



ELECTORAL REFORM **IN MONTENEGRO**

RECOMMENDATIONS FOR IMPROVEMENT

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**ELECTORAL REFORM IN MONTENEGRO
RECOMMENDATIONS FOR IMPROVEMENT**

1. INTRODUCTION

This study is based on the previous experience and findings of our organization, which were established through conducting numerous monitoring activities of electoral processes in Montenegro, as well as in other countries, with a particular emphasis on the period from 2016 to 2023. The findings and recommendations draw upon the previous reports published by our organization, but also represent an extension of some of them.

We owe special thanks to the British Embassy Podgorica, which not only supported the publication of this study but also the entire project, including support for monitoring the presidential and parliamentary elections in 2023.

Since its establishment, CeMI has consistently pointed out the need for and called for reform of the electoral framework. Unfortunately, changes to the electoral framework have occurred in a non-transparent manner as part of political negotiations resulting from then-current political crisis, and have been insufficient to meet real needs.

In its recent reports, the OSCE-ODIHR has repeatedly emphasized the key recommendation that Montenegro should undertake a comprehensive and inclusive reform of the electoral framework. The same request has been made by two Montenegrin traditional election monitoring organizations (CeMI and CDT).

The current composition of the parliament has formed a working group (March 2024), which includes 5 representatives from non-governmental organizations and the academic community, including a representative from CeMI. The selection of these representatives represents progress compared to decisions made by the previous parliament.

The announced electoral reform presents an opportunity for our society to respond to the demands of the EU and take a step closer to concluding negotiations on Montenegro's EU membership, while addressing concerns regarding the implementation of the electoral process.

CeMI advocates for the reform to also include a change in the electoral system. On the one hand, it should allow voters to vote for individual candidates, not just party lists, thus enhancing the accountability and quality of the work of members of the Montenegrin Parliament.

On the other hand, it should address the method of selecting candidates for parliamentary mandates, which should be done democratically, as well as the democratic election of party leadership.

When it comes to the electoral system, electoral reform should strengthen the role of voters in choosing MPs and party members in selecting candidates for MPs, or making decisions within parties.

At CeMI, we believe that this study makes a significant contribution to the ongoing electoral reform process.

The structure of the study follows the structure of CeMI's election monitoring reports, which our organization publishes after conducting monitoring

2. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

2.1. LEGAL FRAMEWORK

The legal framework governing electoral processes in Montenegro consists, on one hand, of the Constitution and a set of laws constituting the so-called electoral legislation. Together, they provide the basis for conducting elections. On the other hand, there are a number of other legal acts which, although not directly regulating elections, are relevant to the organization and conduct of the electoral process.

In this segment of the study, the so-called electoral laws are briefly presented, along with other relevant legal acts regulating several issues in the context of the electoral process. A detailed analysis of deficiencies in the electoral legal framework are thoroughly addressed in the subsequent parts of the study.

2.1.1. ELECTORAL LEGISLATION

The Constitution of Montenegro, together with the Law on the Election of Councilors and MPs, constitutes the foundation of the legal framework for regulating the electoral process, including the exercise of the right to vote and the organization of elections at various levels in the country.

In accordance with the Constitution,¹ every citizen has the universal and equal right to vote, and voting is conducted in secrecy. The Constitution clearly states that elections are direct and free, and that every adult citizen of Montenegro with at least two years of residency has the right to vote and can be elected.

The **Law on the Election of Councilors and MPs²** regulates the manner and procedure of electing councilors to the Municipal Assembly, city municipality, Capital City, and the Capital, as well as Members of the Parliament of Montenegro. It also addresses the organization, composition, and competence of election bodies, the determination of voting results and distribution of mandates, the protection of voting rights, and other significant aspects for the organization and conduct of elections.

The **Special Law on the Election of the President of Montenegro³** governs the manner and procedure of electing the President of the state, with relevant provisions of the Law on the Election of Councilors and MPs being mostly applicable, including aspects such as voting rights, candidacies, election organization, ballot design, and the voting process itself.

In addition to the aforementioned laws, the “package” of electoral laws is supplemented by the **Law on the Financing of Political Subjects and Election Campaigns,⁴** and the **Law on the Voters’**

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

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

³ Law on the Election of the President of Montenegro ('Official Gazette of Montenegro', No. 17/07 from 31.12.2007, 08/09 from 04.02.2009)

⁴ The Law on the Financing of Political Subjects and Election Campaigns ("Official Gazette of Montenegro", No. 3/2020 and 38/2020)

Register.⁵ The former regulates the acquisition and provision of financial resources for the regular operation and election campaign of political subjects, as well as prohibitions and restrictions on the use of state property, funds, and public authority during the campaign (abuse of state resources), as well as the control, supervision, and audit of the financing and financial operations of political subjects to ensure the legality and transparency of their operations. The latter law regulates the management and supervision of the voters register, as well as the right of accredited observers to inspect the voters register during elections.

Although it does not directly regulate the electoral process, the **Law on Political Parties**⁶ can be included in the set of electoral laws, as it regulates the conditions and procedures for establishing, organizing, registering, associating, and terminating the activities of political parties, which are primary entities participating in the electoral competition.

2.1.2. OTHER LEGAL ACTS RELEVANT TO THE ELECTORAL PROCESS

In addition to the aforementioned regulations, there are also numerous other laws, legal acts, and regulations that are relevant to the electoral process.

Firstly, the **Law on Montenegrin Citizenship**⁷ regulates the manner and conditions for acquiring and losing Montenegrin citizenship, as the fundamental prerequisite for exercising the right to vote in Montenegro. The **Law on Registers of Residence and Stay**⁸ is also relevant, as it regulates the registers of residence and stay, their content, use, and protection of data from the register.

Acts (decisions, rulings, conclusions, opinions, positions) of electoral authorities, primarily the State Election Commission, can also be cited as a source of law governing the organization of elections. Similarly, decisions of the Constitutional Court, whether initiated during the electoral process or through initiatives for the assessment of the constitutionality of laws and other legal acts, represent an essential source of law which, as we will see below, has a significant impact on electoral legislation.

Although not directly related to elections, there are several laws containing provisions regulating the rights and obligations of various entities during the election campaign period. The **Criminal Code of Montenegro**⁹ establishes the legal framework for criminal liability and punishment for certain actions that may undermine the integrity of the electoral process. The Criminal Code devotes an entire chapter of 14 articles (Chapter Sixteen) to criminal offenses against electoral rights.

Laws in the field of broadcasting are also significant for the electoral process, namely the **Law on Electronic Media**¹⁰ and the **Law on the National Public Broadcaster Radio and Television of Montenegro**.¹¹ These laws contain special provisions regarding the obligations of public broadcasters

5 The Law on the Voters' Register ("Official Gazette of the Republic of Montenegro", No. 10/2014, 20/2015, 92/2017, 17/2019 - decision of the Constitutional Court, and 3/2020)

6 Law on Political Parties ("Official Gazette of the Republic of Montenegro", no. 21/04 dated 31.03.2004 and "Official Gazette of Montenegro", no. 73/10 dated 10.12.2010, 40/11 dated 08.08.2011, 59/11 dated 14.12.2011)

7 Law on Montenegrin Citizenship ("Official Gazette of Montenegro", no. 13/2008, 40/2010, 28/2011, 46/2011, 20/2014 - decision of the Constitutional Court, 54/2016, and 73/2019)

8 Law on Registers of Residence and Stay ("Official Gazette of Montenegro", no. 46/2015)

9 Criminal Code of the Republic of Montenegro ("Official Gazette of the Republic of Montenegro", no. 70/2003, 13/2004 - correction, and 47/2006, and "Official Gazette of the Republic of Montenegro", no. 40/2008, 25/2010, 32/2011, 64/2011 - amended law, 40/2013, 56/2013 - correction, 14/2015, 42/2015, 58/2015 - amended law, 44/2017, 49/2018, and 3/2020), Articles 184-194.

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

11 Law on the National Public Broadcaster Radio and Television of Montenegro ("Official Gazette of Montenegro", no. 80/2020 and 125/2023)

during the pre-election campaign, aiming for the equal representation of political subjects competing in elections.

We can also briefly mention some other laws that regulate circumstances of particular importance during the election campaign period, when there is an increased risk of abuse of state resources.

For example, Article 4 of the **Law on Public Administration**¹² prohibits political organizing and activities of political organizations in state administration bodies. Similarly, **Article 9 of the Law on Civil Servants and Employees**¹³ prescribes the obligation of political neutrality and impartiality for civil servants and employees, as well as the obligation to refrain from publicly expressing political beliefs. **Article 18 of the Law on the Army of Montenegro**¹⁴ prohibits individuals in military service from publicly expressing their political beliefs and being members of a political party, and they must perform their duties neutrally and impartially in accordance with public interest. Similarly, the **Law on Internal Affairs, in Article 154**,¹⁵ prohibits police officers from being members of political parties and from running for state or local elections.

2.2. ELECTORAL SYSTEM

Montenegro uses a proportional representation system with closed party lists. Candidate lists are closed and blocked, without the option of preferential voting. Montenegro represents a single electoral unit, in which 81 seats are allocated, meaning 81 members are elected to the unicameral parliament. All registered parties, coalitions, or groups of citizens have the right to propose their candidates for the electoral list. The electoral list must include at least two thirds (54) of the seats, but no more than 81, the total number of members of parliament, except for groups of citizens or political parties representing a national minority or minority national community, which are obliged to nominate a minimum of 1/3 (27) of the total number of candidates being elected.

The d'Hondt formula is used for the allocation of seats to political parties, along with the application of the statutory electoral threshold. Only those lists that exceed the prescribed electoral legal threshold are included in the seat allocation process using this method. An electoral list must receive a minimum of 3% of valid votes, which is the statutory electoral threshold in Montenegro, in order to participate in the allocation of seats. The same statutory electoral threshold applies to all lists, regardless of whether they represent a coalition of multiple parties or political organizations.

2.2.1. PRIVILEGED CONDITIONS FOR THE LISTS OF NATIONAL MINORITIES

According to the Law on the Election of Councilors and MPs, the statutory electoral threshold, which implies that an electoral list must receive a minimum of 3% valid votes to participate in the allocation of mandates, is differently defined for lists of national minorities. Namely, the right to positive discrimination, as defined in Article 94, paragraph 2, point 1 of the Law on the Election of Councilors and MPs, is utilized by electoral lists representing members of a specific - same national minority, or a specific - same minority national community, with a participation of up to 15% of the total population in the electoral unit, according to data from the latest census.

The statutory electoral threshold, in the case of minority parties, exists as a condition for winning a mandate in the case of the Croatian minority, or for the result of a minority list to be included in the aggregate list of that national minorities, or minority community (in practice with the Albanian

¹² Law on State Administration ("Official Gazette of Montenegro", no. 078/18 dated 04.12.2018)

¹³ Law on Civil Servants and Employees ("Official Gazette of the Republic of Montenegro", no. 2/2018, 34/2019, and 8/2021)

¹⁴ Law on the Armed Forces of Montenegro ("Official Gazette of Montenegro", no. 51/2017 and 34/2019)

¹⁵ Law on Internal Affairs ("Official Gazette of Montenegro", no. 44/2012, 36/2013, 1/2015, and 87/2018)

minority). Namely, in the case of the Croatian minority, the Law stipulates that if none of the electoral lists for the election of MPs representing members of the Croatian people in Montenegro exceeds the statutory threshold of 3%, the most successful of them, with at least 0.35% valid votes, gains the right to one parliamentary mandate. However, if one of them achieves at least 0.7% of the votes, it loses that right, and its status is equalized with other national minorities. When it comes to other minorities, there is no such mechanism, and the Croatian minority is an exception. Namely, for other minorities, it is provided that if multiple lists exceed the statutory threshold of 0.7%, their individual results are treated as a single aggregate list, which then enters the seat allocation process with the other qualified lists.

The effect of aggregation is limited in that only the aggregation that secures the winning of up to three mandates will be recognized for the allocation of mandates.

At the local level, i.e. for the election of councilors from minority lists, in the event that none of them meets the condition of the statutory electoral threshold of 3%, they gain the right to participate in the allocation of mandates individually, based on the number of valid votes received, and the statutory threshold will not be applied to them directly; instead, they will qualify directly for the seat allocation process using the d'Hondt formula. Article 95, paragraph 3 of the law regulates how mandates will be distributed among parties within the aggregate list of national minorities. The distribution is carried out in a similar manner to how mandates are distributed among other candidate lists. More information about minority representation is included in section 8 of this study.

2.2.2. REPRESENTATION OF WOMEN

In Montenegro, women gained the right to vote and the right to stand for representative positions in 1946. However, until 1990, it was a one-party, unfree, and undemocratic system, therefore women voted in the first multi-party elections after 1990.

Currently, the Law on the Election of Councilors and MPs stipulates that one gender, less represented on the electoral list, must be represented by at least 30%, and that among every four candidates in the electoral list there must be at least one candidate of the less represented gender, in accordance with the order on the list.¹⁶ When filling vacancies on the list, the filling is done with the next candidate in line, except when the mandate of a councilor or an MP from the less represented gender ends, in which case the next candidate from the less represented gender on the electoral list will be elected instead.¹⁷ More information on the representation of women and the application of gender quotas is included in section 7 of this study.

2.3. KEY SHORTCOMINGS OF THE LEGAL FRAMEWORK AND THE ELECTORAL SYSTEM

2.3.1. DISCORDANT ELECTORAL LEGISLATION

Improvements in electoral legislation have mainly been carried out through amendment activities, usually without prior public discourse. As a result of such an approach, instances of norm collisions are noticeable. Therefore, there is a need to adopt a new legislative text, accompanied by public and expert discussions to avoid potential inconsistencies and errors.

The electoral legislation, especially the Law on the Election of Councilors and MPs and the Law on the Financing of Political Subjects and Electoral Campaigns, is incomplete, often contradictory and inadequate, causing problems in the implementation of the electoral process. Primarily, the

¹⁶ Law on Election of Councilors and MPs of Montenegro, Article 39a

¹⁷ Law on Election of Councilors and MPs of Montenegro, Article 104

basic electoral legislation does not contain even basic concepts mentioned in the laws themselves, which during the parliamentary elections in 2016 led to numerous disputes and issues. Among the most significant are: the imprecise use of the term “biometric ID card” in the Law on the Election of Councilors and MPs, which is not in line with the fact that Montenegrin citizens could not possess biometric ID cards and left space for challenging votes cast based on voter identification using their ID cards.¹⁸ In the meantime, the ID card issued to citizens is indeed biometric, while non-biometric ID cards are also in use; the imprecise definition of an invalid ballot, stating that an invalid ballot is one that is filled out in a way that the voted electoral list cannot be determined, while Article 73 of the same Law states that voting is exclusively done by marking, leaving open the question of voting using other symbols, from which it is apparent for which option one voted; the imprecise definition of the term “political subject” in the Law on the Financing of Political Subjects and Electoral Campaigns, which caused a dilemma regarding the need and deadlines for reporting campaign expenses and opening accounts for political subjects; the overly broad definition of election observation, which somewhat restricted accredited observers in exercising their right to inspect electoral material; and many other ambiguities.

2.3.2. DISCORDANCE OF ELECTORAL LEGISLATION WITH OSCE/ODIHR RECOMMENDATIONS, VENICE COMMISSION, AND DOMESTIC NON-GOVERNMENTAL ORGANIZATIONS OVERSEEING ELECTIONS

The OSCE/ODIHR, through its numerous missions, has developed a series of recommendations. Montenegrin legislators have incorporated most of them into legislative texts.

It should be noted that some recommendations may not be adequately suited for Montenegro, such as abolishing the residency requirement for voting rights, especially concerning local elections. Numerous cases of so-called “busing,” or the relocation of voters by changing their place of residence, are a problem that transcends Montenegro’s borders. Cases in Serbia, North Macedonia, and Bosnia and Herzegovina attest to the widespread nature of this abuse. Therefore, it seems logical to propose a change whereby the residency requirement of one year is reintroduced. In this case, voters’ voting rights would be active not in their new place of residence during the transition period of one year but in the one where they had previously resided. This measure is a proposal by several non-governmental organizations from the Western Balkans region to uniformly address this issue in all countries of the region, with the exchange of data from voter registers.

On the other hand, the recommendation to allow individual candidacies is extremely important but difficult to implement. Montenegrin legislators should integrate the majority of OSCE/ODIHR mission recommendations, but also critically assess them from a professional standpoint.

OSCE/ODIHR recommendations should not be understood as the exclusive framework for electoral reform. It should be kept in mind that these are minimum requirements, but they often are insufficient for further democratization of society. Therefore, this framework needs significant expansion.

2.3.3. DEPERSONILIZATION OF THE ELECTORAL SYSTEM AND LACK OF ACCOUNTABILITY OF REPRESENTATIVES TO VOTERS

The role of citizens in electing their representatives currently stands at a very low level. In Montenegrin history, citizens have rarely had the opportunity to vote for specific individuals. At the moment, they

¹⁸ The Center for Monitoring and Research (CeMI) publicly initiated a campaign for amending the Law on the Election of Councilors and MPs, particularly regarding the identification of voters, so that voters could exercise their right using non-biometric personal identification cards, and requested urgent parliamentary procedure for this matter. However, this initiative was disregarded by political and legislative entities, and a silent decision was made to overlook the fact that the law was not fully complied with, and that it was arbitrarily interpreted.

can only do so when electing the President of Montenegro. In the past, they could do so during elections for mayors and in 1990 for the members of the Presidency of Montenegro. Unfortunately, they have never been able to vote directly for parliamentary candidates. In a closed list system, without the possibility of democratically influencing the order of candidates on the party list, all power is concentrated in the hands of the central party leadership.

It is interesting to note that studies of candidates' attitudes (Comparative Candidate Study for Montenegro) indicate that the idea of introducing preferential voting among MPs is quite strong. Citizens only partially recognize this problem, with a lower percentage supporting the introduction of preferential voting (46%), although this percentage increases when it comes to party members (49%) and is exceptionally high when it comes to candidates for parliamentary positions (79%). However, citizens are much more in favor of "voters being able to vote for both the party and the candidates on the list, thus changing the order of candidates on the list," which is essentially the same question as whether they support preferential voting. It is clear that a higher level of knowledge/recognition of the electoral system, as well as a higher level of personal interest, leads to greater support for the introduction of preferential voting. However, on the other hand, citizens clearly indicate that the existing electoral system reflects the opinions of party leaders the most (69.9%), and the least of citizens (37.1%).

The lack of influence of voters on the selection of candidates means that MPs do not feel accountable to those who voted for their lists, but rather to those who designated them as candidates. Therefore, it is not surprising that the widespread practice is that some MPs never speak during plenary sessions and still get re-elected. As a result of such an electoral system, we have weak MPs who predominantly do not make an effort in their work, knowing that it is not crucial for re-election.

2.3.4. THE ABSENCE OF DEMOCRATIC INTRA-PARTY PROCEDURES FOR SELECTING CANDIDATES FOR PARLIAMETARY, COUNCIL, AND OTHER ELECTIVE POSITIONS

The electoral system in use in Montenegro is characterized by party leadership always controlling the process of selecting parliamentary candidates. In the first 14 years (1990 – 2004), the central party leadership: "(1) controlled the process of selecting candidates for MPs, (2) determined, after the elections, who would become an MP from the list, regardless of the order, and (3) indirectly deprived MPs of their mandates by excluding them from the party. In this way, the party leadership completely controlled the process of selecting candidates, elections, and the actions of MPs, including a kind of recall. During this period, MPs simply had no weight. Party oligarchies completely controlled the political process. It's not surprising that those who disagreed with the party leadership sought an exit by leaving the party or sometimes creating new parties. However, if an MP left the party, they could not retain their mandate." (Vujovic, FPN and CeMI, Belgrade, 2018:57). However, in the meantime, the mandate has become free, but a widespread phenomenon of "changing party jerseys" has emerged. Nearly one-fifth of MPs in the 2012-2016 mandate changed party jerseys. Some parties were left without MPs, although they officially have parliamentary status.

What still remains a characteristic is that party leadership controls the process of selecting candidates, and disagreement with the party leadership almost always ends with leaving/exclusion from the party. Parties do not have the capacity to democratically resolve internal problems. This also leads to the lack of full institutionalization of the party system in Montenegro.

Mechanisms need to be introduced to strengthen democratic procedures within political parties: There is a need to regulate procedures by law: (1) selection of candidates for parliamentary functions, (2) decision-making within parties, and (3) direct election of party leadership.

Public opinion research has shown that this idea receives significantly greater support from citizens

(61-64.7%) than from candidates for parliamentary functions who expressed their views through the Candidate Comparative Study (CCS). However, even among them, it is surprisingly high (27.2 - 38.2%), while among party members it is even higher, i.e., extremely high (69-73%). It is evident that party members want a higher degree of democracy, i.e., organization, as they see it as an opportunity for themselves. Within parties, there is a stratification, i.e., parties are not inclusive enough when it comes to the involvement of members in decision-making processes or the election of leadership.

2.3.5. INSUFFICIENTLY EFFECTIVE PROVISION FOR BETTER REPRESENTATION OF WOMEN IN THE ASSEMBLY OF MONTENEGRO AND MUNICIPAL ASSEMBLIES

The introduction of gender quotas has not yielded satisfactory results. The existing solution, where one, less represented gender on the electoral list must be represented by at least 30%, and where among every four candidates on the list there must be at least one candidate from the less represented gender,¹⁹ should be replaced with a provision stating that among every three candidates on the list, there must be at least one candidate from the less represented gender. This change would significantly enhance the participation of women.

2.3.6. PROBLEMS IN IMPLEMENTING PROVISIONS OF OPPOSITIONAL DISCRIMINATION OF MINORITY NATIONS

2.3.6.1. DISCRIMINATION AGAINST ROMA IN THE PROCESS OF ALLOCATING MANDATES TO MINORITY NATIONS

In addition to the above, the Center for Monitoring and Research has repeatedly emphasized and warned that the electoral legal framework puts representatives of the Roma, Egyptian, and Ashkali populations at a disadvantage compared to communities of similar size. Although Roma, according to the national census, make up 1.01% of the total population, and Croats 0.97%, Croats have the right to use the mechanism of positive discrimination for adequate representation in the parliament of minority communities, unlike representatives of the Roma population.

2.3.6.2. CRITERIA FOR DETERMINING THE STATUS OF A NATIONAL MINORITY ELECTORAL LIST

The issue of criteria for determining the minority status of an electoral list is open, which is privileged, thus leaving room for abuse. The law provides for the inclusion of a minority group descriptor in the electoral application or the name of the electoral list. The lack of regulation of the status and participation of minority lists is also evident in cases of coalitions between a minority party and a party that is not, or between two or more minority parties representing different rights (e.g., Croatian minority has the right to a certain type of reserved mandate if it meets the legal threshold of 0.35%, while others have the right to aggregation by meeting the threshold of 0.7%, and for other parties, the legal threshold is 3%). Such potential cases are not legally regulated. In practice, there have been no cases of such status-mixed coalitions, nor problems in interpreting their status. The only regulation is found in Article 94, paragraph 5, which states that if minority lists run in a coalition with other parties that do not have the right to a cumulative list or the minimum legal threshold of 0.35% for lists of the Croatian minority community, it does not exclude other submitters of electoral lists of that minority group or minority national community from the right under paragraph 2 of Article 94. The question remains whether this provision prohibits the use of the privileged position of potentially created coalitions. The designated norm is unclear, and since there has been no opportunity for its interpretation, it is not clear how it would be applied.

¹⁹ Law on Election of Councilors and MPs of Montenegro, Article 39a

3. ELECTORAL ADMINISTRATION

3.1. DEFINITION AND MODELS OF ELECTORAL ADMINISTRATION

In the introductory part of this chapter, we shed light on the theoretical perspectives of electoral administration and the diversity of membership within these bodies. The basis for this theoretical reflection was found in the work of the Swedish International Institute for Democracy and Electoral Assistance (International IDEA). The expert team at IDEA extensively analyzed electoral administration bodies in 217 countries, and the results of this analysis are presented in the publication "Electoral Management Design - International IDEA Handbook"²⁰

Each body assigned with decision-making duties regarding who can participate in the electoral process, the reception and verification of nominations, organizing voting, counting votes, and announcing results is considered an electoral administration body, provided that this is clearly defined by relevant legal acts of the state, usually the electoral law. These responsibilities are typically distributed among different entities forming the electoral administration. However, some countries have a single body that performs all these activities and ensures the legitimacy of the electoral process. In contrast to such form of organization, there are systems where different electoral administration bodies are created for different electoral processes (parliamentary, presidential, referendum, etc.). Additionally, these bodies may take on additional tasks that contribute to the efficiency of elections, such as voter registration, delineation of electoral districts, voter education and information, media monitoring, and resolution of electoral disputes.²¹

The most widely accepted criterion for classifying the types of electoral administration is based on the degree of independence of electoral administration bodies from the executive authority. Accordingly, we can recognize three models: 1 - independent; 2 - governmental (bureaucratic); and 3 - mixed model.²²

3.1.1. INDEPENDENT MODEL

The key characteristic of the independent model is the management of electoral processes through bodies that are independent and autonomous from the executive authority. The executive authority does not have formal influence over their work, nor are these bodies subordinate to the executive authority. Instead, their accountability is directed towards the legislative or judicial branches of government, and in certain cases, towards the president of the state. However, the existence of institutional independence does not automatically imply functional independence, and in practice, we often encounter political influence in the work of these bodies, especially in countries that have undergone post-communist transitions.

The Venice Commission recommends establishing independent electoral administration bodies, especially in countries without a long-standing tradition of administrative independence from political power.²³ According to the "Code of Good Practice in Electoral Matters," impartial and independent electoral commissions should be established at all levels, from national to local.²⁴

²⁰ Catt, H., et al., Electoral Management Design, Revised edition, International Institute for Democracy and Electoral Assistance IDEA, 2014

²¹ Ibid, p. 5

²² López-Pintor, R., Electoral Management Bodies as Institutions of Governance, Bureau for Development Policy United Nations Development Programme, 2000

²³ Code of Good Practice in Electoral Matters, European Commission for Democracy through Law, Venice, 2002, p. 10

²⁴ Ibidem

Countries in the Western Balkans, as well as a number of European Union member states such as Austria, Bulgaria, Estonia, Croatia, Latvia, Lithuania, Malta, Poland, Romania, and Slovenia, have opted for the independent model. Although they are all under the same model, there are significant variations among them regarding the structure, organization, and functioning of electoral administration bodies.

One variation of the independent model is the **double-independent model**, where two mutually accountable bodies manage the electoral process – one is an advisory body responsible for creating electoral policy, while the other body is responsible for the technical implementation of elections. Another widely spread form is the model of **pro-party independence**, in which members of the electoral administration consist of representatives of political parties and the judiciary, who are usually accountable to the legislative or judicial branches of government.

Table 1: Examples of basic characteristics of the central electoral administration body in countries with an independent model

COUNTRY	ELECTION ADMINISTRATION BODY	NO. OF MEMBERS	TERM OF OFFICE	TYPE OF MEMBERSHIP	APPOINTMENT OF MEMBERS
Montenegro	State Election Commission	11	4 years	Combined	President and the member from among the representatives of the civil sector, NGO and university, who is an expert in electoral law, is appointed by the Parliament, at the proposal of the working body of the Parliament responsible for electing the appointment. Four members of the permanent composition are appointed on the proposal of the parliamentary majority and four on the proposal of the parliamentary opposition. One member is appointed by a representative of a political party, i.e. the submitter of the electoral list for the authentic representation of members of the minority people or the minority national community that received the largest number of votes in the previous elections.

Albania ²⁵	Central Election Commission	12	4-9 years depending on membership zavisnosti od članstva	Expert	The governing bodies of the CEC include the State Electoral Commissioner and his deputy, the Regulatory Commission (5 members), and the Complaints and Sanctions Commission (five members). The State Electoral Commissioner manages the Commission, while the Regulatory Commission, which meets periodically in public sessions, approves regulatory acts in the electoral process. The Complaints and Sanctions Commission, also meeting periodically, deals with administrative complaints and sanctions for violations of electoral law, with activities conducted at public hearings. Both commissions can convene meetings independently if the commissioner does not engage them on matters within their jurisdiction.
Bosnia and Herzegovina ²⁶	Central Election Commission	7	7 years	Expert	Two members are elected from the Croatian community, two from the Bosniak community, two from the Serb community, and one from the "others" community. Candidates are proposed by the Commission for Appointment and Election, and they are elected by Parliament with a two-thirds majority. All candidates are legal experts with experience in conducting elections and/or electoral specialists.

25 Electoral Code of the Republic of Albania (approved by Law no. 10019, dated 29.12.2008 and amended by laws no. 74/2012, dated 19.07.2012, no. 31/2015, dated 02.04.2015, no. 101/2020, dated 23.7.2020, and no. 118/2020, dated 5.10.2020), available at: https://www.osce.org/files/f/documents/5/7/477547_0.pdf

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

Croatia ²⁷	State Electoral Commission	9	8 years	Combined	The President of the State Election Commission (DIP) is the President of the Supreme Court; two vice-presidents are elected by the plenary session of the Supreme Court from among the judges of the Supreme Court, upon the proposal of the President of the Supreme Court; one vice-president and two members are elected by the Croatian Parliament upon the proposal of the majority party/coalition; one vice-president and two members are elected by the Croatian Parliament upon the proposal of the opposition parties/coalitions.
Kosovo ²⁸	Central Election Commission	11	7 years	Combined	The president is appointed by the head of state from among the members of the Supreme or Appellate Court; six members are appointed by the six largest parliamentary groups, which do not have the right to participate in the distribution of reserved mandates; one member is appointed by the parliamentarians occupying reserved seats for the Kosovo Serbian community; three members are appointed by parliamentarians occupying reserved or guaranteed seats for other communities that do not constitute the majority in Kosovo.
North Macedonia ²⁹	State Election Commission	7	2 years	Party	The president and two members are nominated by opposition parties; the vice president and three members are nominated by the ruling political parties. They are elected by a two-thirds majority in Parliament.
Serbia ³⁰	Republic Election Commission	17	4 years	Combined	The President and 16 members are appointed by the National Assembly of the Republic of Serbia on the proposal of parliamentary groups.

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

28 Constitution of the Republic of Kosovo (With amendments I-XXIV)

29 Electoral Code of North Macedonia ("Official Gazette of the Republic of North Macedonia", no. 40/06, 136/08, 148/08, 155/08, 163/08, 44/11, 51/11, 54/11, 142/12, 31/13, 34/13, 14/14, 30/14, 196/15, 35/16, 97/16, 99/16, 136/16, 142/16, 67/17, 125/17, 35/18, 99/18, 140/18, 208/18, 27/19, 98/19 and 42/20)

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

3.1.2. GOVERNMENTAL MODEL

Countries that apply the governmental model of electoral administration are characterized by the engagement of bodies established by executive institutions in electoral processes, which is common in states with a long democratic history and a high level of public trust in state institutions. In this model, electoral activities are usually entrusted to ministries or local authorities, and responsibility for their implementation lies with the executive bodies that have established them. Typically, these bodies are headed by ministers or senior government officials. In the governmental model, instead of members of the electoral administration, government officials are engaged to perform administrative and technical tasks. Such organizations are funded from the budgets of relevant ministries or local authorities and are functionally and financially dependent on the executive authority.

Examples of countries relying on this model include the United States and the United Kingdom, where the organization of elections is delegated to local administration, and countries like Sweden and Switzerland, where central electoral bodies take on a coordinating role. In Sweden, electoral administration bodies are regulated by the Election Act,³¹ where the power structure reflects the organization of electoral bodies at the central, regional, and local levels, with decentralized electoral administration allowing local electoral commissions to independently hire and train workers in polling stations. On the other hand, Germany has a codified electoral system through the Federal Electoral Code,³² which clearly defines the roles and responsibilities of electoral officials and commissions at the federal, state, electoral district, and polling station levels. This system enables the formation of specialized committees for postal voting and the participation of qualified voters in electoral processes, with legal obligations to participate in the work of electoral boards and commissions.

3.1.3. MIXED MODEL

The mixed model of electoral administration, to a certain extent, represents a synthesis of both previous models, resulting in a dual structure of its organs. This structure involves two components: independent and institutional. The independent body, similar to that in the independent model, operates autonomously and oversees electoral actions, while the institutional body, akin to the bodies in the governmental model, operates under the auspices of the executive authority and is responsible for the direct execution of electoral activities.

In different countries, the powers of the independent body vary – in some, it is limited to supervising electoral actions, while in others, it encompasses broader control over the entire electoral process and evaluation of the institutional body's performance. The mixed model is applicable in countries such as Japan, certain West African countries (mostly former French colonies like Mali and Senegal), and in some European Union member states, including France, the Netherlands, Hungary, Portugal, Slovakia, and Spain.

France represents a typical example of this model, where the electoral administration functions in accordance with the Constitution of France³³ and the Electoral Code.³⁴ The Ministry of the Interior, as an executive body, is responsible for the direct implementation of elections, including organizing voting for the diaspora. Meanwhile, the Constitutional Council, which has a supervisory role, participates in the electoral process by registering presidential candidates and proclaiming results. It also acts as an advisory body, providing advice on electoral legislation, deciding on complaints and appeals, and

31 Electoral Law of Sweden, available at: <https://www.government.se/contentassets/4e2fdee5a8e342e88289496d-34701aec/the-elections-act-2005837.pdf>

32 Federal Electoral Law of Germany, available at: <https://www.bundeswahlleiterin.de/en/bundestagswahlen/2021/rechtsgrundlagen.html#17c9d4b0-f7fc-424a-b8d8-322758da5050>

33 Constitution of France, available at: <https://www.conseil-constitutionnel.fr/en/constitution-of-4-october-1958>

34 Electoral Code of France, available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070239/

receiving reports from judges delegated by the Court of Cassation.

Table 2: Examples of central election commission bodies of a mixed model in three European Union countries³⁵

COUNTRY	ELECTION ADMINISTRATION BODY		NO. OF MEMBERS	TERM OF OFFICE	TYPE OF MEMBERSHIP	APPOINTMENT OF MEMBERS
	GOVERNMENTAL COMPONENT	INDEPENDENT COMPONENT				
France	Ministry of Interior	Constitutional Council	9	9 years	Expert	The members of the Constitutional Council are appointed by the President of France and the President of each of the Houses of Parliament (National Assembly and Senate). Former presidents of France are automatically members of this body. The election to this body is preceded by the opinion of the Constitutional Committees of both Houses.
Slovakia ³⁶	Ministry of Interior	State Commission for Elections and Control of Funding of Political Parties	14	4	Combined	10 members are delegated by political parties that gained representation in Parliament in the last elections, in proportion to the number of seats. One member is delegated by the President of the Constitutional Court, the President of the Supreme Court, the State Attorney, and the President of the Supreme Audit Office.
Portugal ³⁷	Ministry of Interior ³⁸	National Election Commission	6	4	Expert	The composition of the National Election Commission includes: one associate of the Supreme Court of Justice, as the President of the Commission, appointed by the Supreme Judicial Council; one citizen of recognized merit appointed by each parliamentary group and one technical advisor appointed by the government's internal affairs, foreign affairs and media sectors.

³⁵ Number of members, term of office, type of membership and appointment of members relate only to an individual component of the electoral administration body

³⁶ Law on the Conditions of the Election Law and Amendments to Certain Laws, available at: <https://www.slovlex.sk/pravne-predpisy/SK/ZZ/2014/180/20190219>

³⁷ Regulation on the National Election Commission of Portugal, available at: https://www.cne.pt/sites/default/files/dl/regimento-cne_dr-05-05-2020.pdf

³⁸ Electoral Law on the election to the Assembly of the Republic of Portugal, available at: https://www.cne.pt/sites/default/files/dl/legis_lear_consolidada_2020-11.pdf

3.1.4. STRUCTURE AND COMPOSITION OF THE ELECTORAL ADMINISTRATION

In addition to the typology of models, the structure of the electoral administration is a crucial component which influences the management of electoral processes. The structure and membership within electoral bodies vary depending on the applied model. In the governmental model, members are absent, and all tasks are executed through government officials. In contrast, the independent model is characterized by electoral administration that functions autonomously in relation to the executive authority, often with limited involvement of individual state entities. In the mixed model, electoral activities are mainly led by state bodies, while the independent segment primarily has a supervisory function.³⁹

When it comes to the independent and mixed models, members of electoral administrations can be selected in three basic ways: from among experts (expert type), from political parties (party type), or through a combination of these two groups (combined type). Montenegro is formally classified as a state with a combined type of membership. Each of these types has its advantages and disadvantages, as highlighted in the analysis of the International Institute for Democracy and Electoral Assistance.⁴⁰

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

TYPE OF MEMBERSHIP	ADVANTAGES	DISADVANTAGES
Expert	<ul style="list-style-type: none"> • Impartiality and neutrality of members have a positive effect on the credibility of the body; • More successful resistance to political pressure; • Professionalism of members; • Expertise of members; • Positive impact on the reputation of the body due to the reputation enjoyed by members; • Wide range of professional associations for support. 	<ul style="list-style-type: none"> • In transitional countries, it is difficult to find non-partisan individuals; • Experts are not always aware of all political factors; • They do not always have good relationships and rapport with key decision-makers; • Access to the activities of political entities is limited; • They must balance their obligations to work for the election administration body and the organization they come from; • The most qualified experts are not always able to participate in the work of the election administration body.
Party	<ul style="list-style-type: none"> • Promotes opposition participation in elections; • Encourages voter participation; • Increases transparency in the electoral process; • Ensures the influence of political parties on the development of practical public policies of the election administration body; • Ensures connectivity with key participants in the electoral process; • Brings political experience to election management. 	<ul style="list-style-type: none"> • Members' work is motivated by party interests; • Members' work experience and professional qualifications may be inadequate; • The credibility of the body may be compromised in case a political party is excluded from its work; • Difficulty in achieving consensus in decision-making; • Endangered unity of the body due to public disagreements between political parties.

³⁹ Catt, H., et al. op. cit., p. 110-112

⁴⁰ Ibid, p. 113

Combined	<ul style="list-style-type: none"> • Political experience and opportunities for professional networking; • Connection with key participants in the electoral process and public figures; • Combination of expertise and political knowledge and experience; • Professional credibility and transparency towards participants in the electoral process; • Expert members can serve as a barrier against political influence; • Balance between political and technical requirements. 	<ul style="list-style-type: none"> • The organization may become unnecessarily cumbersome if all professional and political actors are represented in it; • Credibility may be diminished if a political party is excluded; • Difficulty in reaching consensus in decision-making; • Highly qualified experts may refuse to work with political entities.
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3.2. ELECTION ADMINISTRATION IN MONTENEGRO I

From a formal legal standpoint, Montenegro's electoral administration follows the independent model with a combined type of membership. However, the institutional autonomy of these bodies is not synonymous with absolute independence. Although formally independent, electoral administration bodies can be subject to influences from political parties and the executive authority, as confirmed by practice on multiple occasions. Therefore, the starting point of our analysis is a historical overview of the development of the electoral administration in Montenegro, from the introduction of multiparty systems to the present day, in order to understand the evolution of the structure of these bodies and the legal framework that defines them, and how these changes have impacted the functioning of the electoral administration.

3.2.1. ELECTION ADMINISTRATION IN THE FIRST DECADE AFTER THE INTRODUCTION OF A MULTI-PARTY SYSTEM

The first electoral law in Montenegro, adopted in 1990⁴¹ before the first multi-party elections, established the legal framework for the electoral administration, with details elaborated in articles 16-44. The central electoral administration body provided for by the law was the Republic Electoral Commission (RIK), which, together with municipal electoral commissions and polling boards, constituted the structure of the electoral administration in Montenegro. During that period, the president of RIK was elected from among the judges of the Supreme Court, while the secretary, who held a permanent position, was elected from among experts in the electoral system.

After the adoption of the Constitution in 1992, which introduced a parliamentary system, and under the influence of international organizations, a new law⁴² was adopted that reformed the structure of the electoral administration, changing the number of members and criteria for their appointment. In addition to the previous eight members, including the president and secretary of RIK, the new law provided for an additional five members from among holders of judicial functions and law graduates. The next significant changes to the law occurred in 1996 and involved modifications to the election of the president of RIK. The practice of appointing the president from among the judges of the Supreme Court was abandoned, and it was newly stipulated that the president and his deputy would be elected from among prominent holders of judicial functions. Subsequent amendments continued the trend of easing conditions, both for the president and other members of RIK.

41 Law on the Election and Dismissal of Councilors and Members of Parliament ("Official Gazette of the Socialist Republic of Montenegro", no. 36/90, dated October 3, 1990)

42 Law on the Election of Councilors and Members of Parliament ("Official Gazette of Montenegro" no. 49/92, dated October 14, 1992)

Through amendments in 1998⁴³ and 2000,⁴⁴ the structure of RIK was once again changed. With the new amendments, the Commission operated with a permanent composition of 11 members, along with an additional expanded composition that included one authorized representative from each confirmed electoral list. The trend of easing formal-legal conditions for the election of the president and members of RIK continued, with the provision that they would be elected from among law graduates. Similarly, the criterion for the secretary, who had previously been the only expert in the electoral system, was lowered by stipulating that the secretary would be elected from among law graduates, thus finalizing the process of de-professionalization in the membership structure of the central electoral administration body and opening the doors to its politicization.

3.2.2. ELECTION ADMINISTRATION TODAY

According to the current Law on the Election of Councilors and MPs,⁴⁵ the electoral administration in Montenegro is organized at three levels. At the top of this structure is the State Election Commission (hereinafter: SEC), which acts as a permanent body consisting of a president, secretary, and nine permanent members, with the right of each confirmed and declared electoral list submitter to appoint an authorized representative in the expanded composition. This right also belongs to presidential candidates. Representatives of electoral lists, or candidates, have the right to participate and decide in the work of the SEC from 20 days before the day of the election until the day of establishing the final results. All members, both permanent and members in the expanded composition, are elected from among law graduates. An additional requirement for the president of the SEC is to have at least 10 years of work experience in the profession and not to be a member of a political party management body in the last three years, while for a member appointed from the representatives of civil society, the non-governmental sector, or the university, it is required that they have published scientific papers and professional articles on the topic of the electoral process, have achieved public recognition in this area, and have participated in domestic or international monitoring of the electoral process.

The president of the SEC is appointed by the Assembly, upon the proposal of the working body of the Assembly responsible for elections and appointments after a previously conducted competition. The same procedure is prescribed for a member of the SEC from the representatives of civil society, the non-governmental sector, and the university.

As for other members of the permanent composition, four members are appointed upon the proposal of the parliamentary majority, and four, one of whom performs the function of secretary, are appointed upon the proposal of the parliamentary opposition. The right to appoint one member to the permanent composition of the SEC is also given to a political party, i.e., the submitter of an electoral list for authentic representation of members of a minority nation or minority national community, which received the highest number of votes in the previous elections, while their deputy should be a member of another minority nation or minority national community.

At the second level are 25 municipal election commissions, with a president and members whose appointment reflects the political dynamics based on the results of the previous elections. The composition of the Municipal Election Commission (MEC) consists of a president and four members

43 Law on the Election of Councilors and Members of Parliament ("Official Gazette of Montenegro", no. 4/98)

44 Law on the Election of Councilors and Members of Parliament ("Official Gazette of Montenegro", no. 16/2000 (consolidated text), 9/01, 41/02, 46/02, 45/04, and "Official Gazette of the Federal Republic of Yugoslavia", no. 73/00 and 9/01)

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

in the permanent composition and one authorized representative of the submitter of the electoral list in the expanded composition. The president is a party figure from the political party that won the most councilor mandates in the previous elections. Two members are appointed upon the proposal of the parliamentary opposition, one of whom serves as secretary, and the other two members are elected upon the proposal of the ruling majority.

Polling boards, as the third level of the electoral administration, are formed for each polling station and are composed of a president and four members whose task is determined immediately before the voting by drawing lots. In this structure, the representation of political parties in the polling boards reflects their proportional representation in the local assembly. Each political party represented in the corresponding municipal assembly is entitled to a number of polling board presidents proportional to the representation of councilor seats in the municipal assembly. Two members of the permanent composition of the polling board are appointed upon the proposal of the political party or coalition that has a majority in the corresponding municipal assembly, and one representative of two opposition parties in the corresponding assembly, which received the most mandates or the highest number of votes in case of the same number of mandates.

3.3. CHALLENGES IN THE WORK OF ELECTION ADMINISTRATION BODIES

3.3.1. POLITICAL BIAS IN THE WORK AND DECISION-MAKING OF THE SEC

The functioning of the SEC is often perceived as overly politicized. Guidelines and recommendations from international bodies such as the Venice Commission and the OSCE/ODIHR, as well as domestic non-governmental organizations, highlight the challenges in the operation of electoral administration bodies, which are related to the fundamental principles on which the work of the SEC should be based. The Venice Commission, in its "Code of Good Practice in Electoral Matters," emphasizes the importance of transparency, impartiality, and independence from political influences for the proper conduct of the electoral process, from the pre-election phase to the announcement of the final results. In light of the current legislative framework, which allows political parties to appoint a majority of SEC members, it is not surprising that politically biased decisions are observed in practice. We have observed such instances in almost every election cycle, but in this study, we will focus on some of the most notable examples since the onset of the political crisis associated with the parliamentary elections in 2016.

3.3.1.1. THE CASE OF SEC VOTING ON THE TEMPORARY AND FINAL RESULTS OF THE PARLIAMENTARY ELECTIONS IN 2016

The issue of lack of objectivity and independence in the work of the SEC arose during the decision-making process regarding the temporary and final results of the parliamentary elections in 2016. The influence of party interests was evident not only in the interactions among authorized representatives but also within the permanent composition of the SEC itself. Although the reports of municipal commissions were signed by the majority of members, both from the ruling and opposition parties, some opposition members within the SEC refused to accept the election results. As a result, only 15 out of 28 members voted to declare the final results.⁴⁶ In this case, the SEC put the decision on declaring the election results to a vote, which is not in accordance with the Law on the Election of Councilors and MPs. According to the law, the responsibility of the SEC is to determine the election results based on the number of votes and mandates belonging to each electoral list, based on objective data obtained from the polling stations and MECs, rather than deciding on already mathematically verified data. Such a practice can lead to a paradoxical situation where the majority of SEC members vote against the

⁴⁶ OSCE/ODIHR, Montenegro, Final Report, Parliamentary elections 2016, p. 21

election results, even though they have been officially confirmed and represent the will of the citizens.

3.3.1.2. SLUČAJ NAKNADNOG IMENOVANJA OPUNOMOĆENIH PREDSTAVNIKA IZBORNIH LISTA NA PARLAMENTARNIM IZBORIMA 2016. GODINE

During the parliamentary elections of 2016, it was noted that some political entities subsequently appointed authorized representatives from electoral lists after the election day, although according to the law, this right is acquired after the confirmation and proclamation of the electoral list. These members of the SEC in the extended composition did not actively participate in the work and discussions of the SEC, but were engaged solely in the voting process. Such an approach to the work and decision-making of the SEC illustrates very well the attitude of political entities towards the electoral administration bodies. Political parties do not perceive the SEC as an independent body responsible for ensuring the legitimacy of the electoral process, but see the Commission, and their membership in it, as a political platform that can be used to achieve electoral advantages and the realization of political goals. In this context, one of the recommendations of the OSCE/ODIHR addressed to the election administration bodies for the 2016 elections emphasizes the need to reconsider the role and direct involvement of authorized representatives in the decision-making process.⁴⁷

3.3.1.3. CASE OF THE SEC'S DECISION ON AN OBJECTION WITHOUT THE NECESSARY QUORUM IN THE 2018 PRESIDENTIAL ELECTIONS

The OSCE/ODIHR report on the 2018 presidential elections illustrates the ongoing problem of politically motivated decisions within the SEC, emphasizing that decisions were often made in line with party interests not only on election day but also in the periods preceding and following the election day. This is evidenced by the situation in which the SEC decided on an objection without the necessary quorum. Namely, presidential candidate Mladen Bojanic requested the annulment of the election results from the SEC. The SEC rejected this objection as inadmissible, stating that objections to the SEC could only be submitted against decisions of MECs. However, at that time, the Commission had 17 members, but only six members attended and voted at the session where Bojanic's objection was considered.⁴⁸ Bojanic then filed an appeal with the Constitutional Court, which rejected it.⁴⁹ Subsequently, he turned to the European Court of Human Rights, claiming that his right to a fair trial and free elections had been violated. It is interesting to note that Bojanic was an opposition candidate and that it was precisely the permanent and authorized members from the ranks of the opposition who did not participate in the session where the objection of the opposition candidate was considered.

3.3.1.4. THE CASE OF THE SEC'S REFUSAL TO VERIFY THE MANDATE OF SUADA ZORONJIC

The decision of the SEC, which took place outside the usual electoral process framework, attracted significant public attention. This concerns the situation from December 2020 when the SEC was supposed to verify the mandate of candidate Suada Zoronjic from the "In Black and White" list after a member of parliament from the same list resigned. According to Article 101 of the Law on the Election of MPs and MPs, the mandate of an MP ceases on the day of resignation, and the procedure requires that the next candidate on the electoral list be chosen to fill the vacancy. However, although the Parliament of Montenegro informed the SEC about the vacant seat, the majority of SEC members voted against preparing a report to fill the mandate.⁵⁰ It is important to understand that preparing a report on filling

⁴⁷ Ibid, p. 23

⁴⁸ OSCE/ODIHR, Montenegro Final Report, Presidential elections 2018, p. 6

⁴⁹ Decision of the Constitutional Court of Montenegro (U-VII no. 17/18), available at: https://www.ustavisud.me/ustavisud/skladiste/blog_4/objava_146/fajlovi/U%20VII%20BROJ%2017_18.pdf

⁵⁰ Decision of the State Election Commission no. 925 dated 28.12.2020, available at: <https://dikcg.me/wpold/wp-content/uploads/2020/12/Akt-Skup%C5%A1tini-CG-28.12.2020.-godine.pdf>

a parliamentary seat is a declarative, not constitutive, act.

This case deepened suspicions that SEC decisions are being used as an instrument in political struggles, especially in the context of potential voting on amendments to the Law on Freedom of Religion, which was one of the leading sources of political tensions in the election year. Following that, a criminal complaint was filed against the then-president of the SEC, and an initiative was launched for his dismissal. Six months later, in June 2021, Aleksa Ivanovic was removed from the position of SEC president by the votes of 48 MPs.

3.3.1.5. THE CASE OF THE SEC'S REFUSAL TO ACCEPT THE CANDIDACY OF MILOJKO SPAJIC IN THE 2023 PRESIDENTIAL ELECTIONS

The most controversial issue of the presidential elections in 2023 was the decision of the SEC not to confirm the candidacy of Milojko Spajic, which could be seen as a violation of passive electoral rights. In what was widely characterized as a politically motivated decision, the SEC went beyond its jurisdiction and refused to confirm the candidacy of a candidate who had submitted all the necessary documentation. Moreover, the chronological sequence of events also sparked controversy in the public, as the first contentious decision of the SEC was made at a session held on February 3, regarding sending a letter to the Republic Electoral Commission of Serbia (RIK) to obtain data on individuals who had announced, but at that time had not formally submitted their candidacy for President, including Andrija Mandic and Milojko Spajic. The information requested from RIK—questions about residence and citizenship—is exclusively within the jurisdiction of the Ministry of the Interior of Montenegro. With this decision, the SEC not only exceeded its jurisdiction and assumed the role of the Montenegrin Ministry of the Interior but also placed the mentioned two candidates in an unequal position compared to other candidates. The RIK's response to the aforementioned letter was used as an argument for another controversial decision of the SEC, by which Milojko Spajic's candidacy was rejected due to contradictory data in the application, namely the fact that he held Serbian citizenship with a residence in Belgrade at that time. Milojko Spajic initiated the process of renouncing Serbian citizenship on February 15, and the Ministry of the Interior of Montenegro initiated the procedure for revoking Montenegrin citizenship under Article 24 by law. Considering that according to the legal provisions, these procedures cannot be completed within 48 hours, which is the timeframe candidates have to rectify deficiencies in their applications, the SEC ultimately made the decision not to confirm the candidacy. In response to the new situation, Mr. Spajic decided not to file a constitutional appeal against the SEC's decision, but the "Europe Now" Movement requested the opportunity to propose another candidate with the signatures of the same individuals who supported Mr. Spajic. The SEC allowed the same individuals to provide signatures of support for another candidate, deleting the signatures of support they had given to Mr. Spajic from the system.

The fact that this decision was politically motivated also emerges from the analysis of the context of the presidential elections. Mr. Spajic was publicly recognized as one of the main potential competitors to Mr. Djukanovic, and expectations were high that he could reach the second round of elections. However, there were attempts to position Mr. Andrija Mandic as the main rival to Mr. Djukanovic, despite the lack of the necessary majority of votes. This dynamic culminated in the organization of a debate held only three days before the first round of voting, in which only Djukanovic and Mandic,⁵¹ out of the seven confirmed candidates, participated, which was perceived by the public as a joint effort of political entities to steer the outcome towards a second round between these two candidates. In this context, it is important to consider the contentious decision of the SEC, whose members largely stem from the same political structures. There is reason to believe that the motivation was not only to thwart Mr. Spajic's candidacy, but also to influence the limitation of the

⁵¹ <https://www.vijesti.me/vijesti/politika/648003/zbog-cega-djukanovic-i-mandic-idu-na-tv-duel-mimo-drugih-kandidata-prijateljski-dogovor-ljutih-protivnika>

political rise of the “Europe Now” Movement on the national scene.

3.3.2. LACK OF PROFESSIONALISM OF THE ELECTORAL ADMINISTRATION BODIES

3.3.2.1. LACK OF PROFESSIONALISM IN THE WORK OF THE SEC

Membership in the central electoral administration body, from the adoption of the first electoral law in 1990 to the present day, has ranged from highly expert-oriented to a “quasi-combined” type that is predominantly party-based. Amendments to the law gradually introduced amateurism into the work of electoral administration bodies, therefore the current law does not provide strict formal-legal criteria for members of the permanent composition proposed by political parties, but only requires legal education, thus not guaranteeing quality in work, dedication, and ultimately, professionalism.

Partial professionalization of the SEC was sought by prescribing that the President and Secretary of the SEC perform their duties professionally. In this way, it was ensured, at least on paper, that these two members are fully committed to the work and functioning of the commission. According to the Law on Salaries of Employees in the Public Sector,⁵² the President and Secretary of the SEC belong to one of the most significant groups of jobs (B/11 and B/17). The President of the SEC has been assigned an exceptionally high job complexity coefficient of 20.75. In addition to the president of the SEC, the only independent member of this body comes from the representatives of civil society, non-governmental organizations, and the university.

Although the election of a new president of the SEC in 2021 and the election of a member from the representatives of civil society, non-governmental organizations, and the university in 2022 resulted in a more quality and transparent work of the SEC, their election did not significantly contribute to the overall professionalism in the work of the SEC.

a. Election of a member from the representatives of the civil sector, non-governmental organizations, and universities who did not meet legal requirements

Regarding the member of the SEC elected from the representatives of civil society, non-governmental organizations, and universities, it should be mentioned that in the parliamentary elections held in 2016, this was the only member of the SEC who acted in accordance with the principle of professionalism. Also, the position was held by an individual who met all legal requirements.

The Law on the Election of Councilors and Members of Parliament sets stricter conditions for the election of this member than the conditions required for the election of the president of the SEC. These prescribed conditions were aimed at preventing potential abuses of this institute. However, after the representative of the non-governmental sector from CeMI, Vlado Dedovic, resigned,⁵³ it became difficult to find adequate candidates. This circumstance was not caused by poorly designed legal solutions but by the decision of election monitoring organizations not to propose their candidates who meet those conditions to avoid legitimizing the dysfunctional model of the SEC’s work, which needs substantive reform.

Despite several published calls for applications, no candidate who would meet the prescribed legal requirements applied, and for over a year the SEC operated with an incomplete composition, without a member from the civil sector. Finally, after six unsuccessful competitions, the Parliament of Montenegro decided on April 27, 2018, to elect the only candidate who applied for the competition

⁵² Law on Salaries of Public Sector Employees (“Official Gazette of Montenegro”, no. 16/2016, 83/2016, 21/2017, 42/2017, 12/2018, 39/2018 - decision of the Constitutional Court of Montenegro, 42/2018, 34/2019, 130/2021 - decision of the Constitutional Court of Montenegro, 146/2021, 92/2022, 152/2022, and 152/2022-I)

⁵³ <https://www.vijesti.me/vijesti/politika/107901/dedovic-podnio-ostavku-u-dik-u>

but did not meet all the legally prescribed conditions.⁵⁴ Namely, the newly elected member of the SEC, Zoran Vujisic, did not meet any of the three legally prescribed conditions regarding professional references: published scientific and professional papers, experience in election observation, and public recognition in the field of electoral legislation.

b. Adoption of unconstitutional provisions in the "Technical Recommendations for Holding Elections Aimed at Epidemiological Protection of Voters"

During the parliamentary elections held on August 30, 2020, the SEC demonstrated insufficient accountability in adopting comprehensive and clear recommendations for the health-safe conduct of elections in the conditions of the COVID-19 pandemic. In a document full of controversial and unclear provisions, among other things, it was envisaged to restrict the voting rights of voters infected with the COVID-19 virus or in self-isolation. This part of the technical recommendations was annulled by the decision of the Constitutional Court,⁵⁵ which, in its ruling, also stated that the SEC violated the constitutional principle from Article 145 of the Constitution and exceeded its powers by adopting the recommendation to wear masks, which falls under the jurisdiction of the Ministry of Health. In addition to adopting unconstitutional provisions, the document approved by the SEC was conceptually incorrect. Namely, it was about the so-called "technical recommendations," although according to the Law on the Election of Councilors and Members of Parliament (Article 66, paragraph 2), the SEC establishes "detailed rules regarding polling stations."

c. Attempt to close the session on deciding on the candidacy of Miloško Spajic to the public

The decision of the SEC regarding Mr. Spajic's candidacy represents another indicator of unprofessional conduct. However, unprofessional conduct in this case was not exhausted by the decision of the SEC to address RIK in Serbia and to reject Mr. Spajic's candidacy based on the submitted data.

Namely, at the session held on February 18, 2023, attended by CeMI's observer, one of the members of the SEC from the opposition proposed to close the session to the public where the SEC was supposed to decide on Mr. Spajic's candidacy. The reason given for this proposal was that the presence of a large number of journalists disrupts the concentration and work of the Commission. The proposal did not receive the necessary support because only five members (from the opposition) voted to exclude the public, out of the present 10. Although, based on the usual voting patterns, it can be assumed that the presence of the eleventh member of the SEC (Milosav Coric from the SNP) would not change the outcome, the fact that this proposal was put to a vote is worrying. According to the amendments to the Rules of Procedure of the SEC adopted just a month earlier,⁵⁶ a decision to close the session to the public can only be made in cases where the consideration of data requiring protection under the Law on Personal Data Protection is necessary, from which it follows that this issue should not have been decided. This provision of the Rules of Procedure refers to sessions where the SEC considers lists with citizens' signatures supporting candidates and electoral lists, which contain a large number of personal data of citizens. Also, although the amendments to the Rules of Procedure envisage the possibility of live streaming of SEC sessions via the internet, this solution has not yet been implemented due to technical impossibilities.

⁵⁴ CeMI, Final Report – Civic monitoring of the 2018 presidential elections, p. 11

⁵⁵ Decision of the Constitutional Court of Montenegro (U-II no. 45/20)

⁵⁶ Decision on the Amendment and Supplement of the Rules of Procedure of the State Election Commission ("Official Gazette of Montenegro", No. 08/23 dated January 23, 2023)

d. SEC's decisions on (non)repeating voting in several municipalities in the parliamentary elections of 2023

The SEC showed an extremely low level of professionalism in the latest parliamentary elections. At two sessions where decisions were made on objections demanding the repetition of elections in several municipalities, the SEC made decisions that were blatantly unlawful.

At the first disputed session held on June 17, 2023, the SEC decided on objections related to the decisions of the Municipal Election Commissions in Cetinje and Kolasin to hold new elections after the annulment of previous election results at two polling stations. The objections challenged the legality of the decisions to repeat the elections. By adopting the objections, the SEC annulled the decisions on repeated elections.⁵⁷ However, the original decisions to annul the elections remained in force, and the SEC failed to provide additional instructions to the municipal election commissions for further proceedings. The next day, in an even more pronounced example of unprofessionalism, the SEC rejected 10 objections,⁵⁸ including three contentious objections related to three polling stations in three different municipalities – in Cetinje, Rozaje, and Bijelo Polje. Although the Commission found discrepancies in the numbers of ballot papers and stubs, or in the numbers of ballot papers and signatures in extracts from the voter register at these polling stations, it did not decide to repeat the elections, contrary to the law,⁵⁹ but in another example of exceeding its jurisdiction, the SEC decided to assess the rationality of repeating the elections.

3.3.2.2. LACK OF PROFESSIONALISM OF MECs AND PBs

Aside from the SEC, a lack of professionalism can also be found at other levels of the electoral administration. In previous electoral processes, the highest number of irregularities were recorded in the functioning of municipal election commissions and polling boards. These irregularities typically occur to a similar extent and manifest in similar ways in all electoral cycles, except for the parliamentary and local elections in 2020, which were marked by numerous irregularities related to the (non)compliance with measures to prevent the spread of the COVID-19 virus. The main cause of the lack of professionalism is the fact that members of municipal election commissions and polling boards are mostly politically appointed and often insufficiently trained for their tasks. CeMI has documented frequent situations where these bodies operated with incomplete composition or arranged the allocation of roles at the polling station orally, without drawing lots, which is contrary to the legal provisions.

The lack of training among polling board members has also led to the incorrect use of electronic voter identification devices, which is one of the main reasons for the delay in the start of voting at certain polling stations.

Significant problems in many municipalities were observed during the parliamentary and local elections in 2016. Changes in the political scene in many municipalities caused difficulties in forming municipal election commissions, as it was not always clear which party or list represented the

⁵⁷ <https://dik.co.me/akti-komisije/odluke/dik-ponistila-odluke-o-ponavljanju-izbora-u-kolasinu-i-cetinju>

⁵⁸ <https://dik.co.me/aktuelnosti/saopstenja/dik-odbila-10-prigovora>

⁵⁹ Article 89, paragraph 9 of the Law on the Election of Councilors and MPs stipulates: "If it is determined that the number of ballots in the ballot box exceeds the number of voters identified in the extract from the voter register as having voted, or if it is determined that the number of ballots in the ballot box exceeds the number of control coupons, or if it is determined that the number of ballots in the box exceeds the number of signed stubs and signed coupons, or if the existence of two or more control coupons with the same serial number or serial number not belonging to that polling station is determined, the electoral board shall be dissolved and a new one appointed, and voting at that polling station shall be repeated. The results of the voting at that polling station shall be determined after the repeat voting."

government and which the opposition. For example, the Ulcinj Municipal Election Commission was not formed in accordance with the law, as only one of the four members was from the opposition (SNP). A similar problem occurred in Budva and Kotor, where no representative of the SDP was included in the MEC, despite the fact that the party was in power, while in Bar, the SDP was part of the MEC from the quota of the ruling coalition, although it was effectively part of the local opposition.⁶⁰

The lack of professionalism in MECs is also reflected in the ignorance of the provisions of the Law on the Election of Councilors and Members of Parliament related to gender equality, which will be further explained in the chapter dedicated to the participation of women. A significant number of recorded irregularities are directly related to the inadequate work of MEC members and the lack of training and expertise of polling board members. For example, training on electoral procedures and the use of electronic voter identification devices, organized by SEC, have not always been consistent, leading to OSCE/ODIHR stating problems in the skills and knowledge of educators, as well as a lack of interest from training participants.⁶¹ Although the training of polling boards was positively evaluated by the OSCE/ODIHR mission in the presidential elections in 2018, many members were replaced shortly before the elections with inadequately trained representatives,⁶² using the legal possibility provided by Article 35 of the Law on the Election of Councilors and Members of Parliament. This law allows political parties to replace their members in polling boards 12 hours before the opening of polling stations, without obliging all members of the polling board to undergo the necessary training. Similar conclusions were also made by the ENEMO observation mission in the parliamentary elections in 2020, which criticized the lack of regulatory mechanisms for mandatory training of all polling board members.⁶³ Deficiencies in training were also highlighted in the final report of the OSCE/ODIHR mission.⁶⁴

However, the most blatant example of the lack of professionalism in the work of polling boards and municipal election commissions concerns the local elections in Savnik in 2022. Although the elections were scheduled for October 23, the electoral process in Savnik has not yet been completed due to specific problems at two polling stations. Specifically, members of polling boards from the "For the Future of Savnik" coalition prevented certain voters from exercising their voting rights, accusing them of fictitious registration of residence in Savnik. There was suspicion that these voters were, in fact, supporters of the DPS who wanted to influence the election results in Savnik. This situation was repeated eight times. After the last attempt to hold elections, the Savnik MEC stopped making decisions on repeating elections due to a lack of the required majority. Since then, SEC has been issuing decisions every Sunday on objections from Savnik, instructing the Savnik MEC to decide on repeating voting at polling stations No. 1 Sala SO Savnik and No. 14 Kafana Krusevice in Savnik.

3.3.3. CHALLENGES IN THE WORK OF ELECTORAL ADMINISTRATION BODIES CAUSED BY LEGAL DEFICIENCIES AND AMBIGUITIES

In the analysis of the challenges faced by electoral administration bodies, it is important to recognize that the problems in their work are not always the result of their internal procedures or practices. A significant number of these challenges stem from inadequate legal frameworks within which these bodies operate. Legal deficiencies and ambiguities often lay the groundwork for complexity and difficulties in implementing electoral actions. These deficiencies can create room for various interpretations, leading to inconsistencies in the application of the law, but they can also lead to

60 CeMI, Final report - Civic monitoring of the 2016 parliamentary and local elections

61 OSCE/ODIHR, Montenegro Final Report, Parliamentary Elections 2016, x', p. 8

62 OSCE/ODIHR, Montenegro Final Report, Presidential Elections 2018, op. cit., p. 7

63 European Network of Election Monitoring Organizations ENEMO, International Election Observation Mission Montenegro Parliamentary Elections 2020

64 OSCE/ODIHR, Montenegro Final Report, Parliamentary Elections 2020, p. 8

manipulation. Therefore, it is important to understand how ambiguities and deficiencies in legislation affect the work of electoral administration bodies in order to identify effective ways to overcome them and improve the overall electoral process.

a. The issue of “electoral tourism”

One example of deficiencies in electoral legislation is based on the previously mentioned crisis in Savnik. Namely, in 2020, the Constitutional Court decision⁶⁵ abolished the residency requirement for local elections. By removing the requirement that voters must have residency in a particular municipality for at least six months before the elections, the possibility of moving voters between municipalities to influence the results of local elections was created. The residency requirement abolished by the Constitutional Court is recognized in the Venice Commission document “Code of Good Practice in Electoral Matters”⁶⁶ as an acceptable practice, provided it does not exceed six months, except in situations where it is necessary to protect the rights of national minorities. The specific case in Savnik can be partly seen as a direct consequence of the Constitutional Court’s decision. Although there is no precise data on the number of citizens who abused this possibility by registering a fictitious residence to participate in local elections, it cannot be ignored that the Constitutional Court’s decision expanded the scope for such manipulations. This situation is further complicated by the lack of legal mechanisms to resolve it. Although it would be logical to expect the highest electoral administration body to find a way out of this situation, the SEC is powerless in this case. The competence for conducting local elections lies solely with the MECs, and to this day, no mechanism has been found to resolve the crisis.⁶⁷ In the meantime, according to media reports, some voters have deregistered their residence in Savnik. This circumstance further complicates the situation. On the one hand, the confirmed voter list cannot be changed while the electoral process is ongoing, while on the other hand, the right to vote in local elections is reserved only for individuals who have residency in the municipality where the elections are held. In theory, this could lead to a situation where individuals who no longer live in that municipality could vote in local elections.

It should be noted that terms such as “electoral tourism” and “professional voters” are not new in the Montenegrin context; accusations of various forms of manipulation of voter lists, including through relocation from one municipality to another, existed even when the residency requirement was in force. Therefore, although the Constitutional Court’s decision is not the original cause of such problems, it has certainly brought them to greater visibility and potential intensification. But above all, it is a consequence whose cause lies in the fact that local elections in Montenegro are not held on the same day in all municipalities. The elections in Savnik indicate that if this issue is not resolved, we can expect similar situations in other municipalities, especially in those where a small number of votes can decide who will govern in that municipality.

b. Participation of authorized representatives of candidates in the extended composition of the State Election Commission in the second round of presidential elections

During the presidential elections in 2023, after the first round of voting, the SEC faced the challenge of defining the status of authorized representatives of candidates who did not advance to the second round of elections. The Law on the Election of the President of Montenegro does not provide specific provisions on this issue, so the provisions of the Law on the Election of Councilors and MPs are applied to resolve the situation.

⁶⁵ ‘Official Gazette of Montenegro’, no. 109/20

⁶⁶ Code of Good Practice in Electoral Matters, op. cit., p. 5

⁶⁷ According to the latest information, as of March 18, 2024, the State Election Commission (SEC) held 60 sessions dedicated to the elections in Savnik and issued 120 decisions instructing the Savnik Municipal Election Commission (MEC) to make a decision on repeating the elections. <https://rtnk.me/politika/dik-donijela-120-rjesenja-da-se-ponove-izbori-u-savniku-oik-to-nije-usvojila/>

Within the SEC, there were divided opinions. One group of members believed that the mandate of authorized representatives is directly linked to the duration of the candidacy of their candidates, and that the mandate should end as soon as the candidate drops out of the election race. This opinion was based on the interpretation that the relevant application of Article 31 of the Law on the Election of Councilors and MPs does not imply its absolute application in the context of presidential elections.

However, the majority opinion within the SEC was that the electoral process should be considered as a single entity, and in the absence of specific provisions in the Law on the Election of the President, it is necessary to apply Article 31 of the Law on the Election of Councilors and MPs. According to this article, the mandate of authorized representatives ends on the day the final election results are determined, which also applies to work in MECs and polling boards.

Although the decision of the SEC in this context is not disputed, the situation has highlighted significant legal gaps in the Law on the Election of the President of Montenegro. The argument against extending the mandate of authorized representatives has its logical basis. The question arises whether the legislator, anticipating such situations, would define that the mandate of authorized representatives depends on the continuity of the candidacy of their candidates. The current solution can lead to situations where influence or even control over the work of electoral bodies can be exercised through fictitious candidacies. A similar situation occurred after the parliamentary elections in 2016 when there were objections that certain electoral lists were fictitious, and that authorized representatives on those lists were actually under the control of two dominant political entities, the Democratic Party of Socialists and the Democratic Front, rather than being authentic representatives of their list.

c. Status of domestic observers

Two more situations that required attention from the SEC demonstrate the extent of deficiencies in the existing legal framework.

The first situation concerns the registration of a minor as an observer in the 2023 presidential elections. This issue was the subject of discussion and decision-making at several sessions. The reason for this is that the Law on the Election of Councilors and MPs does not provide adulthood as one of the conditions for accrediting observers, although it is somewhat clear that the entire electoral process is linked to the existence of the right to vote. In many countries, this issue is more precisely regulated by including adulthood as one of the conditions, including neighboring countries such as Croatia, Kosovo, and Serbia.

After several sessions discussing this issue, the SEC decided to seek the opinion of the Ministry of Labor and Social Welfare and the Protector of Human Rights and Freedoms. In its response,⁶⁸ the Ombudsman emphasized that in this case, the best interests of the child, as defined by Article 3 of the UN Convention on the Rights of the Child, must be taken into account. Given the complexity of the electoral process and the lack of precisely defined conditions under which minors can participate as observers, it was concluded that the current legislation does not provide adequate protection for their interests. As a result, the SEC aligned with the Ombudsman's recommendation and did not allow the minor to participate as an observer in the elections.

We can also look at another aspect of the Law on the Election of the President of Montenegro that deserves attention, despite not sparking a broader debate. Specifically, the Law does not provide detailed explanations regarding the rights of observers, leaving this area regulated by the general provisions of the Law on the Election of Councilors and MPs. This law sets a deadline of five days

⁶⁸ Opinion of the Protector of Human Rights and Freedoms no. 03-262/23 from 15.03.2023

before the election day for the registration of observers (Article 111a), which is applied accordingly to the first round of presidential elections. However, the question arises how this provision applies to the second round of elections, which is not explicitly explained in the law. On this matter, the Center for Monitoring and Research (CeMI) sent a letter to the SEC. In its response,⁶⁹ the SEC concluded that if there is a second round of voting in the elections for the President of Montenegro, observers who are already accredited can observe the second round of voting. Additionally, the SEC allowed, within the legal deadline, five days before the second round of elections, all organizations authorized to observe elections to accredit observers.

Although this clarification is useful, it must be taken into account that the SEC can change its practice at any time if it is not closely defined by the law, as was the case with the refusal to allow observers the right to inspect the signatures of support for candidates and electoral lists in the last presidential and parliamentary elections. Therefore, there is a need for a more detailed definition of the status and rights of observers within the legal framework to avoid any ambiguities in the future.

d. Right to membership in polling boards

There are challenges in the legislation regulating the rights of membership in polling boards. The Law on the Election of Councilors and MPs demonstrates a certain ambiguity, especially in provisions regarding the composition of polling boards (Article 18, paragraph 2). According to the law, the right to appoint members of the polling board is granted to two opposition parties based on election results, but the same does not apply to coalitions or groups of citizens. Furthermore, Article 20 specifies that candidates from electoral lists cannot be members of election commissions, but this is not mentioned for polling boards. Such ambiguity has led to specific problems, as was the case in Danilovgrad in 2018 when a candidate from the electoral list was simultaneously a member of the polling board. Moreover, in 2016, the SEC adopted a conclusion that prevented candidates from the list of MPs from being the president or deputy president of the polling board, as well as from being a representative or deputy authorized representative, or an observer at the polling station. However, it is not explicitly stated that an MP cannot be a regular member of the polling board. Additionally, the law appears contradictory and indeterminate in some segments. For example, Article 35 treats the position and opposition differently because it regulates parties but not lists, and it remains unclear to which exact composition of the assembly it refers.

e. Abuse of the right to submit objections to prolong the publication of final election results

The existence of space for manipulation and abuse in the Law on the Election of Councilors and MPs is also confirmed by the delay in announcing the final results of the parliamentary elections in 2023. Namely, the Parliamentary elections were held on June 11, and the SEC announced the provisional results two days later.⁷⁰ However, the final results were declared by the SEC more than a month later, at a session held on July 14.⁷¹ The delay was influenced to some extent by the fact that the objectors to the election commissions, or appeals to the Constitutional Court, used the last deadline for submitting them.⁷² But one of the reasons was also the obvious abuse of the right to submit objections by holders of certain electoral lists, who decided to submit objections via mail instead of sending them by email. The fact that all holders of electoral lists during the election campaign regularly communicated with the SEC via email confirms that there was no justified reason to submit objections in a different, slower way. In addition, the holder of the electoral list of the Movement "JUSTICE FOR ALL - Dr. Vladimir Leposavic" submitted a large number of what can

69 The document number 378/2 dated March 17, 2023, available at: <http://dikcg.me/wpold/wp-content/uploads/2023/03/Cemi.pdf>

70 <https://dik.co.me/images/DIK-media/izbori/parlamentarni/2023/final-PRIVREMENI-REZULTATI-2023.pdf>

71 <https://dik.co.me/images/DIK-media/izbori/parlamentarni/2023/KONACNI-REZULTATI-2023.pdf>

72 <https://dik.co.me/aktuelnosti/saopstenja/saopstenje-u-vezi-utvrdivanja-i-objavlivanja-konacnih-rezultata-izbora-za-izbor-poslanika-odrzanih-11-juna-2023-godine>

only be characterized as false objections, in which the repetition of the elections at polling stations in several municipalities was requested for the same irregularities, i.e., alleged mismatch of the control ballot numbers with the number of coupons, although representatives of this list did not have access to the electoral material. Moreover, the objections of this list did not highlight specific circumstances indicating irregularities; instead, the commission was asked to determine the number of control ballot papers and the number of coupons through an inspection of the electoral material.

4. REGISTRATION OF CANDIDATES AND ELECTORAL LISTS

4.1. REGISTRATION OF CANDIDATES

Passive electoral rights, in terms of candidacy for the President of Montenegro, according to Article 1 paragraph 2 of the Law on the Election of the President of Montenegro, can be exercised by all citizens who have reached the age of 18 and have residency in Montenegro for at least 10 out of the last 15 years. According to the mentioned Law, a presidential candidate can be proposed by one or more political parties, coalitions, or groups of citizens, while nominations must be supported by signatures of at least 1.5% of voters registered for the elections preceding the decision to call presidential elections (Article 4). In the nomination process, voters can support only one candidate. These provisions are contrary to international standards and best practices because they impose an unnecessarily long residential requirement for submitting a candidacy and unjustifiably limit passive electoral rights, require an unnecessarily high number of signatures of support for nomination, and by limiting support signatures to one candidate restrict the freedom of association of voters during the electoral process.

In the process of verifying candidacy proposals, with a positive opinion from the Agency for Personal Data Protection and Free Access to Information (AZLP), the SEC introduced a new procedure during the 2023 presidential elections to verify signatures only up to the legally prescribed minimum of valid signatures (in the case of the 2023 presidential elections, 8,101 signatures of voters), but only in terms of the consistency of personal data with the support list with data from the voters' register, not the credibility of the signatures themselves. An additional problem during the verification of candidacies is the fact that the SEC is obliged to establish the list of candidates for President (Art. 7 paragraph 2) within 48 hours after the deadline for submitting candidate proposals,⁷³ which does not leave enough time for a credible verification process, especially in a situation where candidacy proposals are submitted shortly before the legally prescribed deadline. Such a case occurred in 2023, due to the submission of Jovan Radulovic's candidacy half an hour before the deadline, around 23:30 on February 26. Since deficiencies were found in Jovan Radulovic's candidacy, the SEC had to allow the potential candidate to remedy them within the legal deadline. Therefore, the deadline for establishing the list of candidates, which was set by the electoral calendar for February 28, 2023,⁷⁴ was postponed to March 4.

As a mechanism to protect against signature abuse, the SEC introduced an online verification system in 2018, through which voters can check whether their signature is on the support list of candidates/electoral lists by entering their name, surname, and identification number, but only after the confirmation and publication of the final list of candidates for the presidential elections. In this way, a timely and efficient legal remedy is not provided, and space is opened for formal confirmation of candidacy and acquiring the right to participate in the electoral competition based on forged signatures. In response to such criticism, the SEC stated during the 2023 presidential elections that it cannot be held responsible for signature abuses on support lists for candidates because the expert service of the SEC is not qualified for expert interpretation of handwriting, but this can only

⁷³ Article 6 of the Law on the Election of the President of Montenegro states: "The proposal of a candidate for President shall be submitted to the State Election Commission no later than 20 days before the day designated for holding the election. Along with the proposal from paragraph 1 of this Article, the following shall be submitted:

1) a written statement of the candidate accepting the candidacy; 2) confirmation of the candidate's electoral rights; 3) confirmation of the candidate's residence; 4) a certificate of citizenship; 5) signatures of voters supporting the candidate."

⁷⁴ <https://dik.co.me/images/DIK-media/izbori/predsjednicki/2023/Kalendar-rokova-za-sprovođenje-izbornih-rad-njipdf.pdf>

be the subject of graphological interpretation in a separate procedure.⁷⁵

Additionally, currently there is no legally prescribed responsibility for falsifying support signatures, nor are there mechanisms for issuing judgments in an expedited procedure whose implementation would have an impact on the current electoral process, thereby further undermining the integrity and not contributing to building trust in the electoral process. On the contrary, current legal solutions provide incentives for potential offenders in a way that allows them to obtain missing signatures without hindrance or threat of sanctions. During the 2018 presidential elections, three out of seven candidates did not have even close to the number of votes as the collected signatures of support, while in 2023, this was the case with two out of seven candidates who participated in the first round of the presidential elections. In this regard, one way to prevent potential abuses would be to examine models for implementing the practice established by the judgment of the European Court of Human Rights in the case of *Fournier v. France*, according to which it is reasonable to regulate the reimbursement of campaign costs in proportional electoral systems when an electoral list did not win a minimum of 5% of the votes in the elections.

That the current system does not provide a satisfactory level of protection against abuses is evident from the experiences of the presidential elections in 2018 and 2023, where numerous irregularities were recorded. After the introduction of the online verification system in 2018, several hundred reports of irregularities were sent to the competent state institutions at the address of the Center for Monitoring and Research (CeMI), however, the processes in the initiated 157 cases were suspended due to statute of limitations. During 2023, CeMI received several hundred reports via the online system about the abuse of data based on which reports were filed, and CeMI provided free legal assistance to citizens whose data were abused. Based on data from the SEC, they received more than 80 reports of signature abuse, and the Prosecutor's Office initiated 30 investigations.⁷⁶ However, the key problems in this area recorded during 2018 were also evident during the 2023 presidential elections. In this context, it is not realistic to expect that investigative actions will have a different outcome, and it is very likely that investigations will be suspended after the expiration of statutory deadlines, as was the case with 157 processes initiated after the 2018 elections.

The aforementioned problem is also related to the questionable decision of the SEC to deviate from the established practice of allowing accredited observers to access the support signatures of presidential candidates. Instead, requests for access to support signatures were forwarded to the AZLP, which gave a negative opinion on them. Although the SEC did not formally reject the requests of non-governmental organizations, by forwarding them to AZLP, access to documentation after the registration of candidates became meaningless. Additionally, AZLP's opinion did not take into account the special right of observers during elections, which is contrary to international instruments such as the Copenhagen Document of 1990, or the Guidelines on the International Recognized Status of International Observers of the Venice Commission from 2009, which emphasize the importance of broad participation of observers in the election monitoring process. By such action, authorized observers were prevented from effectively monitoring the electoral process and timely detecting irregularities that have been recurring for several years.

In addition to the mentioned problems, during the 2023 presidential elections, the work of the SEC in the process of registering presidential candidates was criticized in cases involving Goran Danilovic and Miloško Spajic. The initial candidacy proposal of Goran Danilovic from February 20 was returned for supplementation due to deficiencies, with the explanation that 2,269 valid support signatures were missing for formal confirmation.⁷⁷ G. Danilovic made serious allegations against the Expert

⁷⁵ <https://dikcg.me/wpold/saopsenje-u-vezi-zloupotreba-potpisa-podrske-kandidatima-za-predsjednika-crne-gore/>

⁷⁶ ODIHR, Montenegro Final Report, Early Parliamentary Elections 2023, p. 14

⁷⁷ <https://dikcg.me/wpold/zakljucak-o-otklanjanju-nedostataka-u-predlogu-kandidata-za-predsjednika-crne-gore-goran-danilovic-kandidat-ujedinjene-crne-gore/>

Service of the SEC, claiming that the signatures were intentionally deleted, and in his response, provided copies⁷⁸ of support signatures as evidence that the disputed signatures exist. It remained unclear how the deletion of voters' signatures from the support list occurred, and the SEC decided at a session on February 24 to forward all documentation related to Goran Danilovic's candidacy to the competent prosecutor's office for further action.⁷⁹

In addition to the controversial decision to reject Mr. Spajic's candidacy, which we described in the third chapter, questions were raised among the public regarding Mr. Andrija Mandic's candidacy. Before the formal confirmation of candidacies, Mr. Mandic avoided answering whether he possessed the citizenship of the Republic of Serbia, although such conclusions stemmed from his previous statements. The SEC requested data from the Republic Electoral Commission of Serbia, but the REC only partially responded, with data about residency but not about active voting rights, meaning that Montenegrin authorities do not have official data on Mr. Mandic's citizenship and when he acquired it. After confirming his candidacy, Mr. Mandic reiterated that he holds Serbian citizenship, claiming that he obtained it legally, but did not provide evidence for this, asking the Ministry of Interior to clarify the circumstances of acquiring citizenship after the elections. These circumstances raise doubts about the truthfulness of Mr. Mandic's statement, especially considering his previous statement from 2011 about hiding such data from Montenegrin authorities.

4.2. REGISTRATION OF ELECTORAL LISTS

According to **Article 43, paragraph 1 of the Law on the Election of Councilors and Members of Parliament**, an electoral list for the election of members of parliament is confirmed by the signatures of at least 0.8% of voters. However, for political parties or groups representing minority nations or national communities, at least 1,000 signatures of voters are required (**Article 43, paragraph 2**), while in the case of minority nations or national communities with a share of up to 2% of the total population according to the results of the last census, at least 300 signatures are required (**Article 4, paragraph 3**). According to the current provisions of the Law, independent candidates do not have the right to participate in elections, which should be changed to allow individuals to participate independently. Similarly to the support lists for presidential candidates, contrary to international practice and numerous recommendations from non-governmental organizations and relevant international organizations, a voter can support only one electoral list with their signature.

Political parties, coalitions, and groups of voters can nominate candidate lists. Article 39a, paragraph 1 of the Law establishes a quota for underrepresented gender of at least 30%, and in Article 39a, paragraph 2, rules regarding the positioning of one candidate of the underrepresented gender among every four candidates on the electoral list. Additionally, Article 39, paragraph 3 of the Law stipulates that electoral lists must contain at least 2/3 of the maximum number of candidates to be elected (54), while Article 39, paragraph 3 prescribes that lists representing national minorities must have at least 1/3 (27) of the candidates. All these criteria are necessary prerequisites for the formal confirmation of an electoral list. During the 2023 parliamentary elections, the SEC announced a consolidated list of candidates within the legally prescribed deadline with 15 confirmed lists. The lists comprised a total of 1,113 candidates, with only 397 women (35.67%). As during the 2020 parliamentary elections, only one list was led by a woman. Formal quotas for the representation of women were respected since parties adhered precisely to the aforementioned legal provisions. However, there was a lack of initiative from the majority of parties to contribute to a higher degree of women's representation in political life. In this regard, current indications suggest that greater participation of women in political life can only be achieved through changes in legislative solutions and increased quotas, rather than expecting parties to autonomously create a favorable environment for increased participation of

⁷⁸ Mr. Danilovic was not allowed to have copies of the support lists in his possession or to keep them as evidence of the submitted candidacy, and the reaction of AZLP in this case was completely absent.

⁷⁹ <https://dikcg.me/wpold/wp-content/uploads/2023/02/Zapisnik86.pdf>

women in politics.

One potential problem that was not recorded in 2023 but was in 2020 is the implementation of criteria for the representation of national minorities in a fair and equitable manner. The reason for the non-repetition of the problem in 2023 does not lie in the improvement of laws and procedures to eliminate the possibility of recurrence, but rather in the fact that in 2023, there were no submissions of candidacies from “new” minority communities. Namely, the Socialist Party of Montenegro submitted an electoral list “SNEZANA JONICA - SOCIALISTS OF MONTENEGRO - LET’S LIVE AS YUGOSLAVS” for the 2020 parliamentary elections, referring to Yugoslavs as a minority. The SEC refused to declare this electoral list⁸⁰ with the explanation that Yugoslavs cannot have minority status, and therefore, the principles of affirmative action intended for minority nations and national communities cannot be applied to them. The Constitutional Court reached the same conclusion,⁸¹ acting on the constitutional appeal of the Socialist Party of Montenegro, in which it was stated that the SEC violated the rights of the mentioned party, considering that the SEC only noted that the list did not meet the conditions to be recognized as a national minority, without providing reasons and evidence in favor of such a decision.⁸² In commenting on the SEC’s decision and the Constitutional Court’s ruling, Snezana Jonica stated that they acted illegally, considering that they were not given the opportunity to provide additional signatures up to the number required for lists that are not minority lists. Regardless of the claims from the mentioned list, it did not have a sufficient number of signatures for the verification of candidacy, and in the case of being registered as a minority, it raises the question of why the SEC did not request additional documentation with missing signatures up to the number required for non-minority lists. In this context, the electoral legislation needs to be harmonized and clearly specify the criteria and procedures for determining the status of national minorities to avoid the possibility of abuse in subsequent electoral cycles.

80 <https://dikcg.me/wpold/odbijena-izborna-lista-snezana-jonica-socijalisti-crne-gore-da-zivimo-kao-jugosloveni/>

81 Decision of the Constitutional Court of Montenegro (U-no. VII 1-20)

82 Additionally, the insufficient justification of the decisions of the State Election Commission and the Constitutional Court is problematic, considering that this is the first case of its kind in the history of electoral processes in Montenegro. This case will serve as a basis for future decisions in similar situations. The decision of the Constitutional Court will significantly impact future electoral practices and may open up room for various interpretations and potential discrimination against minority national communities.

5. REGISTRATION OF VOTERS

In Montenegro, the right to vote, as defined in **Article 45 of the Constitution**, is held by all adult citizens who have resided in Montenegro for a minimum of two years.⁸³ According to the Law on the Voters Register, voter registration in Montenegro is passive, as the voter register is an electronic database compiled by the Ministry of the Interior (MUP) ex officio, by consolidating data from civil registries (residence, citizenship, births, and deaths). In a subsequent procedure, the unified voter register is divided by polling stations, with each polling station having access only to the part of the voter register relevant to that polling station. The legal regulation in this area is quite precise; however, the lack of timeliness of civil registries, particularly the residence registry and the death registry, as well as inadequate control and review of the voter register, lead to each electoral process in Montenegro commencing with an unsorted voter register, further undermining trust in the entire electoral process.

Since the voter registration procedure is passive, according to **Article 16, paragraph 1 of the Law on the Voters Register**, the MUP is obliged to display the voter register for voters to inspect within three days of the announcement of elections, which was not the case during the parliamentary elections in 2023. With such non-transparent and irresponsible conduct regarding pre-election activities, the MUP violated the procedure, and such actions can lead to further loss of trust in the electoral process, in the accuracy and timeliness of the Central Voter Register.

In the parliamentary elections in June 2023, 542,468 voters had the right to vote, 314 more than in the presidential elections held in March and April of the same year. Such a growth trend is surprising, to say the least, considering that as early as April 2021, the MUP announced that it had taken steps in investigations regarding allegations that 2,108 individuals had lost Montenegrin citizenship and checks for another 8,000 individuals suspected of being simultaneously registered in the voter registers of Serbia, Bosnia and Herzegovina, and Kosovo. Precise information on the results of these procedures is not available, but what is evident is that the number of voters registered in the Central Voter Register increased by 13,651 compared to the parliamentary elections in 2016, or by 2,242 compared to the parliamentary elections in 2020.

Based on CeMI's long-standing experience in monitoring elections in Montenegro, we believe that two key factors are crucial for understanding and potentially addressing the problem of continuous growth in registered voters and the lack of timeliness of the Central Voter Register. The first problem arises from the residency requirement for exercising active voting rights, and the second from the lack of timeliness in reporting deaths by the competent authorities of local self-government. In the context of the residency requirement, we primarily refer to individuals who are citizens of Montenegro but do not reside in Montenegro despite having registered residence. These citizens of Montenegro are the main reason for the significant discrepancy between the number of residents who usually live in Montenegro (according to preliminary results of the 2023 census, this is 633,158 residents⁸⁴) and the disproportionately high number of voters compared to the number of adults and

⁸³ The residency requirement is unnecessarily lengthy and not in line with international standards; however, since amending Article 45 of the Constitution of Montenegro requires an extremely complicated procedure involving a two-thirds majority in parliament and confirmation in a referendum by the votes of at least three-fifths of the total number of voters (Article 155, paragraph 1), it is not realistic to expect imminent change.

⁸⁴ <https://www.monstat.org/uploads/files/popis%202021/pr.podaci/Preliminarni%20rezultati%20popisa%2025.01.2024.pdf>

the total population.⁸⁵ Additionally, the **Law on Registers of Residence and Stay** does not provide for adequate sanctions for individuals who do not deregister their residence, resulting in a situation where a large number of individuals unlawfully reside in Montenegro and acquire the right to be entered into the Central Voter Register. The first step in sorting out the Central Voter Register should be a detailed check of compliance with the residency requirement, prescribing a stricter penalty policy regarding deregistration of residence, and removing individuals from the voter register who are found to have residence in another country. During the monitoring of local elections in Niksic in 2021, CeMI conducted a matching process of individuals suspected of being double registered in the voter register of Montenegro and the voter register of Serbia, provided by the Standard, with available information from the portal <https://upit.birackispisak.gov.rs/>, and found that out of 969 initial individuals on the list, 961 had a unique citizen identification number (JMBG) with an address and a polling station number where they could exercise their voting rights in Serbia. In a similar process leading up to the local elections in Herceg Novi, we found alarming findings that as much as 10.55% of voters, 2,671 of them, were double registered in the voter register of Montenegro and one of the neighboring countries, Serbia or Bosnia and Herzegovina. We identified 1,974⁸⁶ voters from that municipality who were also registered in the voter register in Serbia, as well as 799 who were registered in the voter register in Bosnia and Herzegovina.⁸⁷ CeMI submitted data (names and surnames) about double voters from Herceg Novi to the MUP in accordance with the legal procedure, and the MUP subsequently requested an opinion from the AZLP, which suggested that they destroy the data. In this context, we would like to remind that the competent institution for the voter register is the MUP, which already has access to the data provided by CeMI, so it is unclear why the MUP requested the opinion of the AZLP on a procedure that falls exclusively within their jurisdiction.

There are two modalities based on which this problem could be addressed. The first would involve systematic field checks of residence, which would also entail harmonizing the proposed procedure with the **Law on Administrative Procedure**. The second modality would involve networking databases with the databases of states in the region, which would enable real-time monitoring of the registration of residence of Montenegrin citizens in other countries. This approach would contribute to solving not only the Montenegrin problem of illegal residence but would also prevent the regional practice of “voter busing,” where voters exercise their voting rights in multiple countries in the region. By adopting this approach, Western Balkan countries could significantly reduce the risk of cross-border influence on electoral processes through double or multiple registered voters. This problem has been identified in recent Annual Reports of the EC and requires a serious approach to identifying the extent of the problem and addressing it.

According to **Article 68a, paragraphs 1 and 2 of the Law on the Election of Councilors and Members of Parliament**, in order for a voter to exercise their voting right, they must be electronically identified on an electronic voter identification device unless electronic identification is prevented due to objective circumstances and the electoral board decides to continue voting by visual

⁸⁵ Additional reasons for discrepancies in data can be attributed to differences in the criteria for selecting individuals included in the population category in the census, which significantly differ from the criteria for exercising active voting rights. Namely, residents according to the census are those whose usual place of residence is Montenegro, which implies a stay of one year, as well as those who have been in Montenegro for less than a year but intend to stay. Some of these individuals may not necessarily be citizens and may not be registered in the voter register. Additionally, they could be individuals who were outside of Montenegro at the time of the census and do not intend to return to the country within the next year.

⁸⁶ It is interesting to note that after the verification conducted by CeMI ahead of the local elections in Herceg Novi, the functionality of the website <https://upit.birackispisak.gov.rs/> was changed so that, in addition to the citizen's unique master citizen number (JMBG), it is now necessary to enter the personal identification number as well, thus preventing further verification. Checks in the case of double entries in the voter register of Bosnia and Herzegovina were conducted through the website www.izbori.ba.

⁸⁷ <https://cemi.org.me/me/post/u-herceg-novom-upisano-deset-odsto-biraca-sa-prebivalistem-u-drugoj-drzavi-739>

identification using a printed voter list (**Article 68b, paragraph 4**). Electronic devices contain data about voters (photograph, name and surname, unique citizen identification number, and residence address) entered in the voter register at the polling station where the device is activated. This opens the possibility of double voting by voters at multiple polling stations, as there is no possibility of matching data from the entire voter register. The use of a different system which allows matching of the entire voter register and electronic records of voters who have exercised their voting rights, such as the VAD system in Armenia or the SAISE system in Moldova, would significantly increase trust in the integrity of the electoral process. A step in this direction could be the upgrade of the AFIS system for fingerprint deduplication of voters used since 2016, which abolished the practice of applying invisible ink to voters' fingers after a previous check to see if the ink had been applied earlier with a UV lamp. The AFIS system could be upgraded to compare and unduplicate photo identities. Although our recommendations lean towards building more complex information tools for conducting the voting process, the constant in Montenegrin electoral processes is the inadequate training of members of electoral boards to handle electronic identification devices. To achieve significant improvement in this area and for the recommendations to truly enhance the voting process, additional and more detailed training of members of state administrations is necessary.

Lastly, we would mention the issue of voting with invalid documents, considering that a portion of Montenegrin voters do not possess valid (biometric) ID cards. This problem was pronounced during the 2020 electoral process, as the MUP estimated that the number of voters without valid ID cards by election day could reach 74,871, with 23,931 of those voters having valid passports. Although the issue of invalid documents was not in focus during the parliamentary elections in 2023, future electoral cycles could be affected by similar issues as in 2020, primarily due to amendments to the **Law on ID cards** prescribing the procedure for replacing biometric cards with electronic ID cards with embedded electronic certificates for identification. The law stipulates that this process lasts a maximum of 5 years, specifying that all ID cards issued before March 30, 2020, expire on the expiration date or no later than March 30, 2025 (**Article 33b**). In this context, exercising the voting right in electoral processes after March 30, 2025, should be conditioned on possessing a new electronic ID card (or passport), which could potentially lead to a situation similar to 2020. As possessing a valid ID card is a legal obligation for every adult citizen residing in Montenegro, additional steps need to be taken to reduce the number of citizens without valid documents, regardless of the electoral cycle. As a possible incentive measure, favorable conditions could be provided for issuing electronic ID cards to citizens within a certain timeframe, and free issuance of ID cards could be provided to social assistance recipients. A continuous media campaign leading up to the expiration of the legal deadline for replacing ID cards would significantly contribute to the success of this process. Additionally, voters who do not possess valid identification documents could be categorized into a temporary special group of citizens, inactive voters, until they obtain valid documents. Alternatively, since **Article 80 of the Law on the Election of Councilors and Members of Parliament** prescribes the identification of voters using biometric ID cards or passports, an explicit restrictive norm should be introduced that would not allow voting without a valid identification document.

6. ABUSE OF STATE RESOURCES

6.1. DEFINITION OF THE ABUSE OF STATE RESOURCES

The concept of abuse of state resources (ASR) is not precisely defined in Montenegrin or international law, but its importance is widely recognized in the global context. Many states and international organizations address and recognize this issue in their documents. According to Magnus Ohman from the International Foundation for Electoral Systems (IFES), ASR is any use of state resources to support or undermine any political actor (such as a political party, coalition, or candidate for public office).⁸⁸ The Center for Anti-Corruption Studies describes ASR as a form of political corruption where individuals, parties, or other groups that control state or public sector resources exploit these resources to increase the chances of selecting or re-selecting their favored candidates or groups.⁸⁹ The OSCE defines ASR as an inappropriate advantage gained by certain parties or candidates through the use of official positions or connections with government institutions to influence the outcome of elections.⁹⁰

Despite the differences in the definitions mentioned above, the common thread we can identify is that ASR involves the abuse of state or public resources for political advantage, particularly to influence the outcome of elections. Therefore, ASR can be understood as a form of political corruption, especially during election campaigns.

6.2. FORMS OF ABUSE OF STATE RESOURCES IN MONTENEGRO

During the parliamentary elections in 2020, one of the most widespread forms of ASR was the abuse of incumbency, partly due to the unclear provision of Article 44, paragraph 4 of the Law on Financing Political Subjects and Election Campaigns, which prevented the Agency for Prevention of Corruption (APC) from sanctioning such behavior. The largest number of cases of incumbent abuse was recorded by CeMI precisely in August – the month of the elections.⁹¹ A similar situation recurred in 2021 in local elections in Niksic and Herceg Novi. In these local elections, officials from the three leading political parties involved in the elections were engaged in public official campaign.⁹²

In addition to incumbent abuse, one of the most common and much more harmful forms of ASR in Montenegro is politically motivated hiring in state organs and other entities and institutions that are in state or local ownership. This is a phenomenon known to the Montenegrin public for more than a decade. As early as 2012, the “Snimak” affair showed the tendency of political parties in power to hire citizens during the election campaign to gain votes. Analyzing the dynamics of employment during the pre-election campaign for the parliamentary elections in 2020, CeMI noted that two-thirds of the employment contracts submitted to the APC were submitted in August, and a more detailed analysis showed an exponential increase in the number of employments on a weekly basis as the election day approached, followed by a drastic decrease shortly thereafter. In the last two weeks before the elections on August 30th, up to the election day, **52.47%** of the total number of employees were hired.⁹³

88 Ohman, M., Abuse of state resources, Washington, D.C., IFES, 2011

89 Center for Anti-Corruption Research, Final report on monitoring abuse of state resources during the presidential campaign for the elections of the State Duma of the Russian Federation in 2003, Moscow, 2004, p. 13

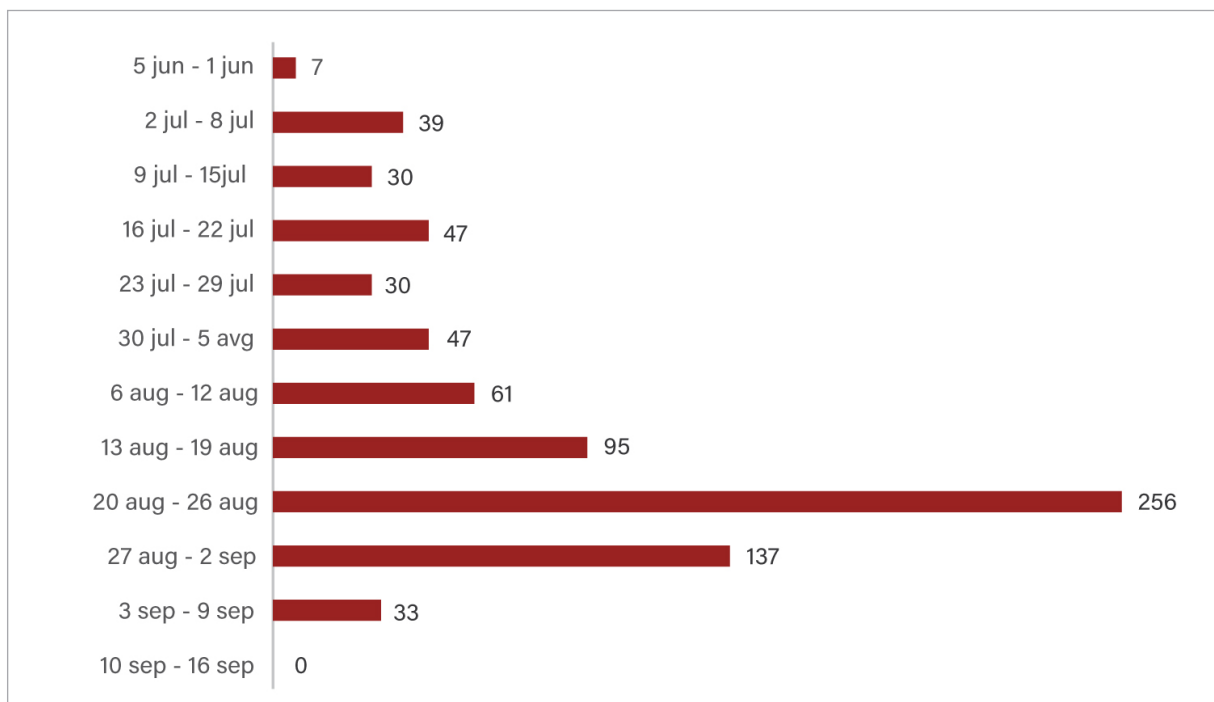
90 OSCE/ODIHR, Handbook for Campaign Finance Monitoring, 2015, p. 22

91 Vujovic, Z., et al., Abuse of state resources in Montenegro, 2021, Podgorica

92 Ibidem

93 Ibid, p. 42

Graph 1: Number of employment contracts delivered to the APC during the election campaign period for the 2020 parliamentary elections

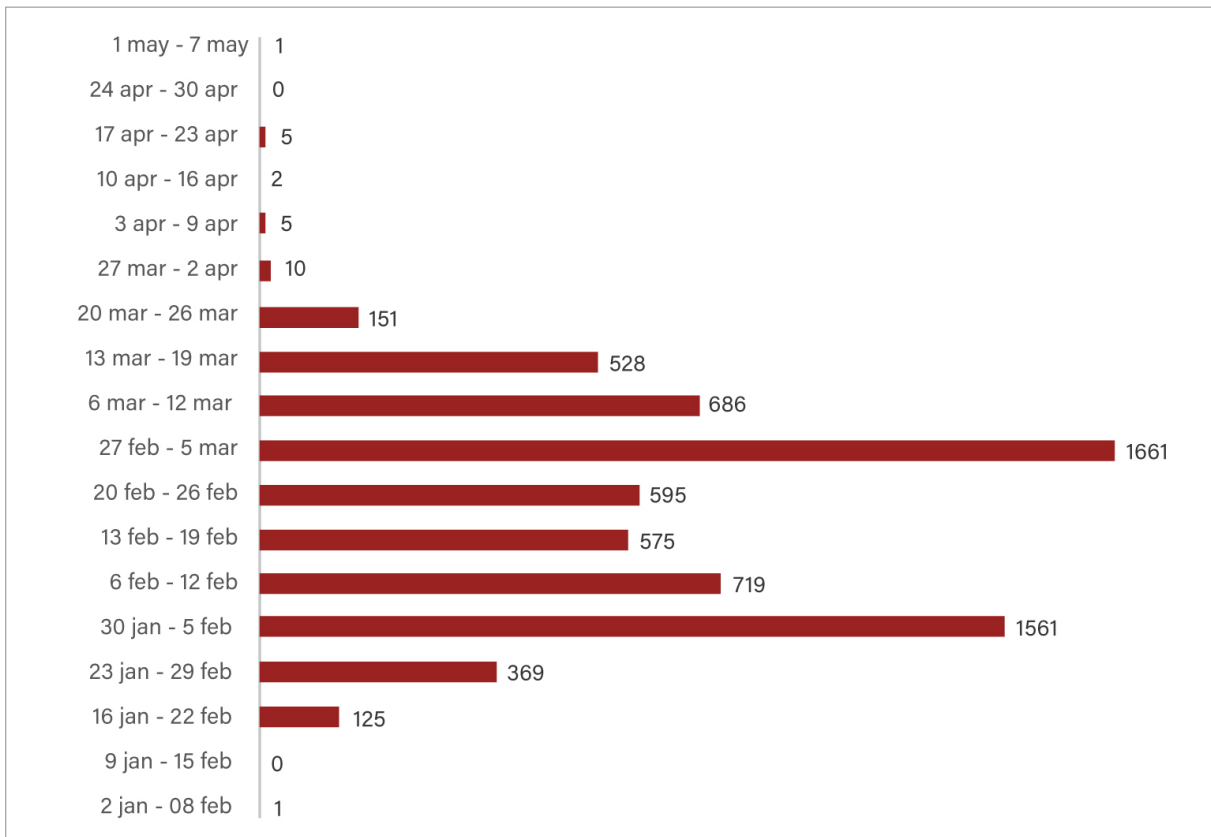


While they were in the opposition, some of the political entities that are now in power rightfully criticized the then-government and were able to articulate the problem of abuse of state resources in almost all its forms. However, after the political change in 2020, the expected progress in combating the abuse of state resources was not achieved. There was no initiative to amend the Law on Financing Political Subjects and Election Campaigns, even though such changes could have been achieved with a simple parliamentary majority.

After the change in government, there was an intensification of politically motivated hiring. The practice popularized by the Democratic Party of Socialists (DPS) with the “Snimak” affair, summarized in the slogan “one employee – four votes,” was continued by the new government as an informal rule. This is particularly evident in the analysis of employment during the election campaigns for the presidential and parliamentary elections in 2023,⁹⁴ where details of the number and pace of employment can be directly linked to the electoral processes.

94 Simonovic, V., Abuse of state resources – Presidential elections in Montenegro 2023, CeMI, Podgorica, 2023, p. 39-40, available at: <https://cemi.org.me/storage/uploads/H445zkl36CZ8ntAwHZIRJPJFVAZveZgRty5uK280.pdf>

Graph 2: The number of employment contracts submitted to the APC during the election campaign period for the 2023 presidential elections.



The data shows that as much as 97.52% of all hiring occurred during the first round of voting, with only 2.48% occurring afterward. It is noteworthy that the two leading candidates who entered the second round—Milo Djukanovic and Jakov Milatovic—came from parties that did not wield power at the state level. Moreover, their parties had significantly less influence even at the local level compared to the parties to which some of the candidates in the first round belonged, especially Andrija Mandic of the New Serb Democracy (NSD) and Aleksa Becic of the Democratic Montenegro. In this regard, the hiring trend suggests that the motive behind many of these hirings was to increase the number of votes for those two candidates.

In the parliamentary elections of 2023, CeMI recorded an increased number of hirings in a short period of time during the election campaign, with an intensified pace two weeks before the second round of presidential elections (parliamentary elections had already been announced) until the week after the parliamentary elections. During this period, the APC received **99.7%** of the total number of employment contracts.⁹⁵

One example of the abuse of state resources which deserves special attention due to the way it occurs is the misuse of one-time financial assistance payments from the budget during elections. Amendments to the Law on Financing Political Subjects and Election Campaigns in 2020, amid the crisis caused by the COVID-19 pandemic, allowed for such payments to be made in an election year, which was not the case before. In the pre-election campaign of 2020, this was done through the Government's third package of measures to mitigate the effects of COVID-19. Activities were recorded where officials used the

⁹⁵ CeMI, Final report - Civic monitoring of the 2023 parliamentary elections, p. 29

Government's economic measures to promote the ruling DPS. Parliament did not play a significant role in overseeing the distribution of social benefits. Members of the ruling majority rejected the discussion on social benefits from the budget reserve. Control mechanisms proposed by non-governmental organizations were not established, and the Government was allowed discretionary control over budget funds, which heightened the perception of possible abuse.⁹⁶

However, in Montenegro, the decision on the pandemic is still in force, despite COVID-19 not being an active problem for two years. The last measures to combat the pandemic were valid from June 30 to August 12, 2022, and the Government of Montenegro's website for COVID response (covidodgovor.me) has been out of service for some time. Without new measures, it becomes challenging to justify the continuation of the pandemic state. Although the World Health Organization declared the end of COVID-19 as a global health crisis in May 2023,⁹⁷ the former director of the Institute of Public Health interpreted this circumstance as something to be distinguished from the end of the pandemic.⁹⁸ Such semantic arguments allow for the maintenance of the pandemic status indefinitely, undermining the prohibition from Article 40 of the Law on Financing Political Subjects and Election Campaigns and enabling the distribution of social benefits in all subsequent electoral cycles.

According to Article 38 of the Law on Financing Political Subjects and Election Campaigns, state and local budgetary spending units, except the SEC and MECs, are prohibited from monthly spending exceeding the average monthly spending in the previous six months from the day of announcement to the day of holding the elections, except in cases of a state of emergency, in accordance with the law. If elections are held in the first half of the year, the monthly spending of budgetary spending units is prohibited from exceeding the amount determined by the monthly expenditure plan established by the Ministry or the local government body at the beginning of the fiscal year.

However, in practice, budget expenditures are often exceeded contrary to the law. For example, during the pre-election campaign for the presidential elections of 2023, this excess for the month of February averaged **15.91%**, i.e., instead of the planned **58,825,363.75 EUR**, **68,184,136.21 EUR** was spent, and for March, the excess averaged **14.91%**.⁹⁹ Some budgetary units, such as the Official Gazette of Montenegro, spent over **300%** more funds than planned.

However, what particularly raises suspicion that budget funds are being spent non-purposefully, i.e., that there is abuse of state resources, is the Government's tendency to declare some expenses secret, without justification. Although it is possible that some of these expenses are justifiably classified as secret because they relate to the National Security Agency and the Ministry of Defense, it is difficult to justify secrecy when it comes to the expenses of the Ministry of Economic Development and Tourism or the Ministry of Finance.¹⁰⁰ Declaring the expenses of the Government and its ministries secret is not a new practice established by the new governing structure. In this case as well, it is a continuity within the practice established by the previous regime.

As a reminder, in 2020, Vijesti reported that the Ministry of Sports made 136 transactions totaling nearly 100,000 euros in June and July 2020. Information obtained by the NGO Network for Affirmation of the Non-Governmental Sector (MANS) from the Ministry of Finance showed that these payments were made in three days from the budget line "other transfers to individuals."¹⁰¹ Another gross violation of this Law

96 <https://www.vijesti.me/vijesti/politika/430160/dps-u-kampanji-i-tokom-korone-iz-pandemije-u-izbore>

97 <https://www.reuters.com/business/healthcare-pharmaceuticals/covid-is-no-longer-global-health-emergency-who-2023-05-05/>

98 <https://www.portalanalitika.me/clanak/bakic-szo-nije-proglasila-kraj-pandemije-nego-vanredne-situacije-ko-ja-je-uedena-zbog-kovida>

99 Simonovic, V., op. cit., p. 30

100 Ibid

101 <https://www.vijesti.me/vijesti/drustvo/463205/ministarstva-sakrila-uplate-pojedincima>

was discovered more than six months after the elections. Vijesti revealed that before the parliamentary and local elections of 2020, the Ministry of Economy spent 280,000 EUR from the budget reserve on 5,100 food packages in Rozaje and Gusinje, which accounts for about 80% of households in these two municipalities.¹⁰² The entire process was completed in a few days, urgently, without publishing a call for public procurement, using the pandemic as an excuse. The process was classified as “internal” secrecy, which, according to Article 12 of the Law on Data Confidentiality,¹⁰³ is used for data whose disclosure could have harmful consequences for the functioning of the body. The official basis for the classification of secrecy was “significance for the security and defense, foreign, monetary, and economic policy of Montenegro.”

102 <https://www.vijesti.me/vijesti/drustvo/546901/ministarstvo-ekonomije-pakete-nosilo-po-kucama-tajna-pomoc-uoci-izbora>

103 Law on Data Confidentiality (“Official Gazette of Montenegro”, no. 14/2008, 76/2009, 41/2010, 40/2011 – amended law, 38/2012, 44/2012, 14/2013, 18/2014, 48/2015, and 74/2020)

7. UČEŠĆE ŽENA

The right of women in Montenegro to vote and to stand for elected office was formally recognized for the first time in 1946 when the first three Montenegrin female MPs were elected out of 107 MPs in the elections held on November 3 of the same year. This marked the beginning of women's presence in the Parliament of the Republic of Montenegro, although their number at that time was only 2.8% percent. However, gender equality was not a subject of discussion and analysis at that time. Today, however, achieving equality between genders, especially in decision-making systems, represents an important issue and challenge for Montenegrin society.

Gender equality was first recognized in the normative framework in 2007 as a constitutional principle, according to which the state of Montenegro is obligated to ensure full gender equality, develop policies of equal opportunities, and proclaim the prohibition and prevention of discrimination based on gender. This is achieved through the establishment of appropriate legislative and institutional frameworks that protect and promote women's rights. In addition to the Constitution, this area is regulated by the **Law on Gender Equality (2007)**, the **Law on the Election of Councilors and Members of Parliament (2014)**, and the **Law on Financing Political Subjects and Election Campaigns (2019)**.

The Law on Gender Equality provides for the application of general and special measures to promote equality in areas of social life where there is inequality in the representation or treatment of women and men. The law makes a distinction between the following three types of special measures that can be taken:

1. Positive measures – which, under equal conditions, give priority to persons of the underrepresented gender or persons who are in an extremely unequal position based on gender until equal representation or established goals for the introduction of these measures are achieved.
2. Incentive measures – which provide special benefits or introduce special incentives to eliminate unequal representation of women or men, or unequal treatment based on gender.
3. Program measures – which involve activities on education or on promoting and establishing gender equality (Law on Gender Equality, Article 16).

The Law on the Election of Councilors and Members of Parliament prescribes that the underrepresented gender on the electoral list be represented by at least 30%, and that among every four candidates in the electoral list, in order of the list, there must be at least one candidate belonging to the underrepresented gender (Article 39a). This provision was introduced into the Law by amendments in 2014. When filling vacant positions on the list, the filling will be done by the next following, except when the mandate of a councilor or member of parliament from the underrepresented gender ceases, in which case the first following candidate on the electoral list from the underrepresented gender will be selected instead (Article 104, paragraph 3).

By amending the Law on Financing Political Subjects and Election Campaigns in December 2019, measures for financing the political work of women's organizations of political parties were introduced for the first time. Namely, in accordance with Article 14 of the Law, budget funds for financing the regular work of women's organizations in political subjects in the Parliament amount to 0.05% of the planned total budget funds (or 0.11% at the local level) for the year for which the budget is adopted. These funds are deposited into special accounts of women's political organizations.

7.1. REPRESENTATION OF WOMEN IN THE LEGISLATIVE AUTHORITY OF MONTENEGRO

In the history of Montenegrin parliamentarism, the Parliament of Montenegro has been chaired by a woman only twice: (1) Vesna Perovic (from 2001 to 2002) and (2) Danijela Djurovic (from April 2022 to July 2023).

Starting from 2014 when the quota of 30% was introduced, the percentage of women has never reached the prescribed norm.

Table 4: The representation of women in the Parliament of Montenegro from 2011 – 2014

YEAR	TOTAL AMOUNT OF MPS	MEN	WOMEN	REPRESENTATION PERCENTAGE
2011	81	70	11	13.6%
2014	81	68	13	16.05%
2015	81	67	14	17.3%
2016	81	67	14	17.3%
2018	81	62	19	23.46%
2020	81	57	24	29.6%
2021 ¹⁰⁴	81	61	20	24.7%
2023	81	61	22	27.16%

In the latest parliamentary elections held in June 2023, the participation of women on electoral lists was marginally higher than in 2020, in terms of percentages. The total number of female candidates on the lists was 365 out of 1,111, or 35.6%, while in 2020, the participation of women was 269 out of 778 candidates, or 34.57%. Only on one electoral list, which did not achieve parliamentary status (YES. WE CAN FOR CIVIL MONTENEGRO!), the percentage of women was higher than 50%. On the majority of electoral lists (10 out of 15), the percentage of women ranged from the legal minimum of 30% to 35%. Of these, on six electoral lists, the number of women corresponded to the legal minimum.¹⁰⁵

Regarding **presidential elections**, since the introduction of multi-partyism in Montenegro, there has not been a female candidate in six presidential electoral processes. For the first time in 2018, a woman, Dr. Draginja Vuksanovic (SDP), ran for president of Montenegro. Dr. Draginja Vuksanovic Stankovic also ran in 2023 when she was the only female candidate among 6 candidates. Throughout her tenure as a member of Parliament and a presidential candidate, Dr. Vuksanovic Stankovic has been subjected to online violence and hate speech on social media and in the comments of online portals.

It is important to note that, despite progress, we still face challenges in achieving full gender equality in the political life of Montenegro. Although the presence of women in parliament and on electoral lists is increasing, there are still barriers that limit their full engagement and contribution to the political process. Issues such as gender-based discrimination, lack of support for female candidates, and stereotypes about the role of women in politics require efforts to create a more inclusive political environment that will enable women to realize their full potential as leaders and decision-makers. In this context, it is

¹⁰⁴ The translation is: "List of male and female MPs from the website of the Parliament of Montenegro, available at: <https://www.skupstina.me/me/poslanice-i-poslanici/lista-poslanica-i-poslanika>".

¹⁰⁵ CeMI, Final report - Civic monitoring of the 2023 parliamentary elections, op. cit., p. 49

important to continuously raise awareness about the importance of gender equality in politics and support initiatives that will ensure equal opportunities for all citizens of Montenegro.

7.2. REPRESENTATION OF WOMEN ON THE LOCAL LEVEL

At the local elections held in 2022, several electoral lists in various municipalities violated the provisions of the Law on the Election of Councilors and MPs, which stipulate that at least 30 percent of candidates of the underrepresented gender must be on the electoral list, and that among every four candidates on the list, there must be at least one candidate of the underrepresented gender.

Table 5: Electoral lists on the local elections of 2022 during which the Article 39a of the Law on Election of Councilors and MPs was violated

MUNICIPALITY	ELECTORAL LIST	TYPE OF VIOLATION
Bar	SOCIALIST PEOPLE PARTY – FUNDAMENTALLY FOR BAR	< 30% less represented gender
	'For the Future of Bar – Maja Vukicevic'	List of candidates
	BS OO Bar for local elections	List of candidates
	True Montenegro	List of candidates
Bijelo Polje	Bosniak Party – CORRECTLY for Bijelo Polje	< 30% less represented gender
Danilovgrad	Democratic Front – For the Future of Danilovgrad	< 30% less represented gender
	GG GI 21 MAY – BRANKO BALETIC	< 30% less represented gender
Kolasin	SNP – Fundamentaly for Kolasin	< 30% less represented gender
	DF 'For the Future of Kolasin'	< 30% less represented gender
	Group of Voters – For Our Kolasin – Dr. Momcilo Vukcevic	< 30% less represented gender
	'Vladimir Martinovic – Let's Go People – Democrats – United MNE'	< 30% less represented gender
	Movement 'Together We Build Kolasin!'	< 30% less represented gender
Plav	Bosniak Party – 'Correctly for Plav'	< 30% less represented gender
	'Europe Now! For Plav'	< 30% less represented gender
	For Our Future – DNP, NSD, True Montenegro	< 30% less represented gender
	SNP – Fundamentaly for Plav	< 30% less represented gender
Pluzine	'Piva Can! Montenegro Can! Dr. Dritan Abazovic'	< 30% less represented gender
	'Real deal, Progress for Pluzine Coaliton/ DPS,SD'	List of candidates
Podgorica	Dr. Dritan Abazovic – Podgorica Can – Civic Movement URA	< 30% less represented gender
Rozaje	'Europe Now! For Rozaje'	< 30% less represented gender
Zabljak	Democratic Front – For the Future of Zabljak	List of candidates

Regarding the representation of women in the local Parliaments, the current situation is:

Table 6: Representation of women in local parliaments

LOCAL PARLIAMENT -MUNICIPALITY-	TOTAL NUMBER OF COUNCILORS	NUMBER OF WOMEN	REPRESENTATION PER- CENTAGE
Podgorica	57	27	47.37%
Zeta	32	10	31.25%
Tuzi	32	10	31.25%
Ulcinj	33	12	36.36%
Bar	37	14	37.84%
Budva	33	18	54.55%
Cetinje	33	12	36.36%
Kotor	33	12	36.36%
Tivat	32	14	43.75%
Herceg Novi	35	14	40%
Danilovgrad	33	11	33.33%
Nikšić	40	15	37.50%
Gusinje	30	10	33.33%
Plav	31	9	29.03%
Andrijevica	31	8	25.81%
Berane	34	12	35.29%
Petnjica	31	5	16.13%
Rožaje	34	6	26.47%
Bijelo Polje	37	13	35.14%
Mojkovac	31	7	22.58%
Kolasin	31	10	32.26%
Pljevlja	34	11	32.35%
Zabljak	30	7	23.33%
Pluzine	30	10	33.33%
Savnik	34	0	26.47%

When it comes to the representation of women in the working bodies of the Parliament, the highest number of women participate in the work of the Committee on Gender Equality (seven out of a total of 12 members), while there are no women in the Committee on Political System, Judiciary, and Administration.

8. PARTICIPATION OF MINORITIES

During the parliamentary elections in 2023, the SEC confirmed four electoral lists that exercised the right to register as minority lists. This right was utilized by two lists representing the Albanian minority community, one list representing the Croatian minority community, and one list representing the Bosniak minority community, even though the latter list received a sufficient number of valid votes to enter the seat allocation process without using affirmative action mechanisms.

The status of minority lists and the method of seat allocation in case of minority representation are quite undefined and vague. In the context of the status of minority lists, electoral legislation should contain clear guidelines to prevent the misuse of affirmative action mechanisms. In earlier chapters, we pointed out legal ambiguities and potential problems in this area when explaining the case of the rejection of the registration of the electoral list of the Socialist Party of Montenegro as the list of the Yugoslav minority community "SNEZANA JONICA - SOCIALISTS OF MONTENEGRO - LET'S LIVE LIKE YUGOSLAVS" for the parliamentary elections in 2020. Additionally, during the parliamentary elections in 2023, the civic movement Casa de Papel submitted documentation for the candidacy of an Italian minority list, explaining to the OSCE/ODIHR observation mission that one of the goals of submitting the minority list was to ridicule the system and affirmative action mechanisms.¹⁰⁶

Regarding seat allocation, the status of the Croatian minority community is the only one precisely regulated, as **Article 94, paragraph 2, item 2 of the Law on the Election of Councilors and Members of Parliament** stipulates that the most successful electoral list of the Croatian minority community gains the right to one mandate, provided it has won at least 0.35% of valid votes. During the parliamentary elections in 2020, neither of the two Croatian minority community lists fulfilled the aforementioned condition of winning 0.35% of valid votes, which was the first case since the first independent appearance of Croatian minority community lists in the elections of 2012 that the Croatian minority community was not represented in the Montenegrin Parliament. To avoid the possibility of a recurrence of such a scenario, the possibility of creating a joint electoral list should be foreseen for the Croatian minority community, as well as for other communities with similar proportional representation in the Montenegrin population. For other minority communities, it is provided that if they exceed the legal threshold of 0.7% (and win less than 3% of valid votes), they enter a joint electoral list of the minority people and the seat allocation process with other lists that have fulfilled the same conditions. In this way, a maximum of three mandates can be allocated, but the law does not regulate the procedure for their distribution among individual parties. Furthermore, if the joint electoral list achieves a result that would result in a greater number of parliamentary seats using the regular seat allocation procedure, the result of the joint electoral list is limited to three mandates, which could lead to a situation where citizens are deprived of representatives in the parliament for whom they voted. During the 2012 elections, three parties representing the Albanian minority community entered a joint electoral list, and although they won one mandate each, only two mandates were awarded in Parliament, despite the fact that there is no clear rule for their distribution. A similar rationale was applied in the parliamentary elections in 2023. The Albanian Forum won two mandates with 1.91% of valid votes, while the Albanian Alliance won one mandate with 1.49%. Apart from the legal inaccuracies in these cases, the situation where two parties enter into a pre-election coalition, one of which is a party of a minority community and the other is not, or where parties represent different minority communities subject to different legal thresholds, is not regulated. So far, there have been no cases of such coalitions, therefore there have been no issues with interpreting their status, but the state of affairs in practice does not exclude the fact that this legal gap could potentially be problematic. Article 94, paragraph 5 of the Law on the Election of

¹⁰⁶ OSCE/ODIHR, Montenegro Final Report, Early Parliamentary Elections 2023, op. cit., p. 24

Councilors and Members of Parliament stipulates that the participation of an electoral list representing a minority community in pre-election coalitions of this type does not entail the abolition of affirmative action mechanisms for other electoral lists of that minority people. In this regard, the ambiguity of this legal norm raises the question of whether this provision prohibits the use of the privileged position of potentially created coalitions in the manner we previously indicated.

Apart from the aforementioned, the fundamental problem of such a legal framework is the fact that it puts representatives of the RE population at a disadvantage compared to communities of similar size. According to the 2011 national census, the RE community accounts for 1.01% of the total population, while Croats account for 0.97%. However, **Article 94, paragraph 2, item 2 of the Law on the Election of Councilors and Members of Parliament** on the reduced threshold of 0.35% explicitly and exclusively applies to lists representing the Croatian minority community. In addition to numerous CeMI recommendations that this norm must be adjusted and that international addresses have been receiving messages that this mechanism should also be extended to members of the Roma community,¹⁰⁷ there still has been no change in the legislation.

Members of the Roma community are systematically excluded from the electoral process in other ways as well. In the sixth report of the Committee of Experts of the European Charter for Regional or Minority Languages¹⁰⁸ from 2023, numerous deficiencies in the use and protection of the Roma language were noted, while according to the current provisions of the **Law on Minority Rights and Freedoms, Article 11, paragraph 2**, Roma cannot exercise the right to use the Roma language on ballot papers and electoral materials because, according to the 2011 census results, they do not meet the criterion of 5% representation in the population of any local self-government unit in Montenegro.¹⁰⁹ In this regard, a change in the legislative framework is necessary, as well as targeted programs to increase the political participation and education of the Roma population on voting rights and the electoral process, especially considering the fact that the Roma population is often targeted in electoral manipulations through vote buying, a practice that undermines legality and trust in the integrity of the electoral process.

107 Third Opinion on Montenegro of the Advisory Committee of the Council of Europe on the Framework Convention for the Protection of National Minorities. <https://rm.coe.int/3rd-op-montenegro-en/168096d737>

108 <https://rm.coe.int/montenegroecrml6-summary-me/1680ac86d2>

109 [https://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje\(1\).pdf](https://www.monstat.org/userfiles/file/popis2011/saopstenje/saopstenje(1).pdf)

9. MEDIA

The Montenegrin media environment is diverse, with a high degree of polarization in reporting, the effects of which are felt in the polarized and selective information habits of the Montenegrin electorate. In terms of ownership structure, most media outlets are privately owned and operate in a limited market environment, making them susceptible to political and corporate interests. In addition to privately-owned media, Montenegro has a national public broadcaster, Radio and Television of Montenegro (RTCG), with three television channels and two radio frequencies, through which it has a legal obligation during electoral actions to ensure impartial and independent reporting on candidates and electoral lists, provide free airtime, and organize electoral debates. However, despite recent changes in the management structure, the politicization of the editorial policy of the public broadcaster remains a serious societal problem. In the context of election campaigns, television channels remain the main source of news and communication channels for political pre-election campaigns; however, digital media are gradually taking precedence, especially among younger populations, while print media already have a less prominent role.

9.1. POLITICIZATION OF THE PUBLIC BROADCASTER

Although there was a change in the management structure of RTCG after the parliamentary elections in 2020, through changes in the composition of the RTCG Council and the appointment of a new general director, Boris Raonic, significant improvements in management have not been achieved. The key problem in this area is the fact that Mr. Boris Raonic was illegally appointed as general director twice. In August 2021, he was first appointed, and following a lawsuit filed by Nikola Markovic against RTCG, the Basic Court issued a decision, and the Higher Court in a final judgment confirmed that the aforementioned appointment constituted a violation of the **Law on the National Public Broadcaster Radio and Television of Montenegro (Article 29, paragraph 1, item 5)** due to a conflict of interest, since Raonic was a public official and a member of the Agency for Electronic Media (AEM) Council until August 13, 2021. Therefore, his appointment cannot be lawful within two years from the cessation of his function in the AEM.¹¹⁰ Ignoring the final judgment of the Higher Court, the RTCG Council re-elected Raonic to the same position in May 2023, which raised concerns about respect for the rule of law not only in Montenegrin public opinion but also in the European Parliament, as expressed in Article 32 of Resolution P9_TA(2023)0369111¹¹¹ adopted by a large majority of 529 votes. In the meantime, RTCG sought a review of the decision of the Higher Court by the Supreme Court of Montenegro, which in its decision of March 4, 2024, rejected the review as unfounded. The Special State Prosecutor's Office of the Special State Prosecutor's Office (SDT) was awaiting the Supreme Court's decision to decide on criminal charges for Raonic's reappointment in May 2023 against Raonic, certain members of the RTCG Council, RTCG's lawyer, and the head of the legal department. Additionally, RTCG's programming schedule has been supplemented with at least controversial and polarizing media content. An illustrative example of this practice is the broadcast of the Saint Sava Academy from Bijelo Polje on the Parliamentary Channel (RTCG 3) on January 28, 2024, which attracted significant public attention. On that occasion, controversial and revisionist messages contrary to the civic concept of Montenegrin society and the public interest of Montenegrin citizens were disseminated.

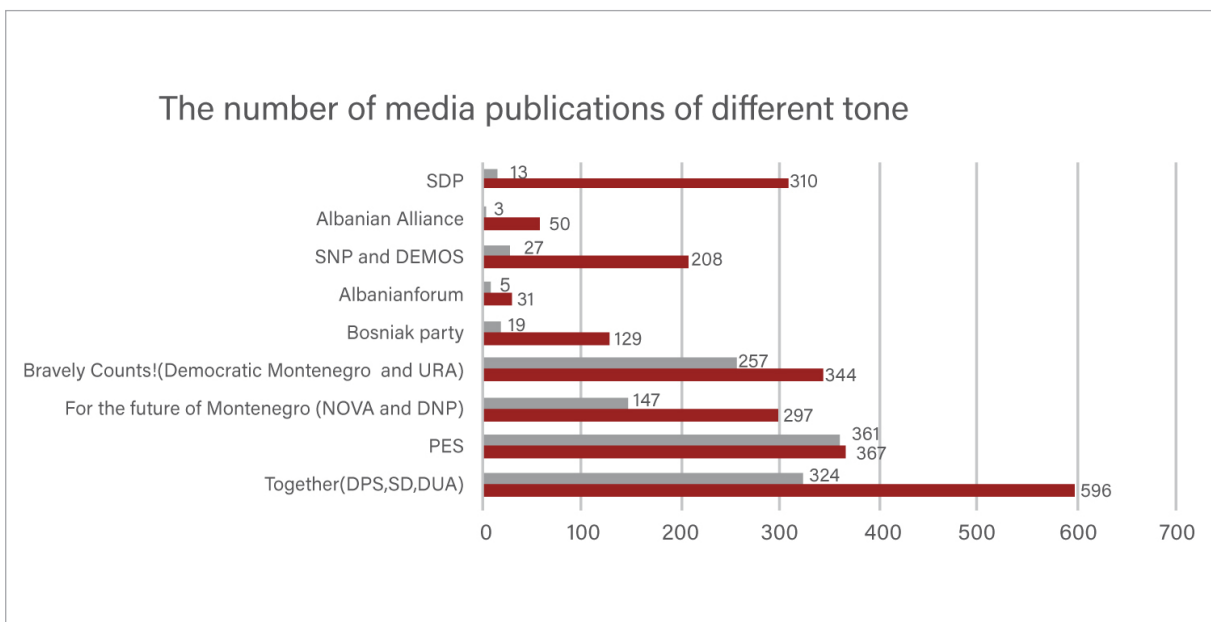
110 According to the opinion of the Agency for Prevention of Corruption (APC), the appointment of Raonic jeopardizes the public interest, considering that Raonic does not meet the requirement of having acquired 10 years of work experience in managerial positions with a high level of professional qualifications, as he graduated from the Faculty of Law in 2018. Work experience with educational qualification VII1 necessary for appointment could only be acquired by him in 2028. More at: <https://www.portalanalitika.me/clanak/ask-doniomisljenje-da-je-savjet-rtcg-ugrozio-javni-interes-raonic-bi-tek-2028-godine-mogao-da-konkurise>

111 https://www.europarl.europa.eu/doceo/document/TA-9-2023-0369_EN.html

9.2. MEDIA SCENE POLARIZATION

In the course of monitoring the parliamentary election campaign in 2023, from May 25th to June 9th, a cumulative total of 3,961 media reports were registered, with the majority being published on websites - 2,830. As an initial step to understand media polarization in Montenegro, one should examine the analysis of the tone of publications, a parameter that assesses the sentiment or perception that an average consumer of information will gain after consuming a particular media report. According to the data collected for this analysis by Arhimed, CeMI coded positive and negative posts¹¹² about the electoral lists participating in the parliamentary elections (**Graph 3**). Based on the analysis, the majority of media posts were related to dominant political structures in Montenegro - (1) the "Together" coalition led by DPS; (2) the Movement Europe Now; (3) the "Bravely Counts" coalition; (4) as well as the "For the Future of Montenegro" coalition. In terms of the tone of posts about these four political groups, the content of the posts was mostly positive, except for the Movement Europe Now, which had an almost equal ratio of negative and positive media content.

Graph 3: The tonality of media publications about parties in Montenegro



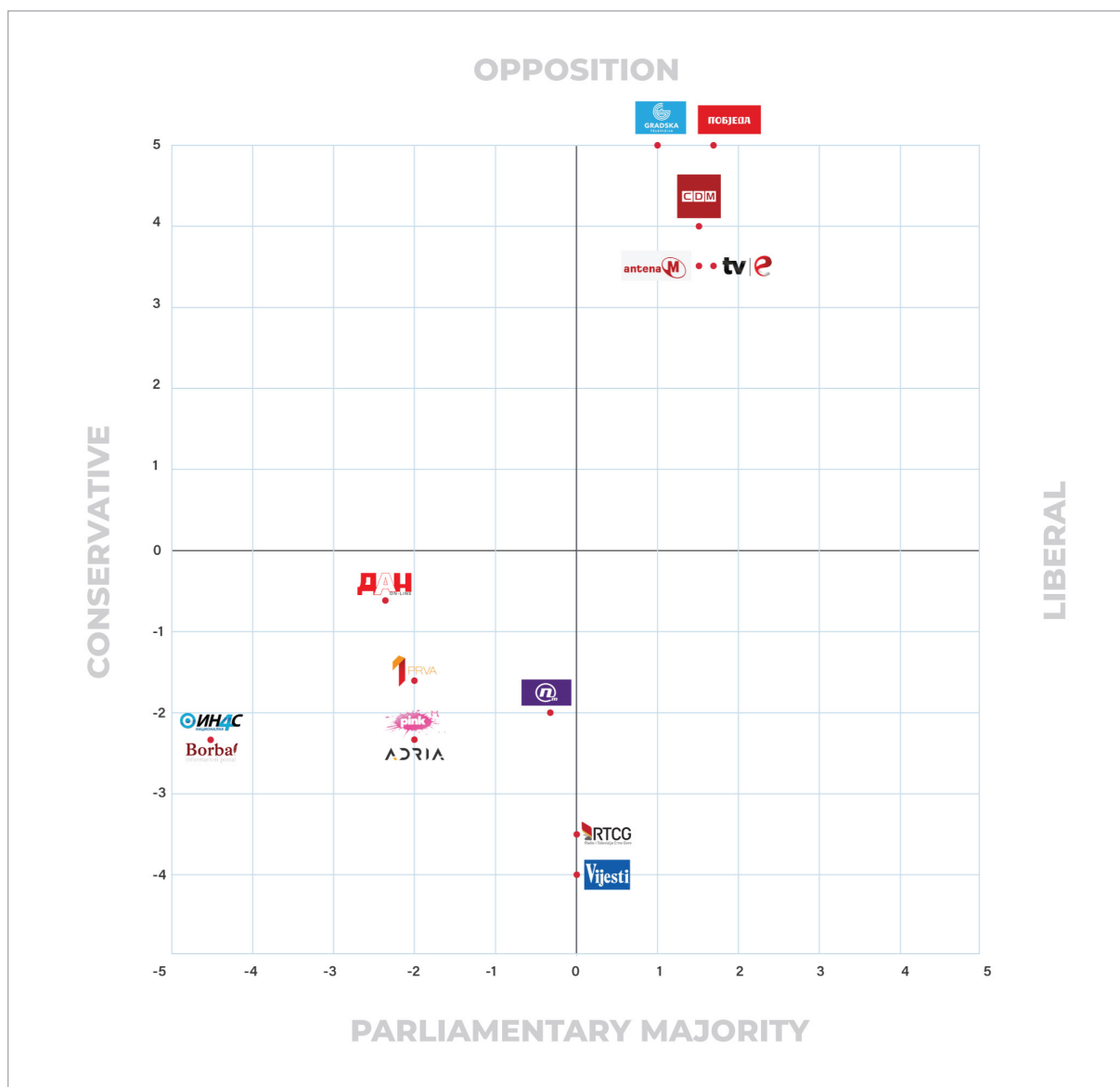
However, empirical data, as well as anecdotal examples, indicate a pronounced polarization of the media scene in Montenegro, suggesting that the tone of posts about specific parties varies depending on whether the information disseminated by the media is valid. This polarization refers to a situation in which the media become increasingly divided along ideological, political, or social lines. In such a context, media outlets often abandon neutrality and become advocates for certain views and interests, introducing a bias into their reporting. As a consequence, the same news can be presented and interpreted in completely different ways to fit into an ideological narrative. All of this ultimately leads to a situation where there is less objective and balanced reporting, with a decline in the quality of information available to the public. In a situation of pronounced polarization, voters are exposed to biased and incomplete information, significantly limiting their ability to make informed decisions on election day. Ultimately, a polarized media space can lead to a general loss of trust in the media and turn voters towards seeking alternative, often completely unreliable and propagandistic sources of information. According to a survey from October 2023, as many as 88.9% of Montenegrin citizens

¹¹² Neutral posts are excluded from the analysis.

to a greater or lesser extent share the view that the media are biased, while Graph 4 below presents a map of the ideological positioning of dominant sources of information in Montenegro, clearly illustrating the division between pro-government and opposition media, with a significant degree of ideological diversity.

The mapping was done based on analyses and evaluations of media experts.

Graph 4: The ideological map of media in Montenegro¹¹³

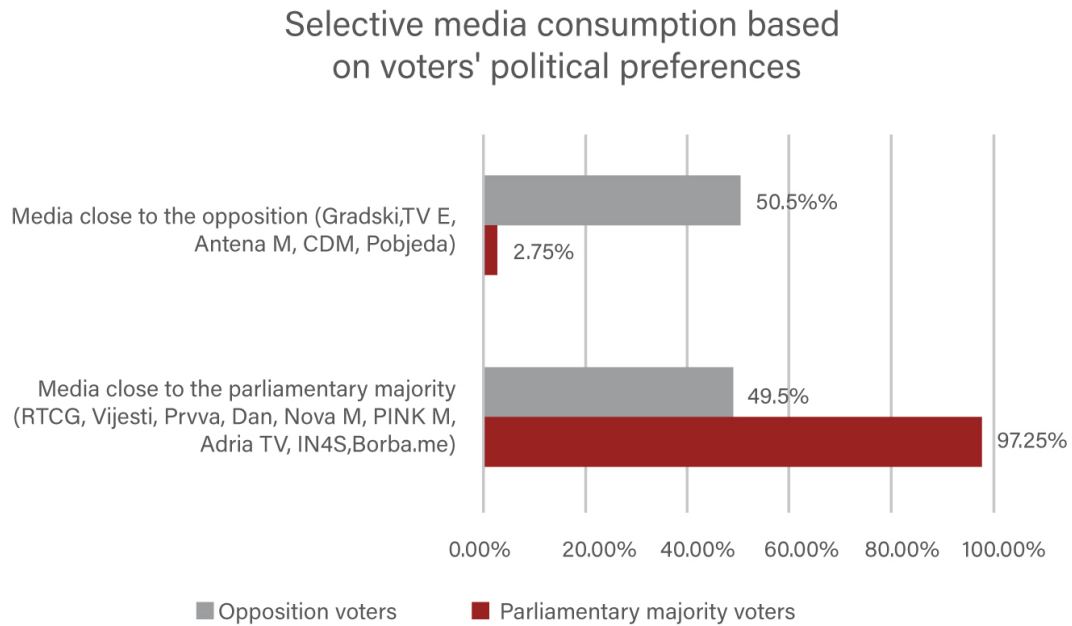


In the context of a polarized media landscape, it is realistic to expect selective exposure to information among the electorate. This is precisely what the findings of CeMI’s research from October 2023 indicate, showing that Montenegrin voters follow and read those media outlets that are on similar or the same political or ideological positions. Among the supporters of the parliamentary majority, as much as 97.25% follow and read some of the media outlets identified by media experts as pro-government, while only 2.75% follow or read opposition media (**Graph 5**). Among supporters of opposition parties, the situation

113 Gilic, T., Research on the interconnection between biased media, social networks, and political polarization in Montenegro. London: University of Westminster, 2023, p. 23

is more balanced: 49.5% follow or read pro-government media, while 50.5% follow or read opposition media. Such a large difference in percentages, especially among supporters of parliamentary majority parties, clearly indicates polarized attitudes both among the public and the media, as this polarization is reflected in citizens' habits when it comes to media usage and consumption.¹¹⁴

Graph 5: Selective media following of the Montenegrin voters¹¹⁵



In support of the expressed selectivity and polarization among the media and the electorate, we would offer another piece of data for consideration (**Table 6**). In this situation, instead of groups of media close to the parliamentary majority or opposition, segments of information are presented regarding which media outlets respondents most frequently follow, as well as their first and second choices when voting in the 2023 parliamentary elections. The analysis shows that even at the level of individual media outlets, we see clear polarization of the electorate, but also significant differences within the “blocks” of media close to the parliamentary majority or opposition. It is also essential to note that based on the available data, it is not possible to answer whether voters follow certain media and therefore vote for certain parties, or if voters of certain parties therefore follow certain media.

114 Ibid, p. 51

115 Ibid, p. 52

Table 7: The media I follow the most and voting

	FIRST CHOICE	SECOND CHOICE
RTCG	DPS (38,7%)	PES (17,1%)
Vijesti	PES (41,6%)	Demokrate i URA (23,8%)
Prva	PES (25,7%)	DPS (22,9%)
Gradska TV	DPS (74,5%)	SDP (7,3%)
Nova M	PES (26,8%)	DPS (26,7%)
Pink M	PES (36,7%)	ZBCG (22,4%)
Adria TV	ZBCG (33,4%)	Demokrate i URA (16,7%)
TV E	DPS (57,1%)	SDP (28,6%)
RTV NK	ZBCG (30,8%)	Demokrate i URA (28,4%)
CDM	DPS (61,7%)	BS (10,1%)
Antena M	DPS (53,8%)	SDP (30,8%)
IN4S	ZBCG (73,7%)	Demokrate i URA (7,7%)
Borba	ZBCG (60%)	PES (20%)
Pobjeda	DPS (56,1%)	PES (12,9%)

9.3. FOREIGN MEDIA INFLUENCE

As previously stated, the limited scope of the advertising market places Montenegrin media in a vulnerable position concerning political and corporate influence. In this regard, it is concerning that out of the five national television stations in Montenegro, only the public broadcaster RTCG is not majority or wholly owned by foreign entities. The most influential commercial television stations, TV Vijesti and Nova M, are majority-owned by the United Media group registered in Luxembourg, directly (TV Vijesti) or indirectly (Nova M) through its subsidiary Direct Media from Serbia, while the remaining two TV stations, TV Prva and Adria TV, are owned by Serbian businessmen Srdjan Milovanovic and Bratislav Stojiljkovic, respectively. A similar situation exists with key daily newspapers and internet portals. The daily newspaper and portal Vijesti are owned by the United Media group (as is TV Vijesti), while Greek businessman Petros Stathis owns Pobjeda (daily newspaper and portal) as well as two influential portals, CDM and Portal Analitika. Among the daily newspapers, only Dan is owned by Montenegrin citizens Slavica Jovanovic and Mladen Milutinovic. Regarding Russian ownership, there are no registered media outlets owned by Russian citizens or legal entities in Montenegro. However, the presence of Russian influence in Montenegro is evident through narratives on certain portals, with experts suggesting that this presence is most pronounced on portals like In4S and Borba.me. According to research conducted by Arhimed for CeMI, reporting on the In4S portal usually has a negative tone when it comes to opposition parties. The structure and extent of foreign ownership of Montenegrin media are facilitated by the lack of legal solutions in Montenegro that address the issue of foreign ownership or prevent its excessive concentration. Consequently, the control of the information environment opens up space for the realization of malign and covert political and economic interests in Montenegro.

Another form of foreign influence is represented by media not registered in Montenegro but accessible either through cable operators (in the case of TV channels) or via the internet. Vulnerability to foreign media influence was particularly evident during the local elections in Niksic in 2021. Serbian media outlets published 4,730 articles about Montenegro during the Niksic elections, with more than a

thousand articles focusing on the elections in Niksic. Some media even introduced special sections exclusively dedicated to the Niksic elections, while TV programs like Happy TV's "Battle for Niksic," advocated for a Greater Serbian ideology and discussed local elections.¹¹⁶ Additional examples of vulnerabilities in the Montenegrin media landscape can be seen in the actions of the two most significant Russian media outlets broadcast outside of Montenegro – Russia Today and Sputnik. Their broadcasting was completely banned in April 2022 as part of Montenegro's alignment with EU foreign policy and sanctions against Russia due to the invasion of Ukraine.

The Ministry of Culture and Media has announced that a new set of media laws will enter parliamentary proceedings in the first half of 2024, aimed at aligning with European standards and addressing the aforementioned issues. However, experts are more than skeptical about the quality and adequacy of the proposed legislative solutions, considering them outdated.¹¹⁷

9.4. MISUSE OF SOCIAL MEDIA

Media polarization is not limited to traditional outlets but increasingly spills over into social media, where, in addition to biased information dissemination, social media platforms are increasingly being used for targeted dissemination of disinformation. During a detailed analysis of Facebook during the pre-election campaign for the 2023 parliamentary elections using the CrowdTangle tool, CeMI did not identify a single Facebook account, page, or group that shares content in a balanced manner. The content on these pages mostly reflects the biased views of the authors, whether original or shared from other media outlets. The importance of understanding and monitoring direct or indirect campaigns on social media can be illustrated by the fact that during the pre-election campaign for the 2023 parliamentary elections, political content garnered a total of 247,300 interactions, with political parties achieving a total of 5.35 million content views. Although the identity of administrators of certain pages cannot be definitively determined, there are indications that some of their activities on social media are part of coordinated online strategies by political actors, given the connections between official political actors and certain Facebook pages expressing views on daily political events.

Furthermore, several coordination channels between internet portals and specific social media pages have been identified. An example of this connection is between the portal 24inform and the Facebook page "Niksic Proud Serbian City," which is useful in demonstrating the pattern of this connection. During the campaign for the 2023 presidential elections, the portal 24inform published information about daily political and pre-election events. However, their activity was completely shut down on June 11, and at the time of writing this analysis, their servers were deactivated and no longer accessible on the internet. On March 17, the portal published an article titled "Miras Dedeic from the so-called CPC: Thanks to Jakov Milatovic, may God keep him alive!" citing an audio recording of a conversation with the Metropolitan of the CPC Mihailo, without information about with whom he was speaking, concluding that "The editorial board of the portal 24Inform.me possesses an audio recording of a conversation with the leader of the so-called CPC Miras Dedeic. If anyone doubts the authenticity of this statement, the audio recording of the conversation will be published." However, the audio recording was never published on the mentioned portal. Instead, it was published the day after on the Facebook page "Niksic Proud Serbian City," and later systematically shared across multiple Facebook groups and pages. Through the CrowdTangle tool, it was determined that the recording was directly published by this Facebook page and was not shared from YouTube or any other online platform. A similar pattern was found in the case of the audio recording of a conversation with the presidential candidate of the SDP, Draginja Vuksanovic Stankovic. Unlike the audio recording of the conversation with Metropolitan CPC Mihailo, which appeared on YouTube on March 18, 2023, the

116 CeMI, Report on Preliminary Findings and Conclusions, 2021, p. 3

117 <https://rtcg.me/vijesti/drustvo/529988/crna-gora-na-korak-od-usvajanja-seta-medijskih-zakona-muric-pred-log-staromodan.html>

recording was published as original content by the Facebook pages “Neprijatni / Unlimited power / Psalm 118” and “Serbs in Montenegro.” The seriousness of this problem can be illustrated by the fact that these “meme” pages had a significant presence on social media in the run-up to the 2023 parliamentary elections: “Do not be part of that crazy movement” had 5,300 followers, “Splacinijada 2022” had 7,710 followers, and “Neprijatni / Unlimited power / Psalm 118” had 2,100 followers.

With a significant number of individuals in Montenegro using Facebook,¹¹⁸ it is concerning that social media platforms are increasingly being abused for political and other purposes such as spreading disinformation and fake news. While part of this problem stems from inadequate legal frameworks and outdated regulations, this issue transcends national borders and requires additional efforts from international organizations and institutions.

Social media have also been directly abused by political actors using paid content and violating election silence. In the context of the second round of the 2023 presidential elections, the election silence¹¹⁹ began on Friday, March 31, and lasted until the closing of polling stations.¹²⁰ However, both presidential candidates exploited loopholes in the legislative framework in this area by using social media for campaigning during the election silence. On Facebook, a total of 14 pieces of content were posted during this period, with 12 coming from the official page of candidate Milo Djukanovic and 2 from the page of candidate Jakov Milatovic. These posts generated a total of 26,375 interactions, of which 20,529 interactions were from Milo Djukanovic’s page (77.8%). This was not an isolated practice, as other parties and candidates participating in the first round of the presidential elections also used social media during the election silence in the second round (27 posts), and all political actors monitored during this electoral process posted 74 posts during the election silence in the first round of the presidential elections.

118 DataReportal data for January 2023 - 75.4% of the population of Montenegro uses social media (472,000 users).

119 An interesting example of violating election silence, which in a technical sense does not fall under the abuse of traditional media or social networks, is the sending of mobilization messages on election day, June 11, 2023, by the coalition “Bravely Counts”, with the following content: “These elections are very important. We’re doing really well. We invite you to come out and vote for number 13. Aleksa and Dritan.”

120 Regulation on the rights and obligations of broadcasters during the campaign for the elections for the President of Montenegro as of April 2, 2023.

10. CONCLUSIONS AND RECOMMENDATIONS

The first part, as outlined, emphasizes the urgency and thoroughness of electoral legislative reform in Montenegro to overcome the longstanding challenges identified in this study. Addressing issues such as irregular voter registration, politicization of electoral institutions, cross-border voter manipulation, and the lack of participation and inclusivity in the political process requires a comprehensive approach and engagement of all relevant stakeholders. Below, we have proposed recommendations to improve the situation in each of the specific areas addressed in the chapters of this study. We believe that their implementation would largely solve the problems of Montenegro's electoral legislation and pave the way for a fairer and more democratic society.

10.1. RECOMMENDATIONS FOR IMPROVING ELECTORAL LEGISLATION

1. The Committee on Comprehensive Electoral Reform should promptly begin work on preparing a new Law on the Election of Councilors and Members of Parliament and work on amendments to the Law on the Election of the President of Montenegro.
2. Concurrently, the Committee on Comprehensive Electoral Reform should work on other laws that are part of the set of electoral laws, primarily the Law on the Financing of Political Subjects and Election Campaigns. While a simple majority is sufficient for amending this law, it is necessary to achieve a broader consensus.
3. When working on new legislative solutions, the Committee should take into account the recommendations of relevant international organizations such as the Venice Commission and the OSCE/ODIHR. The recommendations of the OSCE/ODIHR should not be considered as the exclusive framework for electoral reform. It should be noted that these are minimum requirements, but they often are not sufficient for further democratization of society, thus this framework needs to be significantly expanded. Therefore, it is important for the Committee to consider the recommendations and advice of non-governmental organizations working in this field.
4. Taking into account the efforts of the Government and the Parliament of Montenegro, as well as the realistic chance for Montenegro to become the next member of the European Union by the end of 2028, and with the next elections for Members of the European Parliament in 2029, the first at which Montenegrin citizens would vote, it is necessary within the framework of electoral reform to adopt a Law on the Election of Members of the European Parliament from Montenegro. In the transitional provisions of this Law, it is necessary to stipulate that it will enter into force on the day of Montenegro's accession to the European Union.
5. With the new Law on the Election of Councilors and MPs, it is necessary to envisage the possibility of the presence of an additional electronic device at the polling station, for the purpose of using the software for processing electoral materials that the OSCE Mission donated to the State Election Commission in 2019.

10.2. RECOMMENDATIONS FOR CHANGING THE ELECTORAL SYSTEM

6. Maintain the list proportional electoral system with Montenegro as a single multi-member electoral unit.
7. Instead of closed blocked lists, enable the use of closed unblocked lists.
8. Allow voters the option of mandatory use of up to a maximum of 5 preferential votes within the same candidate (party) list.
9. A ballot paper on which not at least one preferential vote is used shall be considered invalid.
10. Voters would not be able to vote for the first candidate on the list; instead, the candidate would be elected if the list wins at least one mandate.
11. The method of distributing mandates between lists remains unchanged from the current legislative

solution. First, mandates are distributed between candidate or party lists, and then mandates are allocated to MPs based on gender quotas and the number of received preferential votes.

12. In addition to the first candidate on the list, other candidates would be ranked according to the number of received preferential votes. Such a list, formed on the basis of received preferential votes, would be used to elect candidates with the highest number of preferential votes in the number equal to the number of mandates the candidate list won, reduced by the list holder.
13. Gender quotas take precedence over the number of received preferential votes. Thus, the order of candidates formed on the basis of received preferential votes would be adjusted by applying gender quotas to ensure that elected MPs respects the gender quota.
14. The same would apply to the replacement of MPs whose mandate has expired. They would be replaced by a member of the same gender.
15. Ensure equality for the Roma community in the same way it is ensured for the Croatian minority community in the current legal text.
16. The rule regarding the aggregation of results of minority lists of the same minority community, if none has met the applicable legal condition, should also apply to members of the Croatian or Roma community. If none of the minority lists individually surpasses 0.35%, their results will be combined, and if they collectively have more than 0.35%, they will receive a mandate. The mandate will be awarded to the minority list that individually had the most votes.
17. It is necessary to ensure consistent implementation of the legal obligation to respect provisions regarding the representation of women on electoral lists, and introduce an obligation for there to be at least 40% candidates of the underrepresented gender on the electoral list. Among every three candidates on the list (first three places, second three places, and so on until the end of the list), there must be at least one candidate of the underrepresented gender.
18. It is necessary to prescribe by law that local elections in all municipalities be held on the same day.
19. The mandate of members of municipal assembly elected in extraordinary local elections should not last longer than the regular mandate of the initially elected municipal assembly, in order to maintain the principle that general local elections are held simultaneously in all municipalities of Montenegro.

10.3. RECOMMENDATIONS FOR IMPROVING THE WORK AND FUNCTIONING OF ELECTORAL ADMINISTRATION BODIES:

20. Complete professionalization and depoliticization of the composition of the State Election Commission, consisting of 3-5 professionals (in the field of law), and professionalization and depoliticization of the position of the President of the Municipal Election Commission (MEC), who would be selected for this position based on legally established criteria through a public competition by the State Election Commission. Other members would be appointed by political parties according to a model similar to the current one.
21. The Parliament of Montenegro should strictly adhere to legally defined criteria when appointing a member of the State Election Commission from representatives of civil society, non-governmental sector, and universities. The circumstances of appointing candidates who do not meet legal requirements should not be repeated.
22. Continuous training programs for members of the State Election Commission, MECs, and polling boards on conducting electoral processes should be organized even in periods between electoral processes, through practical workshops that will cover lessons learned from each electoral process, thereby influencing the improvement of the actions of all levels of electoral administration in Montenegro.
23. To avoid the possibility of blocking the electoral process at the local level, it is necessary to prescribe that the State Election Commission can take over jurisdiction from MECs in local elections in precisely defined cases.
24. It is necessary to improve conditions at polling stations for persons with disabilities (addressing obstacles or designating alternative polling stations) to prevent voting outside the polling station.
25. Adequate funds need to be provided to the State Election Commission for the modernization of computer infrastructure.

10.3.1. RECOMMENDATIONS FOR IMPROVING THE WORK OF THE STATE ELECTION COMMISSION:

26. The State Election Commission of Montenegro, in the process of confirming presidential candidacies, should respect the Constitution of Montenegro and the legally defined criteria and procedure according to which this process is conducted. The decision not to confirm a candidacy of one candidate during this electoral cycle represents a dangerous precedent and an example of political decision-making in the State Election Commission, which required a reaction from the Constitutional Court regarding the possible violation of passive electoral rights.
27. It is necessary to fully implement Article 18 of the new Rules of Procedure of the State Election Commission and provide live online broadcasting of the State Election Commission sessions.

10.3.2. RECOMMENDATIONS FOR IMPROVING THE WORK OF MECS AND POLLING BOARDS:

28. Depoliticize the position of the President of the MEC.
29. Precisely and unambiguously regulate the election of MEC and polling board members so that it does not depend on political upheavals and decisions of the MEC or State Election Commission.
30. Amend the Law on the Election of Councilors and MPs to regulate all aspects of the work of polling boards in detail by law.
31. Wearing accreditation is not an obligation in the Rules of Procedure of polling boards or in the Manual for training polling boards. Thus to reduce the space for abuse by unauthorized persons, it is necessary to introduce this obligation in the sublegal acts of the State Election Commission.
32. Emphasize to polling boards the importance of working in full composition to avoid situations where a polling board operates with four members instead of five, as envisaged by the Law on the Election of Councilors and MPs.
33. Influence uniformity of polling board practices regarding treatment of individuals whom the electronic identification device does not recognize.

10.4. RECOMMENDATIONS FOR IMPROVING THE CANDIDATE REGISTRATION PROCESS:

34. Reduce the number of signatures required to confirm presidential candidacies and electoral lists, while introducing mandatory verification of signature authenticity by notaries.
35. Abolish the prohibition that one citizen can support only one support list for both presidential candidates and electoral lists.
36. Pay special attention to verifying the authenticity of signatures to prevent abuse.
37. Consider the possibility of introducing into the Criminal Code of Montenegro the criminal offense of abuse of support signatures in the field of criminal offenses against electoral rights, to further combat this practice.
38. Introduce a limitation on the price of signature authenticity verification to avoid it being a limiting factor for presidential candidacies.
39. Prosecutors and courts should process reports of violations of electoral rights and abuse of support signatures more quickly and efficiently than was the case in previous electoral processes.
40. It is necessary to establish a practice of proactive action by the Constitutional Court in cases where, during the electoral process, electoral rights of candidates or potential candidates for the President of Montenegro are clearly violated by political decisions in election administration bodies, especially regarding decisions made by the State Election Commission that affect the passive electoral right of a candidate for President of Montenegro. The Constitutional Court should protect the integrity of the electoral process from political decision-making in election administration bodies, especially regarding decisions made by the State Election Commission, on which the passive electoral right of

a candidate for President of Montenegro depends.

41. Through amendments to the Law on the Election of Councilors and MPs, enable independent candidates, individuals, to participate independently in elections.
42. Define a precise procedure in the law for how a list is registered as a minority list, and based on that, it gains the right to minority representation.
43. Ensure equality for the RE community, which does not have the right to a “privileged mandate” unlike members of other minority communities with a similar share of the total population.

10.5. RECOMMENDATIONS FOR IMPROVING VOTER REGISTRATION:

44. Strengthen legislation to explicitly prohibit and punish practices of voter manipulation, including double registration and voting in multiple countries.
45. To limit “voter transportation” within the country, introduce a provision that if a voter changes residence, this fact will be recorded in the local electoral register of the municipality where their new residence is 12 months later, without limiting other rights arising from the change of residence. Until the end of the transitional period, the voter could still exercise the right to vote in the municipality where they had residence before the change.
46. Stricter control of border crossings for the purpose of identification and verification of the residency requirement, in order to increase the transparency of the voter register.
47. Introduction of strict penal policy in case of untimely deregistration of residence.
48. Conduct periodic field checks of citizens’ residences, which would contribute to suppressing violations of the residency requirement. All procedures need to be harmonized with the Law on Administrative Procedure.
49. Define two categories of voters: 1) Category of active voters - voters who meet all three conditions prescribed for exercising the right to vote and 2) inactive voters - those without valid identification documents.
50. Encourage citizens to obtain biometric ID cards by providing incentives for a certain period for their issuance and conducting a media campaign on the topic. Provide free issuance of ID cards to citizens who replace their existing ID card with an electronic one within a specified period (e.g., three months).
51. Inform citizens that they will not be able to vote in elections with old ID cards but only with a valid biometric (electronic) ID card and passport. Until the issuance of a valid document, provided that other conditions are met, the voter will be classified as an inactive voter (those without a biometric document - ID card or passport).
52. Improve the AFIS system by introducing a module for deduplication of photo identities, which would prevent voting by individuals with multiple documents with the same photograph but different other information.
53. Establish a reliable electronic connection between the electronic voter identification device and the central voter register during election day to ensure the full functionality of this system and theoretically prevent multiple voting by individuals with the same identification document.
54. Upgrade the existing voter identification system and introduce voter identification through fingerprint readers or using the chip of the electronic (biometric) ID card instead as a machine-readable record on the back of the ID card. Software support for managing data obtained by reading data from the voter’s ID card chip that voted at polling stations should be provided. The aggregated data obtained in this way can be used for scientific and professional purposes, and procedures for their use should be defined.

10.5.1. RECOMMENDATIONS FOR IMPROVING DATA EXCHANGE WITH OTHER COUNTRIES:

55. Networking of databases with data from other countries to register citizens who have residency in another country but have not deregistered from Montenegro, with a special emphasis on countries

bordering Montenegro. This would reduce the number of voters who are illegally on the voter list by violating the residency requirement.

56. Strengthen cooperation among countries for data exchange on voter registration and identification of potential double registrations.
57. Establish mechanisms for real-time data exchange to promptly detect and resolve cases of double registration.
58. Explore the use of advanced technological solutions and implementation of modern tools for data exchange and analysis for effective recognition and resolution of irregularities.
59. Encourage cooperation between ministries of the interior and election administration bodies throughout the Western Balkans region to jointly address challenges related to double/multiple voter registrations.

10.6. RECOMMENDATIONS FOR PREVENTING ABUSE OF STATE RESOURCES:

60. To prevent potential manipulations and abuses of social benefits during elections, the Ministry of Health should officially declare the end of the COVID-19 pandemic and revoke the decision that maintained the state of the pandemic, considering that the current data no longer supports maintaining such a status.
61. The Government should implement clear measures that guarantee open and accountable distribution of social benefits, regardless of whether it is an election period or not. During elections, a similar multi-party ad hoc committee should be formed, including members of the civil sector, to ensure that social benefits are not abused.
62. The Government should be more transparent regarding expenses, especially during the election period. The frequency of classifying expenses as "confidential" during electoral cycles should be reduced by implementing rules that clearly specify conditions that allow the Government to classify an expense as confidential. When an expense is classified as confidential, a detailed justification for it should be provided.
63. The Parliament should ensure accountability in case of incorrect classification of expenses as confidential by introducing punitive measures for erroneously classified information in the Law on Classified Information.
64. The Parliament should enhance its oversight of government spending from the budget reserve, especially during election periods, by establishing an ad hoc parliamentary committee that ensures equal representation of the ruling majority, opposition, and members of the civil sector.
65. Amendments to the Law on Financing Political Entities and Election Campaigns should prohibit employment during the election campaign period. From the moment elections are called until their completion, new hirings, whether temporary or permanent, in all state organs, state administration bodies, local self-government units, local administration bodies, public enterprises, public institutions, or state funds should be prohibited. Similarly, any changes in job classification or restructuring within these bodies should be prohibited during this period. Exceptions to this rule can only be made in specific, extraordinary situations important for the proper functioning of these bodies. In such cases, temporary employment or contracts may be allowed, but only if they are in line with pre-established plans specified in the job classification and job description document.
66. Expand Article 44 of the Law on Financing Political Entities and Election Campaigns to include companies in majority or partial state ownership or ownership of local self-government. This would provide comprehensive protection against potential abuses in employment practices during election periods.
67. Clearly define official campaigning. Considering how this type of abuse of state resources typically manifests in Montenegro, it should explicitly state that public officials must not undertake visits to state organs, state administration bodies, local self-government units, local administration bodies, public enterprises, public institutions, and state funds, as well as business entities established by or majority/partially owned by the state or local self-government, during the election campaign.
68. Introduce stricter penalties to make them an effective deterrent. Similarly, penalties for non-compliance with the requests of the APC should carry serious sanctions, which could include dismissal

and temporary prohibition from holding public office.

69. The APC should adopt new tactics for monitoring abuses of state resources adapted to the online environment and should work on enhancing capacity for collecting evidence of misuse of state resources using new technologies.

10.7. RECOMMENDATIONS FOR IMPROVING WOMEN'S REPRESENTATION

70. Adopt a provision that requires electoral lists to consist of 40% candidates of the underrepresented gender. Additionally, among every three candidates on the list in order of placement (first three positions, second three positions, and so on until the end of the list), there must be at least one candidate of the underrepresented gender.
71. Municipal election commissions should protect the integrity of the electoral process by establishing and declaring electoral lists in accordance with the Law on the Election of Councilors and MPs and predefined procedures, and by excluding from the electoral process all electoral lists that do not meet the formal legal requirements for participation in the elections.
72. Ensure consistent implementation of the legal obligation to respect provisions regarding the representation of women on electoral lists and reject electoral lists that do not comply with the legally prescribed number and arrangement of women on the list.

10.8. RECOMMENDATIONS FOR INCREASING MINORITY PARTICIPATION

73. Promote and expand affirmative action policies for national minority communities, especially Roma, by amending the Law on the Election of Members of Parliament and Councilors to ensure equal treatment in electoral legislation and through further development of the normative framework.
74. Ensure equality for the Roma population, who do not have the right to a "privileged mandate" unlike members of other minority communities with a similar share of the total population, either by setting an electoral threshold of 0.35% for the distribution of mandates or by ensuring a reserved mandate.
75. Enable members of the Roma population to have election materials in their language to enable them to fully exercise their voting rights.
76. Invest additional funds to implement activities aimed at educating and empowering members of the Roma population in combating vote-buying practices and create mechanisms to prevent political pressure on the Roma population during the electoral process.
77. Introduce precise procedures in the Law on the Election of Councilors and MPs for how a list is registered as a minority list and thereby gains rights to minority representation.
78. The rule regarding the aggregation of results of minority lists of the same minority community, if none has met the applicable legal condition, should also apply to members of the Croatian or Roma community. If none of the minority lists individually surpasses 0.35%, their results will be combined, and if they collectively have more than 0.35%, they will receive a mandate. The mandate will be awarded to the minority list that individually had the most votes.
79. More systematic and efficient implementation of recommendations from the Ombudsman institution. Increased role of the Human Rights and Freedoms Committee of the Parliament of Montenegro to have a more significant impact on improving the political participation of minorities.

10.9. RECOMMENDATIONS FOR IMPROVING THE MEDIA SPACE

80. The legal framework for media should be improved to ensure equal and fair treatment of all electoral subjects.
81. Depoliticize the Public Service.
82. Enable mechanisms for the implementation of legally binding court decisions.
83. Act more efficiently and effectively on criminal complaints for illegal actions in the process of appointing the Director-General of the Public Service.
84. Protection from ownership concentration: To reduce the potential foreign influence that may be

- contrary to Montenegro's interests, laws preventing excessive foreign ownership of media should be enacted, thereby preventing monopolies and ensuring pluralism of opinions.
85. Regulation of foreign ownership should be in line with international standards, imposing restrictions on the maximum share of foreign ownership in domestic media, also considering Montenegro's accession to the EU, and aligning these rules with EU standards.
 86. Transparency regarding foreign ownership should be regulated. Transparency in the ownership structure of media can help reduce the risk of foreign covert political or economic interests.
 87. Portals functioning as media but not registered accordingly should be subject to legal sanctions.
 88. Strengthen the position of the Agency for Electronic Media in dealing with media that broadcast content but are not registered in Montenegro.
 89. Amend the Law on Financing Political Entities and Election Campaigns to regulate the use of social media during campaigns.
 90. Amend the Law on the Election of Councilors and MPs to regulate behavior and use of social media during the election silence period.
 91. The Government of Montenegro's communication plan, especially crisis communication, should be supplemented to prevent the spread of misinformation, incorrect information, and hate speech in sensitive situations, e.g. the COVID pandemic and elections.
 92. Work on the affirmation and empowerment of partnerships between the government, civil society, and technology companies for joint monitoring and regulation of the online space in the context of elections.
 93. Media should be supported through education on disinformation campaigns, especially during elections, as well as in establishing cross-sectoral cooperation with civil society organizations in the fight against disinformation campaigns on the internet.
 94. Adoption of a National Strategy to Combat Hybrid Threats, which will contain provisions regarding disinformation, information operations, and coordinated inauthentic behavior.
 95. Media should be impartial mediators in reporting on election campaigns, ensuring that all political actors are represented equally in reporting.
 96. The APC should consider introducing the obligation for political parties to submit invoices for paid content on Facebook, as well as a listing from their Ads Manager showing an overview of all advertisements and the amount of money spent on boosting or sponsoring Facebook posts for political campaign purposes.
 97. Political entities, as well as their leaders, should respect pre-election silence on social media platforms.

10.10. RECOMMENDATIONS FOR IMPROVING OBSERVER RIGHTS

98. The State Election Commission should respect the rights of election observers and return to the practice that existed in previous electoral cycles by providing accredited observers access to the signatures of support for presidential candidates or electoral lists.
99. Although the State Election Commission made the correct decision to allow non-governmental organizations to register new observers in the second round of presidential elections, this issue needs to be precisely defined in the Law on the Election of the President of Montenegro to prevent a similar situation in the future with the interruption of good practice, as was the case with access to signatures of support.
100. The Law on the Election of Councilors and MPs should prescribe the condition of adulthood for authorized representatives of domestic non-governmental organizations registered to monitor elections to harmonize the law with regulations protecting the best interests of the child.

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ABOUT CEMI:

The Center for Monitoring and Research (CeMI) is a non-governmental organization founded in March 2000, with the main objective of providing infrastructure and expert support for continuous monitoring of the entire transition process in Montenegro. Through its long-standing and consistent work, CeMI has contributed to changing the social and political conditions in which it emerged, and accordingly expanded the scope of its activities towards legislative initiatives, public opinion research, combating corruption, and respecting human rights and freedoms.

The change in state status and progress in the process of European integration have positively influenced the development of civil society in Montenegro, providing it with a completely new framework for work. In this context, CeMI moves away from the actions of a classic non-governmental organization and becomes closer to the concept of a research center for the creation and advocacy of public policy proposals.

Since 2000, CeMI has continuously implemented civic election monitoring. CeMI has monitored all national elections since 2001, except for the presidential elections held in 2013. The aim of civic election monitoring is to assess the electoral process in line with best practices and methodologies used by all reputable election monitoring organizations, while simultaneously changing the long-standing situation in the country regarding low voter confidence in elections, as well as the questionable legitimacy and legality of the previous electoral process.

To prevent electoral irregularities, since 2001 CeMI has been conducting parallel vote tabulation (PVT), based on which we provide quick assessments of election results. For example, in the 2016 elections, the average deviation of CeMI's final estimates from the official election results in terms of the percentages won by electoral lists was 0.04%, with no deviation in terms of seat distribution. The average deviation in CeMI's estimates compared to the official results in presidential elections was 0.06%. Estimates are now being published live through CeMI's website, through national TV stations that have direct access to CeMI's PVT software, and now also through the Fair elections application.

CeMI is a signatory to the Declaration of Global Principles for Impartial Election Observation and Monitoring by Civil Society Organizations, signed by all reputable domestic election monitoring organizations.

