

# ABUSE OF STATE RESOURCES

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PRESIDENTIAL ELECTIONS  
IN MONTENEGRO 2023

POLICY STUDY





**Publisher:**

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**Year of Issue:**

2023



International Foundation  
for Electoral Systems



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## INTRODUCTION

The abuse of state resources has been a prevalent issue since Montenegro introduced a multiparty system. For over two decades, CeMI has been dedicated to overseeing the democratization process in Montenegro. Our research, dating back to the 1990s, pinpointed a troubling pattern: governing political entities in Montenegro often unlawfully appropriate and exploit state property. What initially seemed benign rapidly evolved into an extensive study on the abuse of state resources (ASR), a topic which was scarcely researched at that time.

Since recognizing the profound impact of this issue on the democratic environment, our organization has exerted significant efforts to advocate for a dedicated law addressing ASR in electoral processes. While policymakers chose to address this issue through the existing 2015 regulation concerning the financing of political entities and electoral campaigns, the first comprehensive regulation of ASR in Montenegro was a promising step forward. It offered a hopeful prospect that the legal framework would finally separate the state from ruling political parties. However, recent electoral practices and emerging forms of ASR cast doubt on the true depth of this commitment in Montenegro.

Despite notable legislative advancements in recent years, our conclusions about the state of ASR in Montenegro remain dishearteningly similar. This suggests a lack of genuine political will and institutional preparedness to counteract or eliminate the pervasive ASR phenomenon that continues to undermine the legitimacy of our electoral processes. Electoral events since 2009 have been dominated by the former ruling DPS party and its coalition allies exploiting state resources. While there was a surge of optimism after the democratic shift in power in 2020, the stance of the current ruling majority and the new government regarding the misuse of state resources during election campaigns remains unchanged. The new ruling majority has perpetuated the misuse of state resources, adopting many of the tactics previously employed by the DPS - tactics they once criticized and rightly identified as abuses of state resources.

Set against recent developments, this policy study seeks to detail the outcomes of monitoring the abuse of state resources during the Presidential elections of 2023. This monitoring endeavor is part of the ECAC project „Supporting Stakeholders in Implementing Anti-Corruption Standards“, which CeMI has been implementing in cooperation with the International Foundation for Electoral Systems (IFES) and the CEELI Institute. The study is structured into four distinct chapters:

- Chapter 1 offers insights into the definitions of state resources and their abuse, elaborating on the various manifestations of abuse of state resources.
- Chapter 2 delves into significant international documents that address the abuse of state resources.
- Chapter 3 provides an extensive review of Montenegro's legal structure concerning the abuse of state resources as well as an overview of the institutional framework.
- Chapter 4 describes the methodology employed for monitoring of abuse of state resources during elections and presents the analysis of CeMI's findings during the presidential elections.

The study concludes with CeMI's conclusions and recommendations.



## CHAPTER 1.

**ABUSE OF STATE RESOURCES (ASR) DURING THE ELECTION CAMPAIGN: CONCEPT, DEFINITIONS AND FORMS OF ASR****1.1. THE CONCEPT AND DEFINITIONS OF ASR**

The concept of abuse of state resources (ASR) lacks a universally recognized definition in both Montenegrin legislation and international law. Nonetheless, its significance is acknowledged by many countries, as well as by global institutions and organizations. This is evidenced by the numerous references to ASR in both international and national documents from various countries. Consequently, while a standard definition might be elusive, there exists a shared understanding of the phenomenon, and multiple attempts have been made to define it.

But before we delve into the definitions of abuse of state (or administrative) resources, we must first understand what those resources are. The importance of accurately defining the term „state/administrative resources“ is highlighted in the Venice Commission Report on the Misuse of Administrative Resources during Electoral Processes. The document states that *administrative resources are human, financial, material, in natura and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support.*<sup>1</sup>

In an ideal setting, state resources are tools dedicated exclusively to advancing and upholding the public interest. These resources are the lifeblood of any state machinery, playing an indispensable role in its smooth and effective operation. However, in countries undergoing transitional phases—whether politically, economically, or socially—there exists a worrying trend. Here, political entities often exploit state resources to further personal agendas or to bolster their party's interests. This misuse not only jeopardizes the credibility of electoral processes but also casts shadows over the foundational principles of democracy.

Magnus Ohman, from the International Foundation for Electoral Systems (IFES) offers a potential definition of ASR as: *any use of state resources to support or undermine any political actor (such as a political party or coalition or a candidate for public office).*<sup>2</sup> Additionally, the Center for Anti-Corruption Research describes it as *a form of political corruption where individuals, parties, or other groups controlling state and public sector resources ('current political forces') exploit these resources to bolster the election or reelection chances of their favored candidates or groups.*<sup>3</sup> The Organization for Security and Cooperation in Europe (OSCE) further defines ASR as *the undue advantages gained by certain parties or candidates through their official roles or affiliations with government institutions, influencing the outcome of elections.*<sup>4</sup>

1 Venice Commission Report, CDL-AD(2013)033 paragraph 12

2 Magnus Ohman, The Abuse of State Resources, Washington, D.C., IFES, 2011

3 Center for Anti-Corruption Research, Final Report on Monitoring the Misuse of State Resources during election campaign for the December 2003 Russian Federal State Duma Elections, Moscow, 2004, p. 13

4 OSCE/ODIHR, Handbook for the Observation of Campaign Finance, 2015, p. 22

Despite the differences in the aforementioned definitions, a common thread that can be observed across all definitions is that ASR pertains to the misuse of state or public resources for political advantage, specifically to influence electoral outcomes. Therefore, ASR can be understood as a prevalent form of political corruption, especially during electoral campaigns. This is characterized by the undue electoral advantage that dominant ruling parties derive from the illegitimate use of state resources. ASR encompasses the unethical, and sometimes illegal, actions of civil servants, incumbent politicians, and political parties, who, by exploiting their official positions or affiliations with government institutions, can sway electoral outcomes. Fundamentally, ASR disrupts the balance of power among political contenders, potentially determining electoral outcomes. The principle of ensuring an even playing field for all electoral participants is viewed by many scholars as a cornerstone of genuine democracy. Some authors go as far as to say that this principle differentiates true democratic societies from „competitive authoritarian” regimes that have emerged post-Cold War.<sup>5</sup>

The association of the abuse of state resources with election campaigns pinpoints both the core nature and the temporal aspect of this phenomenon. While it's undeniable that state resources can be misappropriated outside of election periods, such transgressions typically manifest as standard corruption. The primary objectives in these instances are personal enrichment or securing political or material advantages for the ruling parties. However, even outside the formal confines of an election campaign, state resources can still be misused to strategically position incumbents or parties for reelection, revealing the pervasive nature of this form of abuse. To truly understand and identify the abuse of state resources, it's essential to recognize its key prerequisites, which are 1) the object of abuse, 2) the agent conducting the abuse and 3) the motive for abuse.<sup>6</sup>

**The object of abuse** relates to the specific resources that are being exploited. Those can be 1) financial resources pertaining to the misuse of state funds, budgets, or monetary allocations, or 2) institutional resources, which involve leveraging state institutions or their mechanisms for undue advantages, 3) human resources, which includes the manipulation or coercion of civil servants, state employees, or any other personnel for political gain, 4) media resources, centering around exploitation of state-controlled media outlets or platforms to propagate biased information or suppress opposing views, 5) regulatory resources, that take the form of misuse of laws, regulations, or state-mandated policies for political favor. This is not an exhaustive list and ASR can involve other state resources at the disposal of the state, which can be used for undue advantage, i.e. abused.

**The agent conducting the abuse** relates to the entities or individuals that orchestrate or perpetrate the abuse. These can be, and often are political entities, such as political parties or factions that might leverage state resources for their benefit, individual politicians, officeholders, whether at the local, state, or national level, and state/local Institutions, organizational bodies or departments that might be compelled or co-opted into partaking in such abuse.

**The motive for abuse** delves into the driving reasons behind ASR. This includes gaining electoral advantage, i.e., seeking to tilt the scales in favor of a particular party or candidate in an upcoming election. Another motive can be the retention of power, which includes efforts aimed at ensuring the ruling party or politician remains in their position of authority. ASR can also be used to silence the opposition, i.e. to stifle, discredit, or hamper opposition parties or figures, or

5 Levitsky & Way, *Competitive Authoritarianism, Hybrid Regimes After Cold War*, Cambridge, Cambridge University, 2010, p. 7

6 Vlado Dedovic, *Upotreba državnih resursa u toku izborne kampanje*, Centre for Monitoring and Research, Podgorica, 2009, p. 6

as a means of strengthening control and broadening the influence or control of a ruling party or politician over various facets of the state.

The most comprehensive lens for examining how state resources can be mobilized, utilized, or potentially misused stems from the categorization proposed by the International Foundation for Electoral Systems (IFES), which is why this categorization will be used as the basis for this policy study. As per the IFES model,<sup>7</sup> state resources can be segmented into the following four key categories:

- **Financial Resources:** These refer to monetary assets, typically channeled through various governmental budgets, as well as those from publicly managed or owned institutions.
- **Institutional Resources:** This category encompasses non-monetary assets, such as material and personnel resources that the state has at its disposal. It also includes publicly owned media outlets and other communication mediums.
- **Regulatory Resources:** This pertains to the authority vested in the state to enact laws and regulations that dictate permissible and impermissible actions within the political realm. This domain can span a range of subjects, from criminal legislation to specifics like the sequence in which candidates are listed on electoral ballots.
- **Enforcement Resources:** This underscores the role of security and law enforcement agencies in enforcing laws and regulations. It resonates with the principle that the state holds the exclusive right to the legitimate exercise of force.

## 1.2. THE EMERGING FORMS OF ASR DURING THE ELECTION CAMPAIGN

ASR during electoral campaigns consistently emerges as a prominent concern in the reports of electoral observation missions. Scarcely any government or dominant party can claim total innocence from utilizing state resources in ways that could tilt the electoral scales, be it intentional or unintentional. Thus, this phenomenon warrants continuous monitoring, and proactive measures must be initiated to curb its prevalence. While nations have a diverse range of policy measures at their disposal to combat ASR in electoral scenarios, the genuine political intent and a commitment to accountability are indispensable. Without these, the sanctity of the democratic foundation of elections is at risk, potentially delegitimizing the outcomes.

The Venice Commission, in its report on the Misuse of Administrative Resources During Electoral Processes,<sup>8</sup> draws a pivotal distinction between the „use“ and „abuse“ of state resources in election contexts. The term „use“ is grounded in legality, signifying the legitimate employment of administrative tools during electoral times, ensuring the normal operations of institutions. Such uses strictly exclude any campaigning activities. In stark contrast, „abuse“ or misuse, as per the Venice Commission, should face legal consequences, especially when public resources are wrongly harnessed by incumbents or civil servants for promoting their campaigns. Yet, defining what may constitute illicit behavior isn't always straightforward. For instance, establishing regulations around what public officials can engage in outside their working hours during campaigns can be difficult, as is discerning the true intent behind extending social benefits to marginalized groups during electoral periods.

<sup>7</sup> Magnus Ohman, op.cit.

<sup>8</sup> Venice Commission Report, CDL-AD(2013)033 paragraph 10

Drawing from historical data from past election cycles in Montenegro, we observed several forms of ASR that fall within the following categories:

- Abuse of institutional resources;
- Abuse of financial resources and
- Abuse of public media resources.

Abuses of public media resources are briefly discussed in the following section. However, they were not within the purview of CeMI's monitoring during the 2023 presidential elections.

### 1.2.1. ABUSE OF INSTITUTIONAL RESOURCES

As highlighted earlier, institutional resources encompass non-monetary assets and personnel resources that the state possesses.

**Non-monetary assets** refer to assets such as state-owned office spaces, equipment, public transportation, and other state-owned vehicles, as well as various public facilities. Political entities might exploit these resources to secure an edge over their rivals during electoral campaigns. Examples of such misuse include holding pre-election rallies in public venues, utilizing state office spaces and equipment for voter meetings, producing campaign literature, and ferrying citizens to political events using public transport.

**Personnel resources** are public employees—individuals working across state institutions and agencies at both central and local levels. The ruling political faction might mobilize civil servants, including state and local officials, to take part in pre-election endeavors, aiming to achieve political leverage. Such engagements can involve collecting party endorsement signatures within state premises, active participation of public employees at campaign events, undertaking election-centric research for a political entity, creation and distribution of a party's promotional content, and public officials campaigning on behalf of the party. A critical determinant for tagging these endeavors as ASR is the timing of the action. It's deemed abusive if a state employee partakes in these actions during official work hours or while representing their state role.

### 1.2.2. ABUSE OF FINANCIAL RESOURCES

The abuse of financial resources in electoral campaigns involves the misallocation of state or municipal budgets and other public funds to finance election-related activities. These financial abuses can manifest in direct or indirect ways.

**Direct abuse** refers to offering explicit financial incentives to sway potential voters. One glaring instance of direct financial malpractice is the covert or semi-covert act of vote buying using state budget resources. Another prevalent tactic involves channeling state funds for campaign expenditures, leading to the transfer of money from the state's coffers directly into the accounts of dominant political parties. Public funds can also be allocated for other purposes, such as raising salaries or pensions, offering student loans and scholarships, or settling debts for potential voters. In Montenegro, it is uncommon for state funds to be channeled towards social welfare payments and other benefits to woo potential supporters ahead of elections, a strategy that can influence voting behavior.

**Indirect abuse** involves leveraging state or local budgetary spending on services or infrastructure projects during election campaigns as a method to influence the electorate. Such endeavors are often portrayed as promises of economic progress and job creation. The inception of these projects, consequently, is wielded as political propaganda, especially by those in power. In Montenegro, for instance, this can be observed in the construction or refurbishment of bridges, roads, factories, hotels, public amenities like parks and fountains, and even the establishment or upgrade of educational and healthcare facilities. Additionally, the organization of sports, cultural, or artistic events during election periods serves as an extension of this abuse. Often, these manipulative strategies are intricately linked with institutional misuse, frequently apparent in public official campaigns.

### 1.2.3. ABUSE OF PUBLIC MEDIA RESOURCES

Media plays an instrumental role in elections. Beyond disseminating information on a range of topics to the public, media platforms serve as avenues to inform voters about their rights and, in an ideal setting, grant equitable exposure to all political contenders in the election.

Political factions stand to gain substantially from amplified visibility and a favorable portrayal in the media. This is particularly pronounced in the context of state and local media, i.e., public media. Public media has an obligation to deliver unbiased, precise, timely, understandable, and balanced information on both domestic and global matters that concern the public.<sup>9</sup> This responsibility becomes even more critical during elections, underscoring the need for public media to consistently uphold public trust.

Abuse in this domain can materialize in two primary ways:

**Disproportionate representation**, which involves the unequal exposure of electoral lists or candidates in state or locally owned media during the electioneering phase. In essence, the governing party often receives disproportionate airtime and content coverage compared to opposition parties on state or local media channels.

**Biased content**, which involves the broadcast of material that overtly or covertly favors the incumbent political group or its representatives on state and/or local media. This bias can range from subtle positive narratives about the governing party and its candidates to more overt tactics such as censoring opposition viewpoints or running negative campaigns against opposition figures.

The first kind of abuse is rather straightforward, evident when there's a clear disparity in the coverage between the ruling and opposition parties. The latter, however, is more covert and can be manifested in various shades—be it through subtly favoring one group or by vilifying another.

<sup>9</sup> Article 9, para. 3 point 12 of the Law on National Public Broadcaster Radio and Television Montenegro („Official Gazette of Montenegro“, no. 80/2020)



## CHAPTER 2.

## INTERNATIONAL STANDARDS

While no singular international legal framework specifically addresses the abuse of state resources, several international documents do touch upon ASR, including (in alphabetical order):

**Council of Europe Committee of Ministers Recommendation Rec(2003)4**,<sup>10</sup> states that *objective, fair and reasonable criteria should be applied regarding the distribution of state support, and states should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties;*

**Copenhagen Document**,<sup>11</sup> states that *the participating states...solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings are the following: ...a clear separation between the State and political parties; in particular, political parties will not be merged with the State, and to ensure that the will of the people serves as the basis of the authority of government, the participating States will... provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities;*

**United Nations Convention Against Corruption (UNCAC)**,<sup>12</sup> states that *each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position;*

**Venice Commission Code of Good Practice in Electoral Matters**,<sup>13</sup> states that *equality of opportunity must be guaranteed for parties and candidates alike. This implies a neutral attitude by state authorities, in particular with regard to: i. the election campaign; ii. coverage by the media, in particular by the publicly owned media; iii. public funding of parties and campaigns;*

**Venice Commission Code of Good Practice in the Field of Political Parties**,<sup>14</sup> states that *apart from different forms of funding provided for by law, any party must refrain from receiving assistance, financial or in kind, from any public authorities, particularly those directed by its members, and no party may receive clandestine or fraudulently obtained financial aid;*

**Venice Commission and OSCE/ODIHR Guidelines on Media Analysis During Election Observation Missions**,<sup>15</sup> states that *while all media are expected to offer responsible and fair*

10 Council of Europe Committee of Ministers, Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns

11 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 1990

12 United Nations Office on Drugs and Crime, United Nations Convention Against Corruption, New York, 2004, p. 18

13 Venice Commission, Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, Strasbourg, 2002, p. 7

14 Venice Commission, Code of Good Practice in the Field of Political Parties, Strasbourg, 2009, p. 8-9

15 Venice Commission and OSCE/ODIHR, Guidelines on Media Analysis During Election Observation Missions, Venice, 2009, p. 7

*coverage, it is particularly incumbent upon state/public media to uphold more rigorous standards since they belong to all citizens. Using state/public media to promote a certain political party or candidate is therefore an illegitimate manipulation of the public, as well as that publicly funded broadcasters should provide a complete and impartial picture of the entire political spectrum in their coverage of an election, given that they are obliged to serve the public and offer a diverse, pluralistic, and wide range of views;*

**Venice Commission and OSCE/ODIHR Joint Guidelines „Preventing and responding to the misuse of administrative resources during electoral processes”<sup>16</sup>** states that *the legal framework should provide for a general prohibition of the misuse of administrative resources during electoral processes. The prohibition has to be established in a clear and predictable manner. Sanctions for misuse of administrative resources have to be provided for and implemented. Such sanctions need to be enforceable, proportionate, and dissuasive.*

In addition to these international documents, there are also several notable good practice guidelines related to the abuse of state resources, such as the **Unfair Advantage: The Abuse of State Resources in Elections**,<sup>17</sup> developed by IFES and the **OSCE/ODIHR Handbook for the Observation of Campaign Finance**,<sup>18</sup> which contains several recommendations and guidelines on ensuring transparency, fairness, and accountability in the use of state resources during electoral processes.

These documents provide comprehensive frameworks and methodologies for identifying, addressing, and preventing potential abuses, thus ensuring a level playing field for all political entities involved in elections.

The IFES publication addresses the guidelines and legal provisions in place to ensure a fair electoral process. Specifically, it highlights measures to prevent public employees and officials from leveraging their positions or state resources for campaign advantages. These measures range from restrictions on campaign involvement for public employees to guidelines on the equitable use of government resources and the transparent reporting of campaign expenses. The emphasis is on ensuring a level playing field during elections and preventing the misuse of state resources and positions for electoral gain.

While broader, the OSCE/ODIHR handbook also contains several specific guidelines that touch upon ASR. The handbook offers guidelines to ensure fair and transparent campaign finance during elections. It emphasizes the impartial allocation and reporting of state resources used in campaigns and provides a clear framework for identifying, overseeing, and regulating contributions, including in-kind contributions. The guidelines also set parameters for the classification and timing of campaign expenditures, and it touches upon the importance of public access to campaign finance reports. The handbook also underscores the necessity of having an independent oversight body, immune to political influence, which can objectively monitor and enforce these campaign finance regulations.

<sup>16</sup> Venice Commission and OSCE/ODIHR, Preventing and responding to the misuse of administrative resources during electoral processes, Joint Guidelines, Venice, 2016, p. 7

<sup>17</sup> Available at: <https://electionjudgments.org/en/entity/y4rh0wsq6e?page=1>

<sup>18</sup> Available at: <https://www.osce.org/odihr/elections/135516>

## CHAPTER 3.

## NATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK

## 1.3. NATIONAL LEGAL FRAMEWORK

Montenegro is one of the few European countries with a comprehensive approach to regulating electoral abuses. The need for this emerged in response to challenges between 2012 and 2014, a period marked by controversies around the authenticity of election results. Montenegro's framework to counter electoral infractions spans multiple legal documents, with the Law on Financing of Political Entities and Election Campaigns (LFPEEC) and the Law on Election of Councilors and MPs at its core. There are also other legal instruments, such as the Law on Election of the President of Montenegro, the Law on Public Administration, and the Code of Ethics for Civil Servants and Employees, all of which incorporate measures to prevent the misuse of state resources. Even the Criminal Code contains a provision that falls within this umbrella. Supplementing these primary laws, we can also mention the Rulebook on the Oversight of Provisions of Articles 33 to 45 of the LFPEEC<sup>19</sup> as an important secondary legislation. This rulebook guides the Agency for Prevention of Corruption in ensuring a corruption-free utilization of state assets during elections. This also tells us that the provisions aimed at preventing the abuse of state resources are enshrined within these articles of the LFPEEC.

## 1.3.1. THE LAW ON FINANCING OF POLITICAL ENTITIES AND ELECTION CAMPAIGNS

In 2020, Montenegro introduced the new Law on Financing of Political Entities and Election Campaigns.<sup>20</sup> This legislation governs how political entities receive and distribute financial resources for both their regular operations and electoral campaigns. Moreover, it outlines specific prohibitions and limitations regarding the use of state assets, funds, and public capacities during campaigns. The law also sets forth measures for the oversight, monitoring, and auditing of the financing and fiscal activities of political groups. Spanning 77 articles, the Law is organized into 10 distinct chapters:

Table 1: chapters and articles of the LFPEEC

Chapters of LFPEEC	Relevant articles
I Basic Provisions	1- 11
II Financing the Regular Work of Political Entities	12 – 15
III Financing of Electoral Campaign for the Election of Councilors and MPs	16 – 27
IV Financing of Electoral Campaign of the Candidate for the Election for President of Montenegro	28 – 32
V Prohibitions and Restrictions	33 – 46
VI Financial Operations of a Political Entity	47 – 49
VII Submission and Publication of Reports	50 – 54
VIII Supervision	55 – 63
IX Penal Provisions	64 – 71
X Transitional and Final Provisions	72 – 77

<sup>19</sup> Available at: [https://antikorupcija.me/media/documents/Pravilnik\\_kontrola\\_33-45.pdf](https://antikorupcija.me/media/documents/Pravilnik_kontrola_33-45.pdf)

<sup>20</sup> „Official Gazette of Montenegro”, no. 3/2020 and 38/2020



Chapter V, titled „Prohibitions and Restrictions,” is, in the context of this document, the pivotal section of the Law. It spans articles 33-46 and lays out an array of obligations, limitations, and prohibitions that state authorities, political entities, and media advertising service providers must adhere to during electoral campaigns. These provisions were instated in response to observed misconduct in past electoral cycles. By incorporating a diverse set of bans and restrictions, the legislation aims to rectify prevalent issues and instances of ASR in Montenegro. While the Law does not explicitly define the term „abuse of state resources,” it addresses various manifestations of ASR within articles 33-44. The remaining articles in this chapter (45 and 46) do not specifically address individual forms of ASR. Instead, they outline the conditions for implementing and monitoring the stipulations presented in the preceding articles.

Table 2: Overview of LFPEEC articles that regulate ASR

ABUSE OF STATE RESOURCES			
Prohibition/ Restriction	LFPEEC	Description	Prescribed penalty
Abuse of institutional resources			
Prohibition on use of state premises	Article 36 para. 1	The law prohibits the use of state body premises, as well as premises of state administration bodies, local self-governing bodies, local administration bodies, public enterprises, public institutions and state funds and companies founded and/or owned in major part or partly by the state or local self-governing unit, for the preparation and implementation of the campaigning activities, unless the same conditions are provided for all participants in the election process.	Political entity faces a €5,000 - €20,000 fine;  Responsible person faces a €500 - €2,000 fine.
Prohibition on distribution of propaganda material and collecting of signatures of support for electoral lists	Article 36 para. 2	The use of these premises is forbidden for the purposes of distributing of propaganda material and collecting support for submission of a political entity's electoral list and submission of a candidate's candidacy for the election of the President of Montenegro.	Political entity faces a €5,000 - €20,000 fine;  Responsible person faces a €500 - €2,000 fine.
Prohibition on use of state-owned machinery and equipment	Article 39 para. 1	Businesses founded or majority-owned by the state or a local self-government are prohibited from giving their machinery and equipment to third parties for use without special decision and without a compensation contract, within six months before the planned deadline for holding elections (the planned deadline for holding elections is the date on which the elections were held in the current term of office), except in cases of the need to repair damage caused by natural disasters, fires or prevention of spreading of a communicable disease epidemic.	Responsible person faces a €200 - €2,000 fine.
Prohibition on use of state-owned cars	Article 43 para. 1	Public officials are prohibited from using state-owned cars during the election campaign, except in cases of official need. <sup>21</sup>	No prescribed penalty.

<sup>21</sup> This restriction does not apply to „protected persons”. According to article 22 of the Law on Internal Affairs („Official Gazette of Montenegro”, no. 44/2012, 36/2013, 1/2015 and 87/2018), the Government had adopted a Decision on Determination of Persons and Facilities secured by the Police Administration, which contains a list of protected persons. These persons can use the state-owned cars 24/7.

Restrictions on hiring	Article 44 para. 1	In state bodies, state administration bodies, local self-government bodies, local administration bodies, public institutions and state funds, in the period from the day of announcing the election to the day of elections, persons may be employed on a temporary basis only, i.e. to conclude a contract for temporary and occasional work, in order to ensure the smooth and regular conduct and functioning of the work process of these bodies, based on the decision of the competent body of these entities, only if it is provided for in the act of systematization of jobs.	Legal entity faces a €5,000 - €20,000 fine;  Responsible person faces a €200 - €2,000 fine.
Prohibition of public official campaign	Article 44 para. 4	Public officials (except MPs and councilors), as well as employees in state bodies, state administration bodies, local self-government bodies, local government bodies, public companies, public institutions, and state funds, are prohibited from engaging, during working hours, in election campaign activities.	Natural person faces a €500 - €2,000 fine.
<b>Abuse of financial resources</b>			
Prohibitions on financing	Article 33 para. 1	Political entities are prohibited from receiving material and financial assistance and in-kind contributions from: other states, companies and legal entities outside the territory of Montenegro; natural persons and entrepreneurs without voting rights in Montenegro; anonymous donors; public institutions, legal entities and companies with a share of state-owned capital; trade unions, religious communities and organizations, non-governmental organizations; casinos, bookmakers, and other providers of games of chance.	Political entity faces a €10,000 - €20,000 fine.
	Article 33 para. 5	Legal entities, companies and entrepreneurs and related natural persons which, based on a contract with the competent bodies and in accordance with the Law, performed activities of public interest or concluded a contract through the public procurement procedure, in the period of two years preceding the conclusion of the contract, for the duration of the business relationship, as well as two years after the termination of the business relationship are prohibited from giving contributions to political entities.	Natural person faces a €500 - €2,000 fine.
	Article 34 para. 1	It is prohibited to make promises or political and any other counter favor, privilege, or personal benefit to a natural or legal person for the purpose of obtaining financial, material, or non-financial support for a political entity.	Political entity faces a €10,000 - €20,000 fine;  Responsible person faces a €500 - €2,000.
Prohibition on paid advertisement	Article 37	Paid advertising of state bodies and local self-governing bodies, public companies, public institutions, and state funds in Montenegro, which could in any way place into a favored position the political entities or their representatives during the election campaign, is prohibited.	Natural person faces a €200 - €2,000 fine.

Restrictions and prohibitions on use of state funds	Article 38 para. 1	Unless in case of an emergency, State, and local budget spending units (except SEC and MEC), as well as legal entities exercising public authority based on contracts with the competent authority and companies owned by the state or local self-government in accordance with the Law on the Prevention of Corruption, monthly spending higher than the average monthly spending in the previous six months from the day of calling until the day of the election is prohibited.	Responsible person faces a €200 - €2,000 fine.
	Article 38 para. 2	If the elections are held in the first half of the year, the monthly spending higher than certain amounts determined by the monthly spending plan prescribed by the Ministry or the local government body at the beginning of the fiscal year are prohibited.	Natural person faces a €200 - €2,000 fine.
	Article 38 para. 4	State institutions for social and child protection and state and local bodies responsible for agricultural affairs are prohibited from spending more than the average monthly spending in the last six months of the previous year.	Responsible person faces a €200 - €2,000 fine.
	Article 40 para. 3 and 4	Allocation of social benefits from the current state and local level budget reserve in the year in which local or parliamentary elections are held is prohibited. In case of early elections, the ban is valid for six months from the day the elections are called.	Responsible person faces a €200 - €2,000 fine.
Transparency of social welfare payments	Article 40 para. 1 and 2	The state and local budget spending units are prohibited from paying or providing one-time financial assistance, in accordance with the law governing the entitlements and activities of social and child protection, except in the case of the death of a family member, a serious illness that causes a permanent disability exceeding 50% or damage to a housing or property due to fire or natural disaster. Additionally, local budget spending units are prohibited from monthly payments of material benefits from social protection under the jurisdiction of the local government unit, higher than 20% of average monthly spending for these benefits in the third quarter of the previous budget year, in accordance with the law governing the rights and activities of social and child protection.	Responsible person faces a €200 - €2,000 fine.
Prohibition on writing-off debts	Article 42 para. 1	Legal entities whose founder, partial or majority owner is the state or a local self-government unit, are forbidden from writing off citizens' debts, including electricity, water, and other public service bills, from the day of calling the election until a month after the election.	Legal entity faces a €5,000 - €20,000 fine;  Responsible person faces a €500 - €2,000 fine.
	Article 42 para. 3	In the period from the announcement of the elections to two months after the determination of the final election results, the competent state and local authorities are prohibited from writing off obligations based on the exemption of VAT, other taxes and parafiscal duties.	Legal entity faces a €5,000 - €20,000 fine

Prohibition on introducing new or one-time subsidy	Article 42 para. 2	In the year when elections are being held, and in the case of early elections from the day of their announcement until two months after the determination of final results, it is forbidden to introduce new or one-time subsidies for electricity, as well as subsidies for payments of communal services performed by companies founded by, or fully or partially owned by the state or local self-government unit.	Responsible person faces a €200 - €2,000 fine.
<b>Abuse of enforcement resources</b>			
Prohibition on exerting pressure	Article 35	Political entities, legal and natural persons are prohibited from exerting any form of pressure on legal entities, companies, and natural persons in the course of raising contributions or any other activity related to the election campaign and financing of political entities.	No prescribed penalty.

Despite a rather comprehensive approach to regulation of different forms of ASR, the enforcement policy remains limited, and the practice of establishing violations on the basis of ASR is yet to be fully implemented. In the rare cases where violations are found, the imposed sanctions are too lenient to contribute to effective prevention of ASR. According to the Agency for Prevention of Corruption (hereinafter: the Agency), certain provisions of LFPEEC are unenforceable.

### 3.1.2. THE LAW ON ELECTION OF COUNCILORS AND MPS

Even though this document pertains to abuse of state resources during the presidential elections, the Law on Election of President of Montenegro<sup>22</sup> contains minimal provisions against ASR. Specifically, Article 22 stands as the sole provision addressing ASR, stating that presidential candidates cannot use amenities, funds, vehicles, technical equipment, or any other state property for campaign activities. However, despite its firm stance, the Law lacks clarity on penalties for violations of this provision. Furthermore, this Law emphasizes that the majority of the stipulations in the Law on Election of Councilors and MPs, including those concerning ASR, are to be applied accordingly to the election of the President of Montenegro.

In the 2016 Law on Election of Councilors and MPs,<sup>23</sup> Chapter VII delineates measures against the misuse of state resources during electoral activities. Titled „Presentation of Submitters of Electoral Lists and Candidates of Electoral Lists,” this section expressly forbids state institutions and public bodies from meddling in the electoral process or leveraging state assets for campaign activities. A clear directive also mandates these institutions to uphold impartiality, ensuring every political contender receives equal treatment.

Highlighting this commitment to fairness, Article 50 (para. 4) specifies that assets — be it monetary, technical equipment, premises, or other resources — affiliated with state bodies, public enterprises, institutions, local governmental units, or companies with state ownership, must not be exploited for showcasing candidate lists.

<sup>22</sup> „Official Gazette of Montenegro”, no. 017/07 of 31.12.2007, 008/09 from 04.02.2009, 012/16 of 23.02.2016, 073/18 of 19.11.2018

<sup>23</sup> „Official Gazette of Montenegro”, no. 16/2000, 9/2001, 41/2002, 46/2002, 45/2004 - Constitutional Court [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 and 10/2018 - CC decision

Article 50a further asserts the neutrality of public officials, those appointed by state or local governance, as well as civil servants and staff. These individuals are barred from active participation in electoral campaigns or from expressing their political stances publicly during work hours.

Another clear line is drawn for police officers and members of the National Security Agency; they are unequivocally excluded from all electoral campaigning activities. Moreover, the Law strictly prohibits state and local officials from leveraging their official media platforms to promote or disparage a candidate list or its associated agenda during elections. Any breach of this principle results in financial penalties, with fines ranging from €500 to €2,000 for individuals and €2,000 to €20,000 for corporate entities, as outlined in Articles 116 and 117.

In ensuring resource availability, Article 114 mandates that all state and local government institutions provide their premises and resources for electoral campaigns, while emphasizing equal access for all electoral lists/candidates.

The Law's punitive section (Article 115) explicitly prohibits any commandeering or misuse of resources associated with military, police, judiciary, and other state bodies, whether for endorsement or criticism of candidate lists/candidates. Violators face incarceration, with a duration of up to three years. Notably, employees and associates of these state bodies face similar punitive measures if found complicit. Graver consequences await high-ranking officials — including the President of Montenegro, Parliament Speaker, Prime Minister, members of the Government, and key judiciary figures — with potential prison sentences extending up to five years.

An important aspect of this Law also pertains to the media. In order to guarantee equal media representation, Article 53 mandates all public broadcasters, spanning national to local levels, to provide unbiased and equal airtime for announcements of every candidate list's/candidate's promotional events. This means daily broadcasts of consistent duration, scheduled in equivalent time slots. Supplementing this, Article 53a instructs media entities, especially those with nationwide reach, to allocate free broadcast time uniformly to all authenticated candidate lists/candidates. Specifically, they should air political-propaganda content for no less than 200 seconds daily, contingent upon the scheduled number of political marketing segments. Also, twice per day, three-minute segments should cover promotional rallies, following the central evening news, on TV channels and radio stations. Breaching these stipulations triggers financial repercussions, with fines ranging between €2,000 and €20,000, as detailed in Article 117.

### 3.1.3. OTHER RELEVANT LAWS AND REGULATIONS

**The Criminal Code of Montenegro**<sup>24</sup> explicitly addresses unauthorized usage of state assets during electoral events. Specifically, Article 193a of the code prohibits an official from using or enabling the use of properties belonging to state bodies, public institutions, public companies, local self-government units, and companies where the state holds ownership, for the promotion of electoral lists.<sup>25</sup> Violation of this provision results in imprisonment ranging from six months to five years. Moreover, Article 193b (para. 2) penalizes officials who unduly influence the monetary

24 „Official Gazette of Montenegro”, no. 70/2003, 13/2004 - correction and 47/2006 and „Official Gazette of Montenegro”, no. 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - correction, 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020  
25 Introduced in 2017 as an amendment to the CC, this article has yet to be the subject of any court proceedings regarding its violation.

contributions towards political parties or subjects, with imprisonment terms between three months and five years.

**The Law on State Administration**<sup>26</sup> enforces the non-partisan operations of state administration bodies. Article 3 mandates these bodies to act impartially, without political bias, and prohibits any political activities within them. The overarching objective is to guarantee non-discriminatory treatment to all individuals and entities.

**The Law on Civil Servants and Employees**,<sup>27</sup> encompassing all state-affiliated personnel, further solidifies this non-partisan stance. Within its articles, it emphasizes the political neutrality of civil servants during their professional activities. Article 9 particularly underscores the obligation of civil servants to abstain from public displays of political allegiance during official duties, with violations deemed as severe breaches of duty. Subsequent penalties range from salary deductions (20-40% over 2-6 months) to potential employment termination. Nevertheless, civil servants retain their rights to political expression outside of work hours, and the law does not impede their participation in election administration. **Correspondingly, The Ethical Code of Civil Servants and Employees**<sup>28</sup> provides ethical benchmarks for civil service behavior, forbidding the expression of political allegiances that might compromise the impartial discharge of their duties.

While Article 10 of the Law on Civil Servants and Employees advocates for unbiased hiring, real-world scenarios have witnessed politically motivated hiring during electoral campaigns. In fact, this phenomenon can be aptly described as pervasive and habitual across all political parties that hold power, whether at the local or national level.

In the realm of security and defense, the **Law on Internal Affairs**,<sup>29</sup> specifically Article 154, bars police officers from political party memberships and from contesting in state or local elections. Moreover, the Director of the Police is held to even stricter standards, prohibited from any political affiliations during, and five years prior to their term.

Parallely, the **Law on Army of Montenegro**<sup>30</sup> mandates political neutrality for its personnel. They are forbidden from public political expressions or affiliations with political entities, as outlined in Article 18. Article 60, emphasizing the sanctity of the military uniform, prohibits its wear during non-military events like political rallies or protests. This safeguards the apolitical stance of the army and precludes any perceived endorsements or biases.

### 3.2. INSTITUTIONAL FRAMEWORK

The Agency for Prevention of Corruption serves as the pivotal state institution in charge of overseeing the financing of political entities and election campaigns, thus playing a leading role in combatting the ASR. The core functions of the Agency are enshrined in the Law on Prevention of Corruption. However, specific mandates related to ASR are detailed in the LFPEEC.

26 „Official Gazette of Montenegro“, no. 78/2018, 70/2021 and 52/2022

27 „Official Gazette of Montenegro“, no. 2/2018, 34/2019 and 8/2021

28 „Official Gazette of Montenegro“, no. 050/18 of 20.07.2018

29 „Official Gazette of Montenegro“, no. 070/21 of 25.06.2021

30 „Official Gazette of Montenegro“, no. 51/2017 and 34/2019



The Agency shoulders the responsibility of ensuring that the obligations set out in the LFPEEC are met. Its purview extends to overseeing the operations and financial transactions of political entities, especially during campaign periods. Specifically, the Agency's regulatory roadmap, as defined by its control and supervision plan,<sup>31</sup> encompasses the monitoring of political entities' expenditures, and the requirement for such entities to maintain a dedicated account for election campaign expenses. In performing this duty, the Agency reviews various documents like invoices, contracts, and advertisement samples, ensuring they align with the stated expenditures. This oversight also encompasses service providers and the political recipients of such services.

An important facet of the Agency's responsibility is the maintenance of records. During electoral campaigns, political entities are mandated to systematically record and periodically update details of funds acquired from private donors and their subsequent expenditures. The Agency is then tasked with assimilating this data. Furthermore, the Agency oversees areas such as in-kind contributions, paid media advertising, and other restrictions imposed by the Law.

Providing clarity and guidance is another key function of the Agency. It offers regular advice regarding the law's application to taxpayers and, in instances of non-compliance, initiates requisite administrative or legal procedures. Such procedures can be self-initiated or be prompted by third-party reports, with the Agency's Director leading the process via authorized officers.

If minor discrepancies are detected during audits, the Agency typically issues a warning to the political entity in question. However, should these discrepancies remain unresolved or if they are of a severe nature, a request for legal proceedings is initiated. When potential irregularities are discovered during a campaign, the Agency is bound by a 15-day window to report the transgression to the appropriate authority. This might entail initiating a legal procedure or, in grave cases, alerting the prosecutor's office. However, since its foundation, the Agency has reported only four such cases to the prosecutor's office in 2016, all tied to documents obtained from political entities and one in this election cycle related to pressuring of employees to sign a candidate support list.

Regarding campaign financing infringements, the Agency holds the authority to enforce penalties, ranging from partial to complete withdrawal of budgetary funds allocated for the campaign or halting the transfer of these funds. However, the Agency does face certain limitations. Despite being the institution that conducts oversight of political financing, its jurisdiction is restricted to monitoring financial resources reflected in political entities' accounts. Moreover, the sheer volume of entities under its supervision can dilute its effectiveness.

Recent years have underscored the necessity of bolstering the Agency's capabilities. The European Commission's 2020 Annual report on Montenegro lauded the enhancement of the Agency's institutional capacity, backed by capacity-building exercises and technical support.<sup>32</sup> But the report also flagged ongoing challenges related to the Agency's autonomy, its strategic approach, and decision-making quality. The report emphasized the need for the Agency to adopt a more proactive approach, including better whistleblower protections and improved

31 Plan of control and supervision for the election campaign for the election of the President of Montenegro, which will be held on 19 March 2023, available at: [https://www.antikorupcija.me/media/documents/Plan\\_kontrole\\_i\\_nadzora-predsjedni%C4%8Dki\\_izbori\\_2023.pdf](https://www.antikorupcija.me/media/documents/Plan_kontrole_i_nadzora-predsjedni%C4%8Dki_izbori_2023.pdf)

32 European Commission, Commission Staff Working Document, Montenegro 2020 Report, p. 5.

political finance oversight. In response, over the past few years, the Agency has ramped up its efforts against ASR during electoral campaigns. The European Commission's 2021 Annual report on Montenegro recognized the more proactive approach of the Agency, however, concerns related to the Agency's independence, priority-setting, selective approach and the quality of its decisions remain.<sup>33</sup>

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<sup>33</sup> European Commission, Commission Staff Working Document, Montenegro 2021 Report, p. 4.



## CHAPTER 4.

## ABUSE OF STATE RESOURCES DURING THE PRESIDENTIAL ELECTION CAMPAIGN IN MONTENEGRO 2023

Before delving into the specific instances of ASR observed during the 2023 Presidential election campaign, it's important to provide a clear picture of the political landscape and prevailing circumstances under which these elections unfolded. The backdrop provides essential context, setting the stage for a deeper understanding of the events and intricacies that marked the campaign.

### 4.1. POLITICAL CONTEXT

Following the 2020 parliamentary elections, Montenegro witnessed a shift in power after 30 years of DPS rule. A new majority was formed with 41 of 81 MPs from three main entities: the „Black on White” coalition (primarily URA members), the Democratic Montenegro, and the „For the Future of Montenegro” coalition (led by the Democratic Front and SNP).<sup>34</sup> Despite this, an Expert Government was established with mostly neutral members, except for the Prime Minister Krivokapic from the „For the Future of Montenegro” coalition<sup>35</sup> and his deputy, Dritan Abazovic of URA. A primary rationale behind the Expert Government was to keep the pro-Russian, far-right Democratic Front (DF) out of power, safeguarding Montenegro's foreign policy direction. Nonetheless, the DF secured considerable influence. They wield control over approximately two-thirds of lower-tier government entities and most public enterprises, embedding their allies deep within Montenegro's institutional structure. This enables them to wield state resources in ways eerily similar to the tactics previously employed by the DPS. Following the Niksic local elections in March 2021 and subsequent municipal elections in October 2022, their influence expanded consistently in a similar trajectory. Meanwhile, DPS continued to lose control on state and local levels.

During the „Expert Government” tenure, Milojko Spajic and Jakov Milatovic emerged as two leading expert ministers in the new government, driving the „Europe Now” economic plan which broadly increased salaries. The initiative was tagged as populist, hinting at future political ambitions, and the government increasingly grappled with instability and controversies. This instability peaked in early February of 2022 when a vote of no confidence ousted Krivokapic's administration, supported by URA, CIVIS, the „pro-Montenegrin” bloc, and minority parties.

Subsequently, in late February, the 43rd Government was formed, led by Dritan Abazovic. While DPS lent their votes, they remained outside of the governing coalition. However, after Abazovic signed a controversial agreement with the Serbian Orthodox Church, DPS sought a vote of no confidence against his administration in August of 2022. A year later, the government operates as a caretaker government, primarily represented by URA and SNP, both of which have dwindling public support.

34 For a full list of parties, see CeMI's Final Report on the Civic Monitoring of Parliamentary and Local Elections 2020, available at: <https://cemi.org.me/storage/uploads/btFLFBp08MAWZr9fKUQbYQUjybYiFRQYqGjOntVA.pdf>

35 While Krivokapic emerged as the prominent figurehead of this coalition, he wasn't inherently a political figure. Instead, he was handpicked by the Serbian Orthodox Church to spearhead the coalition. This strategic selection stemmed from the perception that the three top figures from the Democratic Front — Andrija Mandic, Milan Knezevic, and Nebojsa Medojevic — were viewed unfavorably by a significant portion of the electorate.

Between the tenures of the 42nd and 43rd Governments, the former ministers Miloško Spajic and Jakov Milatovic established a new political party, confirming the previous rumors. The party was named „Europe Now” (ES), after their renowned economic plan. However, this move was seen as an unconventional type of misuse of state resources. Notably, while both ministers championed this economic plan, neither were its original architects; and ultimately, it was the Parliament that had endorsed the plan.

With the caretaker government, and the Parliamentary elections being called two days before the first round of voting in the presidential elections, it would be an understatement to say that the presidential elections unfolded under a unique set of circumstances. This extended to the candidates as well.

The two leading candidates hailed from parties that lacked significant state-level influence. While DPS once dominated the political landscape, it now retained only a few municipalities, with the President’s Cabinet being its final stronghold of executive power. The incumbent, Milo Djukanovic, no longer had the vast resources at his disposal, a stark contrast to the influence his party once commanded. Conversely, „Europe Now” was gaining momentum, securing multiple municipalities in the 2022 local elections, notably including the capital, Podgorica. However, their national influence remained limited, preventing them from leveraging state resources for political gains. This limitation was highlighted when the SEC, dominated by rival parties, rejected the candidacy of „Europe Now’s” initial choice, Miloško Spajic.

The third prominent candidate in the first round of voting was Andrija Mandic of the DF.<sup>36</sup> Ever since the inception of the 42nd Government, the DF has been mired in accusations of widespread misuse of state resources, both during and outside of elections. They have capitalized on their influence within the lower echelons of the government and pivotal roles in state enterprises obtained after the August 2020 elections. Yet, even with the vast state resources at their disposal, the DF could not garner enough votes to advance their candidate to the second round of the presidential elections.

Almost all political factions, especially the ones in power at that time, were gearing up for the anticipated early parliamentary elections in 2023, which, as we have highlighted, were announced merely two days before the presidential election’s first round of voting. This overlapping anticipation complicates our analysis, blurring the lines between maneuvers aimed at the presidential elections versus those targeting the soon-to-be-held parliamentary elections.

In subsequent sections of this study, we will present our methodology and notable ASR examples from the latest Presidential elections of 2023.

## 4.2. METHODOLOGY

Drawing from past electoral cycles, CeMI formulated a specialized methodology to monitor ASR during the Presidential elections of 2023. In accordance with our methodology, the focus was primarily on abuses associated with the LFPEEC:

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<sup>36</sup> In May 2023, just before the Parliamentary elections, the Democratic Front Coalition officially dissolved. Yet, with its two main constituents intact, this move seemed more of a strategic trimming, eliminating smaller parties that couldn’t independently meet the threshold for Parliamentary representation. In essence, the Democratic Front persists in all but name.

- **Article 38:** Monitoring any monthly spending by state and local budget units during the campaign that surpasses the six-month average preceding the campaign. For elections in the first half of the year, the benchmark is set by spending plans from the Ministry of Finance or local administration.

Violations of Article 38 may imply the abuse of financial resources. To monitor this, we collated and scrutinized documentation by budget spending units, alongside media reports on budget spending. This process involved securing documents via government information requests and collaboration with the Agency for Prevention of Corruption. Our objective was not merely to identify the number of units violating this article but also to gauge the exceeded amount, the Agency's response, and any subsequent actions or imposed penalties.

- **Article 40:** Monitoring the use of social welfare payments.

This type of ASR has garnered significant attention in Montenegro. Past opposition parties frequently claimed that the ruling party exploited the social welfare system for electoral benefits, such as vote-buying or funneling funds to political affiliates through unwarranted social welfare recipients. For our monitoring, we employed a methodology that entailed analyzing social welfare decisions made by municipal governments. We further contextualized these decisions by examining the prevailing circumstances, especially in light of the 2020 amendments to LFPEEC that allowed for one-time social welfare disbursements during pandemics.

- **Article 44:** Scrutinizing the hiring process in public institutions, firms, and state funds unless explicitly mentioned in the entity's job description act.

Employment practices during election campaigns, specifically by state/municipal entities, have been a long-standing concern in Montenegro. There have been various allegations regarding hiring or promoting employees during campaigns to secure votes. Our monitoring focused on a comprehensive review of all employment contracts by relevant entities mandated to disclose hiring decisions during campaigns. Importantly, we aimed to discern any discernible patterns in hiring – like sudden surges in recruitment close to Election Day, which could hint at underlying political motivations.

- **Article 44, para. 4:** Tracking the involvement of public officials (excluding MPs and councilors) and state/local body employees in election campaigns during office hours.

We monitored public officials who may have been campaigning in violation of the law. Such public official campaigning, often the most prevalent form of abuse, is compounded by its overt nature. This monitoring was achieved through daily oversight of online news outlets, social media, and tracking the Agency's reactions concerning Article 44, para. 4 violations. In these cases, we would also observe media responses and public sentiment, as many citizens often share their views on online articles and social platforms.

Beyond the articles mentioned and the specific abuses they address, we monitored all other potential misuses of state resources. We particularly focused on violations related to Article 35 and Article 36 of the LFPEEC. These articles forbid putting pressure on individuals during election-related activities and prohibit collecting signatures in support of electoral lists and candidates within state-owned facilities. We monitored this mainly through social media monitoring and daily inspection of online media articles.

The methodology was enhanced by updating the Fair Election application, enabling users to report various forms of ASR. While it is clear that certain abuses occurred, many of these weren't overt or easily identifiable by the average citizen, and more obvious forms of ASR that citizens could readily identify and report, were relatively rare. Due to this, only three such reports were made through the „Fair Elections“ app.

Before the presidential elections of 2023, CeMI utilized this app during the 2020 Parliamentary and Local elections, and the 2021 Niksic Local elections. The app is multi-functional, consisting of several key modules:

**Reporting Module:** Arguably its most vital component, this module features three categories: election irregularities, abuse of state resources, and disinformation. Within the election irregularities category, users can report breaches of voter rights or any issues on election day. This method is the primary way CeMI observers and the general public report such irregularities. The ASR reporting module allows the user to describe and report public official campaigns, abuse of budgetary funds, abuse of social welfare, abuse of state-owned vehicles, garnering signatures of support in state institutions, politically motivated hirings, etc. The disinformation module allows users to report the description of the disinformation and its source. All three modules also allow users to attach a file, if necessary.

**Information Module:** Here, users can access essential details about voter rights, election rules, and other related regulations.

**Observation Module:** Users can view all reported irregularities in real-time, whether submitted by observers or other citizens.

**Election Data Module:** This connects the „Fair Election“ app to CeMI's turnout and PVT (Parallel Voter Tabulation) services. Users can view live turnout data and the results of CeMI's PVT. Montenegrin media outlets extensively use this feature to provide real-time election updates to the public. Additionally, this module archives past election results.

All reports from the app are directed to CeMI's legal team for vetting. They assess each one to ensure its validity and determine if it genuinely indicates an election irregularity. This verification process promotes transparency in the election process and serves as an informative and motivational instrument. By publicizing significant irregularities, citizens are educated about potential issues and are encouraged to report any they witness.

One of the app's essential features allows CeMI to validate major reports. If a severe irregularity (e.g., vote buying, violence) gets reported, the legal team can alert the nearest observer to investigate the claim. This was especially significant during the tense Niksic Local elections, deemed one of Montenegro's most problematic electoral periods. The „Fair Elections“ app played a pivotal role in maintaining election day integrity, ensuring acceptance of results by all participants.

#### 4.3. USE OF BUDGET

A noticeable surge in public expenditure during election periods could raise suspicions about the legitimacy of such spending. It might suggest a potential misuse of financial resources to achieve electoral benefits, whether via subtle voter persuasion or direct vote purchasing.

Consequently, it is imperative to maintain fiscal prudence during election campaigns.

Article 38 delineates that state and local budgetary units, with the exception of the State Election Commission and the municipal election commissions, should not exceed their monthly spending beyond the average of the preceding six months, from the announcement to the execution of the elections. Exceptions can be made in emergencies, as stipulated by the Law.

A relevant part of article 38 pertains to scenarios where elections are held in the first half of the year, which was the case during the presidential election of 2023. When this occurs, **state and local budgetary units must not exceed budgetary allocations as determined by the initial monthly spending plans crafted by either the Ministry or relevant local administrative bodies.**

Furthermore, this limitation is applicable to legal entities executing public mandates or serving public interests based on agreements with the appropriate authorities. It also extends to enterprises where the state or local governance unit holds a stake, as defined by anti-corruption legislation. Institutions dedicated to social and child welfare, as well as state and local bodies overseeing agriculture, are also restricted from exceeding their average expenditure from the latter half of the preceding year.

Additionally, Article 38 mandates all budgetary units, both at the state and local levels, to compile weekly financial statements for all their accounts from the announcement to the conclusion of the elections. These statements are then to be submitted to the Agency for Prevention of Corruption for review.

During the presidential election campaign of 2023, there was a total of 884 budgetary units on state and local level who had to adhere to this article of the Law. The Agency has sent a total of 232 warnings related to the publication and delivery of analytical statements, all of which were resolved. During the campaign, there were 59 complaints related to the publication of analytical statements and 18 complaints related to exceeding the monthly expenditures.<sup>37</sup> Similar complaints were observed in previous election cycles.

When it comes to exceeding the monthly expenditures by state budgetary units, we can observe the excess amount, per month, starting from January when the election was called.

In January of 2023,<sup>38</sup> only one budgetary unit exceeded the planned expenditure – **The Health Insurance Fund**, which had spent €11.335.056,00. This constitutes a **54,81%** increase over the planned **€7.321.788,52** for that month.

In the following tables, we will present other state budgetary units which had spent more than originally planned by the Ministry of Finance, for the months of February and March.

Although the State Election Commission (SEC) is not bound by the limitations set forth in Article 38, it should be highlighted that during the presidential elections, multiple Municipal Election

<sup>37</sup> Agency for Prevention of Corruption, Report on conducted control during election campaign for the election of the President of Montenegro in 2023, p. 19, available at: [https://www.antikorupcija.me/media/documents/lzvje%C5%A1taj\\_o\\_sprovedenom\\_nadzoru-Predsjedni%C4%8Dki\\_izbori\\_2023\\_1.pdf](https://www.antikorupcija.me/media/documents/lzvje%C5%A1taj_o_sprovedenom_nadzoru-Predsjedni%C4%8Dki_izbori_2023_1.pdf)

<sup>38</sup> Budget realization per budget unit – January 2023, available at: <https://www.gov.me/dokumenta/6b37b517-a6a7-4f69-97e4-82f5667a1399>

Commissions (MECs) sought additional resources for the second round of voting.<sup>39</sup> The MEC of Podgorica, for instance, requested nearly double the resources it had initially required for the first round.<sup>40</sup> This puts the SEC in a difficult position, as turning down these requests could risk the MECs' ability to effectively conduct the elections. To address this challenge, the SEC subsequently requested an audit of all MECs to ensure proper resource allocation and usage.

Table 3: Monthly expenditure of state budgetary units for the month of February 2023<sup>41</sup>

Budgetary Unit	Planned expenses	Actual expenses	Increase
Service of the President of Montenegro	€88.145,36	€93.940,47	6,57%
Judicial Council	€2.415.186,10	€2.537.802,90	5,08%
Secretariat General of the Government of Montenegro	€321.438,63	€456.121,22	41,90%
Administration for the Execution of Criminal Sanctions	€1.032.367,92	€1.071.338,82	3,77%
Ministry of Foreign Affairs	€1.473.602,26	€1.743.330,00	18,30%
National Tourist Organization	€210.226,72	€367.519,16	74,82%
Ministry of Human and Minority Rights	€159.901,95	€193.401,57	20,95%
Ministry of Ecology, Spatial Planning and Urbanism	€771.683,27	€1.983.418,81	157,02%
Ministry of Labor and Social Welfare	€18.270.122,31	€19.910.047,58	8,98%
Montenegrin Academy of Sciences and Arts	€181.830,83	€214.552,07	18,00%
Red Cross of Montenegro	€18.333,34	€36.666,68	100,00%
Public Broadcaster Radio and Television of Montenegro	€1.433.625,00	€2.867.250,00	100,00%
Regional Diving Center for Underwater Demining and Divers Training	€38.213,90	€43.212,65	13,08%
Official Gazette of Montenegro	€12.833,33	€53.602,96	317,69%
Health Insurance Fund	€28.354.372,94	€32.534.782,54	14,74%
Institute for Employment	€4.043.479,89	€4.077.148,78	0,83%
<b>Total expenditure</b>	<b>€58.825.363,75</b>	<b>€68.184.136,21</b>	<b>15,91%</b>

39 The Decision on the allocation of material costs to MECs for the second round of voting: <https://dik.co.me/wp-content/uploads/2023/04/Nova-odluka-materijalni-troskovi.pdf>

40 The decision on the allocation of material costs to MECs for the first round of voting: <https://dik.co.me/wp-content/uploads/2023/01/Odluka-sredstva-OIK-2023.pdf>

41 Budget realization per budget unit – February 2023, available at: <https://www.gov.me/dokumenta/a863980e-9d5d-4c98-8471-c192361c6e0b>



Table 4: Monthly expenditure of state budgetary units for the month of March 2023<sup>42</sup>

Budgetary Unit	Planned expenses	Actual expenses	Increase
State Election Commission	€597.886,29	€1.375.558,89	130,07%
Judicial Council	€2.368.820,42	€2.665.250,58	12,51%
Prosecutorial Council	€901.675,29	€947.145,86	5,04%
Secretariat General of the Government of Montenegro	€321.438,63	€409.589,57	27,42%
Cabinet of the Prime Minister	€104.813,71	€126.018,44	20,23%
Secretariat for Legislation	€32.483,49	€37.961,88	16,87%
Administration for the Execution of Criminal Sanctions	€1.032.367,92	€1.090.077,47	5,59%
Administration for Protection of Secret Data	€33.823,77	€42.510,21	25,68%
Administration for the Games of Chance	€34.045,81	€46.275,30	35,92%
Revenue and Customs Administration	€1.423.139,64	€1.554.244,25	9,21%
Institute for Education	€125.620,14	€133.224,42	6,05%
State Archive	€176.566,75	€186.530,48	5,64%
Meteorology Institute	€75.474,53	€87.736,62	16,25%
Ministry of Capital Investments	€583.438,17	€794.599,39	36,19%
Administration of Maritime Safety and Harbor Management	€99.794,51	€105.453,67	5,67%
Traffic Administration	€6.172.162,69	€9.155.901,67	48,34%
Railroad Administration	€3.621.674,22	€4.562.694,42	25,98%
Ministry of Human and Minority Rights	€155.901,96	€218.637,13	40,24%
The Agency for Protection of Nature and Environment	€160.617,71	€426.650,96	165,63%
Institute for Hydrometeorology and Seismology	€143.151,66	€160.551,29	12,15%
Ministry of Labor and Social Welfare	€17.930.813,46	€20.993.933,59	17,08%
Department of Social and Child Protection	€24.557,52	€27.270,97	11,05%
Montenegrin Academy of Sciences and Arts	€181.830,83	€253.740,51	39,55%
The National Security Agency	€847.846,76	€892.223,08	5,23%
The Agency for Prevention of Corruption	€145.827,23	€168.229,90	15,36%
Health Insurance Fund	€29.851.916,94	€29.872.846,72	0,07%
Institute for Employment	€3.903.479,87	€5.312.532,67	36,10%
<b>Total</b>	<b>€71.051.169,92</b>	<b>€81.647.389,94</b>	<b>14,91%</b>
<b>Total without the SEC</b>	<b>€71,051,169.92</b>	<b>€80.271.831,05</b>	<b>12,97%</b>

<sup>42</sup> Budget realization per budget unit – March 2023, available at: <https://www.gov.me/dokumenta/a2bf3a12-2056-4c7e-9788-8603b86f93ff>

It is also troubling to see that the Government has chosen again to hide certain transactions from the public. A total of 229 transactions were hidden in the months of January (36),<sup>43</sup> February (111)<sup>44</sup> and March (82).<sup>45</sup> While some of these transactions are possibly justifiably secret, as they relate to expenditures by the National Security Agency and the Ministry of Defense, or some transactions by the Ministry of Interior related to the police, it is difficult to see the reason behind classifying transactions made by Ministry of Economic development and Tourism and the Ministry of Finance.

#### 4.4. USE OF SOCIAL WELFARE PAYMENTS

Article 40 of the LFPEEC outlines restrictions related to one-time financial aid, as well as limitations on monthly disbursements for social welfare benefits by local budgetary units. Additionally, during years when local or parliamentary elections are scheduled, there's a prohibition on using the current budget reserve, both at the national and local levels, for social benefits.

In 2020, before the parliamentary elections in August, the Parliament made a significant revision to Article 40, para. 3 of the Law in response to the COVID-19 pandemic. This article permitted exceptions to the social welfare payment bans under specific circumstances, like wars and other emergencies. The amendment added pandemics to the list of exceptions. While the broad ramifications of the pandemic made a case for such an amendment, there were concerns about potential misuse of this provision for electoral benefits.

Interestingly, it was the former opposition parties that voiced apprehensions about the amendment's potential to be exploited for vote-buying during the election season. One of the parties that is not in power (SDP) put forth a counterproposal.<sup>46</sup> They recommended that disbursements from the budget reserve, earmarked for social benefits, should be managed by an impartial committee comprised of government officials, opposition figures, and civil sector representatives. However, this proposal was not embraced.

Despite the reservations previously raised by the 2020 opposition, the amendment to Article 40 remains active. The new ruling majority has not taken steps to propose a revision that could reduce its susceptibility to exploitation, despite the fact that changes to LFPEEC require only a simple majority in the Parliament. Moreover, their actions seem to indicate an inclination to utilize this provision in the very way they had once feared. It gives the impression that they not only recognize its exploitative potential but might be inclined to capitalize on it.

43 Report on payments from the State Treasury for the month of January 2023, available at: <https://www.gov.me/dokumenta/3d231077-d281-4fdf-84ca-c5e290b5d1a3>

44 Report on payments from the State Treasury for the month of February 2023, available at: <https://www.gov.me/dokumenta/91bb2b7c-1253-4323-99b7-55bfec373632>

45 Report on payments from the State Treasury for the month of March 2023, available at: <https://www.gov.me/dokumenta/cb877fa8-4adf-4598-87af-82c43978e259>

46 <https://www.vijesti.me/vijesti/ekonomija/431799/konjevic-o-socijali-iz-budzetske-rezerve-da-odlucuje-tijelo-u-kojem-ce-bit-i-opozicija-i-civilni-sektor>



### HOW THE PANDEMIC STATUS HAS BEEN ABUSED BY THE GOVERNMENT VIA THE INSTITUTE FOR PUBLIC HEALTH (IPH)

Despite COVID-19 no longer being a pressing concern in Montenegro for over a year, the official pandemic declaration remains in effect. Notably, the final measures to combat the pandemic were enacted from June 30th to August 12th, 2022, and the government website for covid response (covidodgovor.me) is no longer functional. Without any active measures in place, it becomes challenging to justify the continued status of a pandemic. Moreover, even though the World Health Organization declared the end of COVID-19 as a global health emergency in May 2023, the IPH, whose director is appointed by the Minister of Health, interpreted this as distinct from the actual end of the pandemic. Such semantic distinctions allow the government to maintain the pandemic status indefinitely. This can then serve as a loophole to sanction legal payments under Article 40 during the election campaign, undermining the article's original intent and purpose. This is exactly what the government did. Due to the decision on pandemic still being active, the Article 40 restrictions did not apply, i.e., it was legal to issue social welfare payments during the election campaign period.

The Ministry of finance has issued **457** one-time financial aid payments in the total amount of **€261.679,79**, and **14 out of 25 municipalities** have issued **266** one-time financial aid payments in the total amount of **€73.270**, bringing the total amount to **€334.949,79**.

Table 5: one-time payments to natural persons in municipalities during the presidential elections of 2023

Municipality	Population <sup>47</sup>	Number of payments	Amount
Bar	43.950	9	€4.870
Berane	25.683	11	€2.100
Bijelo Polje	40.500	2	€1.850
Budva	22.984	8	€4.500
Cetinje	14.538	1	€150
Kolašin	6.777	24	€3.400
Kotor	22.540	4	€3.400
Nikšić	67.180	21	€10.230
Petnjica	5.227	4	€400
Plav	8.154	6	€1.530
Pljevlja	25.402	50	€14.900
Plužine	2.445	9	€8.350
Podgorica	192.968	112	€16.550
Rožaje	22.853	5	€1.000
<b>TOTAL</b>	<b>501.201</b>	<b>266</b>	<b>€73.270</b>

<sup>47</sup> Based on projection of the population count in the first 6 months of 2022, available at: <https://www.monstat.org/cg/page.php?id=273&pageid=48>

Pursuant to Article 40, The Ministry of Labor and Social Welfare must gather detailed reports on the quantity and recipients of all forms of social welfare throughout the election campaign. This includes data on the type of social welfare, its beneficiaries, and its distribution at the local level. During the campaign, the Ministry disbursed a total of €46.279.908,24 in social welfare.<sup>48</sup>

#### 4.5. EMPLOYMENT

In Montenegro, the act of hiring to secure and maintain a voter base is a pervasive issue. A prominent example that is frequently referenced in this context is the Audio Recordings Affair from 2012.

This affair exposed conversations among DPS members, which took place during party meetings. These conversations revolved around the strategy of hiring individuals based on their party affiliations during the election campaign to ensure an influx of votes.<sup>49</sup> Despite its significance, this scandal, like many others, never reached a conclusive institutional resolution, thereby eroding public trust in both the judiciary and the prosecutorial institutions. The prosecutorial office fell short of conducting a thorough criminal investigation. A mere assurance from the prosecution that their “analysis” of the recordings revealed no criminal activity remains a subject of skepticism, fostering suspicions about the office’s potential politically motivated and careless behavior. Although an ad-hoc Parliamentary inquiry committee examined the affair, it could not ascertain any misuse of state resources by DPS ahead of the 2012 elections. Thus, the matter remained devoid of any legal or political resolution. Nonetheless, the European Union continues to press for both „political and judicial follow-up” on this affair, citing it as one of the most glaring instances of state resource misuse for partisan advantages by the erstwhile ruling DPS.

**From the „Audio recordings” affair:** *„Through these projects, we will try to employ exclusively our people, members of the DPS. One employee, that is four votes. If we manage to hire our man, we have reduced one vote for them, and increased it for us.”*

In a parallel vein, during the 2020 parliamentary election campaign, another incriminating recording surfaced. This recording implied that, even if not directly as a party member, allegiance or support to the party remains crucial for securing employment or advancing one’s career in specific sectors. In the said recording, a DPS member can be heard informing an individual seeking a promotion within the Army of Montenegro that party sympathy is a prerequisite for such advancement.<sup>50</sup>

It appears that this practice did not cease following the DPS’s defeat in August 2020. In fact, the new ruling majority frequently faces accusations of not only perpetuating this practice, but also intensifying it, even outside of the election campaign. These accusations started to appear only months after the defeat of DPS in 2020, and as previously mentioned, they were predominantly centered around the DF, given the breadth of institutions under their control.

<sup>48</sup> The Agency’s report on conducted control, op.cit. p. 20

<sup>49</sup> <https://www.slobodnaevropa.org/a/afera-snimak-ko-je-smjestio-milu-djukanovicu/25157499.html>

<sup>50</sup> <https://www.vijesti.me/vijesti/politika/461357/dobar-dan-dobar-dan-da-li-je-taj-i-taj-jeste-clan-je-dolazi-u-mjesnu-taj-je-crnogorac>

However, the Democrats (DCG) were not exempt from scrutiny. They played a pivotal role in what can be aptly described as regulatory abuse.<sup>51</sup> By proposing amendments to the Law on Civil Servants and Employees in late 2020,<sup>52</sup> which were adopted, they effectively lowered the qualification criteria required for employment in state institutions. Two recent instances illustrate these allegations and can provide valuable insight into this phenomenon.

The Administration for Inspections has discovered legal irregularities in the hiring of Vladimir Cadjenovic and Milan Lekic, both of whom hold key roles in the Montenegrin political and economic landscape. Cadjenovic serves as the Executive Director of the Montenegrin Electricity Distribution System (CEDIS) and is also a member of the main board of DCG; he additionally represents DCG in the permanent composition of the SEC. Lekic was the Executive Director of the Coal Mine in Pljevlja and a board member of the New Serbian Democracy (NSD), a major component of DF. Their appointments in 2021 were made without adhering to the legal mandate for a prior public announcement of the vacant positions, thus contradicting the law.<sup>53</sup>

To better understand how the practice of politically motivated hiring is used, it is essential to first understand one underlying concept that exists in Montenegro. We hinted at this concept in the section discussing the political context, where we detailed the integration of political party members into diverse state institutions and state-owned enterprises. It is an idea encapsulated in a colloquial term that doesn't have a direct translation. However, deep distribution comes close to capturing its essence.

This concept refers to a specific method of allocating positions within government bodies and public institutions among members of political parties that have won mandates in elections. Instead of focusing solely on the highest and most visible positions in the government, this approach delves deeper into the hierarchical structure, allowing party members to take on managerial positions and other key roles that wield significant power and influence within a certain institution or body. This distribution is dependent on the election result. The greater the number of mandates a party secures in the elections, the more positions they are allotted in the hierarchical distribution within government bodies and public institutions. Such an approach can ensure a deeper embedding of a particular party or coalition within the state apparatus, but it also carries risks such as nepotism, decreased efficiency and professionalism, and potential politicization of government bodies and public institutions. It is the opposite of a merit-based system.

This „deep distribution“ of positions is used as a tool for exerting political pressure and manipulation within the state administration. When party members assume pivotal roles across various layers of hierarchy, orchestrated coordination is enabled that can be leveraged to advance party interests and agendas, often to the detriment of objectivity and public interest. Furthermore, having control over diverse segments of the administration can allow a party to exert pressure on employees, either directly or indirectly, thus potentially obliging

51 Following the parliamentary elections, instances of regulatory abuses surged. In retaliation to the President's decision not to grant Miodrag Lekic the mandate to form a new government after the vote of no confidence against Abazovic's administration, the new majority passed contentious amendments to the Law on President of Montenegro. Their objective was clear: to wrest control over the powers that the Constitution exclusively bestows upon the President, under the excuse that the President's decision also constitutes abuse of powers. Even against the backdrop of the Venice Commission deeming these amendments unconstitutional, they persisted. However, by June 2023, these amendments were officially ruled unconstitutional.

52 <https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/72/2422-14015-23-2-20-4.pdf>

53 <https://media.institut-alternativa.org/2023/08/Inspekcija-rada-Rudnik-uglja-Cedis-EPCG.pdf>

them to support or vote for a specific party. Ultimately, such practices can be employed to create a „secure“ electorate, where state administration employees become reliant on the ruling party due to their professional positions, thereby potentially compromising the democratic integrity of the electoral process.

Article 44 of the Law on Financing of Political Entities and Election Campaigns stipulates that from the day elections are announced until election day, state administration bodies, local self-government and administration entities, public institutions, public companies, and state funds are prohibited from hiring new employees. Exceptions are only permissible when necessary for ensuring continuous and regular operations, and only if hires are on a fixed-term basis or under temporary service contracts, as long as these provisions align with the established act on systematization and job descriptions. Notably, the Law does not extend this hiring prohibition to business entities that are either founded by or are majority or partially owned by the state or local self-governments. This oversight provides potential avenues for abuse, which is why before the LFPEEC was amended in 2020, CeMI appealed to the Parliament members to swiftly draft and adopt amendments to Article 44, para. 1 of the Law. However, Parliament did not respond to CeMI's request.

Several of the most prominent state-owned companies have concealed details regarding their employee count and/or their salary structures for over a year.<sup>54</sup> Notable among these are EPCG (the Electric Distribution of Montenegro),<sup>55</sup> Airports of Montenegro, Coal Mine, the Public Company „Morsko Dobro“, and the Post Office of Montenegro, which particularly conceals the salaries of employees contracted through temporary service agreements. Such contracts, when employed by state entities and institutions, are often equated with hiring practices influenced by political affiliations, especially evident during election campaigns.

A total of 6.994 employment contracts were delivered to the Agency between 1 January and 2 May of 2023.<sup>56</sup> It is important to highlight that this figure does not represent 6.994 unique hires. Some individuals on this list entered into multiple contracts within that period. For instance, an individual might have secured a contract in February for 30 days and another in March for an equivalent duration. While this detail does not alter the overall statistics, it is a pertinent point worth mentioning. Most of the hirings were in local municipalities, educational institutions, ministries, and healthcare institutions.

54 MANS, „Kriju podatke o zapošljavanju“, Cetinjski list, June 2, 2023, available at: <https://cetinjskilist.com/mans-kriju-podatke-o-zaposljavanju/>

55 The EPCG is a particularly egregious example. An unconfirmed report from August of 2022 suggests that the new management of the company, led by officials from the Democratic Front and the Democrats, hired more than 2,500 people in less than a year: <https://www.antenam.net/ekonomija/253772-direktori-iz-df-a-i-demokrata-za-godinu-zaposlili-preko-2-5-hiljade-ljudi>

56 Available at: [https://www.antikorupcija.me/me/analitika/jres/zaposljavanje/data?f=\(ik,10181\)&o=0&l=10&r=](https://www.antikorupcija.me/me/analitika/jres/zaposljavanje/data?f=(ik,10181)&o=0&l=10&r=)

Table 6: number of employment contracts by type of contract during the period of presidential election campaign

Type of contract	Number of contracts
Fixed term contracts	3.733
Temporary service contracts	1.723
Supplementary work contracts	917
Indefinite work contracts	294
Temporary and periodic work contracts	140
Author engagement contracts	64
Work engagement contracts	25
Consulting services contracts	23
Work execution contracts	17
Term appointment	13
Other	45
<b>TOTAL</b>	<b>6.994</b>

Considering the public perception with regard to employments during (and outside) of election campaigns, it seems appropriate to present the number of employments during the presidential elections of 2023, relative to the number of households in each municipality.<sup>57</sup>

<sup>57</sup> Since 2011, Montenegro has introduced new municipalities, the latest one being Zeta, which used to be a part of the capital of Podgorica. The data for new municipalities is derived from the addresses of polling stations from the Municipal Election Commissions of those municipalities. This data is then adjusted by subtracting from the original municipality to which those regions previously belonged.

Table 7: Distribution and percentage of employments in every municipality

Municipality	No. of households	Contracts per municipality		% of contracts compared with no. of households per municipality
Andrijevisa	1.666	59	0,84%	3,54%
Bar	13.789	373	5,33%	2,71%
Berane	9.637	284	4,06%	2,95%
Bijelo Polje	13.082	366	5,23%	2,80%
Budva	7.042	267	3,82%	3,79%
Cetinje	5.477	263	3,76%	4,80%
Danilovgrad	5.697	96	1,37%	1,69%
Gusinje	508	15	0,21%	2,95%
Herceg Novi	11.090	307	4,39%	2,77%
Kolasin	2.836	90	1,29%	3,17%
Kotor	7.604	383	5,48%	5,04%
Mojkovac	2.775	79	1,13%	2,85%
Niksic	21.538	699	9,99%	3,25%
Petnjica	127	51	0,73%	40,16%
Plav	3.093	85	1,22%	2,75%
Pljevlja	10.627	509	7,28%	4,79%
Pluzine	1.137	29	0,41%	2,55%
Podgorica	504.500	2.460	35,17%	0,49%
Rozaje	5.455	137	1,96%	2,51%
Savnik	690	40	0,57%	5,80%
Tivat	4.834	128	1,83%	2,65%
Tuzi	2.213	18	0,26%	0,81%
Ulcinj	5.440	144	2,06%	2,65%
Zabljak	1.251	34	0,49%	2,72%
Zeta	4.184	78	1,12%	1,86%
<b>Montenegro</b>	<b>192.242</b>	<b>6.994</b>		

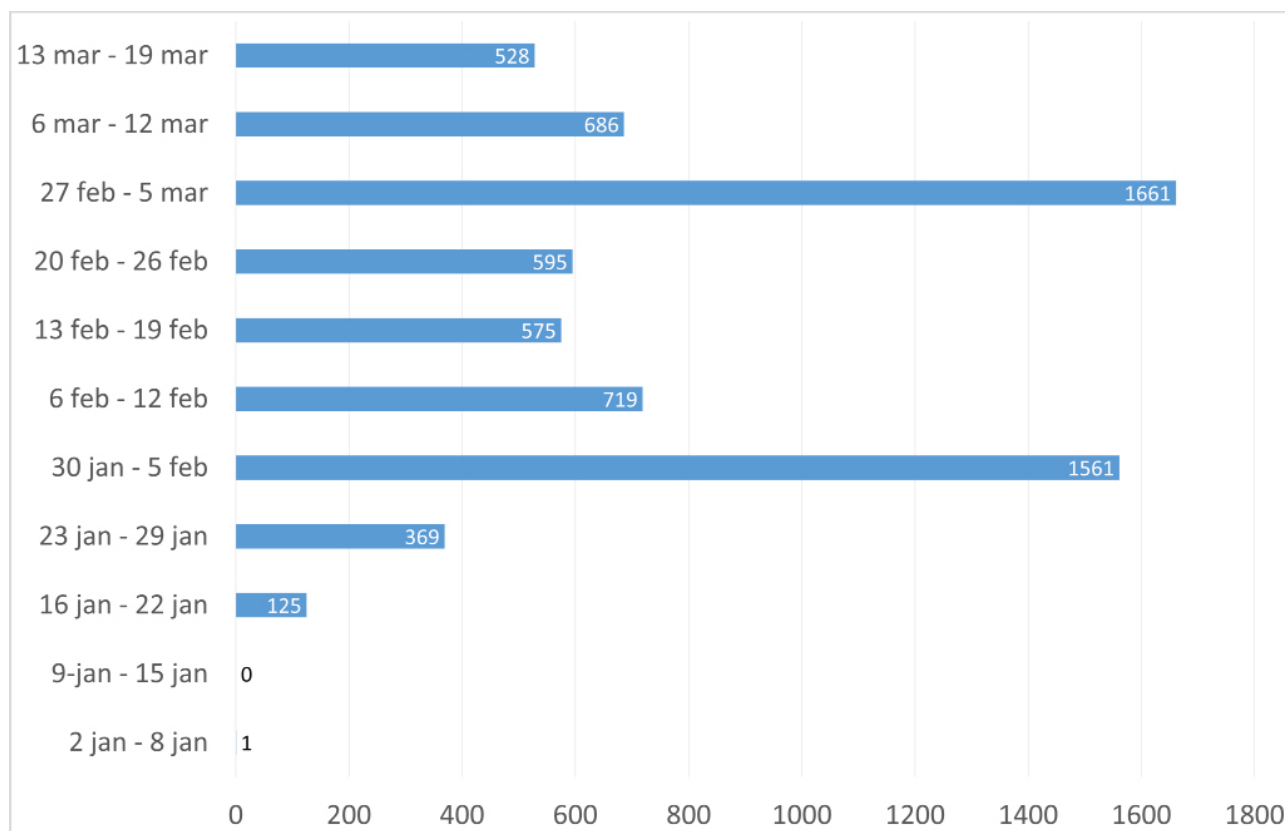
On its own, this figure might not reveal much. However, by examining the monthly employment rates, we can gain a clearer understanding of the potential political motivations behind some of these hirings. Considering the fact that two rounds of presidential elections were held, it is also important to separate the hirings between the two rounds of voting.

Table 8: number of employment contracts delivered to the Agency from 1 January until the first round of voting on 19 March

MONTH	No. and percentage of employment contracts	
January	936	13,7%
February	3.267	47,9%
March	2.617	38,37%
<b>Total</b>	<b>6.820</b>	<b>100%</b>

On a weekly basis, the employments during the first round of voting look like this:

Graph 1: Number of employment contracts delivered to the Agency from 1 January to 19 March, on a seven-day basis



The data shows that a staggering **97,52%** of all employments took place during the first round of voting, with a mere **2,48%** following afterward. Notably, the two frontrunner candidates, advancing to the second round – the incumbent Milo Djukanovic and Jakov Milatovic, hailed from parties without national power. Furthermore, their parties have significantly less influence on the local level than some of the other first-round participant parties. This trend strongly suggests that a motive behind many of these hirings was to bolster votes for some of the candidates who ultimately didn't advance to the second round.

However, less influence does not equate to a lack of influence altogether. For instance, a closer look at Table 7 shows that in Petnjica, the number of contracts relative to the number of households exceeds 40%. This municipality is notable as a place where DPS successfully retained power following the local elections in October 2022. As further testament to their political stronghold in the area, DPS garnered 80% of the votes in the first round of the presidential elections in this municipality.<sup>58</sup> DPS has also managed to hold onto its governing position in Savnik, a municipality where the outcomes of the local elections conducted in October 2022 are still pending. This delay is primarily due to obstructions made by polling board members from the DF, who have accused DPS of manipulating the electoral process by registering voters from different municipalities to cast their ballots in Savnik. Interestingly, DF itself faced similar accusations. But the majority of employment actions during the presidential elections predominantly occurred in municipalities where DPS has lost its governing status,

<sup>58</sup> <https://www.izbori.cemi.org.me/#/predsjednicki-izbori>

with DF and the DCG as the prevailing parties. For example, in municipalities like Andrijevica, Kolasin, Kotor, and Pljevlja, where the ratio of employments per household is notably high, DF and DCG often share governance. In specific instances like Budva, DF operates as the sole governing coalition. Notably, DPS has been ousted from power in all these municipalities in the local elections conducted over the past three years.

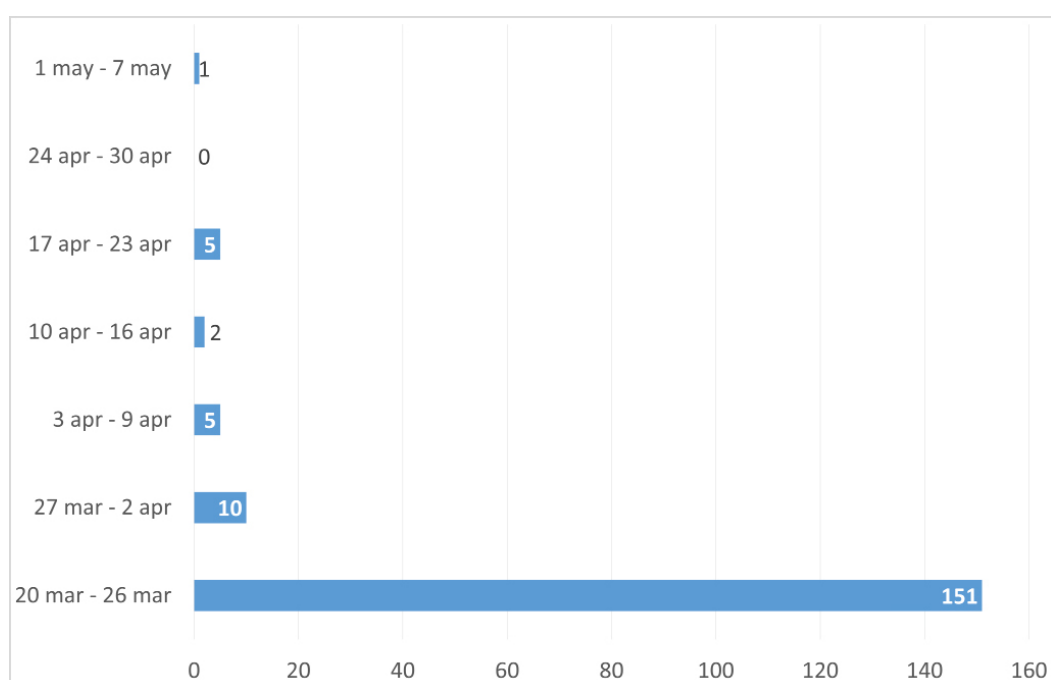
It is important to reiterate that parliamentary elections were announced during the ongoing presidential campaign. Given that a substantial proportion of these employment contracts are of a temporary nature, they have the potential to be leveraged as a tool for influencing voters. Specifically, parties in power may exert pressure on voters to secure their votes, with the implicit understanding that doing so would help to extend their temporary employment status beyond the election period.

As for the second round of voting, the data pertaining to the remaining 174 contracts is as follows:

Table 9: number of employment contracts delivered to the Agency from 1 January until the first round of voting on 19 March.

MONTH	No. and percentage of employment contracts	
March	161	92,52%
April	12	6,89%
May	1	0,57%
<b>Total</b>	<b>174</b>	<b>100%</b>

Graph 2: Number of employment contracts delivered to the Agency from 20 March, on a seven-day basis





Almost all the employment contracts following the first round of voting date back to March. Specifically, 79 contracts were submitted on 20 March, 29 on 21 March, and 18 on 22 March. This timing is crucial given the legal mandate requiring contracts to be submitted to the Agency within three days of a decision, as stipulated by Article 44 para. 2 of the LFPEEC. Consequently, it is probable that out of the 174 outstanding contracts, 126 (72,41%) pertain to hirings that occurred prior to the first round of voting. This would mean that only 48 contracts were signed during the second round of voting, i.e., 0,68%.

#### 4.6. PUBLIC OFFICIAL CAMPAIGN

The public official campaign stands out as arguably the most prevalent form of ASR in Montenegro, or at the very least the easiest to identify. This specific form of misconduct is regulated in the LFPEEC, specifically in Article 44, para. 4. The provision clearly states that public officials, with the exception of MPs and councilors, along with employees in state entities such as state administration bodies, local self-government bodies, local administration bodies, public companies, public institutions, and state funds, are strictly forbidden from participating in election campaign activities during their regular working hours. A significant factor contributing to the rampant abuse via public official campaign, is the inadequacy of the LFPEEC's current provision defining this form of ASR. The Agency has consistently emphasized its ambiguity, stressing the urgent need for refinements and enhancements to the election legislation.<sup>59</sup>

While public official campaigning is usually a dominant form of ASR, the unique circumstances surrounding these Presidential elections made it almost nonexistent. Not only were these particular elections inherently less susceptible to such campaigning, but the ruling party also lacked a candidate in the fray. However, there was still one noteworthy instance of public official campaigning.

Namely, the sole case of public official campaign during the presidential election campaign occurred when the then candidate Jakov Milatovic's visited Budva municipality on 29 March.<sup>60</sup> He had a meeting with Milo Bozovic, the president of the municipality and a high-ranking DF official. Bozovic is currently under detention for alleged involvement in a narcotics-smuggling criminal organization, accused of smuggling three tons of cocaine from South America. Despite being in custody, he continues to hold the position of president of the municipality. Milatovic also met with various officials from the municipal council and the President of the Governing Board of a notable public company „Morsko Dobro“, Mr. Blazo Radjenovic. In a twist of irony, Mr. Radjenovic asserted his belief that, if elected as Montenegro's President, Milatovic's approach to managing state resources would starkly contrast past practices.

Given that this visit took place during working hours, it represents a breach of Article 44, para. 4 of the LFPEEC by both municipal government representatives and the representatives of the public company, who have utilized local resources to campaign for a particular presidential candidate.

<sup>59</sup> <https://www.antikorupcija.me/me/dogadjaji/2101110757-lokalni-izbori-niksic-2021/2103081348-dosadasnji-rezultati-ask-kontroli-izborne-kampanje-niksicu/>

<sup>60</sup> <https://www.rtvbudva.me/vijesti/foto-milatovic-u-posjeti-budvi/66196>

## 4.7. OTHER OBSERVED FORMS OF ASR

We observed two distinct instances of ASR that did not fit the previously mentioned categories. One pertained to the misuse of institutional resources, while the other involved pressuring voters and utilizing state facilities to gather signatures of support.

### 4.7.1. SECS REFUSAL OF TO ACCEPT MR. SPAJIC'S CANDIDACY

Several political parties abused their membership in the State Election Commission (SEC) to block a potential candidacy from the Europe Now movement, specifically from Milojko Spajic. On 3 February, the SEC controversially reached out to the Republic Election Commission of Serbia (REC) seeking information on Andrija Mandic and Milojko Spajic, even though they were not yet presidential candidates at the time, and issues regarding residency and citizenship fall under the jurisdiction of Montenegrin Ministry of the Interior. This move exceeded the SEC's competencies and unfairly targeted these individuals. Using REC's feedback, the majority of the SEC<sup>61</sup> made a contentious decision on 18 February to reject Spajic's candidacy due to „contradictory data,” which was viewed by many as a politically motivated decision. This act by the SEC has been widely criticized and is seen as infringing on passive voting rights.

The Law on the Election of the President of Montenegro mandates that a citizen must be at least 18 years old and have resided in Montenegro for 10 of the last 15 years to be eligible for the presidency.<sup>62</sup> While Mr. Spajic presented all necessary documents in line with Article 6 to the SEC, ensuring his formal eligibility, the SEC highlighted that he was concurrently a citizen of Serbia with a domicile in Belgrade.

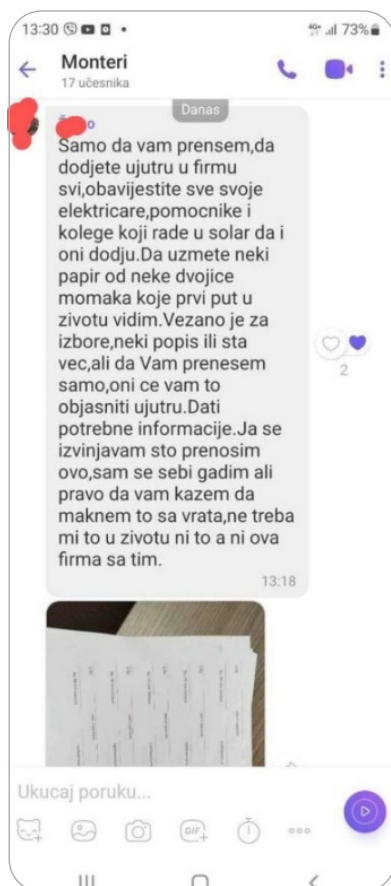
The SEC's refusal of Mr. Spajic's candidacy was based on document inconsistencies, his ongoing process to renounce Serbian citizenship, and related complications with Montenegrin citizenship rules, not on lack of any formal requirement.

In the past, the SEC has frequently faced accusations of making politically motivated decisions. The SEC is often perceived as merely an extension of the ruling parties that constitute it. While this is not the sole instance of abuse of institutional resources through the misuse of the SEC, it is possibly the most egregious to date. Such incidents further underscore the pressing need for professionalization of the SEC as part of a reform of the electoral system.

<sup>61</sup> It is worth noting that the President of the SEC who is not affiliated with a political party, as well as the SEC member who is from an NGO, were against this decision.

<sup>62</sup> Article 1 para. 2 of the Law on the Election of the President of Montenegro

## 4.7.2. PRESSURING VOTERS TO SIGN THE CANDIDATE SUPPORT LIST



**Translation:** Just to let you know, come to the company in the morning, everyone. Notify all your electricians, assistants, and colleagues who work at Solar to come too. You need to take some paper from two guys I've seen for the first time in my life. It's related to the elections, some list or whatever, but just to pass this on to you, they'll explain it to you in the morning. They'll provide the necessary information. I apologize for conveying this; I'm disgusted with myself, but to be honest, I want to get it out of the way. I don't need this in my life, neither this nor the company associated with it.

Another potential instance of ASR is a case that pertains to Articles 35 and 36 of LFPEEC. These articles prohibit exerting pressure on individuals during any election-related activities and the collection of signatures in support of electoral lists and candidates within state-owned premises.

On January 30th, a screenshot from a conversation on the widely used Viber platform surfaced on social media. This screenshot depicted an employee from the public company „EPCG – Solar gradnja” urging colleagues to pick up candidate support lists. While the source behind this message remains unclear, the implication suggests that someone in the company's management wanted employees to sign the candidate support list. This company is operated by members affiliated with both the DF and DCG, with the DF member holding the position of the President of the Governing Board of the parent company EPCG, and the member of DCG serving as the Executive Director.

To date, the authenticity of the screenshot remains uncontested. Following this revelation, the Agency conducted an on-site inspection of the company. After gathering all pertinent information, they forwarded it to the prosecutor's office for further investigation.<sup>63</sup>

<sup>63</sup> The Agency's Report on conducted control, op. cit. p. 18

Also worth mentioning is the fact that the SEC revised the instructions for verifying support signatures for both parliamentary election lists and presidential candidates.<sup>64</sup> Now, signatures are verified only up to the necessary threshold, meaning verification stops once the conditions for validating the election list or presidential candidacy are fulfilled.

This suggests that coercing employees into signing a candidate support list is not primarily about securing the candidacy itself. Instead, it is a strategic maneuver by a party to gauge the number of guaranteed votes they possess. Furthermore, gathering these signatures can function as an implicit warning to employees: it signals that compliance is necessary for job security. Such practices underscore a power dynamic where employees may feel obligated to align with the party's agenda, not out of genuine support, but out of fear for their livelihoods.

Additional insights regarding voter pressure during the presidential election campaign were sourced from a public poll conducted by CeMI between June 3-8, 2023.<sup>65</sup> We inquired if the respondents, or anyone they were aware of, had encountered any forms of political coercion in the lead-up to or during the presidential elections.

While the majority (53,2%) of respondents reported that they were not subjected to any pressure, there were still instances of coercion revealed in the survey. Specifically:

- 0,9% felt pressured by their employer regarding their voting choice, while 3,4% were aware of someone else experiencing such pressure from their employer.
- 1,5% claimed they were influenced by a representative of the local government or public administration. Moreover, an additional 2,2% knew someone who was pressured in this manner.
- 4,5% of participants felt direct pressure from representatives of a political party or a specific candidate. Similarly, 4,3% knew of at least one other individual who faced pressure from political party representatives or candidates.

64 <https://dik.co.me/wp-content/uploads/2023/01/Odluka-o-potrebnom-broju-potpisa.pdf>

65 CeMI's public polling research: <https://cemi.org.me/storage/uploads/Nc8ezsGxw5oZ5VVJi3jnkSK7gTQsPk2fjMkkfDBK.pdf>

## CONCLUSIONS AND RECOMMENDATIONS

Despite the change in political leadership in 2020, Montenegro has regrettably witnessed the blatant and undeniable continuation of practices that abuse state resources. The new administration (led by members of the DF, DCG, URA and SNP), rather than distancing itself from the questionable tactics of its predecessors, appears to have embraced them, using state resources as a tool to bolster their political position. Such willingness to indulge in ASR, despite clear awareness of its nature, underscores a deeper issue within the country's political fabric. Not only does this undermine the democratic principles of fair elections, but it also erodes public trust in government institutions. The very institutions that should be safeguarding the interests of its citizens are, instead, prioritizing their political agendas, demonstrating a concerning disregard for the rule of law and ethical governance.

The patterns of ASR evident during the presidential elections shed light on the pressing need for comprehensive electoral reforms. Essential laws, such as the Law on Election of Councilors and MPs and the Law on Financing of Political Entities and Election Campaigns, require a thorough overhaul to ensure transparency, fairness, and to prevent further misuse of state resources. However, the most significant barrier to these necessary reforms is the palpable lack of political will. The recent behaviors of the ruling majority, particularly their evident inclination to knowingly abuse state resources, have only amplified concerns regarding the nation's democratic processes. Montenegro stands at a crucial juncture, where its leadership must decide if it will prioritize the well-being of its democracy or continue on a path fraught with short-term political gains at the cost of public interest.

Given the historical data on the ASR and its pervasive nature in Montenegro, it becomes evident that a holistic approach to this issue is paramount. To fortify Montenegro's electoral integrity and substantially reduce the misuse of state assets, the following recommendations should be considered:

### THE GOVERNMENT & THE INSTITUTE FOR PUBLIC HEALTH

- **Revoke the decision on the pandemic:**

The IPH should officially declare the end of the COVID-19 pandemic and revoke the decision that has kept the state of pandemic in effect, considering that the current data no longer supports its continued enforcement. This measure will hinder the potential manipulation of social welfare benefits during elections by ending the loophole that currently legalizes such payments amidst electoral periods. Should there be a resurgence of infections, the IPH retains the prerogative to declare a new emergency.

- **Provide inclusive oversight of social welfare disbursement:**

The Government should implement clear measures that guarantee the open and accountable distribution of social benefits, irrespective of whether it is an electoral period. During elections however, a similar bipartisan ad-hoc committee which would also include members of the civil sector should be formed to ensure that social welfare benefits are not being misused.

- **Minimize government secrecy of expenditures:**

The frequency of categorizing expenses as „secret” during election cycles should be minimized, by implementing rules that clearly list conditions that permit the Government to classify an expense as confidential. When an expense is classified as secret, a detailed justification should be provided. While the specifics of the expense might remain undisclosed, the reason for its classification should be detailed enough for the public to understand the necessity of such a measure, ensuring transparency does not compromise the essence of secrecy.

## **THE PARLIAMENT**

- **Provide accountability in case of erroneous classification of expenditures as secret:**

Parliament should consider introducing punitive measures for erroneous confidential classification in the Law on Secrecy of Data, to bolster accountability. For these measures to truly function as a deterrent, the statute of limitations must be set accordingly. To gauge this requires analysis of the average duration that government expenses are kept classified as secret.

- **Conduct comprehensive electoral reform and professionalization of the SEC:**

A comprehensive electoral reform is needed, encompassing the introduction of a new Law on the Election of Councilors and MPs, alongside a new Law on Financing of Political Entities and Election Campaigns.

An important aspect of this reform should focus on professionalization and depoliticization of the SEC, to prevent political parties from abusing SEC’s competencies for political gain. The SEC should consist of 3–5 legal professionals, ideally experts in electoral law, ensuring impartiality and expertise. Similarly, the roles of MEC presidents need to be both professionalized and depoliticized to maintain the integrity of the electoral process.

- **Provide inclusive oversight of government spending:**

To deter potential misuse of funds, Parliament should intensify its oversight of government spending from the budgetary reserve, particularly during election periods. An ad-hoc parliamentary committee should be instituted, ensuring equal representation from both the ruling majority and the opposition, as well as members of the civil sector. Alternatively, meetings of this committee should be open to observers during the election period. This committee should be tasked specifically with scrutinizing the allocation and utilization of the budgetary reserve funds, with its mandate spanning from the day elections are announced until their conclusion.

- **Amend the LFPEEC to ensure:**

**Ban on hiring:** Article 44 of the LFPEEC should undergo revision. From the moment elections are announced until their culmination, new hirings, whether fixed-term or permanent, across all state bodies, state administration organs, local self-government entities, local administration bodies, public companies, public institutions, or state funds should be prohibited. Similarly, any organizational alterations or restructuring within these bodies should be forbidden during this period. Exceptions to this rule may arise in specific, extraordinary situations essential



to the orderly operation of these entities. In such cases, temporary hirings or contracts could be allowed, but only if they align with the pre-established plans laid out by the act on systematization and job descriptions.

**Include state and locally owned business entities:** To prevent potential abuses, it is crucial to expand the scope of Article 44 to encompass all entities, including business entities founded by or majority/partially owned by the state or local self-governments. This would offer a more comprehensive safeguard against potential misuses in hiring practices during election periods.

**Clearly define public official campaign:** Paragraph 4 of the Article 44 requires an amendment to provide a clearer definition of what constitutes a „public official campaign“, ensuring that ambiguities that lead to this article being unenforceable are eliminated. Considering the manner in which this type of ASR typically manifests in Montenegro, it should be explicitly stipulated that public officials are not permitted to undertake visits to state bodies, state administration bodies, local self-government bodies, local administration bodies, public companies, public institutions and state funds, as well as business entities founded by or majority/partially owned by the state or local self-governments, during the election campaign.

**Provide stronger penal provisions:** Penalties should be higher to function as an efficient deterrent. Similarly, the penalties for resisting the APC's requests should carry severe penalties, which could extend to dismissal and a subsequent ban from holding public office for a specified duration.

## CIVIL SOCIETY ORGANIZATIONS, MEDIA, AND THE GENERAL PUBLIC

### ▪ Conduct awareness raising campaigns aimed at the general public:

Overall awareness among the general public about recognizing different forms of ASR both during and outside electoral campaigns should be raised significantly. NGOs specializing in election monitoring and anti-corruption, at both the national and local levels, should develop multifaceted communication channels with citizens. These channels might encompass legal advice, interactive forums, and educational workshops, aiming to elevate the degree of vigilance, monitoring, and reporting on ASR instances throughout election campaigns.

### ▪ Conduct awareness raising campaigns aimed at civil servants and employees:

Civil servants, and employees, need to uphold the highest standards of professionalism and independence. Targeted training and awareness campaigns can ensure these individuals are both aware of ASR and committed to minimizing its occurrence within state and municipal institutions.

### ▪ Conduct awareness raising campaigns aimed at journalists:

The media needs to be better equipped to identify and report on ASR. This entails specialized training for both national and local journalists, emphasizing the critical role they play in monitoring election campaigns, but also outside of elections, and shedding light on all potential abuses of state resources.

- **Incorporate Electoral Law courses in academic curriculum:**

The general lack of understanding of the electoral system in general, as well as of the importance of preventing ASR also points towards the need to incorporate Electoral Law within the curriculum of law faculties. This new course should not only provide a thorough overview of electoral procedures and regulations but should intricately examine the phenomenon of ASR. Through a combination of theoretical knowledge, case studies and expert guest lectures, students can gain a deep understanding of the subject. This would equip future legal professionals with the necessary expertise to identify, analyze, and address ASR, ensuring that future generations of lawyers and jurists are well-prepared to uphold the integrity of electoral processes.

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CIP - Каталогизација у публикацији  
Национална библиотека Црне Горе, Цетиње  
ISBN 978-9911-556-03-5  
COBISS.CG-ID 27297028





