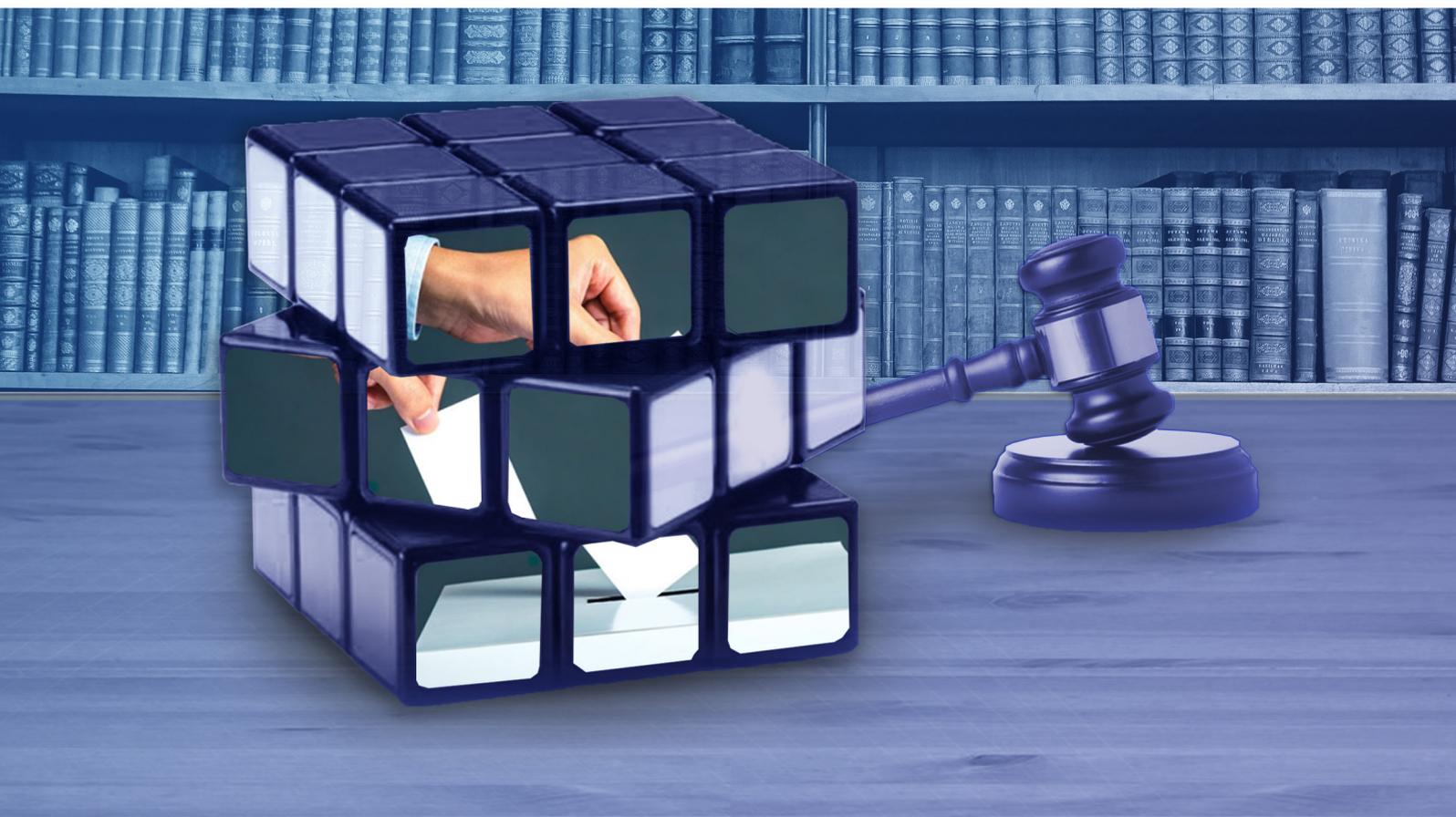




REFORM OF THE ELECTORAL LEGISLATION IN MONTENEGRO

Recommendations for improvement





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Podgorica, 2019.

Reform of the Electoral Legislation in Montenegro – Recommendations for improvement

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Vlada Crne Gore
Ministarstvo javne uprave

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I INTRODUCTION

Since its establishment in 2000, CeMI has been pointing out the need to reform the electoral framework. Unfortunately, Montenegrin legislators have never approached this issue with necessary care. Amendments to the electoral regulations took place on ad hoc basis, non-transparently as part of political negotiations caused by the then-current political crisis.

Montenegro is entering the final phase of EU integration process, with the country's electoral process being qualified as problematic. It is, therefore, no surprise that the EU considers free and fair elections to be one of the priorities for further progress in the accession process.

Public distrust towards the electoral process and the institutions involved is alarmingly high. Only 40.3% of respondents have confidence in the work of institutions responsible for conducting elections. Although this result is better than a year prior when only 35.4% of respondents had confidence in the election process, this data is still very disappointing. This is further confirmed by the citizens' views on the previous parliamentary elections. According to the surveys, 42.9% of respondents reputed the 2016 parliamentary elections as fair and free, compared to 33.5% of respondents who gave a negative answer, which is almost at the same level from the previous year. The fact that there is no majority who believes that the elections were fair (every third respondent assessed the previous elections as unfair) is a serious alarm and reminder that much needs to be done in order to restore confidence in the electoral process.

The boycott of parliament by several political parties has damaged citizens' trust in institutions and blocked electoral legislation reform. Parliament's boycott does not have the support of citizens and is supported by only 19.9% of respondents. The reform of the electoral framework is an imperative which should not be degraded to 'political commerce', but should be comprehensive and inclusive, as suggested by both the OSCE/ODIHR key recommendations and Montenegrin election monitoring organisations.

CeMI advocates for reform to include amendments of the electoral system. Although citizens do not have significant knowledge about electoral systems, over half of the respondents (i.e. 52%) think that voters should have the right to vote both for the party and the candidate. This choice is the closest to a mixed electoral system that combines proportional and majority methods. Even though CeMI emphasizes that the best solution for Montenegro would be to introduce a mixed proportional membership system similar to ones adopted by Germany and New Zealand, where the proportional method serves as a correction of the disproportionality created by the majority method, a major step forward would be the introduction of open party lists where the voter could cast at least three candidates within the same list within one list. Lack of personalization of the electoral system would still block further democratization of Montenegrin society.

At CeMI, we believe that electoral reform should also tackle the issue of selection of candidates for parliamentary positions, which should be just as democratic as the election

of party leadership. More than half of the respondents said it was necessary to legally bind parties to keep records of their members (party electorate), to introduce procedures for choosing party leadership directly by party members, and to introduce procedures for the democratic nomination of candidates for representatives. According to 62.8% of respondents, the party leadership should be elected in elections that could be attended by interested citizens (in theory known as open party elections), which is a big increase in regard to 2016 data, when 45.1% of respondents had the same attitude.

CeMI is committed to further professionalizing and de-politicizing the State Election Commission, municipal election commissions, and polling stations. The poll shows that 65.5% of respondents believe that the State Election Commission should consist of a combination of political party representatives and independent experts, dominated by experts. In the opinion of 74.9% of the respondents, the polling station should be composed of representatives of political parties and local administration officials combined.

This study summarizes the findings obtained not only through this project, but also by monitoring the last three electoral cycles from 2016 to 2018. CeMI's team believes that this study contributes significantly to the further process of electoral reform. The structure of the study follows the structure of the CeMI election monitoring reports that our organization publishes once the monitoring has been carried out. Recommendations at the end of the study follow the structure of the study.

II LEGAL FRAMEWORK AND ELECTORAL SYSTEM

2.1 Legal framework

The Constitution of Montenegro and the Law on Election of Councillors and Representatives represent the basic legal regulations governing the manner of exercising the right to vote and the procedure for organizing elections at all levels in Montenegro. The Constitution of Montenegro, in Article 45, stipulates that a citizen of Montenegro who has reached the age of 18 and has at least a two-year residence in Montenegro has the right to vote and to stand for election. According to the Constitution, the electoral right is exercised in elections. The Law on the Elections of Councillors and Representatives regulates the manner and procedure of election of councillors in parliaments of municipalities, city municipalities, the Capital and Historical Capital, and the members of the Parliament of Montenegro; the organisation, composition and powers of authorities administering elections; the establishing of voting results and allocation of seats; the protection of right to vote and other issues of importance for organisation and carrying out of elections.

Following the last amendments to the Law on the Election of Councilors and Representatives, and especially the amendments in 2014, several major changes were introduced to Montenegrin electoral legislation. This is primarily regarding the introduction of a voter identification device, different methods of “positive discrimination” by minority parties, and stronger protection of gender quotas. In addition to the Constitution and the Law on the Election of Councilors and Representatives, a set of laws in the field of electoral law also includes the Law on Financing of Political Parties and Election Campaigns; Voting List Law and Political Parties Act. The laws that are also important are those in the field of broadcasting – Electronic Media Law and Law on National Public Broadcaster of Montenegro, as well as the Law on Registration of Residence and Temporary Residence.

2.2 Electoral system

Montenegro uses a proportional representation party-list system. The candidate lists are closed and blocked without the possibility of preferential voting. Montenegro represents one constituency, in which 81 mandates are distributed, that is, 81 MPs of the unicameral parliament are elected. All registered parties, coalitions or citizen groups have the right to nominate their candidates for the electoral list. There must be at least 2/3 (54) representatives on the electoral list and at most 81, same number as number of members of parliament, except for groups of citizens or political parties representing a minority people or a minority national community, who are required to nominate a minimum of 1/3 (27) of the total number of candidates selected. The allocation of mandates to political parties is done with d’Hondt formula, with an application of legal election thresholds. Only those lists that exceed the

intended electoral legal criteria are included in the mandate allocation process. The electoral list must receive a minimum of 3% of valid votes, equal to the legal electoral threshold in Montenegro, in order to participate in the distribution of mandates.

2.2.1 Representation of women

Full suffrage for women was introduced in Montenegro in 1946. However, women in Montenegro voted on the first multiparty election after 1990, since the system in Montenegro before that period was a one-party system, unfree and non-democratic.

At the present time, according to the Law on the Election of Councilors and Representatives, candidate lists were required to include at least 30 % of candidates of the less represented gender as well as at least 1 candidate among each 4 on the list from this gender.¹ When filling in the vacancies on the list, the filling is made by the first following, except when the term of office ends with the councilor or the representative from the less represented gender, the first next candidate on the election list will be selected from the less-represented gender.²

When it comes to compliance with these provisions in practice, it is important to mention that in addition to obligations, there was a certain number of electoral lists which did not comply with the prescribed provisions pertaining female representation in the list during the local elections in Podgorica, nine municipalities (Bar, Bijelo Polje, Danilovgrad, Kolasin, Plav, Pljevlja, Podgorica, Rozaje, Savnik and Zabljak) and Golubovci municipality held on May 27, 2018. Specifically, SDP and SPP (in Rozaje), SPP, Albanian Alternative, BS and DF-SNP (in Plav), Albanians for Bar (in Bar) failed to comply with provision about the number of women on the list. On the other hand, the lists DF-SNP (Žabljak) and Složno za Rožaje (Rožaje) did not respect the provision on the placement of women on the list.³

The data in Tables No. 1 and 2 indicate the level of representation of women in municipal assemblies, comparing the last two election cycles at the municipal level. Certainly, women's participation in local parliaments declines significantly as we move from the south-north of Montenegro. In addition, the highest percentage of female members is in the capital Podgorica (40.98%), Bar (35.14%) and Kotor (32.26%), while the lowest in the municipalities of Bijelo Polje (24.32%), Danilovgrad and Ulcinj (24.24%). A similar situation is observed when considering decisive positions in local self-government units, since the vast majority of mayors are men, like their deputies.

According to statistics, following the progress of women's political participation, there is an increase in the percentage of women in local parliaments after the 2014 and 2018 elections. Actually, while the representation of women in Montenegrin local parliaments after the 2014 local elections was 27.46% (see Table 1), the total representation of women in local parliaments following the last 2018 elections was 29.97% (see Table 2), i.e. increased by 2.51% over a three year period.

1. The Law on Election of Councilors and Representatives, Article 39a.

2. The Law on Election of Councilors and Representatives, Article 104.

3. Domestic Observation of Local Elections – Montenegro 2018, Centre for Monitoring and Research, Podgorica, 2018, pg. 16

Table 1: Representation of women and men after the local elections in 2018

Municipality	Total number of councilors	Men	Women	Percentage of men	Percentage of women
Podgorica	59	38	21	64,41%	35,59%
Bar	37	27	10	72,97%	27,03%
Berane	35	24	11	68,57%	31,43%
Bijelo Polje	38	29	9	76,32%	23,68%
Danilovgrad	33	22	11	66,67%	33,33%
Kolašin	31	20	11	64,52%	35,48%
Plav	31	24	7	77,42%	22,58%
Pljevlja	35	25	10	71,43%	28,57%
Rožaje	34	26	8	76,47%	23,53%
Ulcinj	33	30	3	90,91%	9,09%
Žabljak	31	23	8	74,19%	25,81%
Totall	397	288	109	72,54%	27,46%

Table 2: Representation of women and men after local elections in 2018

Opština	Ukupan broj odbornika	Muškarci	Žene	Procenat muškaraca	Procenat žena
Podgorica	61	36	25	59,02%	40,98%
Bar	37	24	13	64,86%	35,14%
Berane	35	24	11	68,57%	31,43%
Bijelo Polje	37	28	9	75,68%	24,32%
Danilovgrad	33	25	8	75,76%	24,24%
Kolašin	31	21	10	67,74%	32,26%
Plav	31	23	8	74,19%	25,81%
Pljevlja	35	25	10	71,43%	28,57%
Rožaje	33	24	9	72,73%	26,47%
Ulcinj	33	25	8	75,76%	24,24%
Žabljak	31	23	8	74,19%	25,81%
Ukupno	397	278	119	70,03%	29,97%

If we recall the 2016 parliamentary elections, we will see that none of the 17 lists were led by a woman. Only three parties (Democrats, HGI, and Positive) had a woman on the list on the second place. Alternative Montenegro and Party of Serbian Radicals, parties that did not win parliamentary status, had a woman candidate on the list on the third place. The other 12 parties, for the first time, had a female candidate on fourth place, behind three men's names.⁴

4. Domestic Observation of Local Elections – Montenegro 2018, Centre for Monitoring and Research, Podgorica, 2018, pg. 28

According to this, it is clear that, despite the existence of obligations, much more work is needed in order to ensure consistent enforcement of the obligation and compliance with the provisions concerning the representation of women in the electoral lists. Also, it is necessary to ensure that election lists which do not respect the statutory number and placement of women on the list are restricted and not tolerated.

When it comes to the percentage of women in the Montenegrin Parliament, prior to the 2016 parliamentary elections, it was 17.28%, and Montenegro was ranked last in the region. After the 2016 parliamentary elections and the implementation of the new electoral legislation, change was reflected through higher number of women in the Montenegrin Parliament. Actually, after the elections, the Montenegrin Parliament got a total of 19 female MPs, which represented an increase of 6.18% over the previous convocation, or a total of 23.46%. This increase at the same time, it implied a significant approximation to the world average female within representative bodies, amounting to 23.9% in 2017.⁵

Table 3: Number of MP's in Montenegro Parliament by gender 2015. i 2018

Year	Total number of MP's	Men	Women	Percentage of men	Percentage of women
2015	81	67	14	82,72%	17,28%
2018	81	62	19	76,54%	23,46%

When it comes to the presidential elections, from the introduction of multiparty system in Montenegro and the total six presidential election processes, by the time of the 2018 presidential election, there were no woman candidates. The first woman candidate was Draginja Vuksanović in the last presidential election held in 2018.

When it comes to electoral institutions, the State Election Commission and a certain number of municipal election commissions have an unacceptably low number of women. For example, there are only two woman members among the 17 members of the State Election Commission and deputy of the recent permanent composition. In the municipal election commissions, women, as members or deputies, are mostly represented in percentage over 30%. The average representation of women in municipal election commissions is 35.09%. However, in the MEC Žabljak, MEC Rožaje, MEC Petnjica and MEC Ulcinj the percentage of women is less than 30 %.⁶

5. World Bank, Proportion of seats held by women in national parliaments, vidjeti više na: <https://data.worldbank.org/indicator/SG.GEN.PARL.ZS>

6. More on: Domestic Observation of Local Elections – Montenegro 2018, Centre for Monitoring and Research, Podgorica, 2018, pg. 17

2.2.2 Representation of national minorities

The issue of legal standardization and practical implementation of the rights of national minorities is one of the key criteria for assessing the degree of democratization of society. The essence of the protection of persons belonging to national minorities is non-discrimination, equality as well as defining a set of principles that guarantee the preservation of their national, religious, cultural and linguistic identity. The Law on Minority Rights and Freedoms defines the minority as any group of citizens of Montenegro, numerically smaller than the prevailing population, which has common ethnic, religious or linguistic characteristics, which has historically been associated with Montenegro as well as motivated to express and preserve national, ethnic, cultural, linguistic and religious identity. Montenegro is a very heterogeneous, multinational and multicultural country. According to the 2011 census on the structure of the population, in relation to the national or ethnic affiliation, Montenegrins account for 44.98%, Serbs 28.73%, Bosnians 8.65%, Albanians 4.9%, Muslims 3.31%, Croats 0.97%, 3.31%, Roma 1.1%, Croats 0.97%, etc.

The law protects acquired rights for members of minorities. In addition to the rights provided for generally accepted international rules and ratified international treaties, the Law ensures full enjoyment of minority rights, on an equal basis, thereby securing full equality of minorities in relation to other citizens. According to the provisions of the Law, minorities and their members have the right to found institutions, societies, associations and non-governmental organizations, organizations in all areas of social life, and in their legal funding, in accordance with its capabilities, Montenegro also participates. The law allows to minority members to independently and freely declare their belonging to a certain minority group and to freely decide on their personal and family names as well as their descendants. They have the right to register names in registers and personal documents in their own language and alphabet.

In addition to the right to represent their interests, minorities also have the right to participate in the exercise of power. Representation of minorities, especially in the electoral legislation and the election process is an important factor influencing Montenegro's position in the international community. The Constitution of Montenegro guaranteed their right to representation in the Parliament of Montenegro and assemblies of local self-government units in which they constitute a significant proportion of the population, according to the principle of affirmative action, as well as the right to proportional representation in public services, government, and local self-government bodies. And the Law on Minority Rights and Freedoms also guarantees the proportional representation of persons belonging to minorities in public services, state and local institutions, which is taken care of by human resources bodies in cooperation with minority councils. Also, statutes, decisions and other legal acts issued by local authorities self-governments must be written and published in the official language and alphabet of the minority.

According to the Law on the Election of Councilors and Deputies, a legal electoral threshold, which implies that the electoral list must receive a minimum of 3% of valid votes in order to participate in the distribution mandate, is differently defined for minority lists. Actually, the right of the positive discrimination as defined in Article 94, paragraph 2, item 1 of the Law on

Election of Councilors and Deputies use the electoral rolls of members of a particular -same minority, or a particular - same national community minority, with up to 15% of the total population in the electoral unit, according to data from the last census on the structure of the population. The legal electoral threshold, in the case of minority parties, exists as a condition for winning the mandate in the case of Croatian minority, that is, the result of the minority list would be included in the summary list of that minority person, or minority communities (in practice with the Albanian minority). In fact, in the case of the Croatian minority the law provides that in the case that none of the electoral lists for election of deputies of the Croatian people in Montenegro do exceed the threshold of 3%, the most successful of them, with at least 0.35% of the valid votes, shall be entitled to one parliamentary term. However, if one of them gets at least 0.7% of the vote, he/she loses that right, and its status is equalized with other minority peoples.

When it comes to other minorities, there is no such mechanism, but the Croatian minority is the exception. In fact, for other minorities, it is foreseen that if more than one list exceeds the legal threshold of 0.7% and their individual results are treated as unique a consolidated list which then enters the process of distributing the mandate with the other lists that have qualified. The effect of the summation is limited by the recognition of the mandate a summation that provides for winning up to three terms.

At the local level, that is, for the election of a minority list councilor, in case that none of them fulfill the requirement of a 3% legal election threshold, they acquire the right to participate in the mandate distribution individually, with the number of valid votes received (there will not be electoral threshold for them. They will be directly qualified for the mandate distribution process using d'Hondt's formula. The Law, in Article 95, paragraph 3, regulates how mandates should be distributed among parties within the aggregate list of minority people. Distribution is made in a similar way as the distribution of the seats of other candidate lists.

In the 2012 parliamentary elections, there were four lists of Albanian national minorities, one Croatian national minority, and one Bosnian national minority. Unlike in 2012, the 2016 parliamentary elections five minority electoral lists participated, three representing the Albanian national minority, two representing the Bosnian national minority and one representing Croatian national minority. Apart from a decrease in the number of minority electoral lists in 2016 in comparison with 2012, we can also see a decline of the number of minority representatives in the final distribution of mandates in Parliament. Minority lists won six seats in 2012 (Bosnian three, Albanian parties two and Croat one), while on the last parliamentary elections in 2016, the minority lists received a total of four mandates: Bosnian two, Albanian one and Croatian one. Thus the percentage of representation minority lists in the Parliament today amounts to 4.93%, while after the 2012 ones amounted to 7.40%

In the 2018 local elections held in the Capital, nine municipalities (Bar, Bijelo Polje, Danilovgrad, Kolasin, Plav, Pljevlja, Podgorica, Rozaje, Savnik and Zabljak) and the city municipality of Golubovci, participated three lists entitled to use by the privileged minority status guaranteed by the Law on the Election of Councilors and Deputies (if they win over 0.7% of the total number of votes). These were: Albanians for Bar, Bosnian Party in Bar and Albanian Alternative in Podgorica. Albanian electoral list for Bar won 0.8% and the Bosnian Party in the same municipality 3.9%. Albanian Alternative in Podgorica won 1.8%, receiving a mandate by using privileged minority status party. The Bosnian party in Bar passed the election threshold and won the mandate. Albanians for Bar, although they were not subject to the legal threshold, they did not win the mandate due to the insufficient number of votes.

2.3 Key shortcomings of the legal framework and the electoral system

2.3.1 Mutual inconsistencies in electoral legislation

The improvement of the electoral legislation was mainly implemented through the amendment and, as a general rule, without prior public discussion. Due to this approach, there are noticeable cases of conflict of norms. Therefore, it is necessary to adopt a new legislation. The adoption will follow public and expert discussions to avoid possible illogicalities and mistakes.

2.3.2 Non-compliance of election legislation with OSCE/ODIHR recommendations, The Venice Commission and the local NGO's that oversee elections

The OSCE ODIHR has produced a number of recommendations through its numerous missions. Montenegrin legislators have incorporated most of them into legal texts. However, due to the non-participation of the opposition, it was not possible to formally adopt them. It should be emphasized that some recommendations are not an adequate solution for Montenegro, such as the abolition of voting rights for residents, especially when it comes to local elections. On the other hand, the recommendation to allow individual nominations is extremely important, but difficult to enforce. Montenegrin lawmakers need to integrate the largest possible number of OSCE ODIHR recommendations, but also to look at them critically. The OSCE ODIHR's recommendations should not be seen as an exclusive framework for electoral reform. Also, it should be taken into consideration that these are minimum requirements, but they are often not sufficient for further democratization of society. Therefore, this framework needs to be significantly expanded.

2.3.3 Depersonalization of the electoral system and lack of accountability of MPs towards voters

The role of citizens in the election of their representatives is at a very low level. In Montenegrin history, citizens have rarely had the opportunity to vote for a particular individual. Currently, they can only do so during the election of the President of Montenegro. They used to be able to do that in elections for the mayor and in elections for members of

the presidency of Montenegro in 1990. Unfortunately, they were never able to vote directly for parliamentary candidates. In a blocked list system, without the ability to democratically affect the order of candidates in the party list, all power is concentrated in the hands of the central party management.

It is interesting to note that the research on attitudes of candidates running for the parliament (Comparative Candidate Study for Montenegro) indicates that the ideas of introducing preferential voting, among MPs are quite strong. Citizens only partially recognize this problem so only 46% of them are for introducing preferential voting (46%), this percentage increases when it comes to party members (49%) and is extremely high when it comes to candidates for the parliamentary functions (79%). But there is much higher percentage of those citizens who believe “that the voter needs to vote for both the party and the candidates on the list so that it changes the order of the candidates on the list, “ which is essentially the same question as to whether you are in favor of preferential voting. Obviously that a greater degree of knowledge/recognition of the electoral system, and also a greater degree of personal interest lead to greater support for the introduction of preferential voting. However, on the other hand, citizens clearly indicate that the current electoral system mostly reflects the opinion of party leaders (69.9%), and the least the opinion of citizens (37.1%).

It can be seen that the lack of influence of voters on the election of candidates affects that the representatives don't feel responsibility to those who voted for their lists, but to those who made them candidates. It is therefore not surprising that widespread practice is that some MPs do not even take the floor during plenary debates and, despite that, they are being re-elected. Because of this electoral system, we have weak representatives, who dominantly do not bother about their work, aware that it is not crucial for re-election.

2.3.4 Absence of democratic intra-party candidate selection procedures for deputies, councilors and other electoral positions

The electoral system in Montenegro is characterized by the party leadership that always controlled the process of who would be a candidate for the parliament. In the first 14 years (1990 - 2004) the party's central leadership: “(1) controlled the selection process of candidates for deputies, (2) determining, after the election, who from the list shall become a deputy, regardless of order, and (3) indirectly deprived of the parliamentary term by expulsion from the party. This is the way in which the party leadership completely controlled the process of selecting candidates, elections but also the actions of MPs, including some form of a recall. In this period representative simply had no weight. The party oligarchies were in full control of the political process. Under such a “mighty hand” it is no wonder that the only alternative for those who disagreed with party leadership was to leave the party or create new ones. However, if the MP left the party he could not detain mandate.” (Vujović, FPN and CeMI, Belgrade, 2018: 57). In the meantime, though, the mandate became free but emerged as a widespread phenomenon “shifting political gears”. Nearly one-fifth of MPs in the 2012-2016 term changed their party gears. Some parties have been left without MPs, even though they

officially had parliamentary status. What is still a feature is that party leadership controls the selection of candidates and eventual disagreements with party leadership almost always end up with excluding/leaving out of the party. Parties do not have the capacity to democratically resolve their internal problems. The same leads to the lack of institutionalization of the party system in Montenegro, especially when it comes to parties belonging to the opposition.

It's necessary to include political mechanisms in order to strengthen democratic procedures in political parties. There is a need to regulate by law the procedures for (1) the selection of candidates for parliamentary functions, (2) decision making within parties and (3) direct election of the party management.

A survey on citizens' attitudes has shown that this idea has significantly larger support of citizens (61-64.7%) than candidates for parliamentary positions who gave their opinions through the survey on MP candidates' attitude. (CCS). However, they are at a surprisingly high level (27.2 - 38.2%), while the one of party members is even higher, i.e. extremely high (69-73%). Obviously, party members want a greater degree of democracy, because they see a chance for themselves. Within the parties there is a stratification, parties are not sufficiently inclusive when talking about the involvement of the members themselves in the process of decision making and selection of management.

2.3.5 The ineffective provision for better representation of women in the Parliament of Montenegro and municipal Assemblies

The introduction of birth certificates did not give a satisfactory result. The existing solution is that the less represented gender on the electoral list shall be represented by at least 30% and on the electoral list there must be at least one candidate among the four candidates in the order in the list, a member of the less represented gender.⁷ It should be replaced by the provision that among the electoral lists every three which would significantly improve the participation of women drastically.

7. The Law on Election of Councillors and Representatives, Article 39a.

2.3.6 Problemi u sprovođenju odredbi o pozitivnoj diskriminaciji manjinskih naroda

2.3.6.1 Allocation of mandates to minority lists of Croatians

The Centre for Monitoring and Research considers that the outlined provisions of the Law on Election of the Councilors and Deputies, which regulates the distribution of seats, are fairly imprecise and incomplete, especially when it comes to minority representation. Namely, such solutions query the meaning and purpose of positive discrimination against minority peoples. In the case of Croatian minority, if the list achieves a score better than 0.7% it loses the right to cross if it does 0.35% of the valid vote is cast, in which case d'Hont's formula is applied with no near-realistic chance of getting a term. In the case of minority lists, the result of the summary list is limited to three terms, and there is a possibility that the summary list deserves a considerably larger number of mandates, but to be deprived of that right, that is, the citizens who voted for them be deprived of their representatives.

2.3.6.2 Discrimination against Roma, Egyptian and Ashkali members in the process of mandate distribution among minorities

In addition, the Centre of Monitoring and Research has repeatedly pointed out and warned that the electoral legal framework puts the Roma, Egyptians and Ashkali population in disadvantage, in relation to a community of similar size. Although Roma, according to the national census, constitute 1.01% of total population, and Croats 0.97%; the later use the positive discrimination mechanism for adequate representation in parliament of minority communities, while this is not the case with Roma.

2.3.6.3 Criteria for determining the status of a minority electoral list

Also, the question of the criteria for determining the minority status of the electoral list, which is privileged and therefore open to abuse. The law provides for guidance for the determinants of minority people in the election application or the name of the electoral list.

The lack of regularization of the status and participation of minority lists is also reflected in the case of coalitions between minority parties and parties that are not, that is, two or

more minority parties, but belonging to minorities with different rights (Croatia is entitled to a specific type of a reserved term if it meets the legal threshold of 0.35%, others have the right to add up fulfilling the 0.7% threshold, or the legal threshold of 3% for other parties). Such possible causes are not regulated by law. In practice, no occurrences have occurred of such status-mixed coalitions, and not even a problem in interpreting their status. Legally it is only regulated by Article 94, paragraph 5 that if the minority lists are in coalition with another party, which do not use the right to the summary list, i.e. to the minimum legal census of 0.35% for the lists of the Croatian minority community, is not excluded by other electoral candidates list of that minority people or minority national community the right referred to in paragraph 2 of Article 94. The question remains whether this provision prohibits the use of a privileged position possibly for the coalitions thus created. The marked norm is confusing and as there was no opportunity for its interpretation it is unclear how it would be applied.

III ELECTORAL ADMINISTRATION

The term electoral administration covers the actors, rules, and procedures for organizing and conducting elections. [1]

The composition and jurisdiction of the electoral administration body are governed by the Law on the Election of Councilors and Deputies. The election administration is organized into three levels: the State Election Commission; 23 municipal election commissions and polling boards. In the last presidential election held in 2018, there were 1,214 polling boards. The work and decision making of the members of the part of municipal and State election commissions are dominated by members affiliated to certain political party, and all decisions must be made by a majority of members at each level of electoral administration, including authorized representatives of political entities, with equal voting rights.

3.1 State Election Commission

The highest body of electoral administration is the State Election Commission (SEC). The SEC consists of 11 members: the president, the secretary, nine permanent members, and one authorized representative of each of the candidates of the electoral list, with the same rights and obligations, but whose term of office runs from the date of appointment by the confirmed electoral list to the date of publication of final election results. All members, with the exception of the President and representatives of the civil sector, are entitled to a deputy, and each member must be a citizen of Montenegro with passive voting right and must have a law degree.

The SEC is a permanent body comprised of the president and ten permanent members as well as representatives of the candidates of the electoral list (one for each candidate). The President is appointed by the Parliament upon a proposal of the working body in charge of the elections, following the public contest. Four permanent members of the SEC are appointed on the proposal of a parliamentary majority. Another four members (the secretary being one of them), are appointed on the proposal of the parliamentary opposition. One permanent member is a representative of either a political party, or a person submitting the electoral list for authentic representation of members of a minority group or national minority community which has received the highest number of votes in the previous elections, and its deputy should be a member of another minority group or national minority community. Another permanent member of the SEC is a representative of civil society, NGO sector and university, with necessary expertise in electoral law matters. This member is appointed by the Parliament, at the proposal of one of the bodies responsible

for elections and appointment after the previously conducted public contest. Apart from them, each electoral list has the right to a representative in the extended composition of the SEC. If there is only one electoral list in the Parliament, which constitutes a parliamentary majority, and one opposition electoral list, all four permanent members of the SEC will be appointed on the proposal of that electoral list.

According to Article 32 of the Law on Election of Councillors and Deputies, the SEC has the following competencies: 1) to take care of the lawful conduct of elections and unique application of the provisions of the law; 2) to monitor the implementation and give opinions regarding the application of the law; 3) to coordinate the work of municipal election commissions and provide instructions regarding the application of the law and supervise their work; 4) establishes uniformed standards for election material; 5) prescribes the forms for conducting electoral actions prescribed by the law; 6) prescribes the manner of declaring election lists; 7) determines the manner in which the election material is handled and stored; 8) assesses whether the election lists for MPs have been compiled and submitted in accordance with the law; 9) passes a decision declaring election lists for deputies; 10) makes public the number of voters as a whole, by municipalities and by polling stations; 11) determines the election results for the deputies, as well as the number of votes for each electoral list, and determines the number of seats that belongs to each electoral list for the election of deputies; 12) publicly announces the total election results for MPs for each polling station in Montenegro; 13) submits to the Parliament the election results report for the election of deputies and filling of vacant seats; 14) issues a certificate to the elected deputy; 15) submits the information on elections for deputies to the bodies responsible for the collection and analysis of statistical data, 15a) adopts Rules of Procedure; 16) performs other tasks prescribed by the law.

The SEC will assume the competencies of the Municipal Election Commission (MEC) in the event that the latter does not fulfill its obligations with respect to the election of deputies.

The President and the Secretary of the SEC perform their duties professionally. The Decision on the earnings and other rights of the President and the Secretary of the SEC is adopted by the Committee of the Parliament responsible for administrative matters.

Requirements for the functioning of the SEC and its Service are provided by the Parliament of Montenegro.

3.2 Municipal Election Commissions

Another level of electoral administration follows the territorial organization of Montenegro, so that each municipality, including Golubovci, has its own municipal election commission.

The MEC consists of the President and four permanent members and one authorized representative of each of the electoral list applicants. The President is nominated by the political party that received the highest number of parliamentary seats in previous elections. Two members of the MEC are appointed on the proposal of the parliamentary opposition, one of them performs the duties of the Secretary, while the two are elected on the proposal of the ruling majority. The voting committee consists of the president and four members. Their obligations are determined by draw before voting. According to Article 27 of the Law on Election of Councilors and Deputies, the MEC has the following competencies: 1) takes

care of the lawful conduct of elections; 2) organizes technical preparations for conducting the elections; 3) determine polling stations for election of councillors and deputies; 4) forms voting committees and appoints the President and members of the voting committees for election of councillors and deputies and organizes their education (training) on work procedures of the electoral committee; 5) determines the number of ballots for individual polling stations, certifies them and together with a certified excerpt from the electoral lists, submit said ballots to the polling station committees for a record; 6) evaluates whether the election lists for the election of councilors have been drawn up and submitted in accordance with the law; 7) approves and promulgates election lists for election of councillors; 8) publicly announces the number of voters in the municipality and polling stations; 9) determines the results of the election of the councillor as well as the number of votes for each electoral list and determines the number of seats that belongs to each electoral list for election of councillors; 10) issues a certificate to the elected councilor; 11) determines the overall results of ballots for the election of deputies in their territory and at each polling station and shall submit it a report to the State Election Commission; 12) publicly announces the results for the election of a councilor; 13) submits a report to the municipal assembly on the results of the election of councilors and on the filling of the vacancies of council seats; 14) submits information on elections for councilors to the bodies responsible for collection and processing of statistics.

Requirements for the functioning of the MEC are provided by the municipal assembly.

3.3 Precincts Election Commission (PECs)

The PEC is comprised of the president and four permanent members, and one representative of each of the electoral list applicants. Each political party represented in the respective assembly has a number of chairpersons of the PEC commensurate with proportionality of the representation of councillors in the municipal assembly. By drawing lots, the MEC determines the polling location where some of the political parties would suggest the representative for the president of the PEC. Two members of the permanent composition of the polling station committee are appointed based on the proposal of the political party or the coalition with the majority in the relevant municipal assembly. The permanent composition of the PEC committee is obligated to appoint one representative of two opposition political parties in the relevant assembly, that won the largest number of seats in the previous elections, or the highest number of votes if the number of seats was the same. If there's only one opposition political party in the corresponding municipal assembly, two representatives of that party will be appointed to the PEC committee. The PEC committee is appointed for each polling station no later than 10 days before the election day.

The PEC directly implements the organization of the voting at the polling station. They also keep the order at the polling station during the voting of the other party. The duties of the committee are determined by drawing lots before the start of the voting. In addition, each electoral list is eligible for a representative or presidential candidate in the extended composition, depending on the type of the election being conducted. The polling board consists of the president and four permanent members and one authorized representative of each electoral lists. Four polling board members are appointed by the PEC members among themselves.

3.4 Problems in the functioning of the electoral administration

3.4.1 State Election Commission and Municipal Election Commissions

3.4.1.1 Political bias in work and decision making

Except for the president of the SEC and the CSO representatives, as a rule, election administration members choose as representatives of political parties, which leads to significant party affiliation influence to decision-making in electoral bodies. This applies to every level of electoral administration. This type of bias in the electoral administration is the basis for contesting the legitimacy of the elections. Therefore, it is necessary to reduce the politicization noticeable in the decision making process of these bodies, as indicated by the reports of both domestic and international election observation organizations.

A. The 2016 case of the provisional and final parliamentary election results decision

The above mentioned politicization can be seen in the SEC's decision on provisional and final results of the 2016 parliamentary elections. Aside from the decision-making process, it was also evident in the everyday functioning of the SEC, that it was lead by partisan interests. In the case of deciding on the provisional election results, permanent members and authorized representatives ignored the requisite to respect the institutional and legal framework for the sake of legality of the electoral process, and they mainly voted in line of the party interests. Obstruction of the SEC and the rejection of the election results by representatives of opposition political parties is a pure example of voting based on partisan interests in the SEC, considering that almost every report is signed by most MEC members. Namely, the MECs summarized the results received by the polling boards and signed by the representatives of the ruling party and the opposition.

The only exception to politicization in SEC voting was the first representative of the civil sector, who resigned in October of 2016, and who often faced strong pressure from members of both the ruling and the opposition parties. That is, unfortunately, the sole example of professional and unbiased decision making in the SEC.

B. The case of deciding upon the objection of Presidential candidate Bojanić on the annulment

During the presidential elections, in the last phase of the electoral process, not all permanent members participated in the work of the SEC, and not all electoral lists had appointed authorized representatives, violating the regulatory concept and method of decision-making during the election process. With six out of 16 possible votes (without a

quorum), the SEC rejected Bojanić's objection, seeking the annulment of election results. As for the representatives of the opposition, they didn't even appear at the session. The SEC also argued that the complaints should not have been submitted to this institution before going to the municipal election commissions first.

3.4.1.2 Institute of authorized representatives of electoral lists

A. Reporting fictitious electoral lists to secure a majority for decision-making in the work of the SEC

The experience from the last parliamentary elections of 2016, best illustrates the nonsensical nature of this model. Specifically, the legal solution encourages key political parties to report fictitious lists to fight for the majority in the SEC, seeing how the authorized representatives have the same voting rights as the members of the permanent composition. Aside from the lists that are not in the electoral process for the purpose of fighting for the support of citizens, the institute and the purpose of authorized representatives of the electoral lists were further brought into question after certain political entities made remarks that after the election day of the 2016 parliamentary elections, the "subsequently" appointed proxy representatives, are essentially just controlled representatives of the two largest political entities: the Democratic Party of Socialists (DPS) and the Democratic Front (DF), and not actual representatives of their electoral lists, especially since during the sessions they weren't involved in any work other than the voting section. This type of SEC composition during the election process, as well as after the election day, creates work difficulties and complicates the decision-making process.

B. Replacement of an authorized representative of the list by a party during the election process

The law allows the representative of the list to appoint or replace a member without the confirmation of the Parliament, thus their status is significantly different from the status of the members of permanent SEC composition. Therefore, it is not surprising that these authorized representatives, that the party can replace during the process, without providing an explanation for their dismissal, are in their work and during decision-making, lead solely by party interests.

Namely, at the session during which the decision was made to declare the final results in the 2016 parliamentary elections, the chaotic situation was created by representatives of the Democratic Alliance of Albanians (DSA). A kind of legal and administrative complication, of which we don't yet have a definitive conclusion of possible abuses regarding dismissal and appointment of authorized representative of the DSA, has, in fact, only confirmed that the SEC's work during the election process, and especially at the time of deciding the results, was the scene of a political battle and confrontation of party interests, rather than the work for the sake of the legality of the process as a whole.

3.4.1.3 Election of representatives of civil society, non-governmental sector and university

The Law on Election of Councillors and Deputies provides very strict conditions for the election of this member of the SEC, even more rigorous than for the election of its president. These strict conditions are precisely the reason why the misuse of this institute has been prevented for so long. Following the resignation of the first NGO sector representative from NGO CeMI, in the several competitions afterwards, no candidates with necessary qualifications applied for this position. Organizations specializing in election monitoring refused to propose their own representatives insisting on reforming the existing model of the SEC, which they still claim to be dysfunctional. From 2016 until April 27, 2018, the SEC did not have a civil sector representative, although more calls were announced. On April 27 of 2018, the Parliament elected the coordinator of the rule of law program, Zoran Vujičić, from NGO Civic Alliance, as a member of the SEC from among the representatives of civil society, the non-governmental sector and universities. At the proposal of the Administrative Board, the Parliament has selected a candidate who does not meet the statutory requirements.

3.4.1.4. Relationship with domestic election observers

The work of the SEC is predominantly characterized by non-transparency. Its attitude towards observers is sometimes inappropriate, especially when they seek access to documentation that is in their possession. During the 2018 local elections in Ulcinj, the SEC did not respect the Observer Rights (CeMI) to access the election documentation, related to a complaint decision, thereby severely violating the provisions of the Law on the Election of Councillors and Deputies and the rights of observers defined in the Copenhagen Declaration which has been ratified by Montenegro. CeMI was not allowed to access the documentation which served as the basis for granting the Bosniak Party (BS) a mandate, in the complaint process that the BS had initiated. Similar situations have been registered in the 2018 presidential elections.

3.5 Problems in the work of PECs

As part of the civic oversight activities of the last few electoral cycles, the Centre for Monitoring and Research team also monitored compliance with the election procedures of all PECs and noted numerous irregularities in the work of MECs and PECs. The type and frequency of irregularities reported, appear in almost similar measures in each electoral cycle, and in most cases as a result of inexperience and incompetence of the PEC committees, as well as the inadequate functioning of MECs and the SEC.

Namely, frequent examples are MECs which are not working in the composition required and regulated by the Law on the Election of Councilors and Deputies, polling committees often work in incomplete composition, and when the polling stations open, members of electoral committees orally agree on the distribution of roles in the polling station, without drawing lots.

The most common irregularities were observed during the election procedures. These irregularities were predominantly related to:

- Improper use of electronic voter identification devices, the result was a delay in the beginning of voting. At the same time, it is noticeable that polling boards don't have a uniformed practice regarding the treatment of persons who are on the voter list, but are unrecognized by the electronic identification device. Although the ability to identify these voters through visual identification is indisputable, the polling board often prevents them from voting, thereby directly hindering their active suffrage;
- Violation of the secrecy of voting by voters photographing ballots, publicly declaring the options they voted for, accepting open paper ballots and failure to comply with the procedures that provide the secrecy of vote at polling stations, during which the members of polling station committees fail to react;
- Taking ballots on behalf of another person who is not present, even voting on behalf of another person, and voting outside of the voting booth;
- Problems with voter identification due to disorganized voter list;
- Posting and presenting promotional material in close proximity and at entrances to polling stations;
- Failure to respect the parity principle of government and opposition when signing control coupons, as more cases have been reported to be signed only by opposition representatives in the polling station;
- Allegations of vote-buying in the immediate vicinity of polling stations, and recording voters who came to the polls by individuals close to the polling station places, or the presence of cameras at the entrance to polling stations;
- Temporary replacement of members of the polling station committee by a person who is not an accredited member of the electoral committee;
- Receiving requests to vote through letters and approved of such letters after the legally prescribed deadline, during the election day;

- The procedure of voting by letter is often conducted in violation of the Law, especially when a smaller number of commissioners than prescribed are referred by the polling station to conduct the letter voting procedure;
- There are also frequent cases where the president and members of the polling station committee use the telephone and don't carry their accreditations with them.

In addition to the irregularities noted in the conduct of election procedures, there are frequent instances of inappropriate behavior by representatives of election administration bodies at polling stations. Namely, although according to Article 37 para. 2 of the Law on Election of Councilors and Deputies, the PEC is responsible for maintaining order at the polling station, cases of verbal clashes between members of the PECs are common, and some of them had even caused the voting to cease or closure of polling stations. During May 27, 2018, in local elections held at the capital, nine municipalities (Bar, Bijelo Polje, Danilovgrad, Kolašin, Plav, Pljevlja, Podgorica, Rožaje, Šavnik and Žabljak) and the Golubovci municipality, there are registered cases of rough verbal assaults on CeMI observers by polling station members for reporting on irregularities from polling stations. Also, polling boards often do not provide the required number of ballot boxes at all polling stations, which is especially alarming in cases where two elections are conducted, for instance, elections for deputies and elections for councillors in a given municipality.⁸

In the previous three election cycles (parliamentary elections in 2016, presidential and local elections in 2018), it was noted that a significant number of polling stations didn't have the Braille material, while today, more than one-third of polling stations are inaccessible to persons with disabilities. Other than this, some polling stations don't have the necessary working conditions, and for that reason they sometimes happen to be closed.⁹

3.6 Uneven Practices of the Constitutional Court in election process appeals

A. The case of the Constitutional Court's decision on the absence of voter's obligation to sign their name after taking the ballot

These local elections were marked by the decision of the Constitutional Court of Montenegro on appeal of the Civic Alliance for Change, after the elections for the local parliament in the capital. By a majority of votes, the Constitutional Court judges found it unnecessary for voters to sign their name as a way to confirm that they have taken the ballot. These types of decisions, as well as further media attacks on those bodies that have both the right and the obligation to protect every citizen's active and passive suffrage, are what introduces additional distrust towards the electoral process. Especially if we bear in mind the Constitutional Court's similar treatment of different complaints regarding the 2019 local elections in Petnjica and

8. The Law on Election of Councilors and Deputies in Article 75 defines that "the competent municipal body shall take care of regulating polling stations and prepares for each polling station the required number of ballot boxes with stamps and voting utensils."

9. For example, at polling station no. Due to poor conditions, 130 elections were not held in Tuzi during the 2018 local elections. Poor working conditions were also recorded at polling station no. 118 in Podgorica

Tuzi. Our hope is that every institution, especially the Constitutional Court, as one of the most responsible and most important institutions in the country, will harmonize their own practices in future procedures, and provide a higher degree of confidence in the electoral process. We are aware that case law is not the main source of law, but the inconsistent decisions made by this institution most certainly won't be a solid base for strengthening the rule of law, even less for strengthening the protection of electoral rights. Which is why we hope that, through clear and substantiated judgements, decisions and other legal acts within its jurisdiction, the Constitutional Court judges will leave as little room for confusion as possible among the subjects of the electoral process, and thus provide a key contribution to the spread of democracy, protection of basic human rights and freedoms of all Montenegro citizens, and to the strengthening and independence of all state institutions.

9. For example, at polling station no. Due to poor conditions, 130 elections were not held in Tuzi during the 2018 local elections. Poor working conditions were also recorded at polling station no. 118 in Podgorica

10. Official Gazette of Montenegro, No. 52/2014, 76/2015 – decision of the Constitutional Court, 83/2016 i 92/2017

IV VOTER REGISTRATION

4.1 Legal framework

The Law on Voters Register stipulates that the voters list is an electronic collection of personal data of Montenegrin citizens who have the right to vote. In addition, the voters list is a public document that serves only for elections and is conducted ex officio. According to the newly adopted provisions of said law, the voters list is kept by the ministry responsible for internal affairs. The Ministry is obligated to submit the voters list to MEC, the parliamentary party, the submitter of the confirmed election list, and the non-governmental organization legally authorized to monitor the elections, at their request, within 48 hours from the day the request has been received, and to provide electronic access to the list, and all the relative changes.

The voters list is a database derived from the registries (citizenship registers, residence, birth, and death) in a process that involves unification and “crossover” of data from the registries in order to obtain a collection of personal data of Montenegrin citizens with the right to vote. Montenegrin nationals with voting rights are enrolled in the voters list, and after the announcement of the election, so are the persons who acquire the right to vote no later than on election day, according to their place of residence.

Before the presidential elections in April 2018, CeMI representatives attended control of AFIS (Automatic Fingerprint Identification System) within the Working Group for control of the application of the voter fingerprint photo deduplication procedure. Control of the AFIS system was rated satisfactory (more on this in the published CeMI Report on April 27, 2018, Presidential Election).

However, in addition to the AFIS system, more measures should be taken to reduce the abuse within the voters list. For example, periodic control of residence via random sampling should be performed throughout the country.

4.2 Problems with keeping voter records and voter identity verification during voting

4.2.1 Inaccuracies in the voters list due to the presence of persons who passed away

It is important to mention that there is still a number of voters who are not on the voter list when they should be, and vice versa, so new mechanisms need to be thought of in order to reduce the frequency of these situations.

4.2.2 A large number of falsely reported citizen residences

An important problem in the voters list is the existence of persons on the list who have falsely reported residence in Montenegro, and who have acquired the right to vote on the basis of fulfilling residential and other conditions. In practice, this leads to a big difference in the trend of increasing voters in relation to the trend of population increase, leading to a decrease in citizens' confidence in the accuracy of the voters list.

4.2.3 Failure to notify of the change of the polling station

Experience from the last three election cycles (Parliamentary of 2016, Presidential of 2018 and local elections of 2018) indicates that there are still a number of citizens who claim that they haven't been informed of the change of their polling station, so more needs to be done in this area. This is especially important knowing that the law prescribes that "the Ministry shall be obliged, within 48 hours from the day of the announcement of elections, to make public in all daily newspapers that are issued in Montenegro and on its website, a numerical tabular view of the changes made to the voters list, as a whole and by units of local self-government, in relation to the voters list by which the previous elections at the national level were held".

V ELECTION CAMPAIGNS AND THEIR FINANCING

5.1 Legal framework

The election campaign is a planned and organized political activity by which the election participants seek to gain as much voter support for their own political options and thus win power or gain as much power as possible. [13]

The election campaign in Montenegro is regulated by the Law on Financing of Political Entities and Election Campaigns, which in Art. 2 provides that the election campaign will begin on the day of the announcement of the elections, and it lasts until the final election results are declared. Financing of political entities and election campaigns in Montenegro, that is, the way of obtaining and securing the financial resources of political parties, the ban and restrictions on the disposition of state property, funds and, public authority in progress campaigns and control, oversight and audit of the financing and financial operations of the political entities for the purpose of exercising the legality and publicity of their business during the election processes, are governed by the Law on Financing Political Entities and Election Campaigns .

The law was adopted in December 2014 and covers the previously adopted which were regulating the funding of political parties and campaigns for the election of the president of Montenegro. The law is in line with some GRECO recommendations, pertaining the prescribed restrictions and prohibitions on the use of state resources for election campaigns, powers and competencies of the institutions in the supervision of law enforcement are clearly defined as well as investigative powers of competent authorities, and system of sanctions has been improved. The Agency for Prevention of Corruption controls the financing of political entities and election campaigns and monitors the implementation of the Law.

5.2 Institutional framework

5.2.1 Agency for Prevention of Corruption (APC)

With regard to the institutional framework, from January 1st 2016, with Anti-Corruption Law¹¹ coming into force, the Agency for Prevention of Corruption controls the financing of political entities and constituencies, and monitors the implementation of the Law.

In order to supervise, the Agency established a Department for the Control of Financing

11. Official Gazette of Montenegro, 53/2014 from 12/19/2014

of Political Entities and Election Campaigns, and adopted a total of 6 by-laws to implement the Law namely: Instruction on the form of reports on the origin, amount and structure of collected and spent funds from public and private sources for the election campaign for the election of the President of Montenegro, Instructions on the form of reports on the origin, amount and structure of funds collected and spent from public and private sources for the election campaign for election of deputies and councilors, Rules on how to calculate and report non-monetary contributions to political entities, Instruction on the manner and procedure for reporting and resolving complaints filed during the election campaign, Instruction on the contents of the report on the contributions of legal entities and individuals to political entities in during the election campaign and the Rulebook on the manner of exercising control over political entities and control and monitoring during the election campaign.

The competencies of the Agency are prescribed by the Law on Financing of Political Entities and Election Campaigns can be divided into those related to law enforcement oversight, that is, to control the financing of political entities and election campaigns. Also, the Law prescribes numerous obligations for political entities and authorities, both for regular work and election campaign. The Agency is obliged to keep records of costs, contributions, as well as sponsorships and donations. Political entities are obligatory to submit to the Agency every 15 days a report containing accurate information on the campaign expenditures, which must be separated from the funds used to fund the regular work of parties.

The Agency is obliged to initiate misdemeanor proceedings against political entities, in case of suspected illegal financing. Even though provided that party reports must be publicly available on the Agency's website, they can not be found on their websites. During the election processes which took place from 2016 to 2019, the Agency initiated 486 misdemeanor charges against several taxpayers, out of which 141 were filed against political entities. The total amount of fines is 135,680EUR.

In recent years, representatives of the civil sector, international institutions, as well as political parties themselves have identified a large number of irregularities and abuses related to political financing and abuse of state resources. The "Audio Recordings" and "Envelope" affairs have initiated new doubts about the transparency of the political financing of, not only the ruling party, but also opposition political entities.

The most common deficiencies in this area, detected by the public, are inadequate monitoring, the reason is that the work of the APC is largely subjected to political influence, the lack of transparency and availability of key data related to the funds spent and donations, as well as the lack of cooperation between competent institutions.

In order to overcome the existing problems, a more proactive role of APC is necessary especially when it comes to exercising control over political finances. Institutional capacity of Agency needs to be strengthened and ensure that sanctions are applied equally for all political entities that violate legal norms.

Also, pursuant to Article 13 pha. 2 of the Law on Financing of Political Entities and Election Campaigns, the political entity is required to submit to the Agency and announce the price and eventual discounts for media advertising. For the purpose of raising funds to finance the election campaign, the political entity opens special account with the institution authorized for payment operations, the following day from the day of confirmation of the electoral list, of which, notifies the Agency within three days and cannot use that account for other purposes.

5.3 Financing of political parties

5.3.1 Sources of financing

Funds obtained by parties for financing activities may be from public and private sources. The law provides that political entities receive funds from public or they can use private sources both to finance the regular work of political parties and to finance election campaigns for the election of councilors and deputies, or the President of Montenegro.

5.3.2 Public sources for financing the regular work of political entities

Public sources are funds allocated from the budget of Montenegro and the budget of local self-government. Budget funds for financing the regular work of political entities are defined in the scope of 0.5% of the planned total budget, while at the level of local self-government 1.1% of the planned total budget. Public funding is also a source of funding employees in the caucuses and councilors' clubs and lease of business premises for the needs of political entities, provided by the Parliament of Montenegro and the Assembly of local self-government units, that is, the body in charge of property affairs.

From the state budget of Montenegro, on average, 5 million euros are reserved for financing political parties, annually. In particular, the Law on Budget of Montenegro for 2019 planned funds for regular work of political parties amounts to EUR 5,608,687.15, for 2018 a total of 5,331,559.78 EUR, 5,095,511.56 EUR in 2017, while the funds earmarked for 2016 amounted to EUR 5,143,840.62.

According to the Agency for Prevention of Corruption (APC), the total amount has been set aside for financing political entities in the period 2016 - 2018 from all public sources amounts to 26.228.182,61 EUR¹², of which 18.393.967,19 EUR from the budget of Montenegro and 7.834.215.42 EUR from budget of the Municipal Assembly. When looking at the structure of appropriations for the regular work of political entities, from public sources, during the same period, EUR 20,093,641.99 was earmarked, of which budget of Montenegro EUR

12.<https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/novosti/1903261051-finansiranje-politickih-subjekata-javnih-izvora-2018/>

13,396,071.8, or EUR 6,697,570.19 from local budgets. For the lease of office space totaled 2.100.966,39 EUR, of which from the budget of Montenegro 1,414,477.2 EUR, or 686,489.19 EUR from the budget of local self-government. From the budget, Montenegro has further earmarked for the funding of employees in the MP clubs the amount of 1,058,686, 95 EUR.

5.3.3 Private sources for financing the regular work of political entities

Political parties may obtain funds from various, legally defined, private sources with the restriction that the total amount of funds provided in this way cannot amount to more than 100% of the appropriations allocated to them from the budget, at the annual level. Private sources can be membership fees, contributions, political revenues, income from assets, legacies and loans from banks and other financial institutions in Montenegro.

For financing a political entity, a physical person can pay up to € 2,000, while the sum for the legal is up to € 10,000 a year.

5.4 Financing election campaigns

Election campaign implies the time elapsed since the day of the election announcement to the day of election silence, in which political parties and candidates, using the law certain mechanisms, propagate their programs in order to win the votes of the voters on elections.

Costs include costs related to pre-election rallies, advertising spots, and promotional material, media presentation, advertisements and publications, public opinion polling, engaging authorized representatives of a political entity in the expanded composition of election administration, overhead and general administration, including transportation costs during the election campaign period. Funding for election campaign financing, political parties can also obtain from both public and private sources.

5.4.1 Public sources for financing the election campaign

Public sources are funds allocated from the budget of Montenegro and the budget of local self-government, provided in the year in which regular elections are held, amounting to 0.25% planned total budgetary funds, that is, in the case of early elections the necessary funds to finance the cost of the election campaign are determined and allocated from current budgetary reserves.

More specifically, during 2018, from the budget of Montenegro for financing election campaigns 820,619.30 EUR was earmarked, of which EUR 594,999.42 for the election campaign for the President of Montenegro and EUR 225,619.88 for local elections in 14 municipalities is the transfer of funds to candidates who have won more than 3% of the vote, in proportion to the percentage votes received, following notification by the Agency for Prevention of corruption.¹³ More specifically, the candidate Milo Đukanovic, who received 53.90% of the vote, received EUR 256,563.75 from public sources; candidate Mladen Bojanic who received 33.40% of the vote went to EUR 158,983.85, candidate Draginji Vuksanovic who received 8.20% of the vote from public sources came to 39,031.96 EUR, while other candidates who won less than 3% of the vote did not participate in the distribution of the remaining 80% of the assets.¹⁴ During 2016, a sum was allocated for election campaigns of political entities of 2,046,092.25EUR, for which it was designated for the October 2016 parliamentary elections 1,929,731.72 EUR, and for local elections held in 5 municipalities in the previous year 116,360.53 EUR.

5.4.2 Private sources for financing the election campaign

For election campaign financing, a political entity may raise funds from private sources, that is, membership fees, contributions, revenues from the activities of political entities, revenues from assets, legacies, and borrowings from banks and other financial institutions in Montenegro but only for the duration of the election campaign. The amount of funding from private sources, which politically collects the entity to finance the cost of the election campaign for the election of deputies and councilors, it may not exceed thirty times the amount of funds belonging to it from public sources of financing.

Unlike the funds that political entities raise for regular work, political entity is required to open the election campaign special giro account during the fundraising, the day after the confirmation of the electoral list, and that account cannot be used for other purposes.

13. <https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/novosti/1903261051-finansiran-jepolitickih-subjekata-javnih-izvora-2018/>

14. ACP, The report on the supervision and inspection of the financing of the election campaign of the political entities, during the election campaign for the election for the President of Montenegro held on April 15th 2018, available at: <https://www.antikorupcija.me/me/kontrolapolitickih-subjekata-izbornih-kampanja/novosti/1807101213-ask-donijela-izvjestaj-kontroli-nadzoru-izborne-kampanje-zapredsjednicke-izbore/>

The total value of the payment and contribution of an individual or entrepreneur for financing election campaign can not exceed the amount of 2,000 euros, and the total value of payment and contributions a legal entity, that is, a company for financing an election campaign, cannot cross the amount of 10,000 EUR. The law also prescribes restrictions on the acquisition of funds from private one's sources. Thus, political entities are prohibited from receiving material and financial assistance and non-monetary income from foreign sources, that is, from other states and legal entities located outside the territory of Montenegro. The same prohibitions apply to obtain financial income from physical persons, entrepreneurs without voting rights in Montenegro, anonymous donors, public institutions, legal entities and companies with state capital participation and persons legally convicted of criminal offenses dealing with elements of corruption and organized crime.

5.5 Campaign financing and social media

Beside sponsoring Facebook posts, political entities also used Google Ads and YouTube, as well as the Facebook pages which they used for promotional purposes of their own programs. This kind of communication, devoid of much control and regulation existing in other media, leaves room for expressing views and opinions that are skewed with the principles of religious and national tolerance, respect for diversity, democracy, dignity, and others. Negative examples of use of social networks were not only characteristic for the period of electoral campaigns but also during regular work of political entities.

The campaign periodically had negative manifestations on both national and local level. In addition to violating these principles, through the use of social networks, political entities have violated also the rule of pre-election silence that underlines the principle of non-exercise of influence over the will of the electorate just before the election.

5.6 Misuse of state resources

Compared to parliamentary and presidential elections, and particularly in occasion of the last local elections held on May 2018, no significant progress has been made with regard to the work of public administration. Specifically, when it comes to misuse of state resources, CeMI observers have received numerous allegations on misuse of public resources for political marketing purposes on the local level, the use of official vehicles for personal / party purposes and "vote-buying" before or on election day itself. Criminal charges were submitted to competent basic state prosecutor's offices. The common feature of presidential and local elections, as well as previous electoral processes, is that there is no clearly defined starting date of campaigns or sanctions in case of non compliance.

VI THE MEDIA

6.1 The role of the media in the electoral process

The media play a significant and multidimensional role in the electoral processes, which is reflected not only in the transmission of information on the candidates' programs and messages but also in informing and educating voters about all segments of the electoral process. The role of the media as a public opinion maker, which can greatly influence the awareness and consequently the voters' choice, is crucial because in this way the media significantly contribute to creating an appropriate environment for free and democratic elections. The last few electoral cycles in Montenegro, the political communication in the election campaign was mostly focused on the media, which is why most voters perceive electoral campaigns as media campaigns. This is supported by the fact that most of the campaign budget is being spent on media promotion.

In functional democracies, the role of the media is reflected in true, complete, timely and impartial reporting, which implies a balanced approach to all electoral actors, that is, the possibility of all political parties in the electoral race to present their programs under the same conditions and have unhindered access to both the public and private media. This is still not the case in Montenegro.

Centre for Monitoring and Research (CeMI) acknowledges that the legal and institutional framework governing the conduct and control over the conduct of the media during the election campaigns, although partly in line with international standards, is insufficiently precise and patly implemented, characterized by the overlapping competences of the institutions/bodies exercising control and thus does not provide the necessary level of security, both of the participants of the electoral process and voters, and therefore needs to be significantly improved.

6.2 Legal framework

The work of the media in Montenegro is regulated by a series of legal regulations that largely respect the standards and recommendations of international organizations. The Constitution of Montenegro¹⁵, the Media Law¹⁶, the Electronic Media Law¹⁸, the Law on the National Public Broadcaster Radio Television of Montenegro, the Law on Election of Councilors and Representatives¹⁹ and the Criminal Code are the basic legal regulations governing the conduct of the media in the election campaign, as well as the conduct of institutions responsible for overseeing the compliance of media with legal regulations.

15. The Constitution of Montenegro, Article 47, p. 1 and 2

16. Official Gazette of Montenegro, No. 51/02, 62/02

17. Official Gazette of Montenegro, No. 51/02, 62/02, Official Gazette of Montenegro, No. 46/10, 73/10, 40/11

18. Official Gazette of Montenegro, No. 079/08 from 12/23/2008, 045/12 from 08/17/2012, 043/16 from 07/20/2016, 054/16 from 08/15/2016

19. Official Gazette of Montenegro, No. 46/11, 14/14, 47/14, 12/16, 60/17, 10/18

The Constitution guarantees freedom of expression, freedom of the press and explicitly prohibits censorship, while the Criminal Code prohibits hate speech that causes national, racial and religious hatred, divisions and intolerance. Norms that directly relate to the conduct of the election media during the pre-election campaign are prescribed by the Law on Election of Councilors and Deputies, which prescribes the right of citizens to be informed about the electoral options, respecting the principles of equality of all electoral candidates and candidates from those lists. The norms of this Law shall also apply to the conduct of the media during the election campaign for the election of the President of Montenegro²⁰.

The Law on Election of Councilors and Deputies defines the start of media coverage of pre-election campaign and sets a deadline from the day of confirmation of the electoral list of participants of the election campaign till 24 hours before the election day. The provisions on free and paid political advertising is also prescribed.

Paid political advertising is allowed and must be clearly labeled as such, however, the law does not impose restrictions on the space that can be rented in the media or the number of funds which may be spent during an election campaign, thus bringing into question the principle of equal representation. In this way, the privileged position belongs to those candidate parties that have larger budgets and can afford paid advertising, or paid airtime. Thus, the ODIHR's final report for the 2018 presidential election states that: There are no legal limits on the amount of paid advertising on television, which led to an overwhelming amount of paid broadcastings on some private media outlets. Many broadcasters offered forms of discounts resulting in inequivalent rates, which severely jeopardized the legal requirement of equal conditions among contestants. As a consequence, candidates who could afford to purchase more airtime had an advantage.

In order to fully fulfill the principle of equal access to the media for all participants in the election process, different models are applied in comparative practice. The recommendation of the Venice Commission²¹ with regard to paid political advertising and possible restrictions, aimed at defining a minimum of rules for all constituents, implies that the media guarantees, on an equal basis, paid access to the media to all participants by offering the same, realistic prices and making them public. Additionally, paid time must be separated and marked as such so that voters have accurate information and are not exposed to covert advertising, while covert media advertising should be prohibited. The Law on Election of Councilors and Deputies does not recognize covert media coverage during the election campaign and does not regulate this area. At the same time, one of the proposed models implies restrictions on the length of the leased term or expenses for this purpose in order to consolidate the principle of equality.²²

The same recommendation came from the ODIHR mission after the 2018 presidential elections. In its final report, the ODIHR recommends that restrictions should be placed on the amount of paid political advertising in order to create fair and equal conditions for all contestants, but also that the media should offer equal prices to all candidates, avoid negotiating the same and publicly announce the prices of services before the election campaign begins. These recommendations are not fulfilled.

20. Law on Election of the President of Montenegro, Article 9, Official Gazette of Montenegro, No. 17/2007.

21. Compilation of Venice Commission opinions and reports concerning media and elections 2016, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)006-e)

22. Compilation of Venice Commission opinions and reports concerning media and elections 2016, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)006-e)

6.2.1 Free political advertisement

Radio-Television of Montenegro, regional and local public broadcasters are obliged, during the election campaign, within the political-informative program, as well as in precisely defined blocks of political marketing whose audibility and visibility is ensured throughout the territory of Montenegro, that is, local self-government, on a daily basis, for the same duration and for the same period, to provide free and equal presentation of the submitters of confirmed electoral lists, as well as presentation and explanation of their electoral programs.

In the case of a national public service broadcaster (RTCG), the RTCG Council is obliged to adapt and adopt a document, that is, reporting and presentation rules²³ for TVCG, RCG, and the RTCG Portal, which further defines the ways in which parties and candidates are represented during the election campaign, and to submit it to the Agency for Electronic Media. It stipulates that media coverage must be easily identifiable, distinct from other visual and audio contents, and must be clearly indicated as such. In addition, the RTCG may inform on current events and activities of state bodies, officials and candidates in news programs and other formats, outside the programs related to media representation, in accordance with the rules of professionalism, objectivity and journalistic ethics, with caution that the reporting does not assume an open or a hidden propaganda character, which could potentially influence voters' decisions. RTCG may refuse to broadcast video or audio of candidates if they consider that these messages violate the Constitution and laws of the state of Montenegro or human rights, that is, incite discrimination, hatred, violence or insult the honor, reputation, and privacy of citizens or other participants in the campaign. The RTCG will notify the candidate or his election headquarters of the decision and the reasons for refusing to broadcast video or audio material. In addition, parties or candidates may file an objection to the RTCG Council, which is obliged to make a decision on the complaint, in writing form, within 24 hours of receipt of the complaint. An appeal may be lodged with the Council of the Electronic Media Agency against the decision of the RTCG Council. However, the lack of adequate mechanisms to allow AEM to respond in a timely manner, as well as adequate sanctions, ultimately does not provide substantial protection to parties or candidates, as AEM may issue warnings and suspend or revoke work permits, but does not have the power to impose indirect financial sanctions.

23. <http://www.rtcg.me/rtcg/dokumenti/regulativa.html>

With this in mind, the legal framework relating to free political representation, in formal terms, is regulated and aligned with most key international documents, however, in practice, RTCG reporting is of a strictly technical nature, without analytical approaches and attempts to provide citizens with objective information about party programs and key policies. Most often, the RTCG publishes footage of pre-election rallies and other campaign activities and organizes debates and presentations of parties and candidates at prescribed times and intervals. This approach is often not essential to the voter because, especially during parliamentary elections, due to the number of parties participating in the elections, it takes on a farcical character, leaving little or no time for party representatives to familiarize their citizens with their programs. The international standard is that special attention must be made with aim to ensure that the space allocated is sufficient to represent the candidate or to present his / her political platform. If the number of candidates is very high, it is recommended to apply a proportional approach to the media.

Additionally, although public service broadcasters are generally subject to much more rigorous standards and rules than private media, as a publicly funded public service, they have a moral and legal duty to protect the interests of citizens, and not of individual political parties. The public service is expected to be accountable for reporting embodied in a neutral approach and ensuring pluralism of information, which in the case of the RTCG was not provided in previous election cycles. In its final report, following the 2016 parliamentary elections, the ODIHR recommends that the public media should make additional efforts to actively monitor the campaign in an impartial and professional manner, rather than relying on the material provided by political parties.

6.2.2 Restrictions on the exercise of public office during political campaign and media coverage

The Law on Election of Councilors and Deputies stipulates that state and local government officials may, during election campaigns, act as representatives of electoral lists and may promote electoral programs and electoral lists in their media appearances, but their appearances in the media must be clearly separated from activities they perform as public officials.

Officials are prohibited from abusing and using their media appearances as a state officials or other public official during the election campaign and abuse it to advertise the electoral list and/or its electoral program. On the other hand, public officials appointed by the Government of Montenegro and elected or appointed by the local self-government, civil servants and state employees may not participate in the election campaign, nor may they publicly express their views on the election, during working hours or while in office. Police officers and members of the National Security Agency may not participate in the election campaign in any way.

Although the norms of the law are precise, they are not applied in practice because public officials use their position in all election campaigns. The prescribed penalties are low, the breach of the standard is treated as a misdemeanor, and fines of 500 to 2,000 EUR are provided and are not sufficient incentive for public officials to refrain from the said conduct during the election campaign, thereby directly violating equal access to the media due to the inevitable advantages of the current government.

Even during the electoral campaign, in order to keep the public informed, the media must monitor the daily activities of public officials, who are also party representatives. Evaluating the capacity in which officials appear in the media, as well as their goals, presents a great challenge to the media, since officials often use their public appearance to increase their visibility in the campaign. The only teneble guideline the media can rely on in these situations is journalistic and editorial professionalism.

6.2.3 Electronic media and political advertising

The activities of electronic media as the most influential and dominant in the election campaign are regulated by the Electronic Media Law, but this Law does not regulate specific monitoring of the election campaign, but only defines the general standards of political advertising and program content. On the other hand, the conditions for the realization of the rights and duties of media broadcasters during the election campaign are regulated by Rulebook for Media, prepared by the AEM. The latter is supposed to ensure that citizens are provided with truthful, timely and impartial information at all stages of the process as well as equal terms for all participants in the election campaign. It prescribes the obligation of all broadcasters to adopt and publish special rules on media presentation which clearly determine the forms, duration of media presentation, as well as the manner of deciding on the schedule of political advertising and/or presentation within the information and political programs and to submit it, no later than ten days after the election is announced, to the Agency for Electronic Media.

However, despite the precise norm, and due to the non-imposition of sanctions and the lack of another mechanism that would allow the Agency pursue those broadcasters who fail to fulfill their obligation, private broadcasters generally do not adopt internal rules on campaign monitoring. The final report for the 2016 parliamentary elections of the ODIHR mission states that only one private television station has fulfilled its prescribed obligation, but that sanctions have not been imposed on the rest.²⁴

International standards provide for a national legal framework to ensure minimal access to private media in the conduct of an election campaign. Although private media generally cannot be legally binded to the allocation of free airtime, it is recommended that equal market prices should be applied for all election campaign participants, and prices should be realistic and stable during the electoral campaign.²⁵

24. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2016\)006-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)006-e)

25. CDL-AD(2002)23 rev, Code of good practice in electoral matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd Session (Venice, 18-19 October 2002) (paras. I.2.3.c)

6.2.4 Print media and political advertising

The principle of equal access also applies to print media. In order to comply with democratic standards and principles, some restrictions are put in place such as the number of paid ads a party can buy, or the number of pages a newspaper can rent on daily basis. The Council of Europe's recommendations does not cover private print media, but their work in the election campaign is regulated by self-regulatory mechanisms. Self-regulation in Montenegro has not been developed enough, therefore the issue of political parties' and candidates' representation in the print media is reduced to the matter of available funds, with the advantage of those who have larger budgets, resulting in often unequal representation²⁶

6.3 Institutional framework

The institutional framework has been set up in a such a way which identifies the two bodies responsible for media monitoring during the election campaign and assessing their compliance with legal provisions. The Law on Election of Councilors and Deputies prescribes the formation of an ad-hoc committee of the Parliament of Montenegro which is responsible to monitor and supervise the implementation of the Law on Election of Councilors and Deputies in the part relating to the media, whilst the Law on Electronic Media prescribes the obligation to the Agency for Electronic Media (AEM).

6.3.1 Ad-hoc Committee of the Parliament of Montenegro

Law on Election of Councilors and Deputies prescribes the obligation for the Parliament of Montenegro to establish, by a special decision, a Committee for monitoring the implementation of the Law on Election of Councilors and Deputies in the part related to the media, which is formed no later than 10 days from the day the elections are announced.

The Committee is responsible for monitoring and supervising the implementation of the provisions of the Law relating to media obligations in the election campaign, in particular:

1. Considers complains pertaining the actions of the media and issues statements and conclusions;
2. Warns the media about the compliance with the law and irregularities;
3. Publicly announces its views and conclusions;

26. Commission at its 52nd Session (Venice, 18-19 October 2002) (paras. I.2.3.c)

4. Notifies the Agency for Electronic Media and the competent media bodies of the violations in order to take measures within their jurisdiction towards a media that acts contrary to the law.

The committee has 10 members and is composed on a parity basis by members of a parliamentary majority and parliamentary opposition. The chairman and the deputy chairman of the Committee are appointed from among the members of the Committee. The board does not have the authority to sanction the media, only to pass on information to the AEM to determine sanction measures.

However, despite the legal obligation to form a committee, it did not occur during the 2018 presidential elections. Previously, during the 2016 parliamentary elections, the Committee held two meetings during the campaign, mainly serving as a platform for parties and media representatives, to voice concerns and their views. Due to a lack of quorum, the board was unable to formally respond to identified issues or to decide on three complaints received.²⁷

CeMI acknowledges that this solution is neither functional nor in line with international standards and practices, and considering that it has not been of any functional significance in the previous few electoral cycles, the consideration should be given to changing the legal framework and deleting the article which prescribes the obligation to form a Committee. In addition, in order to avoid overlapping within the legal jurisdiction, the Agency for Electronic Media should be the only body responsible for overseeing broadcasters during the electoral campaign.

6.3.2 Agency for Electronic Media (AEM)

According to the Electronic Media Law, the Electronic Media Agency (AEM) has a legal obligation to monitor the compliance of broadcasters with the legal framework, and is entitled with the right to issue warnings, impose penalties or suspend or suspend a license. In order to monitor the conduct of the media, the Agency supervises the work media during the entire duration of the campaign and publishes a report on findings upon completion of the campaign. In addition, AEM also acts on the complaints of candidates against decisions of media outlets and has a deadline of 24 hours to act on them and make a decision.

In December 2017, the Parliament of Montenegro adopted the Law on Amendments to the Law on Electronic Media in order to take into account the ODIHR recommendations following the 2016 parliamentary elections. The recommendations were partially adopted, in the part pertaining the enlargement of AEM's area of jurisdiction, but not in part related to strengthening of mechanisms at the Agency's disposal, which would enable it to react promptly and apply adequate sanctions.

The amendment to the law stipulates that the Council of the Agency for Electronic Media, no later than seven days from the day of announcing the elections, shall adopt a regulation which regulates more closely the conditions for the realization of the rights and obligations of broadcasters when it comes to election campaigns and political advertising. It stipulates that the broadcaster, which enables media coverage, must adopt and make public special rules on

27. OSCE/ODIHR Mission Report, Parliamentary Elections, 16 October 2016, p. 15.

media representation. The rules are adopted by the Public Broadcasting Council, or the founder of a commercial or non-profit broadcaster. The Rules define the forms of media presentation, their duration, and distribution, as well as the manner of deciding on the schedule of political advertising or presentation within the framework of information and political programs. Broadcasters are obliged to submit to the Broadcasting Agency the rules of presentation within each individual radio or television program, no later than ten days from the day the elections were announced. Also, broadcasters are obliged to keep records of broadcast program contents and to submit the records to the Agency every Monday. In addition, amendments to the Electronic Media Law oblige broadcasters to name sponsors of political advertisements, and the Agency of Electronic Media to prevent the broadcasting of illegal advertisements.

However, in practice, this obligation was not fulfilled by a part of the broadcasters and no sanctions were imposed by the AEM.²⁸

The most frequent irregularities recorded by the Agency in previous election cycles were related to the inadequate practice of labeling paid and free political ads, contrary to the law, while on the other hand, it has not received any complaints from candidates with regard to the work of electronic media.

In its recommendations, the ODIHR states that “Consideration should be given to providing AEM with a stronger and more effective enforcement mechanism that would include indirect financial sanctions commensurated with the gravity of the crime committed. To avoid overlapping and ensure effective legal redress, the Agency for Electronic Media should be the sole authority responsible for the oversight of broadcasters during the election campaign. “

28. AEM Report on Media representation during the Presidential Election campaign, 2018

VII RECOMMENDATIONS

7.1 Priority recommendations

I Electoral reform

It is necessary to implement comprehensive electoral reform that would include the adoption of a new (1) Law on Election of Councilors and Deputies, and related laws: (2) the Law on Voters List and (3) the Law on Financing of Political Entities and Election Campaigns. The reform should also include an amendment to a set of related laws: (4) the Electronic Media Law, (5) the Law on Registration of Residence and Temporary Residence and (6) the Law on Prevention of Corruption.

II Election administration reform through professionalization and depoliticization of the SEC and the president of the MEC.

7.2 Recommendations by specific fields

7.2.1 Electoral system

1. It is necessary to amend the existing electoral system for elections by introducing the possibility for a voter to elect candidates by the mandatory use of 5 preferential votes within the same candidate list.

Voters would not be able to vote for the first candidate on the list, but that candidate would be elected if the list wins at least one seat. Other candidates would be ranked according to the number of preferential votes won. Mandates would be assigned to the first candidate on the list, and then to the other candidates who won the most preferential terms.

This will increase the voter's influence on the choice of specific candidates, but also strengthen the bond between citizens and their elected representatives. Also, this model allows for an easier coalition of parties, since the selection of a candidate from the list does not depend on the coalition agreement but on the number of preferential votes won, which will encourage parties to choose the best candidates, but also to avoid difficult pre-coalition negotiations.

2. Ensure equality for Roma communities who are not entitled to a “privileged mandate” like members of other minority communities with the similar percentage of total population.

3. It is necessary to ensure consistent application of the legal obligation to respect the provisions regarding the representation of women on the electoral lists and to prevent the acceptance of electoral lists that do not comply with the statutory number and layout of women on the list.

4. Introduce a precise procedure on how to register a certain list as a minority one, and on that basis draw the rights to minority representation.

7.2.2 Election administration and the Constitutional Court

7.2.2.1 State Election Commission

5. Modify and professionalize the SEC in such a way that the composition of the commission would consist of 3 - 5 law professionals (preferably with an emphasis on voters rights). The proposed professionalization of the SEC composition would significantly contribute to its more serious and efficient functioning while strengthening the capacity and established procedures necessary for the planning and operation of this institution.

6. The latest opinion poll conducted by CeMI within this project indicates that a stronger introduction of experts to the State Election Commission is needed. According to the survey, 65.5% of respondents believe that the State Election Commission should consist of a combination of political party representatives and independent experts, with prevalence of experts.

7. In the future, representatives of confirmed electoral lists should not participate in the work of the SEC or have the right to vote. They should only have the opportunity to observe and have insight into SEC's documentation.

8. Provide access to media at SEC meetings.

9. Particular attention should be paid to verifying the authenticity of signatures in order to avoid abuse;

10. Advance and ensure promptness in publishing information on the official SEC website.

7.2.2.2 Municipal Election Commissions

11. It is necessary to professionalize the position of the President of the Municipal Election Commission, who would be appointed by the SEC on the basis of criteria determined by law, via public competition. Other members would be nominated by political parties following the model in use, based on their proportional participation in the local parliament on the day it was constituted after the election. The shift in party membership cannot be influenced by changing the composition of municipal election commissions.

12. Speed up the processing of applications for jeopardizing electoral rights, taking into account the urgency when it comes to deciding on disputes concerning electoral rights;

13. Pay attention to increasing the transparency of municipal election commissions;

7.2.2.3 PECs

14. To prevent voting abuses by establishing a precise provision on the conditions for a ballot to be valid, instead of the current insufficiently precise provision on situations where the ballot is invalid. These changes should prevent the compromise of the secrecy of voting by labeling ballots with different geometric shapes, ornaments, combined with different colors.

15. Carrying accreditation is not an obligation in either the Rules of the Work of PECs or in the Manual for Training of PECs. In order to reduce the room for abuse by unauthorized persons, it is necessary to introduce this obligation in a by-law;

16. Improve conditions at polling stations for persons with disabilities (to solve the problem of obstacles or designate other polling stations) in order to avoid voting outside the polling station;

17. Indicate to the PEC the importance of full membership so that there are no situations in which the PEC is comprised of four members and not five as provided by the Law on Election of Councilors and Deputies;

18. To harmonize the practice of PECs regarding the treatment of persons which are not recognized by the electronic identification device;

19. Allow people who hold a diplomatic passport and are not recognized by the electronic identification device, to vote using visual voter identification;

20. Solve the problem of designating small polling stations with 10 or fewer voters that jeopardize the secrecy of voting and problem of economic viability in such a way that the said voters will be provided with transportation to larger polling stations. Also, conduct training for PEC members to prevent other forms of violations of the secrecy of voting;

21. It is also necessary to enable members of the Roma community to have election material in their own language, in order to enable them to fully exercise their voting rights.

7.2.2.4 The Constitutional Court

22. The practice of the Constitutional Court of Montenegro in deciding on the appeals in the electoral process should be harmonized in order to avoid legal uncertainty.

7.2.3 Voter registration

7.2.3.1 Maintenance of the Central Voter's Register

23. Introduce the institute of field verification of residence in order to remove persons who falsely declared their residence from the register. Police should conduct check on address indicated as permanent residency of voter in Voter's registry in order to verificate it's validity.

24. Introduce strict penalties for incorrect registration of residence, as well as for non-registration of residential changes, that is, the person resides outside Montenegro.

7.2.3.2 Electronic voter identification

25. Introduce voter identification through fingerprint readers. The existing voter identification system needs to be upgraded and any doubts about its work should be eliminated due to objections from opposition representatives;

26. Introduce a legal obligation to integrate data from voter identification units from polling stations at the state level and to check for double voting. The devices used by PECs on polling stations contain only an excerpt of the voters list for that polling station so the members of the polling station can't know whether the same person voted at another polling station. The devices are not connected online, so there is no real-time verification capability. Representatives of state authorities pointed out that the online work would create an opening for abuse. In this case, the subsequent verification of data from the device at the polling stations is required. This would remove the suspicion that double voting had taken place.

7.2.4 Election campaign

27. In order to ensure full respect for the principle of electoral silence, we believe that the law should regulate that the responsibility for respecting electoral silence on social networks rests with political actors participating in elections, rather than on social media. Candidate list/candidate, or other entity should be sanctioned for publishing adds during electoral silence;

28. Clearly define the time of the beginning of the campaign, as well as sanctions for failure to act in accordance with defined time framework.

7.2.5 Campaign financing

29. Ensure full implementation of the Law on Financing of Political Entities and Election Campaigns, in particular with regard to the use of public funds and the use of official vehicles during election campaigns, which is a violation of the provisions of said law;

30. Strengthen the institutional capacity of the Agency for Prevention of Corruption as a prerequisite for strengthening its independence and clearly define the powers in the field of political financing (both from private and public sources), and achieve effective implementation of legal provisions regarding the financing of political entities and electoral institutions campaigns;

31. Define clear rules and guidelines regarding the use of public and party resources, as well as loans, for funding the election campaigns and political entities;

32. The Agency should be pro-active in conducting comprehensive procedures when it comes to examining the accuracy, completeness, legality, and objectivity of financial statements submitted by political entities;

33. Improve existing legislation and procedures for sanctioning candidates who report incorrect information about their income and expenditures;

34. Increase the level of public awareness of the activities of the Agency for Prevention of Corruption through the classification of available documents and the regular publication of its sessions;

35. Remove ambiguities in the Law and conduct training for relevant stakeholders on legislative practices (harmonized interpretations of the law by the APC and SAI). Strengthen civic monitoring of election campaign financing;

36. New systematization of APC posts, that provides a sufficient number of employees for the scope of work in the area of control over the financing of political entities and election campaigns, and fill the remaining posts;

37. Drafting and advocating for amendments to the Law on Anti-Corruption. The proposed amendments should address the sections of the law that relates to the work of the Agency and the procedure for electing members of the Agency's Council;

38. The Agency for Prevention of Corruption should initiate and strengthen cooperation with the Agency for the Protection of Personal Data and Free Access to Information in order to jointly establish a system for publishing data on donations and sponsorships of political entities;

39. State funding of regular work and election campaigns of political parties should be conditioned by law, first by statute, but also by implementing democratic procedures for the selection of candidates for parliamentary and councillor positions, and the direct election of party leadership by party members.

7.2.6 Media

40. The law should determine the competence of the Electronic Media Agency, with regard to the control of content placed on social networks during election campaigns;

41. Stronger and more effective AEM mechanisms should be prescribed, that would include indirect financial sanctions commensurate with the gravity of the offense and ensure its timely treatment in relation to identified irregularities;

42. In order to avoid overlapping of legal jurisdiction, it is necessary to consider the abolition of the ad-hoc Committee of the Parliament of Montenegro to monitor the implementation of the Law on Election of Councilors and Representatives in the media section and to establish the obligation of the Agency of Electronic Media as the sole body responsible to monitor broadcasters during the election campaign;

43. Proposal to set up an ad-hoc working group within the AEM, composed of representatives of institutions, civil society, and experts in the media field, who would possess the capacity to effectively deal with media complaints. The task of the working group would consist of analyzing the monitoring reports of the AEM on a weekly basis and proposing specific sanctions for identified irregularities. This way, AEM would exercise its statutory function, react in a timely manner to the discovered irregularities, and impose adequate sanction to the media, that was found to have acted contrary to the provisions in the Law;

44. It would be useful to amend the existing legal framework for the media with regard to the definition of political advertising, with a focus on the precise definition of covert advertising not recognized by the Law on the Election of Councillors and Deputies, but only in the Rulebook on broadcasters' rights and obligations during the campaign;

45. It is necessary to legally regulate the payment methods for material published on the Internet, as well as an effective mechanism for controlling and prohibiting the broadcasting of these forms of advertising during a period of pre-election silence;

46. Work on educating the citizens about the electoral process through changing university curricula so that at least those who are vocationally focused on learning about the legal system of their country (law students) could gain adequate knowledge of the electoral process.

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