticeable. This way of communication, deprived of a greater degree of control and regulation that exists in other media, leaves room for expressing views and opinions that are contrary to the principles of religious and national tolerance, respect for diversity, democracy, dignity and others. This was particularly evident in the 2020 parliamentary elections, where CeMI observed patterns of coordinated inauthentic behavior (CIB) as part of its observation of social networks.⁸⁷

6.2 Key recommendations for improving conditions for campaigning

1. Based on the recommendations that ODIHR has already sent to Montenegro, it is necessary for political parties to reach an agreement and adopt a Code of Ethics for participants in election processes during the election campaign, which would greatly contribute respecting the standards of fair political conduct and positively affect the integrity of election campaigns.
2. The Law on the Election of Councilors and MPs should be amended to regulate the conduct and use of social media during the electoral silence.
3. In order to ensure full respect for the principle of electoral silence, we believe that the law should regulate that the responsibility for respecting electoral silence on social networks rests with political entities participating in elections, instead of on social platforms.
4. The Law on the Financing of Political Entities and Election Campaigns should be amended to regulate the use of social media during the campaign.
5. Political entities, as well as their leaders, should respect the pre-election silence on social networks as well.

⁸⁷ More on this point in the Final Report “Reshaping the election campaign using social media in Montenegro”, available at: <https://tinyurl.com/phpwh36w>

VII REPRESENTATION OF WOMEN

Women in Montenegro were given the right to vote and be elected to representative positions for the first time in 1946, and have exercised their right to represent since the first convocation of the National Assembly of the Republic of Montenegro, but in a negligibly low percentage compared to men. Out of 107 deputies elected in the elections held on November 3, 1946, the first three female Montenegrin deputies were elected, with the National Assembly of the Republic of Montenegro consisting of only 2.8% women. The right to freely choose was exercised by women in 1990, in the first multi-party elections after the fall of the communist regime.

The Law on the Election of Councilors and MPs requires that the underrepresented gender be represented on the electoral list by at least 30%, and that there must be at least one candidate of the underrepresented sex on the electoral list among every four candidates according to the order on the list. When filling vacancies on the list, the filling will be done with the first next on the electoral list, except when the mandate of the councilor or MP from the underrepresented sex ends, the first next candidate on the electoral list from the underrepresented sex will be elected instead (Article 104, para. 3).

Amendments to the Law on Financing of Political Entities and Election Campaigns from December 2019, introduced, for the first time, measures for financing the political work of women's organizations of political parties. Namely, in accordance with Art. 14 of the Law, budget funds for financing the regular work of women's organizations in political entities in the Parliament amount to 0.05% of the planned total budget funds (i.e., 0.11% at the local level) for the year for which the budget is adopted. These funds are paid into special sub-accounts of women's political organizations.

Table 4: Representation of women in the Parliament of Montenegro between 2011-2021

Year	Total number of MPs	Men	Women	Representation in percentages
2011 ⁸⁸	81	70	11	13.6%
2014 ⁸⁹	81	68	13	16.05%
2015 ⁹⁰	81	67	14	17.3%
2016 ⁹¹	81	67	14	17.3%
2018 ⁹²	81	62	19	23.46%
2020 ⁹³	81	57	24	29.6%
2021 ⁹⁴	81	61	20	24.7%

⁸⁸ Political Activism of Women in Montenegro, CeMI, Podgorica, 2014, p. 21

⁸⁹ Ibid, p. 23

⁹⁰ Reform of Electoral Legislation in Montenegro, op. cit. p. 14

⁹¹ CeMI, Final Report 2020, op. cit., p. 54

⁹² Reform of Electoral Legislation in Montenegro, op. cit. p. 14

⁹³ Ibidem

⁹⁴ List of MPs from the website of the Parliament of Montenegro, available at: <https://tinyurl.com/yj2f8behe>

Looking at the last two election cycles for parliamentary elections in Montenegro, the participation of women in electoral lists has seen some increase. Thanks to the greater participation of women in the Montenegrin parliament after the parliamentary elections in 2016, Montenegro, in relation to the previous 102nd position in the world, climbed to the 87th place. According to the World Bank data from 2019,⁹⁵ Montenegro was ranked 57th out of 217 countries in the world, which is a considerable improvement over data from previous years. The representation of women in the Montenegrin parliament immediately before the 2020 parliamentary elections was 29.6%, which is above the world average of 24.6%, but below the EU average of 31.8%. After the 2020 parliamentary elections, it was found that the 27th convocation of the Parliament of Montenegro makes up only 24.7% of women, which is 4.9% less than the previous convocation of the Parliament immediately before the parliamentary elections.

In the 2020 parliamentary elections, the total number of women candidates on the lists was 269 out of 778, or 34.57%, which is 2.47% more than their participation in the 2016 lists. Only two electoral lists found a significantly higher percentage of women than the legal minimum: HRS with as many as 69% and SD with 40% of women. Other lists contained between 30-36% of women. The Albanian Coalition "Unanimously" included 15 women, which is the legal minimum in relation to the number of candidates on this list (49), while there were only 25 women on the four electoral lists of 81 candidates. The last figure representing the mound for one more than the legal minimum required to achieve 30% of members of the under-represented sex. Only on the SDP electoral list, a woman – party president was first on the list, and a woman was in second place on the electoral list only in the case of HRS. In order to solve this problem, the Republic of Croatia in its legislation introduced a financial penalty in the event of failure to comply with quotas for women. It seems that, with an increase in the mandatory percentage of female candidates on the electoral list,⁹⁶ this novelty could be the next step that Montenegro should take.

When it comes to the presidential elections, since the introduction of a multi-party system in Montenegro, the curiosity is that there were no women candidates in the six presidential election processes. For the first time in 2018, a woman, Dr. Draginja Vuksanović (SDP), ran for president of Montenegro.

In addition to the problem of irreverence for the inclusion of women on electoral lists and unsatisfactory representation in the Parliament, Montenegro also faces the problem of disproportionate representation of women in leading positions in electoral administration bodies.⁹⁷ As one of the solutions, following good practices of the neighboring countries, more intensive work is necessary for campaigns that promote equality of women in politics and the necessity of their participation. Also, according to the latest OSCE recommendations, the authorities should consider additional measures to achieve a balanced representation of women and men in publicly elected positions, and political parties could consider internal measures to promote women to positions within the party structure, and increase the visibility of female candidates during election campaigns.⁹⁸

⁹⁵ World Bank, Proportion of seats held by women in national parliaments (%) [online], <https://tinyurl.com/y2m93far>, accessed on 28.12.2020.

⁹⁶ ENEMO Montenegro Final Report 2020, op.cit., p. 34

⁹⁷ Ibid

⁹⁸ OSCE/ODIHR, Montenegro Final Report 2020, op.cit., p. 25

7.1 Key recommendations for improving representation of women

1. The provision from the Proposal of the Law on Election of Councilors and MPs, determined by the ruling majority from the previous convocation of the Parliament of Montenegro, should be adopted. According to this proposal, in order to achieve the principle of gender equality, at least 40% of candidates of the underrepresented gender will be on the electoral list. In addition, on the electoral list among every three candidates in the order of the list (first three places, second three places and so on until the end of the list) there must be at least one candidate of the underrepresented gender.
2. Municipal election commissions should protect the integrity of the electoral process by determining and declaring electoral lists in accordance with the Law on Election of Councilors and MPs and according to pre-established procedures, and to exclude from the electoral process all electoral lists that do not meet formal legal requirements and conditions for participating in elections.
3. It is necessary to ensure consistent application of the legal obligation to comply with the provisions concerning the representation of women on electoral lists, and to prevent the acceptance of electoral lists that do not respect the number and position of women on the list prescribed by law.

VIII REPRESENTATION OF MINORITIES

Article 94 of the Law on the Election of Councilors and MPs envisages affirmative action for the election of representatives of national minorities. Each electoral list must receive a minimum of 3% of valid votes, equal to the legal electoral threshold in Montenegro, in order to participate in the distribution of seats.

The provisions of the Law on the Election of Councilors and MPs that regulate the distribution of mandates are rather imprecise and vague, especially when it comes to minority representation. Only the case of the Croatian minority is clear. The Law in Article 94 prescribes that in case none of the electoral lists for the election of deputies of the Croatian people in Montenegro meets the requirements of paragraph 1 of this article and item 1 of this paragraph, the most successful with at least 0.35% of valid votes, acquires the right to one parliamentary seat. By using this mechanism, the Croatian minority people receives a guaranteed seat, which is still conditioned by fulfilling the legal threshold, but again, significantly lower than the required number of votes to obtain a seat based on the allocation process using the D'Hondt formula.

Despite the so-called “guaranteed seat”, for the first time the Croatian minority has no representatives in Parliament, because neither of the two electoral lists of the Croatian national minority – Croatian Civic Initiative (HGI) and Croatian Reform Party (HRS) managed to win the number of valid votes needed to win a seat in the Parliament. HGI won 1,106 votes, or 0.27%, and HRS won only 496 votes, or 0.13% of the total number of votes.

When it comes to other minorities, there is no such mechanism. For other minorities, it is envisaged that if more than one list exceeds the legal threshold of 0.7%, their individual results will be treated as a single aggregate list, which will then enter the process of allocating seats with other qualified lists. The effect of aggregation is limited by acknowledging for the calculation of seats an aggregation that ensures the winning of a maximum of three seats. The law did not regulate how the seats would be distributed among the parties within the aggregate list of the minority people. In the 2012 elections, three parties of the Albanian minority won two seats using this mechanism. The seats were given to two lists with a larger number of individually won votes, although this is not regulated in the legislation.

As for the local elections, a minority list is not required to meet the legal electoral threshold of 3%. Instead, it will directly qualify in the process of distribution of seats according to D'Hondt's formula. The question of the criteria for determining the minority status of an electoral list, which is privileged, remains open, thus creating an opening for abuse. The law only provides for the indication of the designation of the minority people in the electoral application or the name of the electoral list. This problem was manifested in the application of the electoral list “SNEŽANA JONICA - LET'S LIVE AS YUGOSLAVS”. Namely, the SEC rejected this list to run in the elections as a minority. This decision was then confirmed by the Constitutional Court by a majority vote with the exception of an exempt opinion of one of the judges. In its reasoning, the Constitutional Court stated that the SEC's decision did not violate the complainant's voting right because the submitter of the list did not eliminate the irregularities pointed out in the SEC's Conclusion, i.e., the submitter of the electoral list did not provide evidence that the electoral list has a basis for exercising the rights of a minority people or a minority national community.

The lack of orderliness of the status and participation of minority lists is reflected in the unsolved situation in which there is a coalition between a minority party and a party that is not a minority, or two or more minority parties belonging to minorities with different rights or different legal thresholds.

As was the case in previous election cycles, the Roma, Egyptian, and Ashkali populations did not

have an authentic electoral list to represent their interests. Also, no slogans, billboards or video material in Roma language were noticed during the election campaign.

8.1 Key recommendations for improving minority representation

1. Introduce in the Law on the Election of Councilors and MPs a precise procedure for how one list is registered as a minority, and on that basis draws the rights to minority representation.
2. Through the amendment of the Law on the Election of Councilors and MPs, ensure equality of members of the Roma community, who do not have an equal status as the members of the minority communities that compose a similar percentage of the total population.
3. It is necessary to enable members of the Roma community to have election materials in their own language, in order to enable them to fully exercise their right to vote.
4. The rule on summing up the results of minority lists of the same minority community, if none of them has exceeded the valid legal condition for them, should also apply to members of the Croatian people. If none of the minority lists alone exceeds 0.35%, their results will add up and if they have over 0.35% as such they will be given a mandate. The mandate will be given to the Croatian minority list that had the most votes individually.

IX PROTECTION OF THE RIGHT TO VOTE

The Law on the Election of Councilors and MPs prescribes the procedural possibility of protecting the right to vote, in such a way that the bodies responsible for conducting elections are obliged to inform voters about their voting rights and the manner of protecting those rights during the election procedure.

Every voter, candidate and submitter of the electoral list has the right to file a complaint to the competent election commission for violation of the right to vote during the election. The complaint should be submitted within 72 hours from the hour when the decision was made, i.e., when the action was performed. An objection against a decision, action or omission of the polling board should be submitted to the MEC. An objection against the decision, action or omission of the MEC should be submitted to the SEC.

The competent election commission should issue a decision within 24 hours of receiving the complaint and deliver it to the complainant. OSCE/ODIHR considers this deadline to be too short, therefore one of their recommendations is to extend it in order to provide a more effective remedy for complaints that require more detailed investigation.⁹⁹

If the competent election commission accepts the objection, it will annul that decision or action. If the competent election commission does not make a decision on the complaint within the deadlines provided by this law, it should be considered that the complaint has been adopted.

An objection may be lodged with the SEC against the decision of the MEC rejecting or declining the objection.

As a final legal remedy, it is possible to appeal the decisions of the SEC to the Constitutional Court of Montenegro. In addition, every citizen has the constitutional right to submit an initiative to initiate proceedings to review constitutionality and legality, both in the part of the conformity of laws with the Constitution and ratified and published international agreements, and in the conformity of other regulations and general acts with the Constitution and the law. What is indisputable is that the Constitutional Court, in cases initiated on the basis of these initiatives should act promptly, which was not always the case in previous proceedings.

In all election processes, one part of the reported irregularities refers to the protection of the right to vote. For example, during the local elections in 2016, the MEC Mojkovac received a complaint regarding the inability of an individual who was at the Bureau for the Execution of Criminal Sanctions III Bijelo Polje polling station at the time of the conclusion of the Voter Register, to exercise his voting right since he was not in prison on the day of the election. MEC Mojkovac rejected this complaint due to incompetence and instructed the voter to seek protection of rights before the Ministry of the Interior or the SEC, but the voter did not use any of the mentioned possibilities.¹⁰⁰

Four days after the 2018 presidential elections, the authorized representative of the candidate Mladen Bojanić filed a complaint to the SEC, in which it is stated that citizens were not allowed to freely express their will. This view is justified by the following reasons: 1) the arrival of representatives of state institutions to a meeting of DPS two days before the elections; 2) the “lost email” affair; 3) visit of Milo Đukanović to a part of the Bar-Boljare highway section; 4) visit to the construction of Ski Resort Kolašin; 5) attendance of Milo Đukanović at the donation of the Clinical Centre of Montenegro in Podgorica; 6) support of the Association of Veterans of the People’s Liberation War of Yugoslavia (association financed from the budget of Montenegro); 7) a pre-election rally in an educational institution in Kotor; and 8) involvement of senior police officials in pre-election activities. The SEC rejected this complaint as inad

⁹⁹ OSCE/ODIHR, Montenegro Final Report 2016, op. cit, p. 17

¹⁰⁰ CEMI, Final report 2016, op., cit, p. 46

missible on the grounds that the SEC can only be challenged against MEC decisions, and the MEC did not decide on a specific complaint.¹⁰¹ It is important to note that the SEC session at which this decision was made was attended only by members of the ruling coalition and the authorized representative of the candidate Milo Đukanović.

In the parliamentary and local elections in 2020, the issue of protection of the right to vote was in special focus, given the conditions caused by the COVID-19 pandemic. Namely, the epidemiological situation in Montenegro has conditioned the application of measures prescribed by law by the NCB (National Coordination Body for Infectious Diseases) as well as the establishment of “Technical Recommendations for Elections for the Epidemiological Protection of Voters” by the SEC. After the objections of the participants in the election process and non-governmental organizations, upon the submitted constitutional initiative, the Constitutional Court issued a decision¹⁰² which repeals paragraphs 1 and 4 of the chapters “Voting outside the polling station – voting by letter” and the chapter “Voting in quarantine”, assessing them as unconstitutional. Although the Constitutional Court acted urgently in the proceedings to review the constitutionality of the “Rules for Voting by Letter” and the “Technical Recommendations for Holding Elections for the Epidemiological Protection of Voters” and abolished unconstitutional provisions/recommendations restricting the right to vote to persons who are not in their place of residence due to illness, old age or quarantine, the concern remained whether it is possible to fill the legal gaps and ambiguities by election day, but also, create necessary conditions so that all voters can freely exercise their right to vote.¹⁰³

After the election day, nine objections to the MEC’s decisions were submitted to the SEC within the legal deadline, five of which were rejected and the MEC’s decisions upheld. No appeal was lodged with the Constitutional Court of Montenegro against the rejected objections.¹⁰⁴

¹⁰¹ CEMI, Final report 2018, op. cit. p. 26

¹⁰² Constitutional Court Decision (U-II number 46/20), available at: <https://tinyurl.com/u4ace9nh>

¹⁰³ CEMI, Final report 2020, op., cit, p. 83

¹⁰⁴ Ibidem

X RECOMMENDATIONS AND PROPOSALS FOR AMENDMENTS TO LEGAL DOCUMENTS

In order to facilitate the work of decision makers, a special annex to this study presents an overview of the recommendations that accompany the proposal of norms that should be included in the legal text. This table presents some of the recommendations made by CeMI.

Table 5: Excerpt of recommendations for amendments to laws and other relevant regulations in the field of electoral legislation

Current text of the law	Proposed amendments	Comment
THE LAW ON ELECTION OF COUNCILORS AND MPs		
Article 6 paragraph 3		
The election promotion via media and public gatherings shall cease 24 hours prior to the polling day.	Election promotion via the media, social media and public gatherings ceases 24 hours before election day, and the responsibility for non-compliance with this provision lies with political entities.	The proposed change aims to contribute to a better pre-election campaign by prescribing that the election silence also applies to advertising on social media. In order to ensure full respect for electoral silence, the responsibility for its non-compliance should be borne directly by political entities that violate this provision.
Article 18 paragraph 2		
Any submitter of the verified and proclaimed list of candidates shall have the right to appoint an authorized representative to the election administration bodies.	Any submitter of the verified and proclaimed list of candidates, coalition or list of groups of citizens shall have the right to appoint an authorized representative to the election administration bodies.	This provision contributes to achieving equality of position of all categories of political entities.
Article 20 paragraph 2		
A candidate from the list of candidates may not be a member of election commissions and his term of office shall cease in such an authority upon his acceptance of the candidate nomination for a councilor or MP.	A candidate from the list of candidates may not be a member of election administration bodies and his term of office shall cease in such an authority upon his acceptance of the candidate nomination for a councilor or MP.	This article prescribes that a candidate on electoral lists cannot be a member of election commissions but does not specify polling stations. Practice has shown that such legal ambiguity has practical consequences, so it is necessary to amend the law to ensure that in the future there are no situations in which a person who is a candidate on the electoral list is elected a member of the polling station committee.

Article 25

The permanent composition of the municipal election commission shall include a president and four members and one empowered representative of each candidate list submitting entity.

The candidate of a political party, i.e. candidate list submitting entity which won the highest number of councilor seats in the previous elections shall be appointed president of municipal election commission.

If a coalition candidate list won the highest number of seats in the previous elections, as a rule, the candidate of the political party which won the highest number of councilor seats within the coalition shall be appointed president of municipal election commission.

The secretary of the municipal election commission shall be appointed at the proposal of parliamentary opposition.

As a rule, the candidate proposed by the opposition candidate list which won the highest number of councilor seats in the previous elections shall be appointed secretary of municipal election commission.

Commission secretary shall be in charge of administrative duties provided for in electoral legislation.

Two members of the permanent composition of the municipal election commission shall be appointed at the proposal of parliamentary opposition.

Permanent members from the ranks of opposition shall be representatives of opposition candidate lists in the relevant municipal assembly in proportion to the number of seats won at previous elections, while in the case of the same number of seats, advantage shall be given to the candidate list which received the highest number of votes.

If there is only one opposition candidate list in the relevant municipal assembly, both members of the permanent composition of the municipal election commission shall be appointed at the proposal of that opposition candidate list.

A municipal election commission shall be composed of: president and four members in the permanent composition and one authorized representative of each submitter of candidate lists.

The President of the Municipal Election Commission and their deputies are appointed by the State Election Commission, for a period of five years, from among law graduates with at least five years of work experience in legal profession, after a previously conducted public competition.

Two members of the permanent composition of the municipal election commission are appointed on the proposal of the ruling majority in the municipal assembly.

Two members of the permanent composition of the municipal election commission are appointed on the proposal of the opposition in the municipal assembly.

Permanent members from the ranks of opposition shall be representatives of opposition candidate lists in the relevant municipal assembly in proportion to the number of seats won at previous elections, while in the case of the same number of seats, advantage shall be given to the candidate list which received the highest number of votes.

If there is only one opposition candidate list in the relevant municipal assembly, both members of the permanent composition of the municipal election commission shall be appointed at the proposal of that opposition candidate list.

The president and permanent composition members of the municipal election commission shall have their deputies appointed.

The authorized representative of the submitter of the electoral list may have a deputy.

By amending Article 25, the function of the MEC president is professionalized, so that special conditions of expertise and work experience are required for appointment to that position.

Professionalization of this member could lead to less omissions that lead to confirmation of electoral lists that do not meet the formal and legal requirements for participation in elections, but also faster processing of applications for endangering electoral rights, as was the case with electoral lists that did not meet the requirements of gender equality from Article 39a of the Law on the Election of Councilors and MPs.

<p>The president and permanent composition members of the municipal election commission shall have their deputies appointed.</p> <p>The empowered representative of the candidate list submitting entity may have a deputy.</p> <p>President and members of the commission, as well as empowered representatives of candidate list submitting entities, in the case of their absence or inability to work, shall be replaced by their deputies who shall perform commission activities and tasks.</p> <p>President of the commission, his deputy and secretary, as well as permanent commission members and their deputies shall be appointed from among lawyers.</p>	<p>President and members of the commission, as well as empowered representatives of candidate list submitting entities, in the case of their absence or inability to work, shall be replaced by their deputies who shall perform commission activities and tasks.</p> <p>Permanent commission members and their deputies shall be appointed from among the lawyers.</p>	
Article 30		
<p>The State Election Commission shall be composed of: the president and ten permanent members and one authorized representative of each candidate list submitting entity.</p> <p>The State Election Commission president shall be appointed by the Parliament, at the proposal of the Parliamentary working body in charge of elections and appointments, after a previously conducted open competition.</p> <p>Four members of the permanent State Election Commission composition shall be appointed at the proposal of the parliamentary majority.</p> <p>Four members of the permanent State Election Commission composition, one of whom shall perform the office of a secretary, shall be appointed at the proposal of parliamentary opposition.</p> <p>One representative of a political party or candidate list submitting entity for authentic representation of members of national minorities or minority ethnic communities which received the highest number of votes in previous elections shall also be appointed member of the permanent State Election Commission, while his deputy should be a member of another national minority or minority ethnic community.</p>	<p>The State Election Commission shall be composed of: the president, four permanent members, one of which performs the function of the secretary, and one empowered representative of each candidate list submitting entity.</p> <p>The president and members of the permanent composition of the State Election Commission and their deputies, shall be appointed by the Parliament on the proposal of the Working Body of the Parliament competent for election and appointment (hereinafter: Working Body), after a previously conducted open competition.</p> <p>The president and members of the permanent composition of the State Election Commission shall be appointed from among lawyers with at least 10 years of work experience in the legal profession. Preference in evaluating the application is given to candidates with experience in the field of electoral law.</p> <p>Authorized representatives of candidate lists do not have the right to vote, but only the right to observe the work and inspect the documentation of the State Election Commission.</p> <p>Authorized representatives are appointed from among lawyers.</p>	<p>The amendment to this article is also the most significant change when it comes to the election administration bodies. This article envisages the full professionalization of the SEC in such a way that instead of the current permanent composition of the president and 10 members, five legal experts would be elected for whom special conditions are prescribed in terms of expertise and work experience. The proposed amendment would not give priority to any political option on any grounds, which would contribute to the independence, impartiality and transparency of this body.</p>

One member of the permanent State Election Commission composition who is familiar with electoral legislation shall be appointed by the Parliament from among the representatives of civil society, non-governmental sector and university, at the proposal of the Parliamentary working body competent for appointments and elections, after a previously conducted open competition.

Persons who performed the office of a political party body member during the previous 10 years may not be appointed member of the permanent State Election Commission composition referred to in paragraph 6 of this Article.

Persons who published scientific papers and professional treatises on the topic of the election process, who are distinguished by the public as experts in that field and who took part in national or international monitoring of the election process shall be appointed members of the permanent State Election Commission composition referred to in para. 6 of this Article.

When endorsing proposals, the Parliamentary working body competent for elections and appointments shall also take into consideration recommendations of organizations which were involved in drafting electoral legislation and monitoring election processes over the past five years.

Representatives of candidate lists shall be appointed members of the permanent composition at the proposal of the parliamentary majority or opposition in proportion to the number of seats won in previous elections, and where the number of seats is the same, they shall be appointed from the candidate list which received the highest number of votes in previous elections.

If there is only one candidate list which constitutes parliamentary majority in the Parliament, or one opposition candidate list, all four members shall be appointed to the permanent State Election Commission composition at the proposal of that candidate list.

Authorized representative of the candidate list submitting entity may have a deputy, who must fulfil the conditions referred to in paragraph 5 of this article.

<p>Deputies shall be appointed for members of the permanent State Election Commission composition who are appointed at the proposal of parliamentary majority or parliamentary opposition.</p> <p>In the case of the State Election Commission president's inability to work, he shall be replaced by the member of the permanent State Election Commission composition designated by him.</p> <p>An authorized representative of the candidate list submitting entity may have a deputy.</p> <p>Members of the State Election Commission, as well as authorized representatives of candidate list submitting entities, in the case of their absence or inability to work, shall be replaced by their deputies who shall perform State Election Commission activities and tasks.</p> <p>Members of the State Election Commission, their deputies and authorized representatives of candidate list submitting entities shall be appointed from among lawyers.</p> <p>The State Election Commission president shall be a lawyer and have at least 10 years of working experience in that line of work and he may not have been a member of a political party managing body during the last three years.</p>		
Article 30a		
N/A	<p>The State Election Commission shall be composed of: the president, four permanent members, one of which performs the function of the secretary, and one empowered representative of each candidate list submitting entity.</p> <p>The president and members of the permanent composition of the State Election Commission and their deputies, shall be appointed by the Parliament on the proposal of the Working Body of the Parliament competent for election and appointment (hereinafter: Working Body), after a previously conducted open competition.</p>	This article prescribes the procedure for electing the president and members of the SEC through a public competition.

	The deadline for submitting applications for the public competition is 30 days from the day the competition is announced.	
Article 30b		
N/A	<p>The Working Body is obliged, within 8 days from the day of receiving the list of candidates, to check the fulfillment of the conditions from Article 30 of this Law and within 8 days from the day of expiration of the deadline for applying for the competition to compile the list of eligible candidates.</p> <p>The Working Body conducts an interview with the candidates referred to in paragraph 1 of this Article.</p> <p>The Working Body, on the basis of evidence confirming the fulfillment of the conditions from Article 30, and on the basis of the conducted interview with the candidates, proposes five candidates for election to the permanent composition of the State Election Commission, and five deputies, with explanation.</p> <p>The Working Body shall compile the list referred to in paragraph 3 of this Article, by a majority vote, within 15 days from the date of expiration of the deadline for application for the competition, and submit it to the Parliament for consideration and decision.</p>	This article prescribes the procedure for electing the president and members of the SEC through a public competition.
Article 31 paragraph 4		
Empowered representatives shall participate in work and render valid decisions 20 days prior to the election day.	Authorized representatives acquire the right to observe the work and inspect the documentation of the State Election Commission 20 days before the day set for the elections.	In order to depoliticize and professionalize the SEC, the proposed amendments delete the provision that allowed authorized representatives to participate fully in the work of the SEC. Practice has shown that political entities / electoral lists elect authorized representatives not in the interest of voters, but in the interest of the political entities / electoral lists themselves.
Article 32 – added paragraph 3		
N/A	The State Election Commission is obliged to provide audio-visual recording of all sessions and to make the recorded material available for free download on its website no later than 12 hours after the end of the session.	This article stipulates the obligation of the SEC to provide audio-visual recording of all sessions, and to make it available to the public through its website. In this way, greater transparency in the work of the SEC will be provided.

Article 35

Permanent composition of polling boards shall include the president and four members and one empowered representative of each candidate list submitting entity.

Each political party represented in the relevant assembly shall be entitled to the number of polling board presidents proportionate to the proportional representation of councilor seats in assembly, while the polling stations at which individual political parties would propose representatives for polling board presiding officers shall be determined by the municipal election commission by drawing lots.

Two members shall be appointed to the permanent polling board composition at the proposal of a political party or coalition that has majority in the relevant municipal assembly.

One representative of the two opposition political parties in the relevant assembly respectively which won the highest number of seats in the previous elections shall be appointed to the permanent composition of the polling board, and in case the number of seats was the same, the criterion shall be the highest received number of votes.

If there is only one opposition political party in the relevant municipal assembly, two representatives of that party shall be appointed to the permanent polling board composition.

Polling boards shall be appointed for each polling station, at the latest 10 days before the election day.

As an exception, at the substantiated request of a political party or group of voters which acquired the right to propose representatives to the permanent polling board composition, the polling board composition may also be changed after the expiry of the term referred to in para. 6 of this Article, and at the latest 12 hours before the polling stations are opened.

The president and members of the Polling Station Committee, as well as the authorized representatives of the candidate list submitting entity, in case of their absence or imped-

Permanent composition of polling boards shall include the president and four members and one empowered representative of each candidate list submitting entity.

Only persons who have attended election training and received a certificate of successful attendance issued by the State Election Commission may be appointed as president and members of the polling station committee and their deputies.

Each political party, coalition, or group of voters represented in the relevant assembly has the right to the number of polling station presidents in proportion to the proportional representation of councilor seats in the assembly, and polling stations where individual political parties, coalitions or groups of voters would nominate a representative the municipal election commission determines by lot.

Two members and their deputies are appointed to the permanent composition of the polling board on the proposal of the political party, coalition, or group of voters that has a majority in the appropriate municipal assembly.

One representative of two opposition political parties, coalitions, or groups of voters in the appropriate assembly, which won the largest number of seats in the previous elections, and in the case of the same number of seats, the largest number of votes, must be appointed to the permanent composition of the polling board.

If there is only one opposition political party, coalition, or group of voters in the appropriate municipal assembly, two representatives and their deputies of that party, coalition, or group of voters shall be appointed to the permanent composition of the polling board.

The Polling Station Committee is appointed for each polling station, no

The highest number of irregularities occurs on election day at polling stations, and the reason for that is the insufficient training of the members of the polling station committee.

Therefore, this article provides for mandatory attendance of training for members of the polling station committee, in order to contribute to solving one of the long-term problems in their work.

This article also contributes to achieving equality of position of all categories of political entities.

<p>The president and members of the Polling Station Committee, as well as the authorized representatives of the candidate list submitting entity, in case of their absence or impediment, in the performance of the duties and tasks of the Polling Station Committee shall be replaced by their deputies.</p>	<p>later than 10 days before the day set for the election.</p> <p>If, at the reasoned request of a political party, coalition, or group of voters that has acquired the right to nominate representatives in the permanent composition of the polling station committee, the composition of the polling station committee may be changed after the deadline referred to in paragraph 7 of this Article, and no later than 12 hours before the polling stations are opened.</p> <p>The president and members of the polling board, as well as the authorized representatives of the candidate list submitting entity, in case of their absence or impediment, in the performance of the duties and tasks of the polling board shall be replaced by their deputies.</p>	
<p>Article 38 paragraph 1</p>		
<p>Political parties registered in Montenegro, separately or as a coalition, as well as groups of voters, shall propose candidates for their candidate lists on the basis of a certain number of voter signatures.</p>	<p>Political parties registered in Montenegro, separately or as a coalition, individuals (individual candidates), as well as groups of voters shall propose candidates for their candidate lists on the basis of a certain number of voter signatures.</p>	<p>This provision contributes to achieving equality of position of all categories of political entities.</p>
<p>Article 39a</p>		
<p>In order to exercise the gender equality principle, there shall be at least 30% of candidates on the candidate list from the underrepresented sex.</p> <p>Among each four candidates in the candidate list order (the first four places, the second four places and so on until the end of the list) there shall be at least one candidate who is a member of the underrepresented sex.</p> <p>Candidate lists not meeting the requirements referred to in paras. 1 and 2 of this Article shall be deemed to contain shortcomings in respect of its publishing, and the list submitting entity shall be invited to remove the shortcomings from the list, in conformity with this Law.</p> <p>The election commission shall refuse to publish candidate lists of candidate list submitting entities that do not remove shortcomings referred to in paragraph 3 of this Article, in conformity with this Law.</p>	<p>In order to exercise the gender equality principle, there shall be at least 40% of candidates on the candidate list from the underrepresented sex.</p> <p>Among each three candidates in the candidate list order (the first three places, the second three places and so on until the end of the list) there shall be at least one candidate who is a member of the underrepresented sex.</p> <p>Candidate lists not meeting the requirements referred to in paragraphs 1 and 2 of this Article shall be deemed to contain shortcomings in respect of its publishing, and the list submitting entity shall be invited to remove the shortcomings from the list, in conformity with this Law.</p> <p>The election commission shall refuse to publish candidate lists of candidate list submitting entities that do not remove shortcomings referred to in paragraph 3 of this Article, in conformity with this Law.</p>	<p>By amending this article, the number of members of the underrepresented sex is increased, which directly affects the higher degree of their participation in political life. Although the practice so far has shown positive effects of the introduction of this article in the Law on the Election of Councilors and MPs, the current solution has proved insufficient to achieve gender equality. In most cases, the submitters of electoral lists assign members of the underrepresented sex to every fourth place, so that their participation in the work of the parliament and municipal boards largely depends on the electoral result of the respective electoral list.</p>

Article 43

A candidate list for election of councilors or MPs may be accepted if it has been supported by signatures of at least 0.8% of voters out of the number of voters in the electoral district, counting according to the data on the number of voters in the elections which preceded the decision to call for elections, regardless of whether those were elections for the president of Montenegro or parliamentary elections.

As an exception to paragraph 1 of this Article, candidate lists for election of councilors of political parties or groups of voters which represent a minority nation or a minority ethnic community maybe accepted if supported by the signatures of at least 150 voters, that is, for election of members of parliament it may be accepted if supported by the signatures of at least 1,000 voters who are exercising the right referred to in Article 94 paragraph 2 of this Law. In municipalities in which the seat of a councilor in previous elections was equal or less than 150 votes, candidate lists for election of councilors may be accepted if supported by the number of signatures of voters which is less by one compared to the number of votes equal to one councilor seat in the previous elections for the relevant municipal assembly.

A candidate list for election of members of parliament which represents a minority nation or a minority ethnic community which constitutes up to 2% of the Montenegrin population according to the last census results may be accepted if supported by the signatures of at least 300 voters.

Voters who sign lists for the election of councilors shall have their place of permanent residence in the territory of the relevant municipality.

Voters who sign lists for the election of members of parliament shall have their place of permanent residence in the territory of Montenegro.

The State Election Commission shall prescribe the procedure and organization of gathering voter signatures in support of a candidate list.

A candidate list for election of councilors or MPs may be accepted if it has been supported by signatures of at least 0.2% of voters out of the number of voters in the electoral district, counting according to the data on the number of voters in the elections which preceded the decision to call for elections, regardless of whether those were elections for the president of Montenegro or parliamentary elections.

As an exception to paragraph 1 of this Article, candidate lists for election of councilors of political parties or groups of voters which represent a minority nation or a minority ethnic community maybe accepted if supported by the signatures of at least 50 voters, that is, for election of members of parliament it may be accepted if supported by the signatures of at least 300 voters who are exercising the right referred to in Article 94 paragraph 2 of this Law. In municipalities in which the seat of a councilor in previous elections was equal or less than 150 votes, candidate lists for election of councilors may be accepted if supported by the number of signatures of voters which is less by one compared to the number of votes equal to one councilor seat in the previous elections for the relevant municipal assembly.

A candidate list for election of members of parliament which represents a minority nation or a minority ethnic community which constitutes up to 2% of the Montenegrin population according to the last census results may be accepted if supported by the signatures of at least 300 voters.

Voters who sign lists for election of councilors shall have their place of permanent residence in the territory of the relevant municipality.

Voters who sign lists for election of members of parliament shall have their place of permanent residence in the territory of Montenegro.

Voters' signatures in support of the electoral list must go through a notary authentication.

In order to achieve a greater degree of democracy and adherence to international standards, it is necessary to reduce the number of signatures required to confirm the electoral list.

Practice has shown that the SEC does not have sufficient capacity to verify the authenticity of signatures by which citizens give their support to the electoral list / candidate, as well as that this leads to abuse and political tensions. The introduction of mandatory verification of the authenticity of signatures by notaries would contribute to solving this long-standing problem.

Article 44		
Voters may support only one candidate list with their signatures for election of councilors and only one candidate list for election of members of parliament.	To be erased	There is no justifiable reason why one citizen could not give his support to a large number of electoral lists. This recommendation is also in line with the recommendation of the ODIHR and domestic election observer organizations, who think that the ban on one citizen being able to support only one list of candidates with his or her signature should be lifted.
Article 68a – added a new paragraph 10		
N/A	Extract referred to in paragraph 7 of this Article shall be available to each polling station throughout the election day. Polling boards are obliged to check double voting by inspecting extracts from other polling stations	The existence of consolidated data in one database must be used in such a way that the device at each polling station contains the complete database of the voter register, and not individual parts of the register for an individual polling station. This would prevent double voting at two polling stations.
Article 68b paragraph 3		
The electronic identification device shall display a photo of the voter on the monitor and print out a paper stub (confirmation) which shall contain name and surname, voter's PIN and ordinal number which is identical to that in the printed electoral register. The printed stub (confirmation) shall be signed personally and in clear script by the polling board presiding officer and polling board member from the opposite political party (adherence to the government-opposition parity), which shall then be kept together with the counterfoil.	The electronic identification device shall display a photo of the voter on the monitor with the checkup of photo identity in the Voter Register and print out a paper stub (confirmation) which shall contain name and surname, voter's PIN and ordinal number which is identical to that in the printed electoral register. The printed stub (confirmation) shall be signed personally and in clear script by the polling board presiding officer and polling board member from the opposite political party (adherence to the government-opposition parity), which shall then be kept together with the counterfoil.	One of the abuses during the election process is the voting of the same person with documents that contain the same photo, but different other data on the document. In order to solve this problem, it is necessary to introduce photo identity control. In that way, by checking the identification document in the database, the photo in the database of the complete voter list would be checked. Information on the possible existence of a double photo identity would appear on the screen, thus preventing voters from being able to vote multiple times.
Article 94 paragraph 2 item 2		
2) where none of the candidate lists for election of MPs members of the Croatian people in Montenegro meets the requirements referred to in para.1 of this Article and item 1 of this paragraph, the most successful of them, with at least 0.35% valid ballots, shall acquire the right to one MP seat.	2) where none of the candidate lists for election of MPs members of the Croatian people in Montenegro meets the requirements referred to in para.1 of this Article and item 1 of this paragraph, the most successful of them, with at least 0.35% valid ballots, shall acquire the right to one MP seat.	This amendment envisages the summation of the results of minority lists of the same minority community, in case they individually fail to exceed the legal requirement.

Article 94 paragraph 2 – added item 4		
N/A	The provision from item 2, paragraph 2 of this Article shall also apply to the electoral lists for the election of deputies belonging to the Roma national community.	Discrimination against members of the Roma national community is present in various ways. The impossibility of participating in the process of considering and making decisions in the Parliament is most often mentioned as a starting point. The introduction of these amendments to the legislation is the first, and crucial step towards improving the position of the representatives of this minority national community in Montenegro, and for combating discrimination against Roma people.
Article 94 – added paragraph 6		
N/A	In determining the status of a national minority of an electoral list, the criteria set out in Article 2 of the Law on Minority Rights and Freedoms shall be used.	The 2020 parliamentary elections and the case of the Socialists of Montenegro have shown that it is necessary to more precisely define the criteria for determining the minority status of the electoral list. According to the current legal solution, this issue remains open. The law only provides for the indication of the designation of the minority people in the election application or the name of the electoral list. Therefore, it is necessary to supplement the Law on the Election of Councilors and MPs with a concrete solution which can be found in the Law on Minority Rights and Freedoms.
Article 109 paragraph 1		
The competent election commission shall issue a decision within 24 hours of the hour of receipt of the objection and submit it to the objection submitting entity.	The competent election commission shall issue a decision within 48 hours of the hour of receipt of the objection and submit it to the objection submitting entity.	By extending the deadline for deciding on complaints, it contributes to providing a more effective remedy, for appeals that require more detailed investigation.
Article 116 – added paragraph 4		
N/A	A fine of 5,500 euros shall be imposed on a legal entity for failure to act in accordance with Article 39a of this Law.	In order to achieve full compliance with the legal provisions that implement the principle of gender equality, it is necessary to prescribe a penal provision for non-compliance with this legal provision.

LAW ON REGISTRY OF PERMANENT AND TEMPORARY RESIDENCE

After Article 15 added Article 15a

N/A

One year before the scheduled elections, the competent authority is obliged to perform random field control of the residence of citizens on the entire territory of Montenegro. The results, in the form of a report on field control, will be the responsibility of the institution in charge of updating the voter register.

In order to create an accurate voter register and verify compliance with the length of residence requirement, extensive field control should be conducted, prior to the next election process. The Council for the Control of the Voters' List, the establishment of which was decided by the Government, is recommended as the competent body (available at: <https://www.gov.me/vijesti/237615/Sapostenje-sa-seste-sjednice-Vlade-Crne-Gore-odrzane-14-1-2021-godine.html>).

Article 36 paragraph 1

A fine in the amount of 30 euros to 200 euros shall be imposed on a person for a misdemeanor if he:

1) fails to submit the application for residence, the application for change of residence, i.e., address, the application for departure to another state and the application for return from another state within eight days (Article 10, paragraphs 1, 2, 4, 5 and 6);

2) fails to submit the application referred to in Article 10 paragraphs 1, 2, 4, 5 and 6 of this Law for a minor or a person deprived of legal capacity (Article 11, paragraph 1);

3) does not submit the registration of residence within 24 hours of arrival at the residence or does not deregister the residence before departure (Article 24).

A fine in the amount of 200 euros to 2.000 euros shall be imposed on a person for a misdemeanor if he:

1) fails to submit the application for residence, the application for change of residence, i.e., address, the application for departure to another state and the application for return from another state within eight days (Article 10, paragraphs 1, 2, 4, 5 and 6);

2) fails to submit the application referred to in Article 10 paragraphs 1, 2, 4, 5 and 6 of this Law for a minor or a person deprived of legal capacity (Article 11, paragraph 1);

3) does not submit the registration of residence within 24 hours of arrival at the residence or does not deregister the residence before departure (Article 24).

One of the key problems when it comes to the functioning of the voter register is the problem of changing or registering residence. Extremely low penalties prescribed by the current legislation do not represent a sufficient motive for citizens to fulfill their duties, so it is necessary to introduce a stricter penal policy in the process of combating this problem.

THE LAW ON VOTER REGISTER

Article 2

The Voter Register is a derived electronic collection of personal data of Montenegrin citizens having the right to vote.	The Voter Register is a derived electronic collection of personal data of Montenegrin citizens having the right to vote.	The proposed amendment introduces the category of active and inactive voters in the Law on the Voter Register in order to reduce the number of persons who are in the Voter Register and do not meet the residency requirement.
The Voter Register is a public document that serves only for election purposes and is kept ex officio.	The Voter Register is a public document that serves only for election purposes and is kept ex officio.	
Registration with the Voter Register is a condition for exercising the right to vote.	Registration with the Voter Register is a condition for exercising the right to vote.	
Voter Register is permanent and regularly updated.	The Voter Register contains records on active and inactive voters. Voter Register is permanent and regularly updated.	

Article 5 – item 15 is changed and the previous item 15 becomes item 16

15) other activities, in accordance with this Law.	15) keeps records of active and inactive voters; 16) other activities, in accordance with this Law.	This provision places the responsibility of the Ministry of the Interior to keep records of active and inactive voters.
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LAW ON FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGNS

Article 2 paragraph 1

Political entities, in terms of this Law, are: political parties, coalitions, groups of voters and candidates for the election of the President of Montenegro.	Political entities, in terms of this Law, are: political parties, coalitions, groups of voters, individuals (individual candidates) and candidates for the election of the President of Montenegro.	This provision contributes to achieving equality of position of all categories of political entities.
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Article 12 – added paragraph 2

N/A	A political subject can receive funds for regular work if the statute envisages and implements democratic procedures for the election of party leadership, candidates for parliamentary and board functions (all party members vote, direct elections and secret ballot).	State funding of regular work and election campaigns of political parties should be legally conditioned to the introduction in the statutes and implementation of democratic procedures, the selection of candidates for parliamentary and councilor positions, and the direct election of party leadership by party members.
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RULES OF PROCEDURE OF POLLING BOARDS

Article 1 – added paragraphs 1.9 i 1.9a

N/A

1.9. President of the polling board, his deputy, members of the polling board and their deputies are obliged to wear the accreditation issued by the competent authority confirming their membership in the polling board (hereinafter: accreditation) from the time of arrival at the polling station to the end of establishing the election results at the polling station, in such a way that it is clearly displayed and visible.

As an exception, the president of the polling board shall be obliged to wear the accreditation, as described in paragraph 1.9 of this Article, until the completion of the procedures referred to in Article 6, paragraph 6.2.

In current practice, the members of polling boards often did not wear the accreditation. By simply prescribing the wearing of accreditation as an obligation, it contributes to the prevention of possible abuses.

Article 2 – added paragraph 2.11

N/A

The polling board is obliged to enable the voter to vote, with obligatory visual identification, if a voter registered in the excerpt from the voter register for that polling station comes to the polling station, and by swiping his identification document through the reader on the screen of the electronic identification device his photograph does not appear, nor data, but the information “the voter is not at this polling station”, in the lower left part of the screen, the voter will still be permitted to vote as long as his information can be verified against the excerpt from the voter register for that polling station.

Despite efforts to provide accurate and complete data in electronic databases and checks on the correctness of electronic devices, it should be possible to exercise the right to vote in case the electronic device does not recognize the voter at the polling station, and he/she is on the excerpt from the voter list.

POLLING BOARD TRAINING MANUAL

1. Arrangement of the polling station – added new item

N/A

The president, his deputy, members of the polling station committee and their deputies, upon arrival at the polling station, are obliged to display the accreditation confirming their membership in the polling station committee and to wear it throughout the election day, so that it is visible until completion of the determination of voting results. This obligation applies to the president until he submits the materials and equipment to the municipal election commission and receives a confirmation of admission from the president of the municipal election commission.

Prescribing the obligation to carry accreditation in the Rules of Procedure of Polling Boards entails the need to prescribe the same in the Polling Board Training Manual.

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