



Civic monitoring of the elections Parliamentary and local elections Montenegro 2020

INTERIM REPORT

Podgorica, 26 August 2020

NOTE: The opinions and views expressed in this report represent opinion of the authors and do not necessarily reflect the official views of the British Embassy Podgorica, the Ministry of Foreign Affairs of the Kingdom of the Netherlands and the Embassy of the Kingdom of Norway in Belgrade.



Britanska ambasada
Podgorica



Kingdom of the Netherlands

B | T | D The Balkan Trust
for Democracy
A PROJECT OF THE GERMAN MARSHALL FUND



Norwegian Embassy
Belgrade

I SUMMARY

The legal framework for administration of elections has been partially amended despite the fact that the Law on Election of MPs and Councilors has not been amended due to unsuccessful electoral reform which could not obtain the support of two-thirds of the votes in the Montenegrin Parliament.

The necessity to implement the law which regulates protection of people's health, in relation to Covid-19 pandemic, caused higher level of ambiguities in relation to rules on administration of the electoral process, which adversely influence preparation of elections causing strong pressure in terms of legality and constitutionality in performance of the electoral administration, primarily the State Election Commission.

The State Election Commission (SEC) has mainly respected all legal deadlines for administration of electoral activities. The SEC has not demonstrated an adequate level of responsibility when adopting overall and clear recommendations for holding safe elections in terms of health protection.

Adoption of regulations and documents which were abolished by the Constitutional Court as unconstitutional, is an indicator of insufficient competencies of SEC Members, as well of the political irresponsibility, since they consciously adopted unconstitutional regulations, as stated by the SEC PR Officer. Abolition of certain provisions of the Technical recommendations caused postponement of certain activities which the Commission planned to implement.

The SEC has not provided full transparency of its performance under the current election process, since the presence of media at SEC sessions and live broadcasting of SEC sessions via the internet have not been enabled which is the practice of many countries worldwide. Part of SEC that deserves compliments for the quality of the work performed is SEC Professional Service, that demonstrated a high level of professionalism and openness for cooperation with nongovernmental organizations.

Municipal Election Commissions (MECs) have mainly performed their activities in compliance with the law. Although there were some doubts in relation to selection of members of polling boards, the decisions made by MECs were in compliance with the law which was confirmed by the fact that five complaints about their work, which were lodged to SEC and one appeal which was filed to the Constitutional Court, were rejected.

A total of 1.217 polling boards (PBs) have been established which members shall be trained on administration of elections. The training for the polling board members is late due to above mentioned abolition of certain provisions of the Technical recommendations, which can cause an

issue, especially in case of the pooling board chairpersons who are performing this function for the first time and under difficult circumstances caused by Covid-19.

The Voter Register counts 540.026 voters which is 7.427 voters more than at the presidential elections held in 2018. Total number of polling stations has been increased by 4, so there are in total 1.217 polling stations. 6.288 voters who have old ID cards or passports (issued before 2008) and who did not submit requests for issuing new documents were entered into Voter Register, as well as 1.299 voters who do not have any valid identification document and did not submit requests for issuing new identification documents.

The Ministry of Interior demonstrated a high level of readiness to cooperate with the representatives of the civil society sector by establishing the Expert team for monitoring the accuracy and up-to-dateness of the Voter Register. The Ministry of Interior enabled citizens to check directly their status in the voter's registry and get responses to their questions.

Voter Register control will be performed at this electoral cycle, as well, by using AFIS system (automatic fingerprint identification system) in presence of local and international observers. Control has started on 25 August 2020 and it is still in progress.

Public campaign and increased level of engagement of the competent services of the Ministry of Interior resulted in reduction of the number of voters without valid identification documents from more than 50.000 to 23.000 approximately as of the date when the voter register was finalized. This issue was definitely solved by the SEC decision to allow the voters without valid identification documents to vote at the elections.

The possibilities for misusing the citizens' signatures while collecting signatures by the electoral lists, have remained many, as it was the case at previous election processes due to lack of the procedures for prevention.

SEC decision in relation to the Socialists of Montenegro electoral list registration case, which was confirmed by the Constitutional Court has not been adequately elaborated and causes legal instability and creates grounds for discrimination of minorities..

Competent MECs did not indicate the necessity to modify the electoral lists because gender quotas were not respected in case of two electoral lists for the elections in Andrijevica and Budva which was the case of Law violation. If the provisions of the law on underrepresented sex are not respected, then the legislator's idea behind adoption of this solution, which is encouraging women to participate more in the politics, becomes senseless.

Election campaign for the upcoming elections has been conducted under uncertain and irregular circumstances and conditions caused by non-compliance of the legal provisions which regulate the

starting date and duration of the election campaign but also by lack of institutional rules and guidelines for conducting the election campaign under Covid-19 circumstances.

The omnipresence of the “public officials campaign”, i.e. intensive presence of high level public officials during the pre-election campaign is concerning. It refers primarily to promotions and commissioning of various structures and infrastructure projects by the President of Montenegro, Prime Minister and most of the Members of the Government of Montenegro, but also by the high officials in the local self-government bodies. CeMI warns that it is related to direct violation of Article 50a of the Law on Election of MPs and Councilors and endangering the principle of equality of all electoral process contestants. Also, a clear institutional advantage of the ruling coalition is being created, while, regulated misdemeanor sanctions for the violations are not adequate and do not have deterrent effect.

So far, the election campaign, dominantly conditioned by the regulations of the National Coordination Body for Communicable Diseases (NCB) in relation to the epidemiological situation, is of lower intensity than the previous electoral cycles, without many public gatherings organized. The greatest part of the campaign, especially in July, was conducted online and it was mainly focused on the YouTube channel and social networks. Later on, the campaign was intensified and political entities were using almost all techniques for promotion of their pre-election programmes: audio and visual advertising, billboards, dissemination of campaign material, contacting the voters in the field and through door-to door campaigns.

As the campaign continues, elements of the negative campaign become more visible.

In the second part of the campaign, the Serbian Orthodox Church, despite initial announcement that it would not interfere into the pre-election campaign, has become its active participant justifying such position with the need to fight for cancelation of the Law on Freedom of Religion. Organization of the Church’s protest walks was restarted by the active engagement of the Serbian Orthodox Church, even though they are organized illegally. Engagement of the Serbian Orthodox Church raises questions related to financing of the electoral campaign where financing by the religious communities is forbidden. This is a very sensitive issue and shall be treated by the Agency for the Prevention of Corruption (APC).

For the 2020 Parliamentary Elections 11 electoral lists are confirmed, to which were distributed the budgetary assets amounting to €43,051,02 per electoral list before 12 August 2020, which was the deadline regulated by the law for distribution of 20% of the funds for electoral campaign costs. There are three confirmed electoral lists for the local elections in Andrijevisa to which were distributed the budgetary assets amounting to €248,06 per electoral list before 12 August. There are seven electoral lists confirmed in Budva to which were distributed budgetary assets amounting to €1,730.88 per electoral list before the above mentioned date. During the same time period, there were six electoral lists which were confirmed for the local elections in Gusinje and distributed

budgetary assets amounting to €90,31 per electoral list. For the local elections in Kotor, there were nine confirmed electoral lists to which were distributed budgetary assets amounting to €721,02 per list before 12 August. There are seven electoral lists confirmed in Tivat to which were distributed budgetary assets amounting to €759,71 per electoral list before the legal deadline for distribution.

Separate bank accounts for financing of the election campaign were opened by 11 political entities which are contestants to the parliamentary elections. The progress has been made compared to the previous parliamentary elections when several political entities did not fulfil this obligation. Ten political entities informed the APC about opening of the bank account within the deadline defined by the law. Croatian Reform Party was the only political entity which fulfilled this obligation two days after the expiry of the legal deadline.

APC demonstrated readiness to cooperate with nongovernmental organizations through weekly working group meetings for monitoring of the campaign finance.

With regards to the Amendments to the Law and due to special circumstances caused by the Covid-19 pandemic, APC should pay more attention to performing control over the state bodies, business entities which owner and/or major or partial owner is the state, as well as to control in the area of social welfare transparency. The best example of the insufficient quality control performed by APC are some small municipalities (Andrijevisa, Plužine) which have paid the largest amounts from budget reserves through single social welfare payments.

Within the course of the campaign so far, there were 287 proceedings initiated against government bodies and 83 proceedings against political entities for violation of the provisions of the Law. The APC has performed the most of the controls envisaged by the Plan of control and supervision, but still, there have been no proceedings initiated in cases which attract the greatest public attention.

The case has been formed by the Basic State Prosecution Office in Podgorica in order to determine all facts and circumstances related to the subject case which is currently in the preliminary proceedings phase. Besides that, the case of accusation of the vice president of the Assembly and political party Forca on behalf of coalition partners from the ruling structure to perform political corruption in Ulcinj by promising employments and employing people in order to secure votes is indicative.

The “umbrella” Law on Media and Law on RTCG was adopted by the Parliament of Montenegro in the end of July 2020 after the elections were called for. Thus, the legal instability was created and there was not enough time left neither to the media nor to political entities to get familiar with the solutions which newly adopted Laws offer.

Additionally, amendments to the Law on financing of political entities and election campaigns which were adopted by the Parliament half a year ago, which provisions regulate performance of media during election campaign, as well as APC competences in that regard, additionally

contribute to instability and do not make a good indicator for uniform and equal treatment of all election entities.

Montenegro has a diverse media environment. There are over 150 media at the market which include 22 TV stations, 53 radio stations, 70 information portals (registered electronic publications), 4 daily print outlets, 1 weekly print outlet and 1 news agency. Although being pluralistic, the media environment is deeply politically divided with easily noticeable political preferences in relation to published contents.

The Parliament of Montenegro has not established the Committee for monitoring the enforcement of the Law on Election of MPs and Councilors with regards to media which was its legal duty.

The lack of numerous traditional debates in key talk shows is noticeable, both with the public broadcasters and private media. The conceptual design of the Television of Montenegro (TVCG) scenography which is almost identical to the pre-election campaign design of the ruling Democratic Party of Socialists (DPS) may be deceiving for the voters and falls under disguised media promotion which is contrary to Article 8 of the AEM Rulebook. This was a reason for numerous reactions of the representatives of other electoral lists and accusations of bias in informing on behalf of RTCG which were additionally deepened after the political video of the electoral list “Black on White” was banned because the hologram of the president of the state was used in the video.

Agency for Electronic Media (AEM) is authorized to perform supervision over media during campaign. The AEM has timely adopted the Rulebook on rights and duties of broadcasters during election campaigns.

With regards to the situation related to coronavirus in Montenegro, social networks have played a significant role during the elections campaign. A high level of the political parties’ activities were registered which has recorded a rising trend since June when the elections were officially called for. Political parties (DCG, DF, True Montenegro, SNP, DPS, URA, SD, SPD) have been dominantly active on social networks in the pre-election period, while minority parties were slightly less active.

Having in mind that there is no legislative framework in Montenegro which explicitly regulates online media and social networks, it is important to mention the obligation to respect Facebook rules on political advertising for all political entities in Montenegro which has been enforced since 5 August 2020. With regards to that, the data on authorized advertiser or the author of the advertisement which are submitted to Facebook shall be available in Ad Library for the next 7 years.

During the pre-election period, the most active media on the Facebook platform was FOS Media which has created and shared the largest portion of the uploaded content, followed by Portal

Analitika, Portal Standard, Portal Antena M, Informativni portal IN4S, Kolektiv.me, Vijesti, and RTCG Portal. Besides the high activity level of political parties and politicians on social networks, various web pages, groups and “mim” profiles have been used during the election campaign aimed at dissemination of messages by political parties and politicians to the voters.

Participation of women at the electoral lists is slightly higher than in 2016. However, in the greatest percentage of cases (40%) women are still allocated at each fourth position on the electoral list which is the legal minimum. On the other hand, some irregularities were recorded when accepting two electoral lists at the local level, in relation to participation of underrepresented sex. Electoral lists “For future of Andrijevića” and “New Budva-Ilija Gigović” were not structured in compliance with the law which regulates that among each four candidates in the electoral list order there shall be at least one candidate who is a member of the underrepresented sex, which is direct violation of the Law on Election of MPs and Councilors.

II INTRODUCTION

Center for Monitoring and Research - CeMI, is a nongovernmental organization that, for the past 20 years has been engaged in monitoring of the electoral process in Montenegro and other countries, through ENEMO network of European election monitoring organizations.

Following its mission and social role that we've had in previous election cycles, CeMI election observers will monitor the parliamentary elections that are scheduled for 30 August of 2020, as well as local elections in five municipalities (Andrijevića, Budva, Gusinje, Kotor and Tivat). CeMI has been observing the election campaign in Montenegro since the announcement of the election on 20 June 2020, and this Preliminary Report represents the results of that monitoring.

Monitoring of the parliamentary and local elections is financially supported by the British Embassy Podgorica, Embassy of Norway in Belgrade and the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Center for Monitoring and Research – CeMI has established a mission expert team for observation of the upcoming elections scheduled for 30 August 2020. The mission expert team will be tasked with observation of various segments of the electoral process and conducting civic monitoring of the elections. Aside from the core team, local coordinators for each municipality are also engaged, and they will be tasked with providing support to the CeMI observation network in all cities. For the purpose of voting process observation at the forthcoming elections in Montenegro, CeMI accredited more than 1,300 observers in order to provide full coverage of almost all polling stations. Based on the information acquired from the observers' network during the elections day, CeMI will regularly inform the public about all significant and possible irregularities, turnout of

voters, as well as present projections of the elections results soon after the closure of polling stations and first votes counted, through regular press conferences, web site, social networks and mobile application, as it was a practice before.

III POLITICAL CONTEXT

Political background

The Decision no. 01-1212 on scheduling parliamentary elections in Montenegro to be held on 30 August 2020 was made by the president Milo Đukanović on 20 June 2020¹. Besides parliamentary elections, local elections for Municipal Assembly councilors will be held on the same date in five municipalities of Andrijevica, Budva, Gusinje, Kotor and Tivat.

After parliamentary elections held in 2016, all parliamentary opposition parties decided against acceptance of election results and the beginning of boycott of the parliament. Boycott of the parliament undermined performance functionality of the Parliament of Montenegro, while its consequences caused an additional challenge for holding forthcoming elections. The trigger for beginning the collective boycott was publishing of the information, and later on initiating investigations and trial proceedings against some of the leaders of the Democratic front for organization of the Coup d'état. Coup d'état trial drew the attention of the public worldwide. Besides Democrats and United reform action (URA), other opposition parties occasionally stopped boycotting the parliamentary sessions, but they have not permanently returned to the Parliament.

The trial process for the crime of attempted terrorism, was followed by numerous street protests against the ruling coalition of the Democratic Party of Socialists (DPS). The closure of the trial process was marked by new political tensions which reached their peak in December 2019 and during 2020. New tensions were mainly caused by adoption of the Law on freedom of religion or belief and legal status of religious communities, which due to its polarized nature among the religious believers and political forces resulted in mass protests in Podgorica and all around the country by the Serbian Orthodox Church and opposition parties.

Unlike all previous protests, for the first time, the religious institution – Serbian Orthodox Church (SOC), has taken over the overall organization of protests formulating them as “Church’s protest walks”. According to the police estimations, Church’s protest walks were in average supported by approximately 20,000 citizens, while the maximum number of protestants which gathered to support a single Church’s protest walk was approximately 63,000. Although organized by the Serbian Orthodox Church, Church’s protest walks were logistically and politically supported by

¹ <http://www.mup.gov.me/vijesti/227555/Saopstenje-za-javnost-i-numericke-tabelarne-prikazi-podataka.html>

the opposition parties, primarily by the Democratic Front (DF), Socialist People's Party (SNP) and Democrats. Some representatives of opposition parties URA and Demos supported Church's protest walks by their own presence.

The continuity in organizing Church's protest walks was shortly interrupted by the gathering ban which was ordered following the declaration of Covid-19 pandemic. However, the continuity was soon re-established by organizing Church's protest car rides which are being supported by the priests.

New electoral legislation was adopted in the beginning of 2014, regulating many new additional control mechanisms, such as: electronic identification of voters, new voting procedures by letter, regulating competences of the Ministry of Interior for maintenance of the voter register, etc. The lack of the readiness of the institutions to implement consistently the electoral legislation was evident before and after the parliament elections were called for. The State Election Commission has several times pointed out to the Parliament of Montenegro the practical issues related to implementation of the electoral legislation. The opinions and requests of the political entities and nongovernmental sector and recommendations of the international organizations (OSCE/ODIHR) resulted in establishment of the Temporary Parliamentary Committee for overall reform of electoral and other legislation which was formed in October 2018. However, the functioning of this Committee did not give the results in the end due to the withdrawal of the part of opposition which was represented in equal numbers as the representatives of the ruling party. After the Committee ceased functioning, notwithstanding the great efforts of the European Union to have the political entities define the electoral regulations which will secure the trust into the electoral process, necessary amendments to the electoral legislation have not been made.

Covid-19 epidemic is a great challenge for holding the parliamentary elections which are scheduled to be held on 30 August, and which has already significantly limited pre-election activities. Limitations imposed by the National Coordination Body for Communicable Diseases (NCBCD) represented aggravated circumstances for organization of the pre-election campaigns of the political parties. According to the initial NCBCD decisions, it was allowed to organize gatherings in closed premises for maximum 20 persons. In the case of the open space gathering, the maximum number of allowed participants was 40. However, the end of the first half of the pre-election campaign for forthcoming parliamentary elections was marked by relaxation of measures in relation to organization of political rallies. According to current regulations, the allowed number of participants at the closed space gathering is 50, while the allowed number of participants at the open space gatherings is 100.

Since the last parliamentary cycle (2016-2020), according to the Freedom House report of the Nations in transitions, Montenegro moved from the category of semi-consolidated democracy to the category of hybrid regimes.

IV LEGAL FRAMEWORK AND ELECTORAL SYSTEM

A. Legal framework

The Constitution and the Law on Election of MPs and Councilors are crucial legal documents regulating the manner of exercising the right to vote and procedure of election organization at each level in Montenegro. Law on Election of MPs and Councilors regulates the manner and procedure of electing councilors in municipal assemblies, borough councils, Administrative Capital assembly and Historic Royal Capital assembly and of members of the Parliament of Montenegro; organisation, composition and powers of election management bodies; ascertaining of voting results and allocating of seats; protection of voting right and other matters of significance for election organisation and administration. Aside from the Constitution and the (1) Law on Election of MPs and Councilors, a set of laws in the area of electoral legislation consists of: (2) Law on Financing of Political Entities and Election Campaigns (which regulates the manner of acquisition and provision of financial assets for regular operation and the election campaign of political entities, the prohibitions and restrictions on disposal with state-owned property, funds and public authorities in the course of campaign as well as the control, supervision and auditing of financing and financial operations of political entities, in order to achieve the legality and transparency of their operation); (3) Law on Voter Register, (4) Law on Political Parties and (5) Law on Registry of Permanent and Temporary Residence.

In addition to above listed regulations, the following laws in the radio diffusion area are also significant – Law on electronic media and Law on public radio diffusion services of Montenegro. Decisions of the bodies for election administration can be taken as the legal source which regulates the area of parliamentary elections organization. From the aspect of the criminal-legal responsibility, a special Chapter of the Criminal Code of Montenegro regulates the criminal offences against the electoral rights. Detection and prosecution of the criminal offences against the electoral rights fall under the competence of the Basic State Prosecution Offices.

Due to the situation caused by Covid-19 pandemic, normative acts which are enforced in order to protect the health of the population shall be implemented in case of the parliamentary elections in 2020, as well. Law on protection of population against communicable diseases, which was adopted in 2018, but amended in July 2020, regulates the measures for prevention, suppression and eradication of communicable diseases, epidemiological supervision and competent entities for their enforcement. The Amendments to the Law adopted in 2020 regulate new measures for protection of population against communicable diseases in order to secure respecting of the mandatory implementation of the measures related to physical distancing between persons, using personal protective equipment - masks, and other items of equipment if necessary, mandatory

using of defined personal protective equipment, mandatory disinfection of the buildings, and similar.

Since the legal framework for administration of elections remained unharmonized with the international standards, with special reference to the legal framework for protection of health of citizens against communicable diseases which has not been adapted, and made precise and clear enough for enforcement during the electoral process, the concern remains related to lack of preconditions for undisturbed administration of elections in 2020, their regularity and guarantees of electoral rights to all voters.

B. Electoral system

List proportional representation system (List PR) has been used in Montenegro since the introduction of the multi-party system. Closed and blocked party lists (electoral lists) are used providing no possibility for preferential voting. Montenegro is one electoral district which magnitude (81) is equivalent to the Parliament size containing 81 seats.

Registered parties, coalitions and groups of citizens have the right to register their electoral lists. The electoral list must contain minimum 54 ($\frac{2}{3}$ of the seats in the Parliament), and maximum 81 members of the Parliament (equivalent to the number of seats in the Parliament), except for the groups of citizens or political parties representing the minority nation or minority ethnic community which must nominate minimum $\frac{1}{3}$ (27) of the total number of members of the Parliament in Montenegro (81).

In line with the Article 39a of the Law on Election of MPs and Councilors, there should be at least 30 per cent of candidates on the electoral list from the underrepresented sex, in a way that among each four candidates in the electoral list there should be at least one female candidate.

Seats are allocated to the qualified electoral lists by using the D'Hondt method and applying differentiated legal threshold. Only the electoral lists which exceed the electoral threshold can be included into the process of seat allocation by using the described method. A legal threshold of 3% applies to all lists. Exceptions are minority lists for which a legal threshold of 0.7% and 0.35% is provided for lists of the Croatian minority.

Independent candidates, individuals are still not allowed to run for elections, although, this was recommended by the Venice Commission, OSCE/ODIHR and CeMI Mission, but are allowed to be the candidate only within the candidate (party) list.

Number of MPs	Electoral system	Number of electoral districts	Electoral thresholds	Type of electoral list	Preferential voting	Electoral method
81	Party list system	1	3% 0,7% 0,35%	Closed blocked	No	D'Hondt

V ELECTION ADMINISTRATION

Election administration bodies have a very significant position in the electoral system of Montenegro. Composition and competencies of the bodies for election administration are regulated by the Law on Election of MPs and Councilors. Election administration bodies that perform activities related to preparation and organization of Parliamentary elections are: the State Election Commission; Municipal Election Commissions in 24 municipalities in Montenegro and the Polling boards.

A. State Election Commission (SEC)

The State Election Commission is the most significant election administration body. The SEC is composed of the chairperson, secretary, nine permanent members and one authorized representative of each submitter of electoral list. The SEC chairperson shall be appointed by the Parliament, at the proposal of the Parliamentary working body in charge of elections and appointments, after a previously conducted open competition. Four members of the permanent SEC composition shall be appointed at the proposal of the parliamentary majority. Four members of the permanent SEC composition, one of whom shall perform the office of a secretary, shall be appointed at the proposal of parliamentary opposition. One representative of a political party or submitter of electoral list for authentic representation of members of national minorities or minority ethnic communities which received the highest number of votes in previous elections shall also be appointed member of the permanent SEC composition, while his deputy should be a member of another national minority or minority ethnic community. One member of the permanent SEC composition who is familiar with electoral legislation² shall be appointed by the Parliament

² Article 30 of the Law on Election of MPs and Councilors (Official Gazette of Montenegro, no. 16/2000, 9/2001, 41/2002, 46/2002, 45/2004 - Constitutional court (CC) decision, 48/2006, 56/2006 - CC decision and "Official Gazette of Montenegro", no. 46/2011, 14/2014, 47/2014 - CC decision, 12/2016 - CC decision, 60/2017 - CC decision and 10/2018 - CC decision)

from among the representatives of civil society, non-governmental sector and university, at the proposal of the Parliamentary working body competent for appointments and elections, after a previously conducted open competition. Authorized representatives of the confirmed electoral lists gain the right to participate in the work 20 days prior to the election. Eight out of eleven electoral lists exercised the right to participation of authorized representatives.

The public is informed about SEC activities through the website. Sessions of the SEC are held at the hotel Hilton, in order to respect measures ordered by the National coordination body for communicable diseases in terms of the adequate size of the meeting room, since capacities of SEC premises are limited, which was remarked by some representatives of media and nongovernmental sector, having in mind that this is the most expensive hotel in Podgorica. As before, the full transparency of SEC performance is not enabled under the current election process, since the presence of media representatives at SEC sessions is not enabled, as well as live broadcasting of the sessions via the internet, which is the regular practice in many other countries, including regional countries. SEC Professional Service deserves compliments for the quality of the work performed. It has demonstrated a high level of professionalism and openness for cooperation with nongovernmental organizations.

The SEC has not enabled regular and updated controls of the voter register. The flow of the electoral process so far has been marked by the lack of the regular communication and coordination of activities between the Ministry of Interior and the SEC in performing controls of the voter register. This issue was raised at the sessions by the members of the SEC themselves, who indicated that more possibilities for performing control are in hands of the representatives of the authorized nongovernmental organizations who are members of the Expert team for monitoring the accuracy and up-to-dateness of the voter register than with themselves.

Since the date when the elections were called for until 24 August 2020 the SEC has held 28 sessions. The authorized representatives of the accepted electoral list attended the last five sessions, starting from 10 August when they acquired the right to participate in the work of the Commission.

On 31 July 2020, the SEC made a decision that the election materials for the elections scheduled to take place on 30 August will be printed by “Merkator International ltd Bijelo Polje”. The decision was made unanimously, selecting the most favourable bid, following several hours of discussion where none of the members of the SEC discussed the ownership structure of the “Merkator International ltd Bijelo Polje” which might be disputable. Namely, in accordance with the data from the Central registry of business entities, the owner and executive director of the

company is a former vice president of Bijelo Polje Municipality from DPS³ ranks. Several days later, a DPS electoral list was published where this person holds a position number 72.

Representative of the Center for Monitoring and Research was present when the printing of the ballots was finalized. During this process, some SEC members informed our observer that the data available in the Central registry of business entities are not correct and that the owner of the company is a son of the former vice president of Bijelo Polje Municipality. CeMI observer verified that the premises and the number of employees of the printing company satisfied the needs of the electoral process. Ballots were printed in B5 format, with the exception of ballots in two languages which are printed in A4 format. The remark to the performance of the printing company is related to insufficient respect for the measures aimed at epidemiological protection. Namely, at the beginning of the printing process the workers were wearing protective masks, but later on most of them did not use this type of protection. Representatives of the media and several nongovernmental organizations questioned the fairness in selecting the company Merkator Bijelo Polje to print the ballots. Regarding this situation, SEC members stated that they unbiasedly selected the most favourable bid (the offered price was €40,000 and €90,000 lower than the prices offered by other competitors), and they did not want to give advantage to the company which they had cooperated before just on the grounds of their previous cooperation. The decision on selection of the most favourable bidder has not been uploaded at the SEC website yet. The SEC is not bound by the Law on Public Procurement, but it should not be used as a reason for lower levels of transparency and lack of explanations when making such decisions.

Another decision which was criticized by the public was related to the application of the software for verification of signatures which was developed by the Section for information and communication technologies of the Parliamentary service of Montenegro. This decision was criticized by some media and nongovernmental organizations because such software has already existed – it has been donated by the OSCE mission to the Commission. In the press release, the chairperson of the Commission stated that the reason for such a decision was grounded on the fact that the software developed by the above mentioned Section of the Parliamentary service enables faster data entry and requires less human resources for data entry than the software developed in cooperation with OSCE.

B. Municipal election commissions (MECs)

The composition of the MECs includes the chairman, four permanent members and one authorized representative of each submitter of electoral list⁴.

³ <http://www.pretraga.crps.me:8083/Home/PrikaziSlog/17>

⁴ Op.cit. Law on Election of MPs and Councilors, Article 25, paragraph 1

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

The secretary of the MEC shall be appointed at the proposal of parliamentary opposition. As a rule, the candidate proposed by the opposition electoral list which won the highest number of councilor seats in the previous elections shall be appointed secretary of MEC. Commission secretary shall be in charge of administrative duties provided for in electoral legislation.

Two members of the permanent composition of the MEC shall be appointed at the proposal of parliamentary opposition. Permanent members from the ranks of opposition shall be representatives of opposition electoral lists in the relevant municipal assembly in proportion to the number of seats won at previous elections, while in the case of the same number of seats, advantage shall be given to the electoral list which received the highest number of votes.

The MEC in parliamentary elections shall have the following competences: 1) take care of a lawful election administration; 2) organize technical preparations for election administration; 3) designate polling stations for election of councilors and MPs; 4) form polling boards and appoint the presiding officer and members of polling boards for election of councilors and MPs and organise their training on polling board work procedures; 5) determine the number of ballot papers for individual polling stations, stamp them, and together with the stamped extract from the voter register, deliver them to polling boards with a written record of delivery; 6) publicly disclose the number of voters in a municipality and per polling stations; 9) ascertain the overall voting results for the election of members of parliament in its territory and per each polling station and submit a report thereon to the SEC⁵.

The MEC also has the following competences in the process of the local elections: 1) assess whether electoral lists for election of councilors have been compiled and submitted in conformity with this Law; 2) validate and publish electoral lists for election of councilors; 3) ascertain the results of election of councilors, as well as the number of votes for each electoral list and determine the number of seats belonging to each electoral list for election of councilors; 4) issue certificates to elected councilors; 5) publicly announce the results of the election of councilors; 6) submit a report to the municipal assembly on the results of election of councilors and about the filling in of vacant councilor seats; 7) submit data on the election of councilors to the bodies in charge of statistical data collecting and processing.

⁵ Ibid, Article 27 para.1

The MEC shall immediately publish all acts and information of election administration significance on its website, as well as interim and final voting results at every polling station⁶. Each MEC has its website, however, some of them are not transparent enough. At the website of the MEC Kolašin there is no information about this year's parliamentary elections. MECs in Žabljak, Petnjica and Plužine have had only one entry uploaded to their websites in the course of the electoral process so far (Decision on determining the polling stations), while MECs in Ulcinj, Kolašin, and Bijelo Polje have had three or less news items uploaded to their websites so far, which is significantly less comparing to the websites of other MECs.

We need to point out that the MECs in the municipalities where the parliamentary and local elections will take place on the same day (Andrijevica, Budva, Gusinje, Kotor and Tivat) shall pay special attention to the organization of the election process and preparation of the Pooling boards for performance of the electoral activities, since their tasks at these elections will be more demanding comparing to other municipalities in Montenegro, especially, due to current circumstances related to Covid-19 and need to provide the epidemiological protection of the voters.

C. Polling boards

At the forthcoming parliamentary elections there will be 1,217 polling boards with more than 12,000 permanent members and deputy members. Besides that, the extended composition of polling boards will include the authorized representatives of 11 electoral lists and representatives of the electoral lists at the local level, so it is almost certain that the election administration bodies will include more than 25,000 members. It will be a great challenge for the SEC, with regards to the elections being organized under Covid-19 circumstances. Due to difficult circumstances under which the election will be held, the Center for Monitoring and Research (CeMI), not long after the elections were called for, proposed to have the elections postponed for the last date within the deadline regulated by the Law (which is 16 October).

D. Activities of the SEC aimed at epidemiological protection of voters

Technical recommendations for holding elections with the goal of epidemiological protection of voters were adopted by the SEC on 6 August (24 days before the election date). The recommendations were adopted by 10 votes in favour and 1 abstention (representative of the Democrats). The recommendations were criticized by the organizations which are monitoring the elections (CeMI, CDT, MANS) and political parties, both ruling and oppositional ones. The recommendations spotlighted the unreadiness of the commission to take over the responsibility for development of the comprehensive document which shall regulate safe holding of the elections during the Covid-19 epidemic. According to the opinion of CeMI experts, the adopted

⁶ Ibid, Article 27 para. 2

recommendations are unconstitutional because they deprive the voters hospitalized due to treatment of Covid-19 infection and the institutionally quarantined voters being outside of their place of residence from their right to vote. Exercising the right to vote is not a matter of “doing the favor“, as stated in the press release of the Commission’s PR officer, but it is an obligation of the state to enable all citizens who fulfill the requirements to exercise their voting rights. Regardless of the character of the recommendations (they are not mandatory), this document will cause in practice the violation of the rights of the mentioned groups of citizens which are guaranteed by the Constitution. The role of the Constitutional court shall be even more important under these challenging electoral conditions than under the regular circumstances. The Constitutional court initiated the procedure to review the constitutionality and legality of the Chapter “Voting outside the polling station - voting by letter” following the initiative of the nongovernmental organization. The significant facts which have been determined by the Court during the procedure so far are as follows: 1) recommendations of the SEC, in formal-legal terms, were not adopted in line with the rules for drafting the general acts, but in substantive-legal terms contain significant characteristics of the general legal act, so the review of constitutionality and legality of this act falls under the competence of the Constitutional court, 2) the SEC violated the constitutional principle referred to in the provision of the Article 145 of the Constitution by the contested chapter “Voting outside the polling station-voting by letter”, 3) giving the recommendation related to wearing the masks, the SEC exceeded its authorities because such recommendation falls under the competence of the Ministry of Health.

Furthermore, the concept of the document indicates the tendency to cut the corners and omit the responsibility, since the document does not contain rules but recommendations. It is contrary to Article 66, paragraph 2 of the Law on Election of MPs and Councilors which regulates that “more detailed rules regarding the polling station shall be laid down by the SEC“. Working group involving the representatives of the nongovernmental organizations was established for development of the document. Significant numbers of recommendations and comments given by the representatives of the non-governmental organizations during the working group meetings were not included into the final version of the document published by the SEC.

Aside from being unconstitutional and conceptually wrong, the document is adopted too late, it is incomplete, it contains multiple contradictions and unclear recommendations and it lacks sanctions that would provide for the possibility for reaction in case of violations.

The document was supposed to be adopted earlier in order to regulate all relevant actions of the political entities. For example, one of the deleted segments of the draft document was related to the collection of signatures. Parties and coalitions which submitted the electoral lists did not have the recommendations, so the public can be reasonably concerned whether the collection of signatures was done in a safe manner. Incompleteness of the document can clearly be noticed since it is not clear how the submission of the applications for voting by letter will be done. Self-isolation of voters implies self-isolation of all household members which raises the question who will

submit the application to the polling board. Since this field has not been regulated by the recommendations, it creates possibilities for violation of self-isolation measures through establishing the contact with the third person which has to take over the application and identification documents of the applicant and submit them to the polling board. Significant shortcomings are clearly visible in the segments of the document where the specific recommendations are not adequately elaborated. Namely, one of the recommendations refers to keeping the physical distance between the members of the polling board „wherever it is possible". This is a confirmation that adequate attention was not paid when drafting the recommendations to provide conditions for reducing the risks from the virus transmission to minimum, because there is an option to apply recommendation whenever it is possible. Similar shortcoming is noticed in relation to the recommendation to disinfect hands at the polling station. The recommendation says that "in case the voter refuses to disinfect hands“, a member of the polling board shall disinfect the polling booth where this voter was voting. In addition, it is recommended to “organize and arrange the polling station in a way to reduce the virus exposure risk to minimum”, as well as to have the polling stations ready one day before elections which are to be checked and confirmed by the members of the polling board. However, there is no provision which regulates what will happen in case the polling station is not ready and organized in a prescribed manner.

Reacting to criticism, the SEC stated the following: “Taking into account the reactions of the political entities and nongovernmental sector regarding this issue and based on review of harmonization of the Technical recommendations with the Law on Election of MPs and Councilors, the conclusion was made that there is no provision in the recommendations which could limit the voting rights of the citizens of Montenegro”. However, furthermore, the SEC in its press release stated that “having in mind the importance of this issue”, it has adopted the amendments to the recommendations where the segment of the text related to the permanent place of residence as a condition for voting in case of institutionally quarantined voters was deleted from the recommendations. The response to the Initiative of the Center for Democratic Transition indicates that the only one amendment made to the recommendations was not done completely. Namely, the Initiative requested also the Regulations for voting by letter to be amended, in terms of voting by letter which shall be done at the permanent place of residence. The SEC rejected this Initiative explaining that amendments to the regulations would cause issues in terms of the deadline for voting by letter which would further “deprive a great number of voters who vote by letter from their right to vote”. Furthermore, the SEC in its explanation states the following “if the principle of the permanent place of residence would be considered as the limitation principle... then the question on whether the polling station is a limitation of the voter’s right to vote could be reasonably raised”. Finally, it is stated in the opinion that “when considering this issue, the SEC has taken into account international electoral standards which recommend no amendments to the electoral regulations to be made in the year when the elections shall be held”. Such SEC’s answer indicates that its members do not understand that special circumstances (which are Covid19 circumstances) require special measures and rules. But they consciously rigidly interpret electoral

regulations during pandemic. It can be concluded from the above stated that they amend recommendations in order to demonstrate to the public that they are “open” for the critics and they accept them, but in essence, they do not want to amend the regulations on voting by letter and thus complete the process and make essential changes.

On 20 August 2020, the Constitutional Court made a decision to cancel paragraphs 1 and 4 in the Chapter “Voting outside the polling station-voting by letter” and Chapter “Voting under quarantine” in part related to the “Rules on voting by letter” of the Technical recommendations for holding the elections with the goal of epidemiological protection of voters. Thus, the Constitutional Court pointed out the unconstitutionality of the recommendations, as well as the need to amend the Rules on voting by letter in light of new special circumstances.

VI REGISTRATION OF VOTERS

The Law on the voter register regulates that the voter register is a derived electronic database containing personal data on citizens of Montenegro having the electoral right. In addition, voter register is a public document which is used only for elections and being kept ex officio. In compliance with the provisions of the Law on the voter register, the registry is being kept by the Ministry of Interior. Voter register is created as a new database derived from the main registries kept by the Ministry of Interior, through the procedure which implied merging and crossing the data from main registries in order to derive the collection of the personal data on the citizens of Montenegro having the electoral right.

A. Changes in the Voters Register

In line with the obligation regulated by the Article 17 of the Law on the voter register, on 22 June 2020, the Ministry of Interior made publicly available the numerical table overview of the data on changes in the voter register overall, as well as per local municipalities in relation to the voter register which was used for the Presidential elections in 2018. In accordance with the Article 18 of the Law on voter register, the voter register was finalized on 20 August 2020, 10 days before the election date. Decision on finalization of the voter register was submitted on the same date to the SEC which uploaded it to its website.

Table 1: Number of voters registered in the voter register and number of polling stations per municipalities in 2020 and 2018

MUNICIPALITY	NUMBER OF VOTERS		NUMBER OF POLLING STATIONS	
	2020	2018	2020	2018
Andrijevica	4.106	4.192	23	23
Bar	39.376	38.379	75	72
Berane	23.729	23.685	56	56
Bijelo Polje	39.913	40.314	103	103
Budva	18.062	16.959	27	27
Cetinje	13.766	14.126	39	39
Danilovgrad	13.095	12.844	32	33
Municipality within the capital city of Podgorica-Golubovci	12.318	11.947	26	26
Gusinie	4.607	4.552	10	10
Herceg Novi	25.485	25.173	51	51
Kolašin	6.319	6.517	35	35
Kotor	18.478	18.117	39	37
Moikovac	6.891	7.074	20	21
Nikšić	58.342	58.334	138	138
Petnjica	6.198	6.198	18	18
Plav	9.202	9.175	22	22
Plužine	2.436	2.548	24	26
Prijevlja	25.394	26.091	94	94
Podgorica	140.086	135.442	206	206
Rožaje	22.511	22.044	44	44
Savnik	1.616	1.737	23	23
Tivat	11.797	11.508	19	19
Tuzi	12.142	11.726	30	28
Ulcinj	20.376	19.962	38	37
Zabljak	3.082	3.120	22	22
Separated polling stations	699	835	3	3
TOTAL	540.026	532.599	1.217	1.213

There are in total 540.026 voters⁷ in Montenegro's voter register. The number of voters, compared with the data from 2018⁸ was increased by 7.427 voters. Since the presidential elections and as of the finalization date of the voter register, 22.346.voters were registered in the voter registry. The number of the newly registered voters who gained the right to vote by reaching the voting age is the highest (19.261). It is followed by the number of voters who registered their permanent place of residence in Montenegro (1.223) and voters who acquired the right to vote by becoming Montenegro citizens (1.219). Lower numbers of citizens were registered in the voter registry based on determining the permanent place of residence (540) and certain corrections made in the voter's registry (103).⁹

Total number of voters who have the right to vote at the local elections in five municipalities where elections will be held is 56.656. Out of this number, 4.049 voters are registered in the municipality of Andrijevica, which is 147 voters less than in 2018; total of 17.898 voters are registered for the election of councilors in the Municipality of Budva, which is 913 more than in 2018; in municipality of Gusinje there are 4.594 voters registered which makes 41 more than in 2018; there are 18.381 voters registered for the local elections in the municipality of Kotor which makes 213 more than in 2018, while 11.734 voters are registered for the local elections in the municipality of Tivat which is 213 voters more than there were registered in 2018 for the presidential elections.

Based on the insight into voter register, the analysis of the voter register modifications, at local level was made taking into account modifications caused by the changes of the citizens' permanent places of residence in five municipalities where the elections will be held, since the parliamentary elections in 2016 until 20 August 2020, when the voter register was finalised. The data in the table below provides an overview of the number of voters in the five municipalities, total number of changes made in the voter register¹⁰, number of changes in permanent place of residence and, finally, percentage of voters which were registered in the voter's registry within the time frame indicated above, based on changes in the place of residence.

⁷ <https://dik.co.me/wp-content/uploads/2020/08/biracki-spisak-2020-1.pdf>

⁸ <https://dik.co.me/wp-content/uploads/2018/04/Biracki-spisak-za-objavu.pdf>

⁹ Data obtained based on the insight into the voter's registry on 25 August 2020, based on the right to insight into the voter's registry referred to in Article 21 of the Law on the voter's registry

¹⁰ The modifications registered in the voter's registry are as follows: modifications, modifications of the date of birth and/or sex, modifications in the Registry of births, cancellations outside Montenegro, decisions on polling stations, cancelation of entry into Registry of deaths, registration of the place of residence, proclamation of business capacity of a person, modifications of the residence address, modifications of the personal names, modifications of the temporary place of residence, modifications of the permanent place of residence, registration of other facts into the Registry of births, registration into the Registry of Montenegrin citizens and determining place of residence.

Table 2: Modification of the permanent places of residence from parliamentary election of 2016 until 20 August 2020 at the local level

MUNICIPALITY	NUMBER OF VOTERS 2016	NUMBER OF VOTERS 2020	TOTAL NUMBER OF CHANGES IN VOTER REGISTER 2016-2020	NUMBER OF PERMANENT PLACES OF RESIDENCE CHANGES 2016-2020	% OF VOTERS REGISTERED IN THE VOTER REGISTER BASED ON CHANGE IN THE PERMANENT PLACE OF RESIDENCE
ANDRIJEVICA	4.207	4.049	483	253	6,25%
BUDVA	16.195	17.898	4672	2.156	12,05%
GUSINJE	4.528	4.594	288	106	2,31%
KOTOR	17.964	18.381	5545	1.188	6,46%
TIVAT	11.078	11.734	3625	902	7,69%

According to the data, we can see that in the time from the previous parliamentary elections until the date of the finalization of the voter register on 20 August, 2020, the largest number of voters who were registered in the voter register based on changes in the permanent place of residence is in Budva, and the lowest in Gusinje.

For the period from 1 January 2020 until 20 August 2020, this number is nearly irrelevant. During the reference time period, based on the modification of the place of permanent residence, there were 46 voters registered in Andrijevica, 106 in Budva, 4 in Gusinje, 85 in Kotor and 44 in Tivat.

The number of voters who moved from one municipality to another cannot be obtained based on the insight into the voter register.

Since the announcement of the election until the finalization of the voter register, a total of 1.231 voters were removed from the voter register. In 97% of cases, voters were removed due to death, while the remaining percentage was removed due to loss of Montenegrin citizenship and cancellation of the permanent place of residence. The insight into the voter register also shows that there are only 18 potentially double registered voters.

The voter register also contains information on the voters' age per municipalities, except for the persons who vote at separated polling stations (UIKS I, UIKS II i UIKS III). Unfortunately, voter register does not enable precise insight into voters' age structure, separately for each year, but it can be observed only in ten-year scope. Due to the functioning method of the program, it is possible to determine precisely only the number of voters who are 18-19 years old. Namely, the initial value where the voter register starts is 10, followed by 20, 30, 40, until the final value of 130. Since minors do not have the right to vote, the range from 10-20 actually reflects the number of voters who are 18 and 19 years old. The range from 20-30 reflects the number of voters who are 20-29

years old, and so on. With regards to previously mentioned, the table below provides an overview of the age structure of voters who are registered in voter register.

Table 3: Age structure of voters (excluding separated polling stations)

AGE	18 - 19	20 - 29	30 - 39	40 - 49	50 - 59	60 - 69	70 - 79	80 - 89	90 - 99	100 - 109	TOTAL
MEN	8.824	46.200	50.093	48.777	46.767	39.768	19.628	8.382	817	15	269.271
WOMEN	8.167	43.045	48.008	47.056	44.010	41.012	25.329	12.688	1.337	38	270.690
TOTAL	16.991	89.245	98.101	95.833	90.777	80.780	44.957	21.070	2.154	53	539.961

B. Electronic identification of voters

Law on Election of MPs and Councilors regulates that electronic voter identification devices shall be used at polling stations for identification of voters¹¹. Voters shall be identified electronically in order to cast their votes¹². After the use of electronic voter identification devices was introduced, in order to prevent voters from casting their voices twice, spraying of the invisible ink on the voter's finger was not used any longer, as well as checking with the ultrasound lamp whether the invisible ink had already been applied to the voter's finger earlier.

Electronic voter identification device contains information on the polling station where it was activated, activation date and time, number of voters at specific polling station for specific elections and statistical data on voters' turnout at the specific polling station.

After biometric ID card or passport are scanned through the reader on the electronic voter identification device, voter's data shall appear, under condition that the voter is registered in the voter register and at that specific polling station. The device displays the voter's photo, name and surname, personal identification number and address at the place of residence. At the same time, the device prints the confirmation list which contains all the listed information about the voter, including the ordinal number in the voter register. The polling board presiding officer shall circle the ordinal number under which the identified voter has been registered in the voter register, next to which the voter shall sign himself and then can proceed to cast the vote.

¹¹ *Op.cit.* Law on Election of MPs and Councilors, Article 68a paragraph 1

¹² *Ibid* Article 68a paragraph 2

The printed confirmation list shall be signed by the polling station presiding officer and board member belonging to the opposite political option. Number of the confirmation lists has to be equal to the number of ballot counterfoils, ballot papers, circled names in the electronic registry and used ballot papers.

C. The work of the Expert Team for monitoring the accuracy and up-to-dateness of the voter register from the date when the elections were called for until the proclamation date of the final election results

On 8 July 2020, the Ministry of Interior established the Expert team for monitoring the accuracy and up-to-dateness of the voter register from the date when the elections were called for until the proclamation date of the final election results, which includes the representative of CeMI. Expert team created a special email address kontrolabs@mup.gov.me which the interested parties can use to send their inquiries and get information related to the voter register. Since the date when the email address was created until the voter`s registry finalization date, citizens sent in a total 55 inquiries. The citizens mainly were interested in the information about the polling station where they can exercise their right to vote, as well as about the possibility of voters` identification at the polling station with the valid passport. Some inquiries were related to the possibilities for facilitated submission of the requests for obtaining identification documents for old, ill and disabled persons. The free phone line and Call center were established by the Ministry of Interior in order to provide information to voters about modifications of the voter register. From the opening date of the Call Center until the finalization date of the voter register, the Call Center received 1.378 citizens` calls.

D. Voting with invalid identification documents

One of the most significant issues related to the rights of voters which has been raised during this electoral cycle is related to the possibility of voting with invalid identification documents. Namely, the SEC sent a letter to the Ministry of Interior asking for the clarification related to the questions asked by the citizens whether the expired identification documents will be valid during the forthcoming elections and whether it will be possible to vote with invalid identification documents. The answer received from the Ministry was negative. In the opinion of the Ministry of Interior, citizens who do not have valid identification documents cannot use expired documents to prove their identity at the polling station, i.e. they cannot vote if they do not have a valid ID card or valid passport. The data which causes the greatest concern is related to the large number of citizens whose ID cards have expired after the Covid-19 epidemic was declared on 26 March 2020, which amounted to 52.200 on 4 August 2020. According to the data of the Ministry of Interior, that number will be 74.871 on the election date. It is important to point out that out of that number, 23.931 voters have valid passports. Covid-19 epidemic is one of the reasons why it was difficult for the citizens to renew their identification documents which is confirmed by the data that nearly 10.000 ID cards have been issued but not handed over to the applicants.

Besides that, there are 6.288 voters in the voter register who have old ID cards or passports (issued before 2008), but who did not submit the request for new identification documents. Among them there are 162 voters who are 90 years old and older than that age. Also, there are 1.299 registered voters who do not have any identification document and who did not request issuing the identification document.

The decision to extend the working hours of all of regional units and branches of the Ministry of Interior and encourage citizens to submit requests for issuing ID cards and have them issued before the date of elections was one of the results of the work done by the expert team aimed at reduction of the number of citizens without valid identification document. Because of this, the number of citizens without a valid ID was reduced in a short amount of time, evidenced by the fact that between 4.8.2020 and 12.8.2020, 8.381 requests for a new ID were issued, and 2.050 requests for a new passport. Of that number, 5.146 ID's and 1.546 passports were issued to citizens. According to the latest data of the Expert team, the number of citizens without a valid ID or passport on 20.8.2020, is 23.295, meaning that the initial number of more than 50.000 voters without a valid ID or passport, was reduced to around 23.000 on the day when the voter register was finalised.

Still, this is a rather large number of citizens who would not be able to exercise their right to vote. However, at the initiative of Democrats, SEC adopted the opinion which is opposite to the position of the Ministry of Interior allowing the voting with invalid identification documents if the electronic identification device recognizes the identification document as a legal one. The SEC explained the opinion by stating that conducting elections is under their competence. Nevertheless, each adult citizen who has the permanent place of residence registered in Montenegro¹³ is legally obliged to have a valid ID card. Therefore, the campaign aimed at reduction of the number of citizens who do not have valid identification documents is welcomed regardless of the election cycle.

E. Difference between the number of inhabitants according to the population census and number of voters registered in the voter register

During the period preceding the electoral campaign, but also during the electoral campaign itself, one quite significant issue which was raised in public was related to the comparison of the population census results with the voter register data. According to the latest population projections which MONSTAT publishes annually¹⁴, in the middle of 2019 Montenegro had 622.028 inhabitants, out of which 486.495 are adult inhabitants, while the voter's registry contains 540.026 voters. It means that the voter's registry contains 53.531 voters registered more than there are adult inhabitants according to the population census data. These differences between data were

¹³ Article 2 paragraph 1 of the Law on identification card, "Official Gazette of Montenegro", no. 12/2007, 73/2010, 28/2011, 50/2012, 10/2014 and 18/2019)

¹⁴ <http://www.monstat.org/userfiles/file/demografija/procjene%20stanovnistva/2019/n/procjene%20stanovnistva%20i%20osnovni%20demografski%20indikator%20-%202019.pdf>

the reason why some parts of the public have doubted the up-to-dateness of the voter register. In order to understand the difference and its role in forming opinion on the validity of the voter register, it is primarily necessary to understand which data are contained in these databases.

At the very beginning, it is necessary to emphasize that there is a difference between the terms “inhabitant who reached the age of majority” and “Montenegrin citizen who reached the age of majority” and “person who has the right to vote (voter)”. Inhabitant may, but does not have to be a citizen. On the other hand, the citizen who reached the age of majority may, but also may not have the right to vote (be registered in the voter register). In line with the Article 45 of the Constitution of Montenegro, the voter shall be the person who is the citizen of Montenegro who is 18 years of age and who has minimum two years of residence in Montenegro¹⁵. It means that there are three necessary criteria for being entered in the voter register: (1) citizenship, (2) age of majority and (3) place of residence (residence requirement). Residence requirement is regulated in more detail by the Article 11 of the Law on Election of MPs and Councilors where the permanent residence in Montenegro is required for no less than two years prior to the parliamentary election date, or six months before the local elections date. It is important to point out that the person may lose the right to vote due to loss of the legal capacity nonetheless the person fulfils these three requirements¹⁶.

Criteria for selection of persons who will be encompassed by the population census are the usual place of residence and intentions for the residency in Montenegro for the certain time period, as stated by the person himself/herself. So, the total number of inhabitants in Montenegro according to the population census is actually composed of the persons who stated that their usual place of residence is in Montenegro, with the residency period of no less than one year, and of the persons whose period of the residency in Montenegro is less than one year, but who intend to stay in Montenegro. Based on the previously stated, it can be concluded that these persons are not necessarily the citizens of Montenegro, and they need not have had a registered place of residence in Montenegro, although they might live in Montenegro, therefore they are not entered into the voter register.

¹⁵ Permanent and temporary place of residence are regulated by the Law on registry of permanent and temporary places of residence (“Official Gazette of Montenegro”, no. 46/2015 dated 14 August 2015). Permanent place of residence is defined as the place at the territory of Montenegro where a Montenegrin citizen has settled with the intention to permanently live there, which is the center of his life activities and which he is permanently connected with. Temporary place of residence is defined as the place and address where a Montenegrin citizen temporarily resides.

¹⁶ Op.cit. Law on Election of MPs and Councilors, Article 11

Also, the total number of inhabitants according to the population census does not include the persons who were outside of the territory of Montenegro during the time period of the population census and who do not intend to return to Montenegro next year, as well as the persons where the intention of their stay outside of the country could not be estimated due to their absence. Typical examples of the described persons are the students who are studying outside of Montenegro who may have the right to vote and who are registered in the voter register. Also, persons who were in Montenegro for less than one year during the population census, and who stated that they did not intend to stay in Montenegro for more than one year, have not been included into the total number of inhabitants according to the population census.

Another significant difference stems from the fact that the number of inhabitants for the population census is generated based on the conducted survey, where the data are obtained based on the statements of the persons, without their identity being verified, while the voter register is composed exclusively on the grounds of the identification documents, actually, official data from the public registries. The data gathered in population census do not necessarily have to be accurate because they have characteristics of the survey data. On the contrary, there is a legal assumption that the data from the voter register are correct because they are taken over from the public registries.

Finally, it is necessary to emphasize that the voter registry is an administrative record based on which the individual rights of the citizens are determined, while the data gathered through the population census are statistical ones and cannot be taken as grounds for determining individual rights and duties. On the other hand, some minority rights are determined based on the results of the population census. The Law on Minority Rights and Freedoms precisely regulates that in the local self-government units, in which members of minority nations and other minority national communities constitute a majority or at least 5% of the population, according to the results of the last two consecutive population censuses, the language of that minority nation and other minority national community shall be in official use. Within the electoral rights domain, the results of the population census are important for determining the status of electoral lists for the election of the minority nation or minority national community members of the parliament councilors. Such a status enables either reduced electoral threshold combined with the guaranteed seat or no electoral threshold at all. Specifically, the electoral threshold is not obligatory at the local elections for “electoral lists of members of a certain (of the same) minority nation or of a certain (of the same) minority ethnic community, whose share is up to 15% in the total population at state level and from 1.5% to 15% in the total population at the territory of a municipality, Administrative Capital or Historic Royal Capital, according to the last population census data for the election of MPs of minority nation or minority ethnic community and allocation of the seats among electoral lists of members of a certain (of the same) minority nation or of a certain (of the same) minority ethnic community¹⁷.

¹⁷ Ibid

The greatest issue in relation to the discrepancies among the numbers is caused by the persons who are registered in the voter register, who are indisputably the citizens of Montenegro, but who actually have not lived in Montenegro for a long time period even though they have registered permanent place of residence, therefore cannot be encompassed by the population census. Unfortunately, the Law on registry of permanent and temporary places of residence does not offer a solution for this issue, but it just makes it more complicated since it does not regulate adequate sanctions for persons who did not cancel their permanent residence. There are a lot of persons who illegally have permanent residence in Montenegro, because they do not live in Montenegro. This phenomenon is actually the reason why a part of the political public has doubts in relation to the existence of phantom voters.

Regarding international standards, according to the “Code of good practices in electoral matters, 2002”, Venice Commission, Council of Europe (1.1 c. iii.) “a length of residence requirement may be imposed on nationals solely for local or regional elections“. According to this document, all Montenegrin citizens should be given the right to vote at the national parliamentary elections no matter their place of residence. Residency requirement could be imposed only for the local elections, where it should not be longer than 6 months, which is already regulated by the Montenegrin electoral legislation. Residency requirement is regulated by the Article 45¹⁸ of the Constitution of Montenegro, whereas its cancellation requires amendments to the Constitution, which can be made final if supported by votes of two-third majority in the Parliament¹⁹ and minimum three-fifths²⁰ of the total number of voters in the national referendum. Currently, there is no political will in Montenegro for fulfilment of the first requirement. Even if it existed, it is questionable whether it would be possible to have the amendments supported in the referendum.

VII REGISTRATION OF ELECTORAL LISTS

The Decision on scheduling elections for the members of the Parliament of Montenegro was made by the President of Montenegro, Milo Đukanović on 20 June 2020, which was the starting date of the deadlines for conducting activities within the scope of the electoral process. In line with the deadlines defined by the law, submission of the electoral lists to the SEC started on 10 July and finished on 4 August 2020.

Provision of the Article 43 paragraph 1 of the Law on Election of MPs and Councilors regulates that a electoral list for election of members of parliament may be accepted if it has been supported

¹⁸ Constitution of Montenegro, (Official Gazette of Montenegro no. 1/2007 and 38/2013 - Amendments I-XVI), Article 45 paragraph 1

¹⁹ Ibid, Article 155 paragraph 4

²⁰ Ibid Article 157

by signatures of at least 0,8% voters. In order for the electoral list to be accepted at this election process, it was necessary to have it supported by signatures of 4,261 voters. Provision of the Article 43 paragraph 2 of the Law on Election of MPs and Councilors regulates that electoral list for election of members of parliament of political parties or groups of citizens which represent minority nation or a minority ethnic community may be accepted if supported by signatures of at least 1,000 voters. In line with the Article 43 paragraph 3, an electoral list for election of members of parliament which represents a minority nation or a minority ethnic community which constitutes up to 2% of the Montenegrin population according to the last population census results may be accepted if supported by the signatures of at least 300 voters.

When deciding on accepting the electoral list “SNEŽANA JONICA – SOCIALISTS OF MONTENEGRO – TO LIVE AS YUGOSLAVS”, the focus of the SEC and the Constitutional Court was on the above mentioned provision. Namely, the electoral list was submitted based on the above mentioned provision, but it was rejected by the SEC claiming that Yugoslavs do not have minority status, therefore, they have no right to use affirmative action intended for minority nations and minority ethnic communities. According to the results of the last population census, there are 1.154 (0,19%) Yugoslavs in Montenegro. When deciding on accepting the electoral list at the session of the SEC, seven members (four representatives of opposition parties, one representative of ruling coalition, one representative of minority nations and the chairperson of the commission) voted against the acceptance of the electoral list, and votes of four members (three representatives of ruling coalition and one representative of non-governmental organization) were abstained. This was a very rare voting situation when the current composition did not make a unanimous decision. Deciding on the initiative of the Socialists of Montenegro, the Constitutional Court made the same decision as the SEC. After the decision was made, Snežana Jonica stated that the Constitutional Court and the SEC acted unlawfully. Namely, if the electoral list which is headed by Jonica did not meet the requirements for minority nation, the SEC was supposed to request from the party headed by Jonica to collect additional supporting signatures to reach the number which is required for other non-minority electoral lists. The SEC failed to do that. Notwithstanding the accuracy of the statement given by Jonica that the party had collected enough signatures for the case of not being accepted as the minority one, it remains unclear why the SEC did not ask for the documentation to be supplemented by additional signatures which were missing in order to reach the number of signatures required for non-minority parties. Also, the decisions made by the SEC and the Constitutional Court have not been elaborated enough, which is discouraging since this was the first case of such a type in the history of the electoral processes in Montenegro and it will serve as grounds for deciding in future similar cases²¹. The decision of the Constitutional court contains the opinion of one judge who disputed the decision of the

²¹ The Constitutional court decision contains the opinion of one judge who contested the decision of the Constitutional court made by the majority votes stating that the electoral list of the Socialists of Montenegro subsequently submitted the documentation requested by the SEC, while the SEC has not registered any other regularities before the Decision was made.

Constitutional court made by the majority opinion. The decision of the Constitutional court will significantly determine the electoral practice in future cases and create possibilities for discrimination of small minority nations.

The procedure of registration of electoral lists was marked by collecting voter signatures in support to the electoral lists by the political parties. The SEC did not verify the authenticity of the voter signatures in support of the electoral list, which was the case as well at the previous elections and which jeopardizes the procedure of electoral list verification. The SEC, once again, started the application which can be used by the citizens to check whether their name was misused in the process of collecting the signatures. Having in mind that the names of several hundreds of citizens had been misused at the presidential elections in 2018 and that no actors of the electoral process had been taken responsible for that, CeMI expresses serious doubts that the misuse of citizens' personal data and forging signatures can secure fulfilment of formal requirements for running for the elections.

Within the deadline defined by the law for publishing of the overall electoral list, on 14 August 2020 the SEC established the following order of the electoral lists by drawing lots:

1. Social Democrats - Ivan Brajović – We decide CONSISTENTLY
2. The Bosniak Party - Correct - Rafet Husović
3. HGI. WITH ALL MY HEART FOR MONTENEGRO!
4. SDP – STRONG MONTENEGRO!
5. CROATIAN REFORM PARTY OF MONTENEGRO – HRS
6. dr Dritan Abazović – Black on White – dr Srđan Pavićević – (Civic Movement URA, Justice and Reconciliation Party, Group CIVIS voters and independent intellectuals) – Citizens!
7. Albanian Coalition “Unanimously“ Democratic Party, Democratic Union of Albanians and Democratic Alliance in Montenegro - Koalicioni shqiptar „Bashkë një za“ Partia Demokratike, Unioni Demokratik i Shqiptarëve dhe Lidhja Demokratike në Mal të Zi
8. Decisive for Montenegro! DPS – Milo Đukanović
9. FOR THE FUTURE OF MONTENEGRO – Democratic Front (New Serbian Democracy, Movement for Change, Democratic People's Party), Socialist People's Party of Montenegro, Rights of Montenegro, United Montenegro, Workers' Party, Party of United Pensioners and Disabled of Montenegro, Yugoslav Communist Party of Montenegro, Serbian Radical Party, Party of Pensioners with Disabilities and Social Justice of Montenegro.”
10. ALBANIAN LIST – Genci Nimanbegu, Nik Gjelošhaj LISTA SHQIPTARE – Genci Nimanbegu, Nik Gjelošhaj
11. ALEKSA BEČIĆ - MIODRAG LEKIĆ - "PEACE IS OUR NATION" - DEMOCRATS – DEMOCRATIC MONTENEGRO - DEMOS – PENSIONERS PARTY, DISABLED PEOPLE AND RESTITUTIONS – CIVIC MOVEMENT NEW LEFT

ANDRIJEVICA

On 7 August 2020, the MEC Andrijevica established the following order of the electoral lists by drawing lots:

1. "For Andrijevica, for Montenegro - Milo Đukanović - DPS - SD".
2. "Aleksa Bečić, Miodrag Lekić – Peace is our nation - Democrats, Democratic Montenegro - Demos".
3. "For the future of Andrijevica - SNP - NSD".

BUDVA

On 6 August 2020, the MEC Budva established the following order of the electoral lists by drawing lots:

1. DRAGAN KRAPOVIĆ-“BUDVA IS OUR NATION”- DEMOCRATS – DEMOCRATIC MONTENEGRO
2. SDP-STRONG BUDVA!
3. FOR BUDVA! FOR MONTENEGRO! – MILO ĐUKANOVIĆ, DPS, SD, MONTENEGRIN, LIBERAL PARTY
4. “URA for all citizens of Budva-Black on White!”
5. Božidar dr Vujičić – Let’s stop concreting Budva!
6. “MARKO BATO CAREVIĆ – FOR THE FUTURE OF BUDVA! DEMOCRATIC FRONT (NEW SERBIAN DEMOCRACY, MOVEMENT FOR CHANGE, DEMOCRATIC PEOPLE’S PARTY, SOCIALISTS PEOPLE’S PARTY OF MONTENEGRO, RIGHTS OF MONTENEGRO, DEMOS, DEMOCRATIC SERBIAN PARTY, UNITED MONTENEGRO “
7. NEW BUDVA-ILIJAS GIGOVIĆ

GUSINJE

On 10 August 2020, the MEC Gusinje established the following order of the electoral lists by drawing lots:

1. DEMOCRATIC ALLIANCE OF ALBANIANS, DEMOCRATIC UNION OF ALBANIANS AND ALBANIAN ALTERNATIVE ,”ALBANIANS TOGETHER FOR GUSINJE”
2. BOSNIAK PARTY – LIBERAL PARTY ,”CORRECT FOR GUSINJE“ RAFET HUSOVIĆ (BS-LP)
3. DEMOCRATIC PARTY OF SOCIALISTS OF MONTENEGRO,”FOR GUSINJE! FOR MONTENEGRO! DPS – MILO ĐUKANOVIĆ“
4. SOCIAL DEMOCRATS OF MONTENEGRO ,”SOCIAL DEMOCRATS - IVAN BRAJOVIĆ – WE DECIDE CONSISTENTLY FOR GUSINJE“
5. SOCIAL DEMOCRATIC PARTY OF MONTENEGRO SDP – dr ELVIS OMERAGIĆ – STRONG GUSINJE!
6. SOCIALIST PEOPLE’S PARTY OF MONTENEGRO “SOCIALIST PEOPLE’S PARTY OF MONTENEGRO – GUSINJE“

KOTOR

On 8 August 2020, the MEC Kotor established the following order of the electoral lists by drawing lots:

1. “Vladimir Jokić– Kotor is our nation– Demokratska Crna Gora”
2. “For Kotor! For Montenegro! DPS – Milo Đukanović”
3. Patriotically and civically “Black on White” Civic Movement URA
4. Social Democratic Party of Montenegro, under the list “SDP – Strong Kotor!”
5. Social Democrats “Dr Andrija Lompar – We decide consistently for Kotor”
6. „For the future of Kotor”(New Serbian Democracy, Movement for Change, Democratic People's Party, Democratic Serbian Party, United Montenegro, PCGSNP and Serbian Radical Party)
7. Croatian Citizens' Initiative Kotor
8. “For liberal Kotor – Andrija Pura Popović – Liberal party”
9. “Dr Branko Bačo Ivanović – Socialists”

TIVAT

On 18 March 2020, (the elections in Tivat were scheduled for 5 April 2020 but were postponed due to Covid-19 pandemic) the MEC Tivat established the following order of the electoral lists by drawing lots

1. “GORAN BOŽOVIĆ – HONESTLY AND RESPONSIBLY FOR BETTER TIVAT”
2. BOKA FORUM – PEOPLE FROM BOKA KNOW
3. Croatian Citizens' Initiative HGI – With all my heart for Tivat!
4. “Social Democrats - Ivan Brajović - Tivat has to do better”
5. Coalition electoral list “People win”
6. For Tivat. For citizens of Tivat! DPS Milo Đukanović
7. SDP – TO DEFEND THE CITY

VIII ELECTION CAMPAIGN

Election campaign has been conducted under uncertain and contradicting frameworks and conditions caused by non-compliance of the legal provisions which regulate the starting date and duration of the election campaign and lack of institutional rules and guidelines for conducting the election campaign under Covid-19 circumstances.

Unsuccessful electoral reform resulted, among other things, in legal uncertainty and sort of contradiction regarding defined time frame for conducting the election campaign. Provisions of the Law on Election of MPs and Councilors regulate that submitters of electoral lists shall conduct the election campaign as of the electoral list validation date up to 24 hours prior to the election date. However, the Law on financing of political entities and election campaigns, Amendments to which were adopted by the Parliament of Montenegro in December 2019, regulates that the election campaign shall start on the date when the elections are called for and last until the date of proclamation of the final election results²². As a consequence, two key institutions competent for enforcement of these Laws, APC²³ and SEC²⁴, set up the electoral campaign within different time frames in the calendars of electoral activities.

²² Article 2, paragraph 6 of the Law on financing of political entities and election campaigns, ("Official Gazette of Montenegro", no. 3/2020 and 38/2020)

²³ Agency for the Prevention of Corruption (APC), Guidelines, June 2020, page2. Available at: http://www.antikorupcija.me/media/documents/smjernice_za_popunjavanje_obrazaca.pdf

²⁴ The State Election Commission (SEC), Calendar of deadlines for conducting electoral activities, June 2020. Available at: <https://dik.co.me/kalendar-rokova-za-sprovođenje-izbornih-radnji/>

The Amendments to the Law on financing of political entities and election campaigns, which were adopted by the votes of the ruling coalition and without support of opposition parties, significantly modified the legal framework in terms of the election campaign and rules for conducting the election campaigns which are not harmonized with other regulations defining the same issue. Thus, one of the key international standards which guarantees credibility of the electoral process – legal security - has been undermined. Specifically, Venice Commission²⁵ with regards to that stated that the fundamental elements of electoral law, in particular the electoral system proper, should not be open to amendment less than one year before an election. Contradiction among regulations does not provide with the legal security and it can cause confusion or it can be misused both by the competent institutions and electoral competition.

Specifically, the election campaign started on the date when the elections were called, on 20 June 2020 in accordance with the Article 2 of the Law on financing of political entities and election campaigns. With regards to that, almost all political entities acted within the framework of this Law.

Early campaign was marked with the political parties which belong to the ruling coalition, DPS and SD, in terms of conducting the so-called „high level public officials campaign“, which continued during the regular part of the election campaign. The activities which are related to promotion of the results achieved by the Government of Montenegro during their previous term, through channels of certain political entities, have all characteristics of the political campaign which is aimed at promotion of the party in order to achieve the best possible results. There are numerous examples, especially on the internet channels and social networks, where the mentioned political parties even used the websites of some Ministries for promotion of the political entity²⁶. Thus, the principle of equality and equal opportunities²⁷ for promotion of the political entities programmes has been directly violated.

In the opinion of CeMI, the election campaign so far has been dominantly conditioned by the regulations of the National coordination body for communicable diseases (NCBCD) in relation to the epidemiological situation caused by Covid-19. The intensity of the election campaign is lower than at the previous electoral cycles, with regards to the presence of political entities in the media. There are not many public gatherings organized through the campaign, while the approach “door

²⁵ Code of good practices in electoral matters, adopted by the Venice Commission at its 52 session in October 2002, number 190/2002, page 10, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

²⁶ Video titled “Knowledgeable persons should be role models, but not outsiders“ where Damir Šehović appears, who is the Minister of education and the candidate on the SD electoral list “We decide” is published at the web portal www.mps.gov.me, containing the marks of the political party. It has also been shared at the Facebook page of Damir Šehović.

²⁷ Code of good practices in electoral matters, adopted by the Venice Commission at its 52 session in October 2002, number 190/2002, page 17, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

to door” has been dominantly used for communication with voters. The greatest part of the campaign, especially in July, was conducted online and it was mainly focused on the Youtube channel and social networks. Later on, the campaign was intensified. During August, political entities were using almost all techniques for promotion of their pre-election programmes: audio and visual advertising, billboards, dissemination of campaign material, contacting the voters in the field and through door-to door campaigns.

In relation to previous electoral cycles, the number of organized gatherings has been reduced. When organized, gatherings are held respecting general restrictions ordered by the NCBCD. These restrictions have been modified during the election campaign. At first, in accordance with the NCBCD instructions, organization of political gatherings in open public spaces has been forbidden. Political entities were allowed to organize public gatherings in the closed spaces for maximum 20 persons, while respecting the measure related to keeping minimum 2 meters physical distance between persons and wearing protective masks. Later on the number of persons at the open spaces was increased to 100 people or 50 persons in closed space. Different interpretation of the regulations by the political entities resulted in organization of the open space gatherings²⁸ by some political entities (DPS) while other contestants to the electoral campaign did not do that. Only after the public reactions, NCBCD revised and modified the regulations.

Having in mind the uncertain circumstances and ambiguities which they bring, CeMI expresses strong concern regarding the fact that no regulation was adopted and presented, in the form of instruction, guidelines drafted by the relevant institutions to the political entities, related to the safety conditions for conducting electoral campaigns. In order to avoid any uncertainties and ambiguities related to electoral campaign, at the NCBCD session which was attended by representatives of other civil society organizations and SEC, CeMI proposed to have the working group established which members will be representatives of the NCBCD, SEC and NGOs involved in electoral process which will define the rules for safe conducting of electoral campaign. The proposal was accepted and a draft document was prepared. The final draft was discussed at the Collegium of the Parliament of Montenegro. However, the drafted document was neither adopted nor implemented, although it was developed in accordance with the best international and regional experiences of the countries which conducted the electoral process during Covid-19 epidemic.

Political entities indicated that they have been significantly limited by ambiguities. Although they conduct the campaign in line with the general instructions given by the NCBCD, very often they send requests for clarifications in order to avoid violation of the rules. In practice, it caused a

²⁸ Following the reactions of the opposition parties, NCBCD clarified the measure related to the political gathering ban: it is related only to organization of political gatherings where political entities invite their supporters but cannot know in advance the number and identity of the persons who will attend the gathering which represents an epidemiological risk. The measure does not relate to any political activity ban. NCBCD stated that following direct inquiries, they have already informed the political parties about the possibility to organize open space political gatherings for maximum 40 persons. <https://www.vijesti.me/vijesti/politika/458853/samo-dps-razumije-sta-nkt-odredi>

significant level of insecurity with the political entities in terms of campaign conducting manner and it may affect the right of the political entities to conduct the electoral campaign, following clearly defined rules and inform citizens about their offers and programmes. Lack of the clear rules on how to conduct “door to door” campaign which has been intensively used by political entities, despite the fact that there are no precise rules and guidelines, is specially concerning because direct communication of political entities with voters definitely increases the risk of infection and could endanger health of all participants in the process.

As the campaign continues, elements of the negative campaign between DPS and SD on one side and coalitions formed around DF, Democrats and URA on the other side become more visible. Earlier political developments conditioned by adoption of the Law on freedom of religion served as the basis for creation of pre-referendum atmosphere and establishment of two confronted blocks where the ruling coalition insists on the state being endangered and on need to preserve state of Montenegro which has been endangered by great Serbian interests promoted by DF and Democrats coalitions.

Accordingly, dominating topics in the electoral campaign are mainly related to the adopted Law on freedom of religion, national and religious issues, preservation of integrity of the state of Montenegro. economic consequences of Covid-19 epidemic, unemployment, social welfare and its possible misuses, rule of law and corruption.

The omnipresence of the “high level public officials” in the pre-election campaign is rather concerning. It refers to the intensive presence of high level public officials during the pre-election campaign period who performed various promotions and opened various buildings/structures. It refers primarily to the president of Montenegro, president and most of the members of the Government of Montenegro, but also to the high officials in the local self-government bodies. This is directly contrary to the Article 50a of the Law on Election of MPs and Councilors which regulates that: “*Public officials appointed by the Government of Montenegro or elected or appointed by the local government, civil servants and state employees may not take part in election campaigns, and neither publicly express their positions regarding elections, during working hours, i.e. while on duty*“, as well as provisions of the Law on financing of political entities and election campaigns which regulates clear restrictions in this regard. CeMi warns that the principle of equality of all contestants to the electoral process is being endangered. Also, clear institutional advantage of the ruling coalition is being created, while, regulated misdemeanor sanctions for these violations are not adequate and do not have deterrent effect²⁹.

Despite the announcements made by Serbian Orthodox Church that it would not interfere into the election process, the last 15 days of the pre-election campaign are marked by support which the Serbian Orthodox Church, more and more openly, has been giving to one segment of the political

²⁹ Op.cit. Law on Election of MPs and Councilors, Article 116, para 3 (Regulated sanctions range from 500 to 2000 EUR)

offer at the parliamentary elections. Leading bishop of the Serbian Orthodox Church in Montenegro, Amfilohije Radović, said that he will be voting for the first time in his life and urged that: ‘ ‘ People should vote at the elections, people should vote for the saints and against the lawless, against lawless laws which rule and false laws".³⁰ According to the statements of CeMI's field contact persons, priests have been influencing the voters by preaching that the opposition to ruling parties means real support to the church and religious principles. Priests have been openly inviting people to support the opposition parties, mainly the opposition block "For future of Montenegro", which is formed around DF. It was noticed that a significant number of gatherings has been organized in religious buildings or at religious properties with the logistic support provided by priests. For the first time in Montenegro, we are witnesses of active participation of the religious community in pre-election campaigns (through political performances and logistic support to one electoral list).

IX ELECTION CAMPAIGN FINANCE

Control over implementation of the electoral legislation in relation to financing of political entities and election campaigns shall be performed by the Agency for prevention of corruption (APC), in line with the Article 4 of the Law on financing of political entities and election campaigns.

Election campaign financing can be made both from public and private sources. In total, 2,367,805.91 million Euros are allocated from the Budget of Montenegro for political parties to be used for financing of the election campaign as regulated by the Law on financing of political entities and election campaigns. The overall allocated amount represents 0,25% of the total planned budgetary assets, after deduction of the capital budgetary assets and budgetary assets of state funds (current budget), for the year for which the budget is adopted. Furthermore, 20% of these funds shall be distributed in equal amounts to the political entities within eight days from the expiry of the deadline for submission of electoral lists, while 80% of the funds shall be distributed to the political entities which won seats, in proportion to the number of seats awarded. There are 11 electoral lists accepted for the parliamentary elections in 2020 which were distributed the budgetary assets amounting to €43,051,02 per electoral list before 12 August 2020 which was the deadline regulated by the law for distribution of 20% of the funds for electoral campaign costs. There are three electoral lists accepted for the local elections in Andrijevica which were distributed the budgetary assets amounting to €248,06 per electoral list before 12 August. There are seven electoral lists accepted in Budva which were distributed budgetary assets amounting to €1,730.88 per electoral list before the above mentioned date. During the same time period, there were six electoral lists which were accepted for the local elections in Gusinje and distributed budgetary

³⁰ <https://www.vijesti.me/vijesti/politika/462711/amfilohije-izborna-pravda-je-svetinja-izbori-kao-nikad-povezani-sa-zivotom-ckve>

assets amounting to €90,31 per electoral list. For the local elections in Kotor, there were nine accepted electoral lists which were distributed budgetary assets amounting to €721,02 per list before 12 August. There are seven electoral lists accepted in Tivat which were distributed budgetary assets amounting to €759,71 per electoral list before the legal deadline for distribution. Funds from private sources include donations from natural and legal persons, as well as non-monetary donations. Supervision over implementation of the Law falls under the competence of APC.

For the purpose of raising funds to finance the election campaign costs, the political entity shall open a separate bank account. For the duration of the election campaign, political entities shall keep and update regularly the records of funds raised from private sources and costs of the election campaign and submit the reports to the APC each fifteen days. Separate bank accounts were opened by 11 political entities which are participants to the parliamentary elections. There were 25 bank accounts open for the local elections, while 32 electoral lists were registered. Bank accounts were opened within the deadline which is regulated by the Law (“the latest on the day following the day of confirmation of the electoral list”). Ten political entities informed the APC about opening of the bank account within the deadline defined by the law (“three days following the day of bank account opening”). Croatian Reform Party was the only political entity which fulfilled this obligation two days after the expiry of the legal deadline. It should be pointed out that the Law on financing of political entities and election campaigns³¹ defines the election campaign as a set of activities of a political entity from the day of calling for the elections until the day of proclamation of the final election results. The same Article lists the following political entities: political parties, coalitions, groups of voters and candidates for the election for the President of Montenegro.

The lack of the clearly defined deadline for opening the separate bank account results in arbitrary interpretation of the provisions of the Law. Having transparency in the area of political entities finance is of key importance. The citizens shall be informed about natural and legal persons which finance the campaign and the way in which the campaigns of the political entities are financed. At the moment it is rather challenging to detect the sources where the money comes from and how it is being spent, which creates grounds for misuse and manipulation.

Other than the obligation above, political entities are only obliged to submit to the APC the report on funds raised and spent for the election campaign with the supporting accounting documents in order to get distributed the remaining part of 80% of the budgetary assets in proportion to the number of seats awarded. Only at that moment it is possible to get the clear image of the campaign finance of a certain political entity, unless the political entity opens a separate bank account for

³¹ *Op. cit.* Law on financing of political entities and election campaigns, Article. 2

the duration of the election campaign. Such vagueness of the Law makes its implementation senseless, especially having in mind that political entities open special bank accounts 20 days before the election date, while their active election campaign starts even before that.

In line with the Article 44 of the Law on financing of political entities and election campaigns, state bodies, state administration bodies, local self-government bodies, local administration bodies, public institutions and state funds are obliged to submit to the APC, in the period from the date when the elections were called for until the election date, all employment decisions with complete supporting documentation within three days following the date when the decision was made. Due to that, on 4 July, the Center for Monitoring and Research (CeMI) asked the members of the Parliament of Montenegro to draft and adopt, through urgent procedure, the Amendments to the Article 44, paragraph 1, of the Law on financing of political entities and election campaigns, in relation to the Article - Employment and hiring of employees. Namely, business entities whose founder and/or majority or partial owner is the state or local self-government body are “omitted” from this Article which are entities being bound by the employment ban during the election period. Current definition of this provision leaves grounds for misuses, unobstructed and non-transparent political employment in such business entities during the election period. The provision neither regulates the ban and employment in exceptional cases, which is regulated for the state bodies, state administration bodies, local self-government bodies, local administration bodies, public institutions and state funds, nor regulates the obligation for business entities which founder and/or majority or partial owner is the state or local self-government body to submit to the APC employment decisions made during the election period, with complete supporting documentation. Also, the provision does not regulate the obligation of the APC to upload the employment decisions at its website and make them publicly available. In our press release we expressed the concern that the current situation purposefully creates grounds for political employment and misuses of public resources aimed at achieving political interests. It is out of the scope of the control performed by the relevant institutions and it directly violates the principle of transparency in this area thus preventing not only the relevant institutions, but also civil society organizations to perform supervision and control over the employments.

We remind that all international and national organizations have been indicating the political employment issue as one of the key mechanisms for the electoral misuses. In addition to it, there are numerous institutionally unresolved affairs. The most picturesque among them, in terms of revealing the functioning mechanism, is the affair „Recordings“ which has never got the institutional epilogue, but which strongly undermines the public trust into the election process in Montenegro. The Parliament of Montenegro did not adopt the Amendments to the Article 44 of the Law on financing of political entities and election campaigns. Having in mind the significance of these information, CeMI requested from the APC the information on whether the largest business entities which founder or partial owner is the state (Plantaže, Elektrodistribucija (Power Supply Company), Aerodromi (Airports), Montenegro Airlines) reported the number of

employments for the period since the elections were called for. Also, CeMI asked the APC to request this information from the business entities in case that they have not reported on the numbers of employment.

APC Plan of control and supervision envisages field controls of three ministries, seven municipalities, nine education institutions, seven administrative bodies at state and local level and 10 largest political entities (7 largest at the state level and 3 largest at the local level)³². A total of 36 field controls were planned. At the session of the working group for monitoring of the election campaign, CeMI representative was told that the number of field controls was lower than planned, and that thus far only 15 such controls have been conducted.

The APC at its session held on 19 August presented the information on initiated procedures. Namely, the APC initiated 239 procedures ex officio against government bodies and 83 procedures aimed at collecting the information and determining facts which are related to the services provided to the political entities during the election campaign. Out of these, the largest number of procedures was initiated in relation to failure to publish the analytical cards (135) and failure to report employments (98).³³

The Agency has published two opinions by 25 August. The first opinion³⁴ refers to the application of Article 40 of the Law on Financing of Political Entities and Election Campaign Financing and states that the prohibitions from paragraphs 1 and 2 of Article 40 of the mentioned law refer only to the election campaign period, while the prohibition from Article 3 refers to the entire 2020 "bearing in mind that regular parliamentary elections are planned". The second opinion³⁵ refers to the application of Article 16 of the Law and states that entities that provide media advertising services do not include electronic publications (portals) and billboards and other forms of advertisement. The explanation states that the Law on the Election of MPs and Councilors and the Law on Electronic Media clearly distinguish between radio and television programs and electronic publications. Also, the Agency refers to the opinion of the Ministry of Culture from August 19, 2020 and the Agency for Electronic Media from 17.08.2020. according to which portals are not electronic media. At the end of the opinion, the Agency points out that it performs the verification by collecting data from various sources and invites all service providers to finance the political campaign to submit price lists and accompanying documentation related to the provision of services.

³² https://www.antikorupcija.me/media/documents/Plan_kontrole_i_nadzora-2020.pdf

³³ <https://www.antikorupcija.me/me/novosti/2008191045-saopstenje-32-sjednice-savjeta-agencije-za-sprjecavanje-korupcije/>

³⁴ http://www.antikorupcija.me/media/documents/-Misljenje_o_primjeni_clana_40_Zakona_o_finansiranju-_iFftkwJ.pdf

³⁵ http://www.antikorupcija.me/media/documents/Mi%C5%A1ljenje_o_primjeni_%C4%8Dlana_16_Zakona_o_finansiranju_poli%C4%8Dkih_subjekata....pdf

According to the data provided by the APC³⁶, since 20 June 2020 when the elections were called until 19 August 2020 there were 303 employments made. Out of that number, 95 persons were employed for a fixed-term. In total, 55 persons were hired under agreement on temporary and periodical work, while 12 persons were selected to perform the function until the expiry of their term. The most employments were made in the local administration bodies and local self-government bodies

Table 4: Distribution and percentage of employments per municipalities

MUNICIPALITY	NUMBER OF EMPLOYEES	%
Bar	3	0.99%
Berane	27	8,91%
Bijelo Polje	11	3,63%
Budva	57	18,81%
Cetinje	3	0,99%
Herceg Novi	20	6,60%
Kolašin	10	3,30%
Kotor	17	5,61%
Mojkovac	2	0,66%
Nikšić	41	13,53%
Plav	2	0,66%
Pljevlja	8	2,64%
Podgorica	72	23,76%
Rožaje	1	0,33%
Tivat	7	2,31%
Tuzi	9	2,97%
Ulcini	6	1,98%
Zabljak	7	2,31%
TOTAL AND PERCENTAGE	303	100,00%

The Agency initiated misdemeanor proceedings against three municipalities (Pljevlja, Ulcinj, Herceg Novi) for violations of paragraph 1 of Article 40 of the Law, which regulates short-term financial assistance in accordance with the law that regulates rights and work of social welfare and childcare.

³⁶ http://www.antikorupcija.me/media/documents/Informacija_o_aktivnostima_Agencije_u_toku_izborne_kampanje_za_izbore_30_Avgusta.pdf

We also need to remind that, due to Covid-19 epidemic, in the first half of this year, the Amendments to the Article 40, paragraph 3 of the Law on financing of political entities and election campaigns were adopted, making the exception in relation to social welfare payment ban in the year when local and parliamentary elections will take place in case of war, state of emergency, epidemic or pandemic of communicable diseases. Therefore, it remains unclear why the Agency hasn't performed a more detailed investigation of municipalities that gave significantly larger amounts than others, as short-term financial assistance from the budget reserve.

Table 5: Single social welfare payments from budget reserves per municipalities for the time period 21 June -10 August 2020

MUNICIPALITY	NUMBER OF SOCIAL WELFARE PAYMENTS	AMOUNTS OF SOCIAL WELFARE PAYMENTS
Andrijevica	162	10.609,00 €
Bar	2	4.800,00 €
Berane	36	2.520,00 €
Bijelo Polje	1	1.000,00 €
Cetinje	8	520,00 €
Kolašin	13	4.200,00 €
Kotor	52	5.700,00 €
Mojkovac	8	1.330,00 €
Nikšić	10	750,00 €
Pljevlja	8	1.550,00 €
Plužine	710	30.830,10 €
Rožaje	8	2.100,00 €
TOTAL	1.018	65.909,10 €

The table above indicates that some smaller municipalities (such as Andrijevica and Plužine) distributed the largest amounts on behalf of social welfare. Therefore, the APC should request clarification from these municipalities and perform control. In accordance with the data which were presented by the APC representatives at the working group meeting with the representatives of the nongovernmental sector, there were cases in Andrijevica that one person received the social welfare payments for five times within five weeks. Each time, €20 was paid to the same person. Such cases are specifically important because the local elections will take place in the municipality of Andrijevica.

The aforementioned data was published on 19 August 2020 in the document titled "Information on the APC activities during the election campaign for the elections which will be held on 30

August”. It should be pointed out that previously published summarized data on social welfare (published by APC) contained municipalities which are no longer listed in the current data, but which can be found at the websites of the individual municipalities. For example, previously published summarized data contained information on social welfare payments in Herceg Novi³⁷. These data are available at the website of the municipality³⁸. Also, according to the data presented in the table, the municipality of Plužine paid the largest amount of money, but according to the earlier summarized reports there were no single social welfare payments made in this municipality. Therefore, it remains unclear which criteria are applied by the APC when performing this sort of control and verification.

Within the course of the campaign so far, there were 287 proceedings initiated against government bodies and 83 proceedings against political entities for violation of the provisions of the Law. The Agency for Prevention of Corruption (APC) performed 15 field controls where respecting various provisions of the Law on financing of political entities and election campaigns was controlled (including employment, use of mechanization and equipment, social welfare, etc). Agency has performed the most of the controls envisaged by the Plan of control and supervision, but still, there have been no proceedings initiated in cases which attract the public attention. Such a case was the one where the activist from the Democratic Party of Socialists was involved in conversation with the candidate to service with the Armed Forces of Montenegro which was recorded. The activist stated in the conversation that “the candidate has not been recognized by the party field”. Director of the APC stated that APC shall gather all required documentation and submit each lodged charge to the relevant bodies if it is considered to be related to a criminal offence. The case has been formed by the Basic State Prosecution Office in Podgorica in order to determine all facts and circumstances. The preliminary proceedings phase is in progress. The Minister of defense stated that he does not know Ms Vulic. He added that criminal charges against her will be lodged if the recording will be confirmed authentic, while she will be excluded from the Democratic Party of Socialists. There is no doubt that prompt reaction of relevant bodies is required in this case in order to change the public attitude stemming from the previous electoral cycles that cases like this one, as a rule, have never been prosecuted.

Besides that, the case related to accusations by the vice president of the Assembly and FORCA on behalf of the coalition partners from the ruling structure for using political corruption (promising employments and employing people in order to secure votes) in Ulcinj is quite indicative. According to his statement, the secretary for finances does not work at his office but at the office of DPS where he is supported by employees who are paid from the Municipality budget. Only half a year ago, as of 31 December 2019 there were 55 fixed-term employees. It is evident that 36 fixed-term contracts have been contracted for that time period. Democratic Party of Socialists –

³⁷ http://www.antikorupcija.me/media/documents/Socijalna_davanja.pdf

³⁸ <https://www.hercegnovi.me/rss/2016-07-19-07-37-10/2016-07-19-07-39-41/2017-03-03-07-13-17>

Ulcinj responded that Nimanbegu through his critical and untrue statements in the media only wants to win some more votes and strengthen his party's ranks.

X MEDIA

Freedom of expression, freedom of press and access to information are guaranteed by the Constitution of Montenegro while censorship is prohibited. The Article 6 of the Law on Election of MPs and Councilors regulates that voters shall have the right to be informed through the media on the electoral programmes and activities of the submitter of the electoral list, as well as about candidates from electoral lists. The media shall consistently implement the principles of equality of all submitters of confirmed electoral lists and candidates from those lists.

However, the frameworks for conducting the election campaign have not been harmonized. Namely, they are regulated in a different ways by the Law on Election of MPs and Councilors and Law on financing of political entities and election campaigns, which was caused by novelties introduced through the amendments to the Law on financing of political entities and election campaigns which were adopted in December 2019.

Law on Election of MPs and Councilors regulates that the „*Rights to media reporting in the pre-election campaign shall start on the date of validation of the electoral list of pre-election campaign contestants and cease 24 hours before the election date*“. However, newly adopted Law on financing of political entities and election campaigns offers the following regulation “*from the date of calling for the elections until the elections date*“, together with the requirement that entities offering services of media advertising of the election campaign shall submit the price list for the services of media advertising to the APC, within ten days following the election call.

The above mentioned non-compliance is reflected best in implementation of the rules related to the “electoral silence”. Whether the contestants to the election process will respect the limitation regulated by the Article 64a of the Law on Election of MPs and Councilors „*Election campaign via media and public gatherings shall cease 24 hours prior to the election date*” or the campaign will continue until the election depends on the Law which will be implemented by the political entities. In any case, non-compliance of the regulations provides grounds for uncertainties and potential misuses which the attention should be drawn to.

The Article 64b of the same Law regulates that the Parliament shall issue a separate decision establishing the Committee in charge of monitoring enforcement of the part of the Law on Election of MPs and Councilors which concerns media. However, the Committee has not been established and since the elections were called for there has not been any session of this body held.

A. Traditional media

Montenegro has a diverse media environment. There are over 150 media at the market which include 22 TV stations, 53 radio stations, 70 information portals (registered electronic publications), 4 daily print outlets, 1 weekly print outlet and 1 news agency. Although being pluralistic, the media environment is deeply politically divided. Political preferences can easily be noticed in the published content.

In terms of trust, citizens mainly prefer TV as a primary source of information which is being used in 63% of the population. It is followed by internet without social networks (16%), then social networks (12%), print media (3%), radio stations (2%), while the remaining percentage is distributed to people who do not use media as the source of information (1%) and those who refused to respond 3%.³⁹

Three key laws are forming the legislative framework: Law on Media, Law on Electronic Media and Law on national public broadcasters – RTCG. The “umbrella” Law on Media and Law on Radio Television of Montenegro was adopted by the Parliament of Montenegro in the end of July 2020 after the elections were called for. CeMI highlights the concerning fact that the key laws regulating the media field were adopted after the elections were called for. In that way, the legal instability was created and there was not enough time left neither to the media nor to political entities to get familiar with the solutions which newly adopted Laws offer. Such practice is contrary to all valid international standards and practices. Additionally, Amendments to the Law on financing of political entities and election campaigns which were adopted by the Parliament half a year ago, which provisions regulate performance of media during election campaign, as well as APC competences in that regard, additionally contribute to instability and do not make a good indicator for uniform and equal treatment of all election entities. Also, commercial broadcasters shall enable paid advertising to all submitters of electoral lists under equal conditions.

Promotion of submitters of confirmed electoral lists via commercial and non-profitable broadcasters shall be done in accordance with the rules adopted by the broadcaster⁴⁰ with the aim of achieving a fair editorial policy and presenting equally the validated submitters of electoral lists. In compliance with the Law on Election of MPs and Councilors, during the election campaign, the Radio Television of Montenegro, regional and local public broadcasters shall ensure free of charge and equal presentation of submitters of confirmed electoral lists, and the presentation and explanation of their electoral programs on a daily basis, of equal duration and as part of the same time slots within the political information program, and within the precisely defined political marketing blocks which audibility and visibility are ensured at the entire territory of Montenegro or local government. Also, commercial broadcasters are obliged to provide paid advertising to the submitters of confirmed electoral lists, under equal conditions.

³⁹ International Republican institute-IRI, research was conducted in the Western Balkan countries from 2 February 2020 until 6 March 2020, available at <https://www.iri.org/resource/western-balkans-poll-shows-strong-support-eu>

⁴⁰ Op.cit. Law on Election of MPs and Councilors, Article 64

National public service (Radio – Television of Montenegro - RTCG) shall enable electoral lists to broadcast political and promotional pre-election audio or TV clips in the length not less than 200 seconds daily, depending on the planned number of advertising blocks; and three-minute coverage of promotional gatherings, twice a day, at the time immediately after the central evening informative TV and Radio shows. Besides the previously mentioned, in compliance with the adopted Rulebook on reporting on pre-election campaign, RTCG, enables two debates on a weekly basis, lasting up to 120 minutes with participation of representatives of each confirmed electoral list, as well as individual promotion of their programs lasting up to 30 minutes.

Rulebook envisages enabling confrontations between the submitters of electoral list, in the final stage of campaign, lasting up to 120 minutes. Formally, National public service fulfilled all obligations which are regulated by the Law. However, the conceptual design of the Television of Montenegro (TVCG) scenography which is almost identical to the pre-election campaign design of the ruling Democratic Party of Socialists (DPS) may be deceiving for the voters and falls under disguised media promotion which is contrary to Article 8 of the AEM Rulebook⁴¹. This is and this was a reason for numerous reactions of the representatives of other electoral lists and accusations of bias in informing on behalf of RTCG. Additionally, informing the public on numerous activities performed by the ruling coalition in key informative shows, which completely falls under the “high public officials campaign“ indicates the lack of balance in informing.

The lack of traditional debates in key talk shows is noticeable, both with the public broadcasters and private media. TV Vijesti decided to enable typical promotion of electoral lists which are time limited, not hosted by a journalist and lack essential exchange of the opinions and attitudes between the participants in the show. Unlike previous electoral cycles, voters have reduced possibilities to get informed, substantially and essentially about the programs and key ideas of the parties and coalitions which are participating in the campaign.

Agency for Electronic Media (AEM) is authorized to perform supervision over media during campaign. The AEM has at its disposal a range of legal instruments for media sanctioning, ranging from the warning to cancelation of the broadcast licence. AEM has timely adopted the Rulebook on rights and duties of broadcasters during election campaigns. In terms of the rights and duties of broadcasters, the Rulebook defines that the campaign starts on the date when the electoral list is confirmed and ends 24 hours prior to the election date, although the laws are contradictory in this respect. Sector for monitoring which records all electronic shows at the territory of Montenegro functions within AEM. Report on the findings is published by AEM after elections.

⁴¹ Rulebook on rights and regulations of broadcasters during the campaign for the elections of MPSs to the Parliament of Montenegro which shall be held on 30 August 2020. Available at <https://aemcg.org/obavjestenja/pravilnik-o-pravima-i-obavezama-emitera-parlamentarni-izbori-avgust-2020/>

The Committee for monitoring the enforcement of the Law on Election of MPs and Councilors has not been established at the Parliament of Montenegro, with regards to media, which should consider complaints to performance of media during election campaign and submit them to AEM through a decision, although establishment of such body has been regulated by the Law on Election of MPs and Councilors.

B. Online media and social networks

With regards to the situation related to coronavirus in Montenegro, social networks have played a significant role during the process for 2020 Parliamentary Elections. Although social networks were also a part of the political parties' campaigns for the previous elections, parliamentary elections in 2020 have been marked by the central role of the Internet in the political strategies and electoral process.

Regarding political social media campaigns, a high level of the political parties' activities were registered which has recorded a rising trend since June when the elections were officially called for. Political parties (DCG, DF, True Montenegro, SNP, DPS, URA, SD, SPD) have been dominantly active on social media in the pre-election period, while minority parties were slightly less active.

In relation to the type of content on the official political parties' websites, images were mainly shared (42%), followed by links (27%), and videos (26%). Main topics which were discussed were the following: 1) ruling party, specially focusing on leaders of the ruling party; 2) corruption and organized crime (affairs); 3) Covid 19.

During the pre-election period, numerous paid contents by the political parties were recorded which also have had a rising trend since June, mainly on Facebook, but also on Instagram and other platforms.

Having in mind that there is no legislative framework in Montenegro which explicitly regulates online media and social networks, it is important to mention the obligation to respect Facebook rules on political advertising for all political entities in Montenegro which has been enforced since 5 August 2020. Therefore, the authors of the political advertisements are obliged to identify themselves which is aimed at increasing the transparency of political campaigns and responsibility of political entities on social networks before the forthcoming parliamentary elections in Montenegro. With regards to that, the data on authorized advertiser or the author of the advertisement which are submitted to Facebook shall be available in Ad Library for the next 7 years.

Besides political parties, Facebook pages which are characterized as "politicians" have also been involved in the political campaigns and registered increased activity levels during the electoral process.

Besides the above mentioned high level of activities of political parties and politicians on social networks, various web pages, groups and meme profiles have been used during the election campaign aimed at dissemination of messages by political parties and politicians to the voters.

The same as traditional media, the online media environment is politically polarized which is visible through the contents available on online portals. During the pre-election period, the most active media on the Facebook platform was FOS Media which has created and shared the largest portion of the uploaded content, followed by Portal Analitika, Portal Standard, Portal Antena M, IN4S Portal, Kolektiv.me, Vijesti, and RTCG Portal.

XI PARTICIPATION OF WOMEN

According to the latest World Bank data for 2019, related to the participation of women in the parliament, Montenegro holds 57th position among 217 ranked countries from all over the world⁴². Compared to the data presented in 2016, when Montenegro was ranked at position number 87, new ranking indicates that the progress was made. Before parliamentary elections in 2016, specifically, according to the data for 2015, percentage of women representation in Montenegrin parliament was 17.3%, while Montenegro was at 102 place in the world. The percentage of current representation of women in Montenegrin parliament is 29,6%, which is above the average percentage in the world which is 24,6%⁴³, but below the EU average which amounts to 31.8%.⁴⁴

The Law on Election of MPs and Councilors requires at least 30% of candidates on the electoral list from the underrepresented sex. Also, among each four candidates in the electoral list order there shall be at least one candidate who is a member of the underrepresented sex. The vacant position at the electoral lists shall be filled in by the successive councilor/MP, except in case if the term of a councilor or MP from the underrepresented sex terminates then the successive candidate on the electoral list from among the underrepresented sex shall be elected in his place Article 104, paragraph 3 of the Law on Election of MPs and Councilors.

Participation of women at the electoral lists is slightly higher than in 2016. The total number of female candidates at the lists is 269 out of 778, which is 34,57%, while in 2016, out of 1.120 candidates there were 360 women which is 32,14%. Two electoral lists have over 35% of women at the electoral lists for the MP functions: HRS with 69% of women and SD which list has 40% of women. Representation of women at other electoral lists is 30-35%. There are 15 women on a electoral list of Albanian coalition “Unanimously”, which is a minimal legal requirement in

⁴² World Bank, Proportion of seats held by women in national parliaments (%) [online], <https://databank.worldbank.org/reports.aspx?source=2&series=SG.GEN.PARL.ZS&country=>, accessed 14 August 2020

⁴³ Ibid

⁴⁴ Ibid

relation to the overall number of candidates at this specific electoral list. In four electoral lists with 81 candidate each, there are 25 women. This number actually contains only one women above minimal legal requirement (at least 30% of candidates of underrepresented sex). At these electoral lists, female candidates are positioned at each third and fourth place on the list (please refer to table 3). At only one electoral list (SDP) female candidate is at the first place – president of the party. Also, at only one list (HRS) a female candidate is at the second place on the electoral list.

Graph 1: Participation of women among candidates for MPs

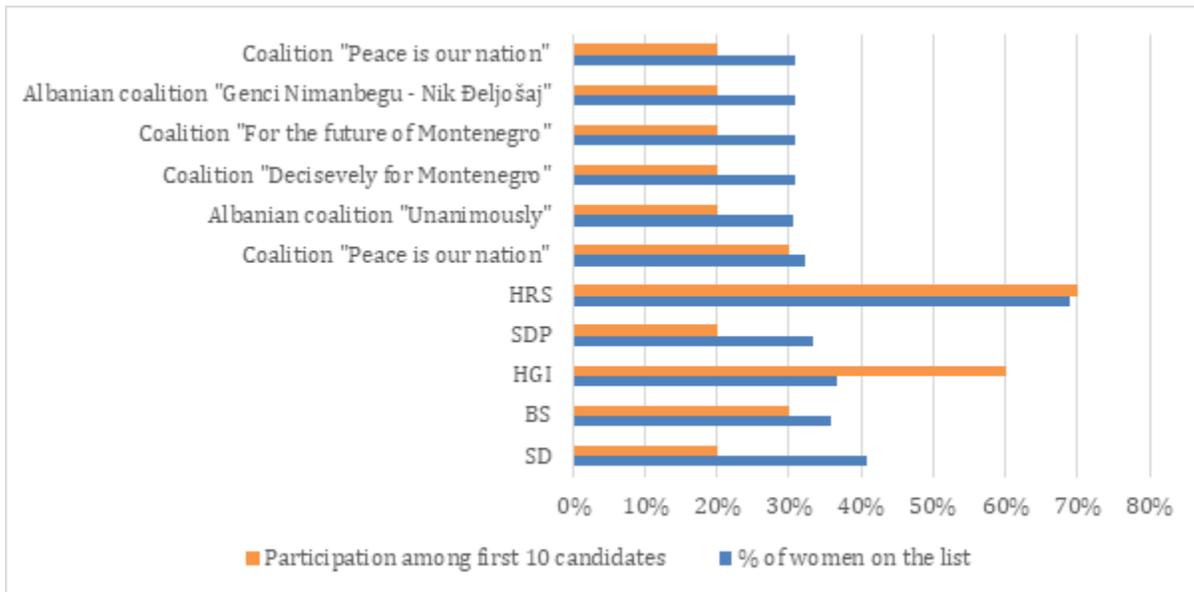
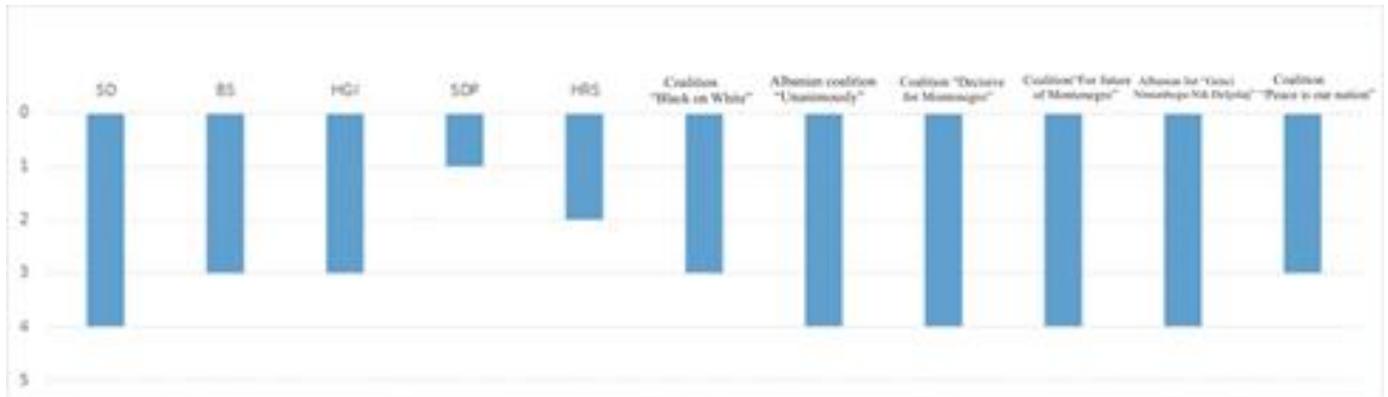


Table 6: Participation of women in electoral lists

Electoral list	No. of candidates	No of women	% of women on the list	Among first 10 candidates	Betwe en places 11-20	Betwe en places 21-30	Between places 31-40	Betwe en places 41-50	Betwe en place 51-60	Betwe en places 61-70	Betwe en places 71-80	81 place
SD	81	33	40.74 %	20%	40%	30%	30%	50%	40%	60%	60%	NE
BS	81	29	35.80 %	30%	30%	40%	30%	30%	40%	40%	40%	DA
HGI	52	19	36.54 %	60%	30%	20%	20%	30%	N/A	N/A	N/A	N/A

SDP	81	27	33.33 %	20%	30%	20%	60%	20%	40%	30%	50%	NE
HRS	29	20	68.96 %	70%	60%	70%	N/A	N/A	N/A	N/A	N/A	N/A
Coalition "Black on white"	81	26	32.10 %	30%	40%	30%	30%	30%	30%	30%	40%	NE
Albanian coalition "Unanimously"	49	15	30.61 %	20%	30%	40%	30%	30%	N/A	N/A	N/A	N/A
Coalition "Decisively for Montenegro"	81	25	30.86 %	20%	30%	20%	30%	30%	50%	30%	30%	NE
Coalition "For the future of Montenegro"	81	25	30.86 %	20%	30%	30%	20%	20%	30%	40%	40%	NE
Albanian list "Genci Nimanbegu - Nik Đeljošaj"	81	25	30.86 %	20%	30%	20%	40%	30%	20%	30%	60%	NE
Coalition "Peace is our nation"	81	25	30.86 %	20%	30%	20%	30%	20%	30%	40%	60%	NE

Graph 2: Position of the first female candidate at individual electoral lists



The following table provides information on the number of women who are candidates for MPs who take each of four positions at electoral lists.

Table 7: Positions of women at electoral lists according to positions with four-position clusters (overall electoral list presented in rows)

Electoral list	No. of women	First out of 4	%	Second out of 4	%	Third out of 4	%	Fourth out of 4	%
SD	33	9	27,27%	6	18,18%	8	24,24%	10	30,30%
BS	29	7	24,14%	8	27,59%	8	27,59%	6	20,69%
HGI	19	4	21,05%	5	26,32%	7	36,84%	2	10,53%
SDP	27	3	11,11%	2	7,41%	2	7,41%	19	70,37%
HRS	20	3	15%	5	25%	6	30%	6	30%
Coalition "Black on White"	26	6	23,08%	7	26,92%	5	19,23%	8	30,77%
Albanian coalition "Unanimously"	15	5	33,33%	2	13,33%	4	26,67%	4	26,67%
Coalition "Decisively for Montenegro"	25	2	8%	2	8%	3	12%	18	72%
Coalition "For future of Montenegro"	25	4	16%	5	20%	12	48%	4	16%
Albanian list "Genci Nimanbegu- Nik Đeljošaj"	25	6	24%	3	12%	2	8%	14	56%
Coalition "Peace is our nation"	25	1	4%	3	12%	6	24%	15	60%
Total and percentage	269	50	18,59%	48	17,84%	63	23,42%	106	39,41%

As shown in the table, at five out of 11 of electoral lists (SD, SDP, coalition "Decisive for Montenegro", Albanian list "Genci Nimanbegu – Nik Đeljošaj" and coalition "Peace is our nation"), most frequently, women are positioned at each fourth place at the electoral list, in compliance with the law. After having a look at all electoral lists, it is clear that in nearly 40% of cases women were allocated at each fourth position, which is more than double compared to the

overall number of women allocated at first and second position on the list. In 23% of cases, women are allocated at each third position on the list, while in 17,84% of cases female candidates occupied second position on the electoral lists. In slightly more cases (18.59%) female candidates are allocated at the first position on the electoral lists.

Participation of women at local elections

Three electoral lists for election of 31 councilors were submitted in Andrijevica. The total number of candidates from three lists is 88, out of which 28 are women, which makes just 25%. Besides the lowest percentage of women participation compared to elections in other municipalities, electoral list “FOR FUTURE OF ANDRIJEVICA - SNP- NSD“, was not structured as regulated by paragraph 2 of the Article 39a of the Law on Election of MPs and Councilors. Male candidates are positioned between 13 and 16 place on the list, while there should be at least one woman. If the candidate who is holding position number 16 was replaced by the female candidate who is at position 17 on the list, irregularity could have been avoided.

Image 1: Electoral list “FOR FUTURE OF ANDRIJEVICA - SNP - NSD”

III “ZA BUDUĆNOST ANDRIJEVICE - SNP - NSD”	
1. Željko Čulafić	17. Jovana D. Jovović
2. Vesko Raketić	18. Ana Ž. Mitrović
3. Jelena Zonjić	19. Milorad Asanović
4. Branko Kastratović	20. Milutin Ivanović
5. Ivan M. Radojević	21. Marija Kičović
6. Radmila Ivanović	22. Miodrag Čukić
7. Goran B. Stojanović	23. Vukašin Ščekić
8. Spasoje Perović	24. Vesna Mitrović
9. Ana S. Mitrović	25. Marijana Đukić
10. Milorad Lakićević	26. Mića Ivanović
11. Igor M. Jelić.	27. Marko Mijović
12. Nada Marsenić	28. Miloš Milović
13. Darko Vojvodić	29. Vladimir Vučević
14. Radoje Stijović	30. Milena Ivanović
15. Milan Mirković	31. Stefan Božović
16. Miomir Dragović	

There will be 33 councilors elected at the local elections in Budva. The total number of candidates at seven electoral lists is 219, out of which 80 are women, which makes 36,52%. One electoral list (New Budva - Ilija Gigović) was not structured in compliance with the law which regulates that among each four candidates in the electoral list order there shall be at least one candidate who is a

member of the underrepresented sex, despite the fact that there are 42% of women at the electoral list, therefore, final five positions on the electoral list are occupied by men.

Image 2: Electoral list NEW BUDVA-ILIJA GIGOVIĆ

7 NOVA BUDVA-ILIJA GIGOVIĆ

1. Ilija Gigović	8. Slavica Knežević	15. Đurica Čejović	22. Sanja Ratković	29. Vlatko Dakić
2. Bojana Rucović	9. Ivan Radonjić	16. Helena Vujović	23. Mladen Gigović	30. Dejan Čeranić
3. Petar Vujović	10. Marija Stanišić	17. Dalibor Franeta	24. Dragana Zečević	31. Goran Pejović
4. Nikoleta Lutovac	11. Aleksandar Braić	18. Milica Bauk	25. Miloš Milošević	32. Vasilije Rucović
5. Zoran Duletić	12. Jovana Todorović	19. Stevo Zenović	26. Jovana Joksimović	33. Darko Ljubanović
6. Sanja Marković	13. Branislav Banjo Vukčević	20. Maša Ratknić	27. Miodrag Zec	
7. Milan Pribilović	14. Milica Cvetković	21. Tomislav Šofran	28. Sandra Pajović	

Total number of candidates at seven electoral lists submitted in Tivat is 213, while 32 councilors are being elected. There are 80 women out of the total number of candidates, which makes 37,55%. The most electoral lists have been submitted in Kotor for election of 33 councilors. Total number of candidates at nine electoral lists is 297, out of which 122 are women, which in percentage amounts to 41,07%. There will be 30 councilors elected at local elections in Gusinje. There were six electoral lists submitted with 161 candidates listed in total, out of which 53 are women, which makes 32,91%. There were no irregularities registered with the electoral lists in these municipalities.

XII PARTICIPATION OF MINORITIES

The Law on Election of MPs and Councillors provides for affirmative action for the election of representatives of national minorities. Each electoral list must receive a minimum of 3% of valid votes, equal to the legal electoral threshold in Montenegro, in order to participate in the distribution of seats. The legal electoral threshold, in the case of minority parties, exists as a condition to win a mandate in the case of the Croatian minority, i.e. to include the result of the minority list in the aggregate list of that minority people, ie minority community, ie to win the first mandate in case it is not possible. that a collective or individual minority list wins multiple mandates by applying the D'Hondt method.

The provisions of the Law on the Election of MPs and Councilors that regulate the distribution of mandates are rather imprecise and vague, especially when it comes to minority representation. Only the case with the Croatian minority is clear, as the Law in Article 94 prescribes that in case that none of the electoral lists for the election of MPs of the Croatian people in Montenegro meets

the requirements of paragraph 1 of this article and point 1 of this paragraph, the most successful, with at least 0.35% of valid votes, acquires the right to one parliamentary seat. By using this mechanism, the Croatian minority people come to a guaranteed mandate, which is still conditioned by fulfilling the legal threshold, but again significantly lower than the required number of votes to obtain a mandate based on the allocation process using d'Hondt's formula.

When it comes to other minorities, there is no such mechanism. For other minorities, it is envisaged that if more lists exceed the legal threshold of 0.7%, their individual results are treated as a single aggregate list, which then enters the process of allocating seats with other lists that have qualified. The effect of aggregation is limited by recognizing for the calculation of mandates an aggregation that ensures the winning of a maximum of three mandates.

The law did not regulate how the mandates would be distributed among the parties within the aggregate list of the minority people. In the 2012 elections, three parties of the Albanian minority won 2 seats using this mechanism. The mandates were given to two with a larger number of individually won votes, although this is nowhere legally regulated.

When it comes to local elections, minority lists are not required to meet the legal electoral threshold of 3%, but will directly qualify in the process of distribution of seats by applying the d'Hondt formula.

The question of the criteria for determining the minority status of the electoral list, which is privileged, remains open, thus opening up space for abuse. The law only provides for the indication of the designation of the minority people in the election application or the name of the electoral list. This problem was manifested in the application of the electoral list "Snezana Jonica - Let's live like Yugoslavs". Namely, the State Election Commission rejected this list to run in the elections as a minority, and this decision was confirmed by the Constitutional Court by a majority vote with the opinion of one judge.

The lack of orderliness of the status and participation of minority lists is reflected in the case of coalitions between a minority party and a party that is not, i.e. two or more minority parties, but which belong to minorities with different rights, i.e. for which a different legal threshold applies.

In these elections, 5 lists used the opportunity to register as minority lists, 2 lists with Albanian and two Croatian lists. The Bosniak party registered as a minority list, although it fulfilled the condition that applies to non-minority lists.

XIII COMPLAINTS AND APPEALS

Law on Election of MPs and Councilors regulates the process of protection of the right to vote in a way that each voter, candidate and submitter of electoral list is entitled to lodge a complaint to the relevant election commission for violation of the voter's right at elections. An appeal to decisions of the State Election Commission can be filed to the Constitutional Court of Montenegro as a final legal remedy.

It is a constitutional right of each citizen to submit an initiative for initiating the procedure to review constitutionality and legality, both in relation to compliance of the Law with the Constitution and ratified and published international agreements, but also in relation to compliance of other regulations and general acts with the Constitution and the Law.

So far, five complaints were lodged related to the work of the MECs (Pljevlja, Podgorica (twice), Kotor and Kolašin). Two complaints (about the work of the MEC Pljevlja and MEC Podgorica) were lodged by Democrats of Montenegro, while other two complaints were lodged by electoral lists "FOR THE FUTURE OF KOTOR" and "Kolašin wins" (DF-SNP) and one complaint was lodged by the Social Democrats of Montenegro. The complaint about the work of MEC Pljevlja was refused because it was not timely lodged, while other complaints were rejected. Due to rejection of their complaint about the work of the MEC Podgorica, Democrats lodged an appeal to the Constitutional Court. This specific complaint is related to the decision of the MEC in Podgorica to cancel small polling stations number 31, 35, 36, 49, 50, 51 and actually merge them with larger polling stations. The SEC confirmed the legality of the decision of MEC in Podgorica and stated that there was no jeopardizing of the accessibility of polling stations in this case, while the merging of polling stations was done due to epidemiological protection. Democrats stated in their appeal that there are more possibilities for virus transmissions at the polling stations with greater numbers of voters than at polling stations with lower numbers of voters. Also, Democrats pointed out that the accessibility of polling stations has been jeopardized since newly determined polling stations are several kilometers away from the voters who are mainly old people living in the rural areas and doing farming for living. It is very unsuitable for them to travel several kilometers in order to reach their newly assigned polling stations. In the end, the Constitutional court rejected the lodged appeal.

The process of confirmation of the electoral lists and defining rules which would enable undisturbed administration of elections in Covid-19 pandemic situation, including protection of voters caused initiating the procedures for reviewing constitutionality of individual and general acts before the Constitutional Court. Deciding by the Constitutional Court in urgent procedures has been one specific characteristic of the parliamentary elections in 2020, especially in three cases which are presented further in the text, including determining the grounds for submitted initiatives/appeals by decisions for administration of the electoral process.

- When deciding on fulfilment of the requirements for accepting the electoral list "Snežana Jonica – To live as Yugoslavs", SEC rejected this electoral list to run for the elections as a minority one. The SEC explained the reasons for such decision stating that

electoral list does not fulfil requirements for exercising minority rights, both in terms of requirements which a community has to fulfil in compliance with the Law on minority rights and freedoms and in relation to the goal of protection and affirmation of the rights of certain minority nations or minority ethnic communities. The position of SEC was confirmed by the decision of the Constitutional court made by the majority votes and singled out opinion of one judge⁴⁵. Notwithstanding the accuracy of the decisions and grounded assumptions that there is a risk of electoral rules misuse, the general impression is that the explanations given by the relevant bodies are incomplete. Taking into account that this is the first case of such a type which will be very important for deciding in future similar cases, this issue becomes especially concerning.

- Epidemiological situation in Montenegro conditioned enforcement of legal measures by the National Coordination Body for Communicable Diseases and adoption of “Technical recommendations for holding elections with the goal of epidemiological protection of voters” by the State Election Commission. Following the complaints lodged by the contestants to the electoral process and nongovernmental organizations, the Constitutional court, based on submitted constitutional initiative, decided to cancel paragraphs 1 and 4 in the Chapter “Voting outside the polling station-voting by letter” and Chapter “Voting under quarantine” declaring them unconstitutional⁴⁶.
- Following the same pattern as in case related to “Technical recommendations for holding elections with the goal of epidemiological protection of voters” the initiative was submitted to review constitutionality of a part of provisions of the “Rules for voting by letter”. The Constitutional court found that limiting the right to vote by letter to voters who are not at their place of residence due to old age, disability or hospital treatment to vote is unconstitutional.⁴⁷

Although the proceedings for reviewing constitutionality of the “Rules for voting by letter” and “Technical recommendations for holding elections with the goal of epidemiological protection of voters” were urgently conducted by the Constitutional Court and although the unconstitutional provisions/recommendations which limited the right to vote to persons who are not at their place of residence due to old age, disability or hospital treatment were abolished within rather short deadline, the concern remains whether it would be possible to resolve all legal gaps and ambiguities before the elections date and technically establish conditions for all voters to be able to exercise their right to vote.

⁴⁵ Constitutional court decision U-VII no. 1/20, made on 14 August 2020

⁴⁶ Constitutional court decision U-II no. 45/20, made on 20 August 2020

⁴⁷ Constitutional court decision U-II no. 46/20, made on 24 August 2020

CeMI's ACTIVITIES IN OBSERVATION MISSION

Observation of the parliamentary and local elections is financially supported by the British Embassy in Podgorica, Embassy of Norway in Belgrade and the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The main goal of election monitoring is enhancing the rule of law in Montenegro, while the specific goal is increasing the election's integrity level. CeMI implements various activities within the scope of the observation process. Observation of the compliance with the electoral legislation is done through performance monitoring of the State Election Commission (and Municipal Election Commissions) with reference to proper implementation of the Law on Election of MPs and Councilors and Law on voter register, performance monitoring of the Agency for the Prevention of Corruption with reference to implementation of the Law on financing of political entities and election campaigns and monitoring of state resources misuse in the pre-election period. Also, special attention is being paid to performance monitoring and reporting of media during the pre-election campaign and monitoring of the system for voters' electronic registration. Part of the team is in charge of monitoring the central voters' registry, its modifications and updating. On 8 July 2020, the Ministry of Interior established the Expert team for monitoring the accuracy and up-to-dateness of the voter register from the date when the elections were called for until the proclamation date of the final election results which member is the president of the Governing Board of the CeMI. Team of local coordinators is established which, jointly with the head of the mission, play a significant role in training the short-term observers and distributing the observers' network. On the election day, CeMI will allocate over 1,300 observers at polling stations and present the estimation of election results quickly after closure of polling stations. At the end of the electoral process, CeMI shall produce an overall Final report on 2020 elections.

The Center for Monitoring and Research - CeMI is a nongovernmental organization founded in May 2000, whose main goal is to provide infrastructural and expert support for continuous monitoring of the overall process of transition in Montenegro. CeMI has been recognized as an organization which besides performing activities in the area of democratization, human rights, fight against corruption and Euro-Atlantic integrations, performs expert analyses of the electoral processes in Montenegro, but also of the electoral processes in the world being a member of the European Network of Election Monitoring Organizations – ENEMO. Civic monitoring of elections is a significant model for involving citizens in the political decision making process without supporting any political structure.