



## **ENEMO International Election Observation Mission**

### **Parliamentary Elections, 30 August 2020 - Montenegro**

#### **STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

**31 August 2020**

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*Election Day was generally calm and peaceful, with few cases of procedural irregularities observed by ENEMO on the day of voting which did not affect the electoral process. The pre-election period took place in a socially and politically polarized environment, generally competitive, despite Covid-19 measures significantly limiting opportunities for campaigning and causing uncertainties regarding voting rights. Although the election was well conducted and the administration met most of the prescribed legal deadlines, late adoption of rules for conducting elections is at odds with international best practices.*

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On 15 July 2020, the European Network of Election Monitoring Organizations (ENEMO) officially deployed an International Election Observation Mission (IEOM) to Montenegro to observe the upcoming Parliamentary Elections of 30 August 2020.

ENEMO accredited a total of five Core Team experts based in Podgorica, and two Core Team members working from abroad. The IEOM is headed by Professor Dr. Gianluca Passarelli. ENEMO additionally deployed eight long-term observers (LTOs) in four teams throughout the country<sup>1</sup>. The mission was reinforced by 38 short-term observers (STOs), paired in multi-national teams of two, who observed the opening of polling stations, voting and counting process on election day.

ENEMO's presence during the 2020 Parliamentary Elections in Montenegro will provide the national and international community with elaborate information about the electoral process. Up until 28 August, ENEMO observers conducted a total of 429 meetings with electoral stakeholders.

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<sup>1</sup> Covering municipalities of Podgorica, Tuzi, Danilovgrad, Kolasin, Ulcinj, Bar, Zabljak, Pluzine, Pljevlja, Savnik, Mojkovac, Niksic, Budva, Herceg Novi, Tivat, Kotor, Cetinje, Berane, Bijelo Polje, Andrijevica, Plav, Gusinje, Rozane, and Petnjica.

The mission assesses the overall political and electoral environment, respect for the rights to elect and stand for election, the conduct of election management bodies, campaigning, gender equity, voting and tabulation processes, electoral dispute resolutions and other crucial aspects of the process, based on international standards for democratic elections and the Montenegrin legal framework. ENEMO will raise the awareness of the domestic and international community regarding the main challenges and problems observed in elections, thus advocating for adequate policy changes through the adoption of concrete recommendations in a final report.

This Preliminary Statement is based on ENEMO's findings from the pre-election period and the election day. The Statement should be considered in conjunction with the mission's Interim Report, issued on 17 August, 2020. The mission's observation fully complied with the Declaration of Principles for International Election Observation and internationally recognized best practices in election observation.

The mission will remain in the country until the conclusion of the electoral process to follow post-election developments. A final report, including a full assessment, which will depend in part on the conduct of the remaining stages of the elections, as well as detailed findings and recommendations will be issued within sixty days from the certification of results.



**The ENEMO IEOM to the 30 August 2020 Parliamentary Elections in Montenegro was financially supported by the National Democratic Institute (NDI) and the National Endowment for Democracy (NED). The content of the document is the sole responsibility of ENEMO and does not necessarily represent the position of the donors.**

## Preliminary Conclusions

Parliamentary elections took place on 30 August 2020 together with municipal elections in five municipalities. ENEMO's assessment relates to the parliamentary elections, but does not cover municipal elections in detail. In total, 11 candidate lists were running in the parliamentary elections.

According to preliminary data officially published by the State Election Commission (SEC), the turnout was higher than in 2012 and 2016 parliamentary elections, with approximately 76.7 per cent<sup>2</sup>. In line with these preliminary estimates, a total of 9 registered lists could be expected to obtain seats in the next parliamentary legislature<sup>3</sup>, pending final announcement of official results by the SEC.

Election day was generally calm and peaceful. The management of the polling and conduct of Polling Boards (PBs) and Municipal Election Commissions (MECs) was assessed positively in the majority of cases observed, with some procedural violations and irregularities assessed not to have negatively affected the legitimacy of the overall process.

ENEMO assessed that the legal framework for parliamentary elections in Montenegro is generally aligned with international standards. Elections were held using a closed list proportional representation system, and based upon a single nationwide constituency.

SEC sessions were generally conducted in a professional and collegial manner. They were open to accredited observers, but not to media representatives. Last minute changes due to appeals to the Constitutional Court, showed insufficient cooperation among competent bodies. These appeals concerned the residency requirement and voting of hospitalized, self-isolated and institutionally quarantined voters. The above questions the competences of the SEC, as some crucial parts of the Technical Recommendations were deemed unconstitutional. ENEMO deems that by choosing only to provide recommendations rather than regulations, the SEC demonstrated limited proactiveness and accountability.

According to ENEMO observers, the training of polling boards (PB) members varied significantly, leading to inconsistencies in quality. Moreover, ENEMO denounces the lack of regulatory mechanisms for ensuring that all PB members attended the online training.

ENEMO notes that in these elections, a newly formed self-declared Yugoslav minority list was rejected by the SEC following a controversial registration process. Considering that the stated grounds for rejection were that the list was not eligible to run as a minority, concerns should be raised that the opportunity was not given to the applicant to submit their candidacy as a non-minority list. ENEMO assesses that this case reveals that the legislation does not clearly and consistently define which national minorities have the right to political representation, leaving space for excessive discretionary power to the SEC in the registration process.

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<sup>2</sup> Official preliminary turnout provided by the SEC based on 98.68% of ballots processed: <https://rezultati.dik.co.me/>

<sup>3</sup> <https://rezultati.dik.co.me/>

A two-year residency requirement for voting in national elections is provided under the Constitution, although it is not in line with international standards, being at odds with the Venice Commission's Code of Good Practice in Electoral Matters. Despite concerns reported to the mission related to the presence of deceased citizens on the lists, outdated lists of residents, possible false ID cards, and multiple voters registered at the same address, ENEMO did not find evidence that this negatively impacted the voter identification process on election day overall.

Visits and inaugurations by the President, Prime Minister, and local self-government body representatives as state officials during the campaign can be assessed as blurring the line between parties and state, as their media appearances were at times used to promote party accomplishments and visibility in the campaign rather than strictly official state matters. Concerns should be raised regarding the lack of a level playing field in these cases, which may have affected the principle of equal opportunity in the campaign.

Compliance with the National Public Broadcaster (Radio Television Montenegro, RTCG) rules was mostly respected, and in line with the provisions set forth in the laws. However, the RTCG played an important role in broadcasting visits, inaugurations and activities performed by state officials in television coverage during the campaign. Therefore in addition to allocated broadcasting time for their lists, several parties also benefited from the media presence of high state officials, which may have affected the balance of coverage and equality of opportunity.

Despite steps taken to improve transparency, ENEMO deems that the limited scope of the Agency for Prevention of Corruption's (APC) sanctions, combined with a lack of proactiveness among the bodies responsible for investigating and prosecuting potential cases, have narrowed opportunities for preventing and sanctioning political finance abuse.

In total, 269 women (34,57 per cent of all candidates) competed in the elections. ENEMO assessed that no measures were in place to avoid female candidates being ranked in non-winning positions. Additionally, the law omits provisions ensuring the replacement of a winning woman candidate with the next woman candidate on the list in cases where a woman candidate withdraws her candidacy after the election. Along with being significantly underrepresented, ENEMO assessed that women rarely hold managerial positions within EMBs. At observed polling stations, 31.25 per cent of PB members were women, while each fourth PB Chairperson and each third PB Deputy Chairperson was a woman.

ENEMO notes that on election day, 52.9 per cent of polling stations observed during voting were assessed as accessible for persons with disabilities, while 24.9 per cent of polling stations required minor assistance and 22.2 per cent of polling stations observed were assessed as not suitable for persons with disabilities.

ENEMO additionally notes that Covid-19 protective measures were not respected at 23.7 per cent of observed polling stations. A significant number of individuals were not wearing protective masks properly, not respecting distance measures and did not use hand-sanitizer.

## Background

The 30 August 2020 parliamentary elections in Montenegro took place in a generally peaceful atmosphere, despite a tense political environment in the pre-election period. Municipal elections for local assembly councilors were held on the same day in five municipalities: Andrijevica, Budva, Gusinje, Kotor and Tivat.

Although overall conditions for holding democratic and fair elections exist in Montenegro, the elections took place against a backdrop of considerable political polarisation as well as pandemic restrictions due to Covid-19.

In particular, the Law on Freedom of Religion or Beliefs and the Legal Status of Religious Communities, passed in December 2019, led to public protests by a part of the opposition and supporters of the Serbian Orthodox Church. These protests took various forms throughout the year, including during the election period and up until election day, through marches as well as auto-litanies in the form of drive-by demonstrations against the new law.

Under these circumstances, the expectations of Montenegrin citizens were high in these elections for a new composition of Parliament, in particular towards advancing the reform agenda, EU integration, the struggle against corruption, economic development, and other crucial issues.

Due to Covid-19, election day was held under specific regulations instituted by the SEC based upon recommendations of the National Coordinating Body for Infectious Diseases (NCB) and the Institute of Public Health on the number of voters allowed in polling stations at any one time, mandatory physical distancing, use of protective facial masks, hand sanitizing, etc.

In total, 11 candidate lists were running in the parliamentary elections.

## Legal framework and electoral system

### Legal framework

The legal framework for parliamentary elections in Montenegro is generally aligned with international standards. Electoral rules are set forth in the Constitution, ordinary laws and SEC regulations. The Law on the Election of Councilors and Members of Parliament is the most important document in the election legislation. Although organic laws are absent in Montenegro, the Constitution states that a two-thirds majority of all Members of Parliament is required to pass electoral law.<sup>4</sup> This requirement makes changing electoral law difficult, while helping to stabilize it. ENEMO notes that this requirement led to the opposition halting the electoral reform process in 2019.

Supplementary legal acts regulating other aspects of the election process are found in: the Law on Financing Political Entities and Election Campaigns, the Law on the Register of Voters, the Law

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<sup>4</sup> Art. 91 of the Constitution

on the Implementation of the Agreement on Creating Conditions for Free and Fair Elections, the Political Parties Act, the Law on Registration of Residence and Temporary Residence, the Electronic Media Law, the Law on the National Public Broadcaster of Montenegro, the Criminal Code of Montenegro, and the Law on the Constitutional Court of Montenegro. There were no significant changes in electoral rules since the previous parliamentary elections in Montenegro in 2016.

ENEMO notes that a relatively small set of electoral norms are established by the Constitution and that a wide range of issues are covered by SEC regulations. Technical recommendations for the Epidemiological Protection of Voters During Elections (adopted in 2020 by the SEC) illustrate that the area of SEC regulations stretches widely.

## **Electoral System**

Parliamentary elections in Montenegro are carried out under a closed list proportional representation system. The elections are conducted based upon a single nationwide constituency. Seats are allocated among candidate lists using the d'Hondt method.

The country represents a single nationwide electoral district. The electoral threshold is 3 per cent of valid votes cast at the national level<sup>5</sup>. However, national minority lists are entitled to seats at lower thresholds: 0.35 per cent for the Croat minority, and 0.7 per cent for other minorities.

Candidate lists can be submitted by political parties, coalitions and groups of voters. Electoral rules establish the dependence of individual politicians on political organizations. Individuals are still not allowed to run independently, despite the recommendations of the Venice Commission and OSCE-ODIHR<sup>6</sup>. Citizens wishing to run for office can join an existing political entity or create a new candidate list which must contain at least 54 candidates (2/3 of the seats in the Assembly). Montenegrin election legislation does not address the rank order of list candidates. Moreover, there are no laws regulating the process of candidature or intra-party democracy.

## **Election Administration**

Parliamentary elections were conducted under a three-tiered election administration: the SEC, 24 MECs, and 1,217 PBs<sup>7</sup>. All decisions needed to be made by majority vote at each level of electoral administration, including authorized representatives of political entities, with equal voting rights.

### **State Election Commission (SEC)**

The SEC is a permanent body composed of a chairperson and ten members, along with additional members representing party lists competing in the election. The present composition of the

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<sup>5</sup> This provision complies with the recommendations of the PACE and the Venice Commission.

<sup>6</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document; OSCE-ODIHR - Montenegro, Parliamentary Elections, 2016, Final Report; Venice Commission 2002 Code of Good Practice in Electoral Matters.

<sup>7</sup> In the last nationwide (presidential) election held in 2018, there were 1,214 PBs.

commission was appointed following the 2016 electoral cycle, and is headed by its current chairperson since March 2020. The SEC's main responsibilities include coordinating MECs, overseeing election materials, reviewing and publishing official candidate lists and ascertaining and publishing election results<sup>8</sup>.

SEC sessions were generally conducted in a professional and collegial manner and were open to accredited observers<sup>9</sup>, but not to media representatives. ENEMO assesses that public SEC meetings were partially transparent due to a lack of live broadcasting. With regards to social media activity by the SEC in these elections, no account was updated regularly.

On 6 August, the SEC adopted recommendations for election day against the spread of Covid-19, including the use of personal protective equipment and enabling mobile voting for citizens in private or institutional quarantine<sup>10</sup>. However, last minute changes due to appeals to the Constitutional Court regarding different aspects of the Technical Recommendations, including the residency requirement and voting by hospitalized voters and those in self-isolation, showed insufficient cooperation among competent bodies<sup>11</sup> and put the competency of the SEC in question as some crucial parts of the document were deemed unconstitutional. ENEMO condemns late changes in regulations which caused confusion among voters about how to exercise their right to vote, especially when it comes to institutionally quarantined, hospitalized and self-isolated voters. ENEMO deems that by choosing to provide merely recommendations rather than regulations, the SEC demonstrated limited proactiveness and accountability in this matter.

ENEMO raises concerns over the attentiveness of PB staff during online training on election day procedures, as well as over the quality of the outputs, which could have affected the PBs' performance on election day. According to ENEMO observers, PB training varied significantly, leading to quality inconsistencies<sup>12</sup>. Moreover, ENEMO condemns the lack of regulatory mechanisms for ensuring that all PB members attended the online training. Many PB members insisted on receiving print materials after attending this training, while some MECs took the initiative to additionally train PB Chairpersons during the takeover of material. Meanwhile, additional training for other election stakeholders was not provided.

On the other hand, ENEMO positively assesses televised and online video material prepared by the SEC for a broad voter education campaign. Voter education videos were broadcast only on the last days of the election period and reposted on the official webpage of the SEC<sup>13</sup>, which raises

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<sup>8</sup> Art. 32 of the Law on Election of Councilors and Members of Parliament.

<sup>9</sup> But not to representatives of the media.

<sup>10</sup> These recommendations became the subject of electoral dispute and were revised by the Constitutional Court. See *Complaints and Appeals*.

<sup>11</sup> Primarily State Election Commission, National Coordination Body, Institute for Public Health and Ministry of Health.

<sup>12</sup> Most MECs still held in-person trainings, at least for PB Chairpersons and sometimes their deputies (Bar, Budva, Cetinje, Pluzine, Ulcinj, Danilovgrad, Petnjica, Bijelo Polje, Kotor, Tivat, Pljevlja, Rozaje, Berane, Plav, Gusinje, Andrijevica), some organized projections of the PB training video material, although attendance was not obligatory (Savnik, Niksic, Zabljak), while a few MECs relied on PB members to watch the video on their own, without any control mechanism (Kolasin, Tuzi, Podgorica, Mojkovac, Herceg Novi).

<sup>13</sup> Election educational and motivational videos were produced, such as "*Your Choice Determines the Future*".

concerns about the number of voters reached. In addition, the SEC established a hotline where voters could obtain information on voting procedures<sup>14</sup>.

On election day the SEC released six updates on the conduct of voting to the media and public<sup>15</sup>. Final results should be published by the SEC within 15 days of election day in the Official Gazette of Montenegro.

### **Municipal Election Commissions (MECs)**

MECs consist of a chairperson and four permanent members appointed following the municipal elections, as well as authorised representatives of the competing electoral lists. Overall, ENEMO positively assesses the work of the MECs, which managed to overcome challenges and prepared the ground for holding the elections.

As the election day approached, more challenges in the work of the MECs were reported by ENEMO observers, especially when it came to appointing PB members according to party affiliation and in a lawful manner (Tuzi, Cetinje, Danilovgrad, Kotor, Podgorica). Closer to election day, problems also occurred with the stamping and issuing of ballots to PBs (Budva, Danilovgrad and Plav), resulting in the withdrawal of spare ballots to supplement the spoiled ones. Overall, both sensitive and non-sensitive materials were issued to PBs on time.

Some MECs failed to publish their decisions and instructions fully or in a timely manner (Zabljak, Petnjica, Pluzine, Ulcinj, Kolasin, Bijelo Polje), despite being instructed to do so by the SEC, especially the MEC in Plav which failed to publish any information on the 2020 Parliamentary Elections. MEC members expressed dissatisfaction with the SEC instructions, particularly regarding late and non-comprehensive Covid-19 preventive measures.

### **Polling Boards**

Voting took place in 1,217 polling stations staffed with approximately 12,300 PB members in addition to party representatives from each of the 11 electoral lists running in the 2020 Parliamentary Elections. Each electoral list is eligible for a representative candidate in the extended composition. ENEMO notes that not all electoral lists had appointed authorized representatives.

PBs consist of a presiding officer and four members, who were mostly appointed by the 20 August deadline, with the exception of the Cetinje MEC, where some PB members were appointed late due to a lack of candidates.

Presiding officers are nominated by political parties represented in a given municipal council, in proportion to their representation. Of the four PB members, two are nominated by the ruling party or coalition, and two by the opposition. Nominating entities may retrieve their nominees up to 12 hours before the voting starts.

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<sup>14</sup> At the MoI, a hotline for voters was additionally established where they could check their data and confirm their assigned polling station-

<sup>15</sup> On election day, the official website: <https://dik.co.me> provided live updates on the voting.



The PB directly implements the organization of the voting at the polling station. Commission members also maintain order at the polling station during the voting. The duties of the board are determined by drawing lots before the start of the voting.

Due to the epidemiological situation, the SEC organized online training for PB members. As a result, the levels of preparedness among commission members for these elections varied, although this did not seem to negatively affect the process overall.

In several cases, knowledge of opening, counting and tabulation procedures, as well as the transfer of electoral materials varied among PB members, although this did not significantly affect the process on election day, ENEMO teams observed.

ENEMO observers reported that in most instances, PBs were adequately supported by relevant public authorities to conduct the elections, especially in Petnjica and Gusinje, which faced additional challenges due to a lack of adequate premises. However, several MEC members mentioned that school administrations and other institutions where PBs were located were not always ready to cooperate and provide the necessary conditions for the work of PBs. Polling boards used EVID to identify voters and check against multiple voting at given polling stations.

After initial concerns on how to handle a potentially large number of requests for homebound voting due to the residency requirement having been cancelled by the Constitutional Court, PBs mostly prioritized voters residing within their municipality. This resulted in only a small proportion of voters who had applied for homebound voting not being visited by the PBs on election day.

## Registration of voters

Any citizen who is at least 18 years old by election day, is legally competent and has been a permanent resident for a minimum of two years ahead of election day has the right to vote<sup>16</sup>. Out-of-country voting was not permitted for these elections. Voters could register or submit changes to their data in the voter registry up until ten days before the day of voting.

The voter list serves as a database and is derived from several registries (citizenship, residence, birth, and death). The two-year residency requirement in national elections is provided under the Constitution, although it is not in line with international standards, being at odds with the Code of Good Practice in Electoral Matters<sup>17</sup>.

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<sup>16</sup>Art. 11 of the Law on Election of Councilors and Members of Parliament.

<sup>17</sup>Venice Commission Code of Good Practice in Electoral Matters, 1.1 c. iii. “a length of residence requirement may be imposed on nationals solely for local or regional elections”, 1.1 c. iv. “*the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities*”, and additionally “*The freedom of movement of citizens within the country, together with their right to return at any time is one of the fundamental rights necessary for truly democratic elections.*”

The voter list was finalized on 20 August in line with the provisions set forth in the law<sup>18</sup>. The Ministry of Interior confirmed there were 540,026 eligible voters on the electoral roll<sup>19</sup>, of which 270,717 were women, out of a total population of 678,497. There were 23,207 newly registered voters, of which 20,634 were first-time voters who had turned eighteen<sup>20</sup>.

Concerns were raised by mission interlocutors regarding the accuracy and reliability of the voter list, in particular possible discrepancies in the number of voters and the demographics in Montenegro. Additional concerns were reported by LTOs related to the presence of deceased citizens on the list, outdated lists of residents, possible false ID cards, and multiple voters registered at the same address. However, ENEMO did not find evidence that this negatively impacted the voter identification process on election day overall.

## Candidate registration

All citizens with voting rights who had resided permanently in the country for at least two years were eligible to run as candidates in these elections. Candidates could be nominated by political parties, coalitions of political parties, or groups of voters. The nomination of individual candidates was not allowed<sup>21</sup>.

ENEMO raised concerns regarding the two-year residency requirement to stand for election, deeming it excessive and at odds with the Venice Commission's Code of Good Practice in Electoral Matters<sup>22</sup>.

The SEC was the responsible body for registering candidate lists. Political parties or coalitions were required to collect and submit signatures of at least 0.8 per cent of the voters<sup>23</sup>, based on the number of registered voters in previous elections. Political parties and groups of voters that represented a minority community had to submit at least 1,000 signatures, while candidates representing a minority amounting to up to two per cent of the population were obliged to gather 300 signatures.

ENEMO raised concerns that, according to the legal provisions set forth in the electoral law, voters were allowed to sign in support of only one electoral list, which is overly restrictive in light of international good practice, and challenges political pluralism. This could have affected the

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<sup>18</sup> Art. 18 of the Law on the Voter Register states that “*The Ministry of Interior shall conclude the voter list with a decision 10 days before the day set for the elections.*”

<sup>19</sup> <https://dik.co.me/wp-content/uploads/2020/08/biracki-spisak-2020-1.pdf>

<sup>20</sup> According to MoI data of 28 Aug 2020. This data shows a number of newly registered voters since the last nationwide (presidential) election held in 2018.

<sup>21</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document states that participating States must “*respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.*”

<sup>22</sup> Namely, paragraph 1.1 c. iii. “*a length of residence requirement may be imposed on nationals solely for local or regional elections*”, and additionally 1.1 c. iv. “*the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities*”.

<sup>23</sup> In these elections, non-minority political entities were required to collect at least 4,261 valid voter signatures: <https://dik.co.me/odluka-o-broju-potpisa-biraca-za-podrsku-izbornoj-listi/>

secrecy of the vote by revealing political preferences, while also leading to potential abuse: no upper limit for signatures collected per party is provided for in the law, leaving room for one political entity to collect signatures in excess in order to deprive another the possibility to collect the minimum<sup>24</sup>. Additional concerns were raised by ENEMO regarding inconsistent visual signature verification, leaving space for impersonation and support on behalf of another voter.

Moreover, the rejection of the self-declared Yugoslav minority list on questionable legal grounds may have infringed the political rights of a self-declared national minority, despite the fact that the Constitutional Court upheld the SEC's decision (see section on *National Minorities* and *Complaints and Appeals* section).

The official registration period ran from 11 July to 4 August 2020, as set forth in the law. In total, 11 candidate lists were registered by the SEC.

## **Electoral Campaign and Campaign Finance**

### **Electoral Campaign**

The NCB, in coordination with the SEC and Ministry of Health, enforced a ban on political rallies gathering over 100 people in open public places and 50 people in closed places<sup>25</sup>. ENEMO's mission raised concerns that the Covid-19 pandemic limited campaigning through traditional means, including outdoor rallies and other political canvassing. Moreover, no comprehensive campaign guidelines regarding health safety and prevention measures were provided to contestants by the abovementioned authorities<sup>26</sup>.

ENEMO observers reported that parties with registered lists only occasionally conducted rallies. Other campaigning activities included door-to-door canvassing, individual meetings with voters, canvassing small groups of voters in public places and handing out leaflets or party programs at stands. Public health concerns ahead of the elections and NCB regulations can be assessed as having limited opportunities for campaigning.

The ENEMO mission observed that political parties and candidates generally respected the principle of officially starting their campaigns after registering their electoral lists. However, in some cases, early or indirect campaigning, such as the early use of billboards, may have affected the fairness of the campaign. ENEMO observers assessed the campaign as low key overall, mainly due to the effects of the Covid-19 pandemic. However an increase in campaigning was observed as election day drew closer, mainly on social networks and online news portals, through media appearances, television and radio commercials, and through a number of rallies, billboards, branded buses and cars, etc. Overall, parties and candidates broadly shifted their campaigns to

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<sup>24</sup> On this point, the OSCE's Guidelines on Political Party Regulation, Paragraph 77, recommends that "*in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list for only one party.*"

<sup>25</sup> Additionally, the NCB's measures impose a physical distance of at least two meters between persons at such events, wearing protective masks and disinfecting hands with appropriate disinfectant. [http://www.gov.me/naslovna/mjere\\_i\\_preporuke/](http://www.gov.me/naslovna/mjere_i_preporuke/)

<sup>26</sup> For instance, no specific guidance was provided to registered lists regarding door-to-door canvassing, an activity which entails a high infection and contamination risk.

social networks through posts, photos and video promotional materials. For instance, the level of paid campaign advertisements on social media (Facebook, Youtube) sharply increased in the last two weeks leading to the day of voting. However, aside from social networks and the possibility for voters to read campaign platforms online, the low number of rallies and campaigning visible in public places may have affected the possibility for voters to familiarize themselves with candidates on the lists and make informed choices.

The mission observed that main campaign themes included the economic development of Montenegro, the effects of Covid-19 on the economy, unemployment, retirement and social benefits, improving living standards, corruption, state stability, EU membership, the abovementioned Law on Religious Freedom, but also preserving the environment and improving conditions for youth in the country. Parties representing national minorities addressed the issue of acceptance of diversity as a fundamental value and promoted their efforts to ensure a better status for their communities.

Although campaigning was assessed as generally peaceful despite a tense political environment, ENEMO observers reported isolated cases of negative campaigning between ruling parties and the opposition, inflammatory language, fake news as well as “black PR” in the form of personalized attacks and insults against politicians, their private lives, and violent threats or remarks on social networks and in the public space aimed at professionally discrediting opponents<sup>27</sup>.

Concerns should be raised regarding considerable allegations of pressure or intimidation towards public and private sector employees as a mean of indirect vote buying<sup>28</sup>, an offense sanctioned under Article 186 of the Criminal Code<sup>29</sup>. Although few formal and official complaints were lodged on this matter, ENEMO notes that long-term observers from nearly all observed regions reported these allegations<sup>30</sup>. Interlocutors of the mission mentioned that this negative practice contributes to the perceived unfair advantage of the ruling coalition. Whether proven or not, these allegations may have affected public perception of the fairness of the campaign.

An increase in the number of official visits carried out by incumbents throughout the country during the last weeks of campaigning, i.e. partisan political activity by public officials while on duty, raises the question of separation of party and State. The 1990 Copenhagen Document, to which Montenegro is committed as a member of the OSCE, clearly stipulate in point 5.4 that participating states agree on “*a clear separation between the State and political parties; in particular, political parties will not be merged with the State*”<sup>31</sup>. The Venice Commission’s Code

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<sup>27</sup> As seen, for instance, on the udar.me online portal and respective Youtube channel.

<sup>28</sup> According to ENEMO interlocutors, intimidation of voters ranged from promising or providing employment and promotions, social services, deduction of debt for communal or similar services and threats of deprivation of pension; to threats of professional demotion, blocking professional advancement, pressure on employees’ families, etc.

<sup>29</sup> Article 186 of the Criminal Code: “(1) *Whoever, by force or threat, compels another or in another unlawful manner influences him to exercise or not exercise the right to vote in elections or referendums or to vote for or against a certain candidate, electoral list or proposal, shall be punished by a fine or imprisonment up to three years; (2) The punishment referred to in paragraph 1 of this Article shall be imposed on whoever requests or receives a gift or other benefit or accepts a promise of a gift or other benefit for himself or another to vote or not to vote or to vote for or against a certain person*”.

<sup>30</sup> This was reported from the Ulcinj, Kolašin and Danilovgrad municipalities in the form of a considerable increase in short-term contracts, and more generally regarding the above mentioned cases in Budva, Zabljak, Berane, Niksic, Tivat, Kotor, Cetinje, Herceg Novi, Danilovgrad and Bar.

<sup>31</sup> 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE:  
<https://www.osce.org/files/f/documents/9/c/14304.pdf>

of Good Practice in Electoral Matters additionally provides that “*Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to: i. the election campaign; ii. coverage by the media, in particular by the publicly owned media; iii. public funding of parties and campaigns.*”<sup>32</sup>

Visits and inaugurations by the President, Prime Minister, and local self-government body representatives in their capacities as state officials during the campaign can be assessed as blurring the line between parties and the state, given that their media appearances were at times used to promote party accomplishments and visibility rather than to conduct strictly official matters<sup>33</sup>. Concerns should be raised regarding the lack of a level playing-field in these cases, which may have affected the principle of equal opportunity in the campaign<sup>34</sup>.

Several cases of involvement of religious authorities in the campaign, shown by their calls for voting against the current administration, were reported by ENEMO observers. One such authority received significant media coverage during the week leading to election day<sup>35</sup>.

Observed rallies generally complied with the maximum number of participants allowed under NCB rules. However, in some cases, rallies were reported to have taken place in municipal premises during working hours. In isolated instances, ENEMO observers were forbidden by the organizers to observe indoor rallies, which calls into question the transparency of those events.

## **Campaign Finance**

The legal framework for political and campaign financing was amended in 2020, under the Law on Financing of Political Entities and Electoral Campaigns. The Agency for Prevention of Corruption (APC) is the main oversight body responsible for monitoring the financing of electoral contestants.

Political entities that registered lists in the election were obliged to open a dedicated account for their electoral fund (“giro account”), and had to report on their donations every 15 days. They were also obliged to submit interim financial reports five days before election day, and the APC had 24 hours to publish these reports in line with the law<sup>36</sup>. Political entities will additionally be obliged to submit their final report on their income and expenditures for the campaign within 30 days after election day.

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<sup>32</sup> 2002 Code of Good Practice in Electoral Matters of the Venice Commission, par. 2.3. “Equality of opportunity”: <https://rm.coe.int/090000168092af01>

<sup>33</sup> Observed in Zabljak, Pljevlja, Budva, Niksic, Berane and Bijelo Polje.

<sup>34</sup> Additionally, Article 50a of the Law on Election of Councilors and Members of Parliament stipulates 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, nor publicly express their positions regarding elections, during working hours, i.e. while on duty*” and 51a “*State and local self-government officials [...] are prohibited from abusing and using their media appearances in the role of a state or other public official during the election campaign to advertise or advertise an electoral list and/or its election program.*”

<sup>35</sup> <https://www.slobodnaevropa.org/a/30798345.html>

<sup>36</sup> ENEMO notes that only 10 out of 11 interim financial reports were available on the APC’s website: <https://portal.antikorupcija.me:9343/acamPublic/pretragaPrivremeniTroskoviIzbornaKampanja.htm>

In the week leading up to election day, the APC announced it was verifying donations from 706 contributors to political entities, and had checked invoices and contracts submitted for some 168 activities of parties and candidates, amounting to 777,221 euro<sup>37</sup>.

Moreover, in order for the APC to enforce control over public spending and limit the possibilities of abuse of state resources, public institutions, including national and local state bodies, were obliged to publish data on their websites and submit their budget expenditures reports to the APC on a weekly basis. In addition to establishing sanctions for the misuse of state resources<sup>38</sup>, the law also prohibits funding from anonymous donors as well as from several types of entities, including religious organizations<sup>39</sup>.

ENEMO interlocutors informed the mission of suspicions that expenditures from the state budget may have been inaccurately reported and possibly misused for political purposes. The suspicions mainly referred to possible irregularities in state and municipal expenditures reports, as well as to unreported employment despite restrictions during the electoral period<sup>40</sup>.

Concerns should be raised regarding possible “shadow funding” of election campaigns or misuse of public funds for political advantage, which is not only at odds with international anti-corruption standards, but also a violation of domestic legislation<sup>41</sup>. Additionally, potential abuse of state resources and related allegations in the media or public space may have affected the perception of voters and their level of trust in the electoral process.

As of 27 August, the APC had initiated a total of 297 procedures regarding the use of public resources<sup>42</sup> in the election campaign, and reviewed over 20,000 documents submitted by government bodies, including the analytical cards regarding budget spending, social benefits, travel orders, etc. Following its analysis, the APC sent 604 warnings to taxpayers, delivered 49 opinions on the requests they received from authorities and 576 clarifications or legal recommendations. The APC also conducted 15 field inspections of authorities and published the minutes of those inspections on its website<sup>43</sup>.

While the APC undertook steps to contribute to increasing the transparency of campaign financing, in line with its legal responsibilities, ENEMO notes the lack of effective and dissuasive sanctions at the disposal of the APC within the amended law. During the election, the APC’s sanctions were limited to warnings and requests for corrections to submitted financial reports, or loss of entitlement to budgetary assets from public funding. Over the campaign period, the APC

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<sup>37</sup> <https://www.antikorupcija.me/me/novosti/2008261254-presjek-rezultata-ask-oblasti-kontrole-politickih-subjekata-izborne-kampanje/>

<sup>38</sup> For instance, restrictions on monthly spending of state budget spending units, ban on the use of premises under unequal conditions, restrictions of employment during the election period, etc.

<sup>39</sup> In particular, Art. 7 and 33 of the Law on Financing of Political Entities and Electoral Campaigns.

<sup>40</sup> As laid forth in Art. 44 to 46 of the Law.

<sup>41</sup> Definitions and sanctions set forth in the Law on Election of Councilors and Members of Parliament and, more extensively, in the Law on Financing of Political Entities and Electoral Campaigns.

<sup>42</sup> Of which, according to the APC, 123 related to the control of restrictions on monthly spending and 101 related to employment during elections: <http://www.antikorupcija.me/me/dogadjaji/2005290656-parlamentarni-izbori-2020/2008271151-saopstenje-33-sjednice-savjeta-agencije-za-sprjecavanje-korupcije/>

<sup>43</sup> <http://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/2008201047-zapisnici/#page=1>

considered complaints it received and posted decisions in a timely manner on its website<sup>44</sup>, although ENEMO notes some complaints remained unaddressed and may be resolved only after the election, limiting the possibility for legal redress before election day.

The APC had the possibility *ex officio* to forward cases of misdemeanors to the Prosecutor's Office, although the law excludes provisions for the APC to follow these cases once they become the responsibility of the prosecution. Criminal cases regarding corruption, including during elections, are effectively not the responsibility of the APC.

Despite steps taken to improve transparency, ENEMO deems that the limited scope of the APC's sanctions, combined with a lack of proactiveness among the bodies responsible for investigating and prosecuting potential cases, have narrowed opportunities for preventing and sanctioning political finance abuse.

## Media

ENEMO assessed the media landscape in Montenegro as generally diverse, although highly polarized with respect to editorial policies, political orientations and media ownership. Transparency in media ownership is limited and under-regulated, in particular for online and social media.

Although the overall legal framework for the media, including the Constitution, generally provides for freedom of speech and freedom of the press, ENEMO observer reports indicated cases of self-censorship and isolated cases of pressure on journalists.

ENEMO notes that the legal framework regulating the media was not harmonized in advance of these elections, for which three main laws<sup>45</sup> applied in addition to provisions contained in a fourth law (Law on Election of Councilors and Members of Parliament). Additionally, the Law on Media and the Law on the National Public Broadcaster (RTCG) was adopted after the start of the electoral process, at the end of July 2020, which should not be considered as good practice and risked affecting the stability of the legal framework for the media.

The public broadcaster RTCG adopted rules for covering the election campaign for the parliamentary elections on 10 July 2020. RTCG was obliged to provide electoral contestants with 200 seconds of political and campaign TV-clips or audio-clips daily, in accordance with the number of advertising segments; and three-minute coverage of promotional gatherings, twice a day, immediately after the main evening TV and radio news shows. RTCG also scheduled political debates for electoral contestants to present their party platforms and inform voters. Despite the free coverage provided, ENEMO observed that not all parties had equal or sufficient monetary funds

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<sup>44</sup> According to the APC, as of 27 August, 118 complaints had been submitted to the agency during the campaign regarding violations to the Law on the Financing of Political Entities and Electoral Campaigns. The APC as of 26 August had considered 51 and delivered a first instance decision, while proceedings were ongoing for other cases.

<sup>45</sup> Media Law, Law on Electronic Media, and the Law on the Public Broadcaster (Radio Television Montenegro -RTCG)

to purchase airtime in commercial media, putting them at a disadvantage in informing citizens about their programs.

ENEMO assesses that compliance with RTCG's rules was mostly respected, and in line with the law. However, the public broadcaster played an important role in broadcasting visits, inaugurations and activities carried out by state officials on television during the campaign. Therefore, in addition to their allocated airtime, several parties also benefited from the media presence of high state officials, which may have affected the balance of coverage stipulated in the law as well as equality of opportunity.

The main body responsible for media oversight is the Agency for Electronic Media (AEM)<sup>46</sup>. The AEM has an array of legal instruments at its disposal to sanction non-compliance of broadcast media with the provisions of the law, ranging from warnings to suspension of broadcasting licenses. ENEMO notes that the AEM is not legally obliged to publish any media monitoring reports for the elections before election day, and chose not to do so, limiting the opportunity for voters to inform themselves of the AEM's monitoring activities.

Given the considerable importance played by social media in this campaign, due to the circumstances of Covid-19, concerns should be raised that social media and their use during elections is under-regulated in Montenegro. ENEMO EOM notes that although advertising on social media is subject to existing legislation, the AEM does not track such spending and no monitoring is provided of advertisements purchased through third parties. This holds the risk of unregulated third-party activities influencing elections through the use of social media<sup>47</sup> or other online tools, particularly in ways not covered by existing advertising regulations<sup>48</sup>.

## Gender Representation

The Law on Election of Councilors and Members of Parliament stipulates that at least 30 per cent of candidates on an electoral list must be women. Moreover, at least every fourth candidate should be of the underrepresented sex<sup>49</sup>. The SEC was required to refuse registration to candidate lists that did not make corrections within the prescribed time frame. ENEMO notes that all registered lists complied with the above requirement, although most lists only fulfilled the required minimum, with the exception of the Croat minority list Croatian Reform Party of Montenegro - HRS, where 69 per cent of the candidates were women.

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<sup>46</sup> The AEM monitors 75 traditional media, in addition to overseeing 85 news portals and 7 cable operators. During the campaign, it was tasked with monitoring equal access for all registered lists and the obligations of all registered broadcasters, as well as ruling on complaints and appeals.

<sup>47</sup> Especially when global companies including Facebook, Youtube and Twitter often describe themselves as "platforms," rather than media companies, and as defenders of free speech.

<sup>48</sup> In particular, it remains unclear whether Montenegrin authorities have the technical and regulatory capacity for regulating speech on social media platforms, particularly platforms based in foreign states.

<sup>49</sup> Article 39a: "*In order to exercise the gender equality principle, there shall be at least 30% of candidates on the candidate list from the underrepresented sex. Among each four candidates in the candidate list order (the first four places, the second four places and so on until the end of the list) there shall be at least one candidate who is a member of the underrepresented sex.*"



In total, 269 women were competing in the elections, which accounts for 34.57 per cent of all candidates. ENEMO assessed that no measures are in place to avoid female candidates being ranked in non-winning positions. Additionally, the law omits provisions to ensure the replacement of a winning female candidate with the next female candidate on the list, in cases where a woman withdraws her candidacy after the election.

Along with being significantly underrepresented<sup>50</sup>, ENEMO assessed that women rarely held managerial positions within EMBs. Overall, campaign messages rarely targeted participation of female voters or promoted inclusiveness, while parties and candidates rarely addressed women in general. ENEMO also notes that only one candidate list was led by a woman in these elections.

PBs were most often composed of eight members, out of which 31.25 per cent were women at observed polling stations. Each fourth PB Chairperson and each third PB Deputy Chairperson was a woman.

## National Minorities

According to the last official state census from 2011<sup>51</sup>, nearly 45 per cent of the population declared themselves as Montenegrins, while slightly over 28 per cent declared themselves as Serbs. Other ethnic groups recognized in the Constitution include Bosniaks (approximately 8.5 per cent), Albanians (nearly 5 per cent), Muslims (slightly over 3 per cent) and Croats (around 1 per cent), according to the state statistics bureau, MONSTAT<sup>52</sup>.

ENEMO notes that in these elections, a newly formed Yugoslav minority list was rejected by the SEC following a controversial registration process (see *Registration of Candidates* above, and *Complaints and Appeals* below), despite 0.19 per cent of citizens declaring themselves as Yugoslavs<sup>53</sup>, therefore meeting the conditions and rights set forth in the law<sup>54</sup> and in the Constitution<sup>55</sup>. The list appealed the rejection, but the Constitutional Court upheld the SEC's decision. International standards such as the Code of Good Practice in Electoral Matters<sup>56</sup> and the

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<sup>50</sup> Women composed 29.63 per cent of the latest composition of the Montenegrin parliament. Only one female member belongs to SEC's permanent composition, and one female commissioner to extended composition. Additionally, MECs in Rozaje, Gusinje and Petnica have no female members.

<sup>51</sup> The next State census is planned for 2021.

<sup>52</sup> Additionally, Roma (around 1 per cent) and other minorities according to the 2011 census, although not explicitly recognized as a minority in the Constitution (<https://www.monstat.org/cg/page.php?id=534&pageid=322>).

<sup>53</sup> According to the abovementioned census.

<sup>54</sup> Art. 43 par. 3 of the Law on Election of Councilors and Members of Parliament states that an electoral list which represents a minority nation or a minority ethnic community constituting 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.

<sup>55</sup> Art. 79 of the Constitution, point 9), states that persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, including "the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action".

<sup>56</sup> Venice Commission's Code of Good Practice in Electoral Matters par. 2.4. Equality and national minorities aa. "Parties representing national minorities must be permitted".

ICCPR<sup>57</sup> consecrate the right of parties to represent national minorities and to enjoy political representation.

Of the eleven registered lists in these elections, five represented national minorities, including two Albanian lists, two Croat lists, and one Bosniak list. However, ENEMO notes that the Roma minority is not explicitly recognized as a minority in the Constitution, and does not benefit from political representation.

During the pre-election period, ENEMO observers reported on isolated cases of hateful speech targeted at minorities, while some national minority voters faced challenges in fully exercising their voting rights due to being functionally illiterate<sup>58</sup>. In the two municipalities with dominant Albanian minorities, specifically Tuzi and Ulcinj, the government provided considerable financial support to the Albanian communities (e.g. formation of new MEC in Tuzi). Continuing the practice from previous elections, 37,866 bilingual Montenegrin-Albanian ballots were printed by the SEC and distributed to a selected number of polling stations.

## Inclusion of Persons with Disabilities

ENEMO notes that the election law does not include campaign requirements to ensure that information is also provided in a format adapted to the needs of PwDs<sup>59</sup>. The need for voters with disabilities to proactively seek to receive election-related information in a user-friendly manner is not fully in line with international standards<sup>60</sup>.

The election law does not require polling stations to be accessible to PwDs. However, ENEMO notes that the SEC invited MECs to ensure that polling stations were accessible to PwDs, despite no additional regulation being adopted to bring provisions more in line with international standards<sup>61</sup>. ENEMO observers reported that persons with disabilities were rarely, if at all, addressed in the election campaign.

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<sup>57</sup> International Covenant on Civil and Political Rights, Art 25 “Every citizen shall have the right and the opportunity [...] without unreasonable restrictions:(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”

<sup>58</sup> In particular, within Roma and Egyptian minority communities.

<sup>59</sup> ODIHR’s Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities states that “key electoral information should be made available in multiple, accessible formats, which may include Braille, large print, audio, easy-to-understand versions and sign language. This includes information about how to participate in an election, how to lodge complaints and appeals, results and updates from the election administration” and that “the electoral campaign should be accessible for persons with all types of disabilities. Efforts should be made to ensure campaign events and electoral materials are available to all”.

<sup>60</sup> Art. 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD) requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others” and that “voting procedures, facilities and materials [shall be] appropriate, accessible and easy to understand and use”.

<sup>61</sup> Art. 9 of the CRPD requires states “to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment [...], facilities and services open or provided to the public, both in urban and in rural areas”.

Most polling stations were situated on ground floors of public institutions, while some MECs were located on higher floors and remained mostly inaccessible to PwDs. According to several interlocutors from the local administration, municipalities do not have a specific budget line for electoral purposes and do not have enough resources to install suitable ramps for polling stations. ENEMO notes that there has been no systemic response to the pandemic crisis with special emphasis on accessibility of PwDs.

Voters with disabilities were eligible to vote with the assistance of a designated individual. Voters living with disabilities and who were of an advanced age or were receiving medical treatment applied to their PB for homebound voting. These applications were due by 13:00 on election day and had to be signed by the homebound voter and submitted by a designated individual in person at the polling station<sup>62</sup>.

ENEMO notes that on election day, 52.9 per cent of the polling stations observed during voting were assessed as accessible for persons with disabilities, while 24.9 per cent of polling stations required minor assistance and 22.2 percent of the polling stations observed were assessed as not suitable for persons with disabilities<sup>63</sup>.

## Complaints and Appeals

The legislation establishes a system of electoral dispute resolution mostly in line with international standards. Every voter, candidate and submitter of a candidate list can lodge complaints about violations to the electoral law. NGOs can also submit an initiative to assess the constitutionality and legality of the actions and documents of EMBs.

Among the three possible general types of electoral dispute resolution systems (by parliament, the courts, the electoral commission with subsequent appeal to a court), the third is most recommended by international organizations and is the type used in Montenegro. The single hierarchical structure of electoral dispute resolution excludes parallel handling of complaints. The same complaint cannot be lodged in different instances.

Verdicts or actions of PBs can be challenged at the MEC. Verdicts or actions of the MEC can be challenged at the SEC, and decisions of the SEC at the Constitutional Court. The Constitutional Court is the highest authority in electoral dispute resolution as the final appellate instance, and the only body of the judicial branch which participates in considering electoral complaints.

According to information published by the SEC, seven complaints were considered and most of them were rejected. One complaint was rejected for being late. However, this did not result from a lack of time to file the complaint, but due to the fact that the submitter (the Democratic

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<sup>62</sup> Art. 85 of the Law on Election of Councilors and Members of Parliament.

<sup>63</sup> At 22.5 per cent of polling stations no polling booth with adequate stairs were provided; 15 percent stairs and or chairs. Only 1/6 of polling stations were suitable.

Montenegro party), which complained against a decision of the Pljevlja MEC, greatly delayed its submission (sixteen days)<sup>64</sup>.

Only one complaint against a MEC was satisfied by the SEC: the Kotor MEC did not publish the calendar of elections on time and the SEC agreed with the complaint submitted by the president of the Municipal Board of the Democrats of Kotor<sup>65</sup>.

The system of appeals allows participants to get some decisions of electoral authorities reversed. The NGO Center for Civic Education lodged a complaint to the Constitutional Court against the Technical Recommendations adopted by the SEC. The Court abolished the parts of this document which prescribed the possibility of remote voting for persons in self-isolation or quarantine by a decision of the sanitary inspection<sup>66</sup>. The Court admitted that the SEC Recommendations do not ensure the voting procedure for persons who have been placed in quarantine facilities outside their place of residence. As a result of a complaint by another NGO, The Center for Democratic Transition, the Constitutional Court indicated that parts of the SEC Rules on voting by letter restrict the exercise of the right to vote of all persons undergoing home or hospital treatment or self-isolation outside their place of residence<sup>67</sup>.

The most important electoral dispute involved the electoral list Snezana Jonica - Socialists of Montenegro - To live as Yugoslavs. The SEC, and later the Constitutional Court, refused to admit Yugoslavs as a national minority and rejected the candidate list<sup>68</sup>. The SEC requested additional documents from the candidate list, which complied in a timely manner and in line with the law. Considering that the stated grounds for rejection were that the list was not eligible to run as a minority, concerns should be raised that the opportunity was not given to the applicant to submit their candidacy as a non-minority list. ENEMO assesses that this case reveals that the legislation does not clearly and consistently define which national minorities have the right to political representation, leaving space for excessive discretionary power to the SEC in the registration process.

ENEMO notes that time limits in Montenegro for lodging and deciding appeals generally meet international standards. Complaints must be filed within 72 hours from the time a decision is rendered or an action performed. The competent election commission should render a decision within 24 hours and the Constitutional Court within 48 hours. However, these timeframes have been criticized by stakeholders as not sufficient for effective legal remedy.

The SEC and the Constitutional Court publish resolutions concerning the electoral complaints on their websites.

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<sup>64</sup> SEC decision, August 6, 2020.

<sup>65</sup> SEC decision, July 22, 2020.

<sup>66</sup> Case U-II No. 45/20, August 20, 2020.

<sup>67</sup> Case U-II No. 46/20, August 24, 2020

<sup>68</sup> Case U-VII No. 1/20, August 14, 2020.

## Election Day

On election day, ENEMO deployed 23 multinational teams of observers to follow the process of the preparation and opening of polling stations, the voting and counting process, as well as the transfer and intake of election materials by the MECs. Observation teams, composed of 8 LTOs and 38 STOs, monitored the opening procedures at 23 polling stations, voting in 315 polling stations<sup>69</sup> (nearly 26 per cent of the total number of polling stations in these elections), and closing and counting in 23 polling stations. ENEMO observed the intake of election materials and tabulation of results in 23 MECs.

The head of ENEMO's mission additionally visited eight polling stations on the day of voting, including two prisons in Podgorica, in order to observe suffrage rights of prisoners<sup>70</sup>.

Election day was generally calm and peaceful. The management of the polling and conduct of PBs and MECs was assessed positively in the majority of cases observed, with some procedural violations and irregularities was assessed as not having negatively affected the legitimacy of the overall process.

The SEC website as well as the Biraci.me webpage enabled voters to check their assigned polling stations were down on several occasions during election day, at times for several hours.

### Opening procedures

ENEMO STOs observed opening processes at 23 polling stations, out of which 21 were assessed positively, including their surrounding environment<sup>71</sup>.

In most cases observed, the PB session started on time, although at three polling stations the preparatory session started after 6:00. The opening procedure was transparent and the stationary ballot boxes were properly sealed and placed according to procedures at all observed polling stations. All polling stations were open on time, except for two which opened within 15 minutes after the prescribed time.

When it comes to observed irregularities, at two polling stations observed the protocol was either not filled out or improperly filled<sup>72</sup>, while the setup of one polling station was assessed as unacceptable<sup>73</sup>. PBs generally conducted the opening in an orderly manner and according to the procedures prescribed for polling stations. However, there were isolated cases of a PB rushing through procedures, a PB substantially undermining the secrecy of the vote by not removing a

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<sup>69</sup> 10 of which were visited more than once by ENEMO observers.

<sup>70</sup> On this point, ENEMO observed that in several cases, prisoners and detainees were not allowed to exercise their right to vote due to not having IDs.

<sup>71</sup> In 2 other polling stations observed, one polling station had two cameras and only one was covered, while the second one was operating. At one polling station observed in Bar, ENEMO observers witnessed campaigning messages in the form of graffiti near the polling station which was repainted on election morning.

<sup>72</sup> In one case, the PB Chairperson declared he would complete the opening protocol at the closing, while in the other case, the opening protocol was signed by members present signing for absent members.

<sup>73</sup> In one case, the polling booths were placed beneath the stairs, putting at risk the secrecy of vote.

video camera within the polling station, and one PB opening the precinct without completing opening procedures<sup>74</sup>.

ENEMO observers assessed the opening process as either very good or good at 21 polling stations observed, while the opening process was assessed as bad in two cases (due to negligence rather than fraud). Moreover, when it comes to the overall work of PBs, one was assessed as not ensuring the secrecy of the vote, seven polling stations faced minor issues, while the rest faced no issues at all.

### **Voting process**

ENEMO observers assessed the process of voting at 315 polling stations. PBs were most often composed of eight members. At most polling stations observed, at least one domestic or international observer was present. The most recurrent observers represented CeMI, CDT and the US Embassy.

The environment was assessed as regular in 95.1 per cent of polling stations observed, while at 3.7 per cent STOs witnessed large groups of voters in front of the polling station. In total, the setup of 97.5 per cent of polling stations was assessed as acceptable, while all essential materials were provided in 99.4 per cent of observed polling stations. In nearly all polling stations observed, there were no discrepancies between the number of voters on the list and the number of ballot papers received. In 1.6 per cent of polling stations observed the stationary ballot boxes were improperly sealed.

Covid-19 protective measures were not respected at 23.7 per cent of observed polling stations. A significant number of individuals were not wearing protective masks properly, not respecting distance measures and did not use hand-sanitizer.

There were isolated cases of EVID malfunctioning which caused short delays (2.2 per cent). In some cases the voter identification process was not closely followed (2.8 per cent), while at 8.3 per cent of polling stations observed some voters were not found on the voter list<sup>75</sup>. On average, 11 requests for homebound voting were submitted to each polling station observed, while 2.8 per cent of requests were rejected for different reasons<sup>76</sup>.

With respect to the secrecy of the vote, it was not respected in 1.8 per cent of the observed polling stations due to cases of more than one voter being in the polling booth, the set up of polling booths, and voters revealing their vote or taking a photo of a marked ballot paper. PBs managed the process properly and functioned in an orderly manner at 95.7 percent of polling stations observed. Observers reported two cases of a disorganized or confusing process, while at nearly

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<sup>74</sup> The PB Chairperson declared he would fill out the opening protocol at the closing.

<sup>75</sup> According to PB explanations, this was mostly due to some voters arriving at the wrong polling station.

<sup>76</sup> The most common reasons for rejecting requests for homebound voting included voters residing in another municipality, attempts to submit requests for more than one person, submitting late requests or insufficient documentation.

all polling stations observed (98.8 per cent), no campaigning was observed inside the polling station and/or within 100 meters<sup>77</sup>.

Formal complaints on issues not fundamentally affecting the election process were submitted in 2.5 percent of cases, mostly due to the taking of photos inside the polling station or not wearing masks. In 1.2 per cent of observed polling stations, observers were not able to conduct proper observation due to the set up of the polling station. At almost all polling stations observed, no presence of unauthorized persons was witnessed by observers.

PBs operated generally according to procedures (94.5 per cent), rarely intentionally deviating from these (1.2 per cent), while in one case the PB lost control over the process. PBs at polling stations observed were evaluated by observers as either “good” or “very good” in 95.8 per cent of cases; while 4.3 were assessed as “bad” or “very bad”<sup>78</sup>.

According to crossed data points extracted from observer reporting forms, there were no procedural issues in 49.2 per cent of submitted forms. Slight procedural deviations not affecting the overall process were recognized in 47.7 per cent of submitted forms, while medium issues were reflected in 3.1 per cent of the STO forms.

## **Counting process**

ENEMO observers assessed the closing and counting process at 23 polling stations. All observed polling stations closed on time (20:00). However, in one case voters were in a queue at the time of closing and were not allowed to vote. In over half of polling stations observed, the PB decided not to use the EVID device after closing.

Counting started on time at 20 observed polling stations<sup>79</sup>. Counting procedures were followed properly at 19 observed polling stations, while at three polling stations the counting protocol was not marked after each counting step. In one case, the stationary ballot box was opened before the mobile ballot box and ballot box seals were already broken before the counting started.

All present observers were able to observe properly without obstruction at 22 observed polling stations. In one case, observers could not observe properly due to the set up of the polling station. No cases of unauthorized persons at polling stations observed during counting were reported.

At 17 polling stations observed, protocols were filled out in accordance with the law, while in six cases the PB somewhat deviated from procedures without affecting the results<sup>80</sup>. In 21 cases copies of the protocols were given to all entitled individuals and posted at the polling station

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<sup>77</sup> However, at four polling stations, observers reported campaigning or campaign materials inside or in the vicinity of polling stations.

<sup>78</sup> At four polling stations observed, this was assessed as a result of intention of fraud (at one polling station, the PB was taking ballot papers out of the ballot box to check for whom voters had voted; while at three polling stations observed in Ulcinj, STOs reported the following violations: violation of vote secrecy, PB members revealing IDs, keeping track of voters or instructing voters for whom to vote, intimidation of voters, and voters revealing their votes or using markers).

<sup>79</sup> While counting at polling stations observed started with delays shorter than 15 minutes in three cases.

<sup>80</sup> These deviations from procedures included omitting making marks in the protocol after each stage of counting, or the protocol being completed only after counting.

observed. In two cases, the protocol was not posted after the counting procedure finished, while at one observed polling station the protocol was not posted in front of the precinct.

Formal complaints were submitted at only one polling station observed during counting<sup>81</sup>. When it comes to packing and sealing election material, at one polling station slight procedural deviations were observed, while two polling stations did not seal the election material. The closing and counting procedures at observed polling stations were positively evaluated by ENEMO observers in 21 cases (either “good” or “very good”), while in two cases they were assessed as “bad” although due to negligence rather than attempts at fraud.

### **Transfer of materials to MECs and MEC activity**

ENEMO observers followed the transfer of materials and the activity of 23 Municipal Election Commissions (MECs). In 22 cases observed, the transport of election material to MECs was conducted in an orderly manner by the required composition of PB members. In one case, only two PB members were present.

On average, at observed MECs, eight members were present during the takeover of materials. Generally, MEC activity was transparent and straightforward in all observed MECs. All premises of observed MECs were assessed as spacious and adequate for delivery of materials. Eight MECs observed faced long queues, although this did not influence the process of material collection, while one MEC was too crowded making movement within the MEC challenging. At 9 MECs observed, all individuals respected the Covid-19 protective measures, while at 14 observed MECs the measures were not properly respected.

In 18 MECs observed no protocols needed correction, while corrections were made at four MECs due to miscalculations in the protocols. Additionally, one PB was sent back to the polling station for corrections.

No formal complaints were submitted at MECs observed regarding their work. All authorized observers were able to properly observe the handover and intake of material.

The transfer of material to observed MECs and MEC activity were positively evaluated by ENEMO observers in 22 cases (either “good” or “very good”), while in one case the MEC’s work was assessed as “bad” due to negligence rather than fraud.

## **Observers**

The rights of electoral observers, domestic and international, are enshrined in Article 111 of the Law on Election of Councilors and Members of Parliament. ENEMO notes that the electoral law

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<sup>81</sup> Reportedly a PB member and one Deputy Chairperson were scrutinizing the voter list when voters were not present in order to make statistics for their personal use. The second complaint was filed by a PB member saying another PB member (authorized representative of a political entity) called voters after scrutinizing the voter list and persuaded voters to come and vote.



does not establish in detail the rights and limitations for both domestic and international electoral observers. For instance, despite the recommendations of the Venice Commission and other organizations, the legislation does not clearly specify the places where observers are not entitled to be present.

In these elections, the SEC accredited seven international organizations as international observers: ENEMO, OSCE-ODIHR, the OSCE Parliamentary Assembly, the US Embassy in Montenegro, the Delegation of the European Union to Montenegro, the Embassy of the United Kingdom, and the Embassy of the Republic of Kosovo in Montenegro.

The SEC also accredited four domestic election monitoring organizations: the Center for Monitoring and Research (CEMI), the Center for Democratic Transition (CDT), the Center for Civic Education (CGO) and the NGO Fenix. Domestic CSOs actively monitored the pre-election period as well as election day, in addition to filing appeals regarding voters' rights in the context of Covid-19 (see above section *Complaints and Appeals*).

In most instances, ENEMO observers were able to freely observe the preparations, conduct, and holding of the elections. No major obstacles were encountered to prevent the election observers from conducting their work, nor were any reported to the mission by other election observation groups. However, as mentioned above, in isolated cases ENEMO LTOs were denied access to rallies by event organizers, which should be considered at odds with international best practices in elections. No major obstacles were reported to the mission regarding the work of observers, although ENEMO was informed of isolated cases of observers being prevented from entering polling stations to observe the counting process.

## About ENEMO

The European Network of Election Monitoring Organizations (ENEMO) is an international nongovernmental organization that represents a network of national nongovernmental civic organizations founded on 29 September 2001, in Opatija, Croatia. It consists of 21 leading domestic monitoring organizations from 17 countries of Central and Eastern Europe and Central Asia, including two European Union countries.

ENEMO seeks to support the international community's interest in promoting democracy in the region by assessing electoral processes and the political environment and offering accurate and impartial observation reports. ENEMO's international observation missions use international benchmarks and standards for democratic elections to evaluate the electoral process and the host country's legal framework. ENEMO and all its member organizations have endorsed the 2005 Declaration of Principles for International Election Observation and the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations. Each ENEMO observer signed the Code of Conduct for International Election Observers.

ENEMO member organizations have monitored more than 250 national elections and trained more than 240,000 observers.

To date, ENEMO has organized 30 international election observation missions to eight countries: Serbia 2020, Parliamentary Elections, Moldova 2019, Local Elections; Ukraine 2019, Early Parliamentary Elections; Ukraine 2019, Presidential Elections; Moldova 2018-19, Parliamentary Elections; Armenia 2018, Early Parliamentary Elections; Moldova 2016, Presidential Elections; Ukraine 2015, Regular Local elections; Ukraine 2014, Parliamentary elections; Ukraine 2014, Presidential elections; Ukraine 2013, Re-run of 2012 Parliamentary Elections in 5 MECs; Kosovo 2013, Local Elections, First Round; Ukraine 2012, Parliamentary Elections; Kosovo 2011, Re-run of Parliamentary Elections; Kosovo 2010, Parliamentary Elections; Kyrgyzstan 2010, Parliamentary Elections; Ukraine 2010, Presidential Elections, Second Round; Ukraine 2010, Presidential Elections, first round; Kosovo 2009, Local Elections; Moldova 2009, Parliamentary Elections; Georgia 2008, Presidential Elections; Kyrgyzstan 2007, Parliamentary Elections; Ukraine 2007, Parliamentary Elections; Ukraine 2006, Local Elections in Poltava, Kirovograd and Chernihiv; Ukraine 2006, Parliamentary Elections; Kazakhstan 2005, Presidential Elections; Albania 2005, Parliamentary Elections; Kyrgyzstan 2005, Presidential Elections; Kyrgyzstan 2005, Parliamentary Elections; Ukraine 2004, Presidential Elections, Second Round Re-run; Ukraine 2004, Presidential Elections.

ENEMO member organizations are: Center for Civic Initiatives CCI, Bosnia and Herzegovina; Center for Democratic Transition – CDT, Montenegro; Centre for Monitoring and Research – CeMI, Montenegro; Center for Free Elections and Democracy – CeSID, Serbia; In Defense of Voters’ Rights ‘GOLOS’, Russia; Gong, Croatia; International Society for Fair Elections and Democracy – ISFED, Georgia; KRIIK Association, Albania; Citizens Association MOST, Macedonia; Promo- LEX, Moldova; OPORA, Ukraine; Society for Democratic Culture SDC, Albania; Transparency International Anti-Corruption Center (TIAC), Armenia; Election Monitoring and Democratic Studies Center (EMDS), Azerbaijan; Belarusian Helsinki Committee (BHC), Belarus; FSCI, Kazakhstan; Kosovo Democratic Institute (KDI), Kosovo; Coalition for Democracy and Civil Society, Kyrgyzstan; Center for Research, Transparency and Accountability (CRTA), Serbia; Obcianske OKO (OKO), Slovakia; Committee of Voters of Ukraine (CVU), Ukraine.