



ENEMO International Election Observation Mission

Parliamentary Elections, 30 August 2020 - Montenegro

INTERIM REPORT

15 July-15 August

17 August 2020

Overall, the domestic electoral legislation provides grounds for holding democratic elections in Montenegro. However, certain legal provisions remain at odds with international standards, including voters' and candidates' rights. The Covid-19 pandemic has negatively affected the conditions for holding parliamentary elections and opportunities for campaigning, while inconsistencies in the laws and lack of comprehensive regulations may confuse participants in the electoral process.

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 has accredited a total of five Core Team experts based in Podgorica, and two Core Team members working from abroad. The Mission is headed by Professor Dr. Gianluca Passarelli. ENEMO has additionally deployed eight long-term observers (LTOs) in four teams throughout the country¹. The IEOM is planned to be reinforced by 38 short-term observers (STOs), paired in multi-national teams of two, who will observe the opening of polling stations, voting and counting process on Election Day.

This is ENEMO's first mission to Montenegro. However, ENEMO has already gained considerable experience through observing elections in the Balkans since the creation of the network in 2001. The presence of ENEMO during the 2020 Parliamentary Elections in Montenegro will provide the national and international community with elaborate information about the electoral process. Up until 15 August, ENEMO observers have conducted a total of 237 meetings with electoral stakeholders.

¹ 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, conduct of election management bodies, campaigning, gender equity, voting and tabulation processes, electoral dispute resolutions and other crucial aspect of the process, based on international standards for democratic elections and the Montenegrin legal framework. ENEMO will raise 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 interim report is based on ENEMO's findings throughout the regions of Montenegro observed from 15 July until 15 August, where ENEMO CT experts and LTOs focused on assessing the work of election administration bodies, registration of political parties and candidates, conduct of the election campaign, election-related complaints and appeals and other election related activities. The mission will issue its preliminary statement of findings and conclusions after Election Day and will remain in the country to also follow the potential complaints and appeals. ENEMO's final report will be issued within sixty days from the certification of results.

ENEMO's international observation mission for the 30 August 2020 Parliamentary Elections in Montenegro is 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.



Executive summary

The 2020 parliamentary elections in Montenegro are scheduled to take place on 30 August 2020. In addition, municipal elections will be held in 5 municipalities on the same day, for municipal assembly councilors of Andrijevica, Budva, Gusinje, Kotor and Tivat.

The current parliamentary election campaign in Montenegro is being held in conditions of a stable electoral system. There were no significant changes in the electoral system since the previous parliamentary elections in Montenegro in 2016. The legal framework for elections is mostly in line with international standards.

In general, the elections are administered professionally despite the lack of legal certainty regarding some aspects of the electoral process. The State Election Commission (SEC) operates in an overall transparent manner. However, late changes by the SEC as well as lack of clarity regarding whether or not all groups of voters will have the opportunity to vote due to Covid-19 pandemic may affect the quality of the electoral process. Municipal Electoral Commissions (MECs) operate professionally and effectively, and seem to be prepared for the upcoming elections, while it remains unclear how trainings for Polling Boards' (PBs) staff will be conducted and whether this will affect their readiness for the election day.

Regarding voter registration, concerns should be raised that excessive provisions in the law on the right to vote could lead to the disenfranchisement of a considerable number of voters, in cases where they resided abroad and have only recently (less than two years) returned to Montenegro to renew their residency in the country. There is also a general perception that there are discrepancies between different databases that compile the voters' list and the total population in the country aged 18 or higher.

All electoral lists were able to collect the required number of voter signatures and were registered by the SEC within the legal deadline, with the exception of the self-declared Yugoslav national minority list, even after lodging an appeal to the Constitutional Court. ENEMO notes that the two year residency requirement to stand for election should also be deemed as excessive and at odds with international standards.

Concerns should be raised regarding the lack of comprehensive regulations on indoor and outdoor campaign events and limitations on campaigning due to the Covid-19 epidemic. As a consequence, electoral contestants have increased the focus of their campaigns on social networks and online media. Both the epidemic itself and the corresponding health security measures adopted may affect the principle of equal opportunity and possibility for candidates and parties to campaign freely.

Limitations in the legal framework on campaigning of state officials, potential abuse of office, and avoiding blurring of lines between parties and State are overall in line with international standards. However, reports of ENEMO observers indicate considerable allegations of pressure towards public-sector employees, threats of non-renewal of contracts, blocking professional advancement, pressure on employees' families, and threats of demotion in cases of employees refusing to support the ruling coalition. On the other hand, allegations of promises of employment or services as means of indirect vote buying were reported to ENEMO observers in several instances.

The overall legal framework for media, including laws and the Constitution, generally provide for freedom of speech and freedom of the press. However, transparency regarding media ownership is limited and under regulated, in particular for online and social media. The appearance of state officials used as a means to increase the coverage of the lists in which they are running, outside the dedicated advertising blocks raises concerns, as it may affect the principle of equality of opportunity, as well as the obligation of impartiality in the media coverage of the electoral campaign.

The 2020 amended legislation has brought the framework for campaign finance overall more in line with international standards, and generally complies with GRECO anti-corruption standards. The role of the Agency for the Prevention of Corruption (APC) and its mandate have been extended to provide effective oversight of campaign finance. ENEMO deems positive the plan published by the APC for controlling and monitoring the financing of political campaigns for these elections. However, concerns should be raised regarding the difficulty of implementing field controls and supervising possible cases of misusing public funds or human resources, due to lack of capacity and limited possibilities to prevent or eliminate abuse.

Even though all electoral lists complied with the gender quota requirement, ENEMO notes that only one national minority went beyond and included 70% of female candidates, while women remain underrepresented in EMBs and public life. Additionally, only one candidate list is led by a woman in these elections.

ENEMO notes that the existing framework for access and participation of PWDs is overall in line with international commitments. However, most EMB premises and polling stations remain only partly accessible or completely inaccessible to PWDs. The Constitution and laws of Montenegro acknowledge the participation of national minorities in the electoral process. This includes special measures to facilitate the opportunity for minorities to be adequately represented.

The system of appeals in Montenegro is overall in line with international standards. The electoral disputes' resolution system is administered by electoral commissions with subsequent appeal to a court, and the legal framework provides for a single hierarchical structure of dispute resolution excluding parallel handling of complaints. Time-limits for lodging and deciding appeals in Montenegro also overall meet international standards. However, these timeframes were criticized by interlocutors as not sufficient for effective legal remedy.

Background

The 2020 parliamentary elections in Montenegro are scheduled to take place on 30 August 2020, following President Milo Dukanovic' Decision 01-1212 dated 20 June 2020². In addition, municipal elections will be held in 5 municipalities on the same day, for municipal assembly councilors of Andrijevica, Budva, Gusinje, Kotor and Tivat.

²<http://www.mup.gov.me/vijesti/227555/Saopstenje-za-javnost-i-numericke-tabelarni-prikazi-podataka.html>

The stakes of these parliamentary elections are particularly high regarding the legitimacy of Montenegro's next parliamentary legislature, as well as aspirations of the country for joining the European Union³. Additionally, the contestation of the fairness of the process by the opposition of the previous 2016 parliamentary elections has led most opposition parties to collectively boycott parliamentary sittings. The opposition boycott has taken the form of street protests against corruption, contestation of the ruling coalition (led by the Democratic Party of Socialists of Montenegro (DPS), which has been in power for nearly thirty years⁴), and announcing their potential contestation of the 2020 election results should they deem the process unfair⁵.

Although opposition parties progressively and partially returned to Parliament in subsequent years following the 2016 parliamentary and 2018 presidential elections, political tensions reached a new high in December 2019 and throughout 2020. This was mainly caused by the passing of the "Law on Freedom of Religion or Beliefs and the Legal Status of Religious Communities"⁶ which, due to its polarizing nature among religious followers and political forces, resulted in mass protests in Podgorica and throughout the country by the opposition and supporters hostile to the law⁷. Coincidentally, prospects for electoral reform in Montenegro ahead of the elections fell short the same month, after opposition parties in Parliament refrained from engaging in sessions to amend the electoral legal framework mainly due to the passing of the abovementioned law. Furthermore, protests regarding the Law on Freedom of Religion continued after the start of the electoral cycle⁸.

Additionally, the context of these elections is considerably affected by the worldwide Covid-19 (SARS-CoV-2) pandemic. Although the National Coordination Body for Infectious Diseases (NCB) declared the end of the coronavirus epidemic in Montenegro on 2 June at the suggestion of the Institute of Public Health, the same authorities declared the country had reached the status of epidemic in five cities in the North of the country a month later⁹. In particular, increases in the infection rates in the country throughout the months of July and August 2020 have raised public health concerns and affected the conditions for holding the election¹⁰.

³ Montenegro has currently opened all thirty EU negotiation Chapters, with the remaining Chapter 8 having officially been opened on 30 June 2020.

⁴ Including before Montenegro regained its independence in 2006, following its union with Serbia under the Socialist Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro.

⁵ The overall assessment of the political situation in Montenegro made by Freedom House in its 2020 report shows concerns regarding the lack of alternance in power and the issue of corruption in the country: "*While numerous political parties compete for power in Montenegro, the opposition is fragmented and its leaders are frequently harassed, and the governing Democratic Party of Socialists (DPS) has been in power since 1991. Corruption is a serious issue. Investigative journalists and journalists critical of the government face pressure, as do many nongovernmental organizations (NGOs).*" <https://freedomhouse.org/country/montenegro/freedom-world/2020>.

⁶ Hereinafter referred to as Law on Freedom of Religion.

⁷ The Law stipulates that church property for which there is no proof of origin automatically becomes the property of the state of Montenegro. *De jure*, it transfers the ownership of church buildings and assets, including real-estate, built before 1918 (when the Montenegrin state was abolished) from the Serbian Orthodox Church in Montenegro to the Montenegrin state. It is relevant to note that the Venice Commission's opinion provided guidance for the evaluation of the new Law, and evaluated the draft law positively overall by welcoming the genuine efforts of the Montenegrin authorities to replace the 1977 Law on legal position of religious communities, while however voicing some reservations on specific aspects of the text: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282019%29010-e>

⁸ In Nikšić, Podgorica, Berane on 26 July and on 9 August around the Bay of Kotor, from Budva to Herceg Novi, Bijelo Polje, Berane, Mojkovac, Bar, Pljevlja and Mojkovac.

⁹ Bijelo Polje, Berane, Petnjica, Rozaje and Gusinje.

¹⁰ <https://www.ijzcg.me/me/novosti> and http://www.gov.me/naslovna/mjere_i_preporuke/

Therefore the environment ahead of the 30 August 2020 parliamentary elections is characterized by a tense political landscape with significant uncertainties, worsened by the current sanitary conditions, and creating challenges for election stakeholders engaged in organizing the process. This concerns election administration bodies (EMBs), but also campaigning by electoral contestants and voters expected to cast their ballots on Election Day. The Covid-19 epidemic affects opportunities to participate in the election, and could negatively impact the turnout in addition to bearing potential repercussions on the health of election administration members and voters at polling stations.

Legal framework and electoral system

Legal framework

The legal framework for parliamentary elections in Montenegro includes the rules set forth in the Constitution, ordinary laws and the State Election Commission (SEC) regulations.

Montenegro has a small set of electoral norms regulated by the Constitution. Only electoral rights of citizens and the standards for holding parliamentary elections are defined in the Constitution in detail. Unlike other countries, in Montenegro the Constitution does not contain norms about electoral management bodies; it also omits norms about electoral administration, the electoral formula, electoral disputes resolution, etc.

Organic laws are absent in Montenegro. However, article 91 of the Constitution states that the laws regulating the electoral system should be adopted by a two-third majority of the total number of the Members of Parliament. This requirement complicates the process of changing the electoral law, while helping to stabilize it and informally bringing it closer to the status of an organic law. ENEMO notes that this requirement led to the opposition halting the electoral reform process in 2019.

The Law on the Election of Councilors and Members of Parliament is the most important document in the legal framework for elections. Supplementary legal acts that regulate several other aspects related to the election process are found in: the Law on Financing Political Entities and Election Campaigns, the Law on the Register of Voters, the Law 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 National Public Broadcaster of Montenegro, the Criminal Code of Montenegro, and the Law on the Constitutional Court of Montenegro. Decisions and regulations of the State Election Commission (SEC) also regulate a wide range of electoral management issues.

After a period of significant changes of electoral legislation in 2011-2014, there were no significant changes in the electoral system since the previous parliamentary elections in Montenegro in 2016¹¹. The legal framework for elections is mostly in line with international standards. The

¹¹ The Law on Election of Councilors and Members of Parliament was amended last time in 2018, the Law on Financing Political Entities and Election Campaigns – in 2020.

fundamental principles of elections (universal, equal, free, secret and direct suffrage) are set in the Montenegrin electoral legislation.

One of the features of Montenegrin electoral legislation is the approach that different acts containing the electoral rules also establish sanctions for violations.

Among shortcomings of the legal framework is the wide set of issues regulated not by laws but by acts of the SEC. For instance, such regulations determine the rules on the work of the polling stations (including significant rules for counting ballots and the rights of observers), rules on homebound voting, etc.

Electoral System

Parliamentary elections in Montenegro adopt a closed-list proportional representation system. The elections are conducted as a single nationwide electoral district. Accordingly, district magnitude is equivalent to the assembly size – 81 and is one of the largest in Europe. The absence of electoral districts provides equality of power of vote. Parliamentary seats are distributed among candidates' lists using the d'Hondt method.

Since independent candidates are not allowed, citizens willing to run for election have the opportunity to join an existing political entity or create a new candidates' list. For individual candidates, practical difficulties stand in the way of creating a new candidates' list, insofar as it must contain at least 54 candidates (2/3 of the seats in the Assembly). The existence of a single nationwide electoral district also increases the dependence of individual politicians on political parties.

The order and rules of candidates' selection (as well as intra-party democracy during the process) are not determined in Montenegrin legislation. Absence of regional or local lists increases the dependence of politicians and political parties' territorial divisions on central leadership.

The electoral legal framework in Montenegro provides for freedom of association: political parties are not required to have registration and to obtain a legal status prior to participating in parliamentary elections and to submit a candidates' list. Registered political parties and other groups of voters have equal rights in the nomination of lists.

The level of electoral threshold is 3%, which complies with the recommendations of the PACE (Resolution 1547 declares a limit of 3%) and the Venice Commission (CDL-AD(2010)007-e declared limits from 3 to 5%). The level of the electoral threshold in Montenegro allows small political parties to enter Parliament and ensures a high level of representativeness: in 2016 elections there were 9 candidates' lists that were included in the process of seat allocation and represented 96.2% of the vote.

Election Administration

Three main tiers of election management bodies are responsible for organizing the electoral process in Montenegro: the State Election Commission (SEC), Municipal Election Commissions (MECs) and Polling Boards (PBs). The SEC and MECs are permanent bodies and are appointed after the inauguration of the elected assembly for a four-year term, while PBs are elected for each election. Formally there is an independent model of electoral management: election commissions are separated from the executive branch of government and have the status of a legal entity. However, article 17 of the Law on Election of MPs and deputies' states that "*election management bodies shall be held accountable for their work to the body that has appointed them*". Powers and responsibilities of election management bodies include organizing technical aspects and legal conduct of elections, determining the number and location of PBs, confirming the electoral lists, managing election materials and publishing the election results.

Parliamentary elections are administered by a three-tiered election administration: The State Election Commission (SEC), 24 Municipal Electoral Commissions (MECs) and some 1,200 expected Polling Boards (PBs). The SEC supervises the activities of MECs, while MECs oversee the work of PBs.

State Election Commission (SEC)

The SEC is composed of appointed members who make the permanent composition as well as empowered members who make the extended composition. The SEC Chairperson is appointed by the Parliament at the proposal of the Administrative Board (Parliamentary working body responsible for elections and appointments), after a previously conducted open competition. The SEC Chairperson should be a lawyer and have at least ten years of working experience in the legal field¹². All permanent and empowered members have deputies.

The SEC has partisan composition, but a candidate cannot be a member of the electoral commission of any level. The SEC uses a multiparty-based model: only one of the permanent members is an election expert¹³. Besides him/her and a Chairperson, all the other SEC permanent and empowered members represent political parties and must be lawyers. Empowered members of the SEC may be revoked and replaced by those political parties who have proposed them.

The main competences of the SEC include legal oversight of the elections and uniformed implementation of the provisions of the Election law coordinating the work of MECs, setting down unified standards for election materials, rendering a decision on proclamation of the lists of candidates for the election, establishing the results of the election and the number of seats belonging to each of the lists of candidates, publicly announcing the overall results of the election, as well as the results by each polling station.

¹² Art. 30 of the Law on Election of Councilors and Members of Parliament.

¹³ Art. 30 of the Law on Election of Councilors and Members of Parliament states that it should be "*a person who published scientific papers and professional treatises on the topic of the election process, who is distinguished by the public as an expert in that field...*"

During the reporting period, the SEC held sessions regularly. Sessions were generally conducted in a collegial manner with the presence of accredited local and international observers, but without live broadcasting on the official website. The SEC published the agenda of the upcoming sessions in advance and provided draft decisions by email or hard copies to all participants. Minutes and decisions were published in a timely manner, respecting the prescribed deadlines. The commissioners had the opportunity to openly discuss each issue, often along the line of their party's agenda, since the Election law does not contain provisions on impartiality of the election administration¹⁴. ENEMO notes that a Code of Ethics for EMBs and all election commissioners, including general requirements of neutrality, impartiality and professionalism for members of the election administration, is still not adopted.

While most political actors expressed confidence in the professionalism of the election administration and their ability to manage the electoral process, some questioned whether the SEC is fully impartial. Moreover, different interlocutors raise concerns over the lack of proactiveness when it comes to problem solving and decision making.

As the COVID-19 pandemic has forced EMBs to change and adapt their operations, national election authorities have also witnessed the need to create and implement new mechanisms as a way to respond to the new circumstances. Technical recommendations for holding elections with the goal of epidemiological protection of voters were published on 6 August, after several weeks of active discussion which resulted in numerous substantial alternations of the document, including the rules for campaigning and, most importantly, potential limitations of voters' rights.

The document was heavily criticized by local civil society organizations immediately after it was published¹⁵, especially when it comes to the impossibility of voting for hospitalized and institutionally quarantined voters who are placed outside of their place of residency. Only two days later, the first addendum enabled voting for institutionally quarantined voters, while CSOs were finally invited to bring their own proposals in this late phase of the pre-electoral process. Moreover, MEC members stated that they will not be able to fully implement given recommendations during the election day in all polling stations due to lack of space, while some expressed the need for more detailed instructions on preventive health measures.

ENEMO stresses the importance of adopting electoral regulation based on a broad consensus after extensive public consultations with all relevant stakeholders, in order to ensure that human rights organizations and the general public, including marginalized groups, are fully informed and able to submit their views prior to the adoption of the draft regulation. Additionally, by adding a residency requirement not provided for in the law, concerns should be raised that the above

¹⁴ Section II.3.1 of the Code of Good Practice states that *“only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results.”*

¹⁵ <https://en.cdtmn.org/2020/08/07/annul-the-state-election-commissions-unconstitutional-instructions/>
<http://cemi.org.me/2020/08/preporuke-dik-jos-jedna-potvrda-da-nema-uslova-za-bezbjedno-odrzavanje-izbora/>

mentioned document published by the SEC may be deemed at odds with the Law on Election of Councillors and Members of Parliament (Article 11¹⁶) and the Constitution (Article 45¹⁷).

Additionally, ENEMO notes that the collegial nature of the SEC's work on the technical recommendations failed to reach a well-needed consensus which was crucial for preparing a comprehensive set of guidelines for the whole electoral process in the Covid-19 context. Moreover, some key aspects remained unaddressed after they were initially discussed and considered, primarily rules of campaigning, which shows insufficient cooperation with the National Coordination Body which initially proposed more detailed instructions for some aspects of the electoral process.

Municipal Election Commissions (MECs)

MECs are permanent bodies that serve four-year terms. MEC members are appointed by municipal assemblies based on nominations from parties, coalitions and voter groups represented in the assembly¹⁸. ENEMO observers in the field generally assessed the work of MECs as positive during the initial phase of their work, as they overall respect the legal deadlines defined by the election calendar. Their sessions are open to the public and the decision-making process is assessed as transparent and collegial, while decisions are mostly made unanimously. However, it may be challenging for the interested public to attend some of the sessions as most MECs do not announce the sessions on their websites.

When it comes to the general understanding of their tasks, procedures, and the law, not all MEC members seem to be familiar with the rules under which they operate, therefore their professionalism, skills and knowledge seem to vary. It is worrying that MECs still do not dispose of information on how they will be responsible for the training of polling boards staff, as well as which material or platform will be used for conducting the training.

Political actors are generally satisfied with the performance of MECs, claiming that they respect the law and do not go beyond their mandate. ENEMO observers generally assessed the attended MEC sessions positively despite common difference of opinion.

Some operational and other challenges in the work of MECs include having commissioners from other regions and municipalities which influences the organisation of their work (Pluzine), delayed funding due to blocked account (Budva), budgeting issue due to missing budget line for the newest municipality (Tuzi), lack of permanent office or regular working hours (Mojkovac), reluctance to meet international observation mission (Pljevlja), technical challenges in regards to the website (Kolasin), tension between the chairman and the secretary (Tuzi), recent replacements of several MEC members, including the chairperson (Cetinje) as well as non-publication of decisions due to lack of staff or other reasons (Berane, Plav and Petnjica). A common concern in regards to potentially high number of requests for homebound voting is shared among all MECs.

¹⁶ “The right to vote and to be elected as a deputy has a voter who has reached 18 years of age, who is legally capable and who has resided in Montenegro for at least two years before the day of the elections.”

¹⁷ “The right to elect and stand for elections shall be granted to the citizen of Montenegro who is 18 years of age or above and who has minimum two years of residence in Montenegro.”

¹⁸ Art. 24 of the Law on Election of Councilors and Members of Parliament.

Polling Boards

Even though the polling boards are yet to be formed, it is expected that Montenegrin citizens will be able to cast their vote on August 30 at approximately 1,200 polling stations. PBs are appointed for every election. PBs organise voting, including homebound, counting and transfer of results to MECs, and consider Election Day complaints.

So far, there seem to be no particular concerns regarding the future work of polling boards, although it remains unclear in which way polling board members will be trained, nor whether the training material is already prepared. Isolated cases of groups of voters concerned about potential premises for future polling stations were expressed to the SEC, such as the case of a polling station in Pljevlje which is allegedly not appropriate for conducting the voting. Moreover, different interlocutors raised concerns that some polling stations are too close to party HQs and that private houses of party officials are often used as polling stations, mainly in northern and central municipalities. It remains to be seen whether the concerns are justified and how EMBs will deal with the issue. It is worth noting that a significant number of polling stations in the northern municipalities of Montenegro are placed in private houses due to lack of suitable public buildings, as well as the fact that some municipalities do not have designated street names nor numbers.

Registration of voters

All citizens who are 18 years old on or before Election Day who have resided in Montenegro for at least the last 24 months and have a valid identification document are eligible to vote. Voter registration is passive. The voter register is permanent and regularly updated and maintained by the Ministry of Interior (MoI) on the basis of data extracted from population and residency registers¹⁹.

The length of the residency requirement in national elections is provided by the Constitution²⁰, although not in line with international standards, namely at odds with the 2002 Code of Good Practice in Electoral Matters of the Venice Commission 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.*”

Additionally, there is no out-of-country voting. Only citizens who are currently in Montenegro at the time of the elections may vote under the condition that they maintained their residence officially in Montenegro. Concerns should be raised that excessive provisions in the law regarding the right to vote could lead to the disenfranchisement of a considerable number of voters, in cases where they resided abroad and have only recently (less than two years) returned to Montenegro to renew their residency in the country.

¹⁹ The main legal provisions regulating the administration of voter lists can be found in the Law on Voter Lists.

²⁰ Article 45 of the Constitution of Montenegro.

As of 20 June 2020, the number of voters on the list was 541,232²¹. Several ENEMO interlocutors have raised concerns about the accuracy and reliability of this number, claiming that there is an increase of over 50,000 voters²² compared to the previous electoral cycle. This includes for instance allegations of “phantom voters” across the country.

Since 2016, polling stations in Montenegro are equipped with a system for electronic voter identification (EVID), which is synchronized with the voter register and aims to prevent possible multiple voting. These are the second parliamentary elections where the EVID system will be used in order to provide safeguards against potential fraudulent attempts.

Once the elections were called, the voter register was made publically available on the MoI website. Voters were able to view the register and request changes up to 15 days before Election Day. Changes can be based on data from records, public documents, and electronic registers.

ENEMO interlocutors, amongst which political party representatives, raised concerns over the possible presence of false or altered ID cards which could potentially affect the reliability of the voters’ list. Since voter identification in the list is based on voters’ ID document rather than a personal unique voter identification number, this leaves space for suspicion of possibilities of impersonation of voters, which could also deprive a certain number of voters from their right to vote.

Registration of candidates

All citizens with voting rights who have resided permanently in the country for at least two years are eligible as candidates. Candidates can be nominated by political parties, coalitions of political parties, or groups of voters. The nomination of individual candidates is not allowed²³.

The two year residency requirement to stand for election should also be deemed as excessive and at odds with the 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*” 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*”.

Submitters of candidate lists and candidates have the right to organize conferences and other public meetings as well as the right to prepare propaganda material and to display and post it during the period of media presentation²⁴.

²¹ <http://ww.mup.gov.me/pretraga/227555/Saopstenje-za-javnost-i-numericke-tabelarne-prikazi-podataka.html>

²² <https://www.in4s.net/ne-damo-crnu-goru-broj-novoupisanih-punoljetnih-biraca-veci-za-vise-od-50-od-realnog-broja-srednjoskolaca/>

²³ 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.*”

²⁴ The right to freedom of assembly is guaranteed in Art. 52 of the Constitution of Montenegro and the right to freedom of expression is guaranteed in Art. 47 of the Constitution.

The SEC registers candidate lists. No provisions are included in the law for candidates to withdraw after registration of the electoral list by the SEC²⁵. A political party or coalition is required to submit signatures of at least 0.8 percent of the voters²⁶, based on the number of registered voters in previous elections. Political parties and groups of voters that represent a minority community must submit at least 1,000 signatures, while candidates representing a minority making up to two percent of the population must gather 300 signatures.

ENEMO notes that voters are allowed to sign in support of only one electoral list, which is overly restrictive in light of international good practice. This limits political pluralism and could potentially affect the secrecy of voting by revealing political preferences. Considering the finite number of voters, this could also lead to potential abuse by political entities collecting signatures, since no upper limit for signatures collected per party is provided for in the law. No provision prevents political entities from gathering a higher number to deprive other lists from obtaining sufficient signatures. 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.*"

In total, parties collected 131,855 signatures, out of which 112,297 were deemed valid (85%), while 29,809 voters checked whether the system registered their support for any of the lists²⁷. The SEC took a proactive approach when it comes to checking the validity of voters' data on the signatures lists and published a detailed report for each list. However, ENEMO raises concerns over the fact that the evaluation of each list did not include visual verification of signatures, making it possible for one person to sign multiple voters or forge their signatures. Moreover, there are no official guidelines (law, regulation or other provision) on the criteria for accepting or rejecting individual signatures. As there are no standardized criteria or minimal requirements that need to be fulfilled, the final decision depends on the potentially subjective assessment of the data entry clerk, which can be assessed as excessive discretionary power.

The official registration period by the SEC went from 11 July until 4 August 2020, in line with the provisions set forth in the law. Despite most political entities submitting their registration documents close to the deadline, the SEC registered submitted candidate lists in time (with one exception detailed below which was subject to a complaint, and was ultimately refused registration)²⁸.

²⁵ Article 40 of the Law on Election of Councilors and Members of Parliament: "*The submitter of the electoral list may withdraw the list no later than the day of determining the collective electoral list. Withdrawal of the electoral list terminates the function of the authorized representative of the submitter of the list in all bodies for conducting the elections, as well as all rights that, in that capacity, belong to him according to the provisions of this Law. The candidate may withdraw from the candidacy until the day of the decision on the declared electoral list.*"

²⁶ 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/>

²⁷ Within the reporting period.

²⁸ 11 electoral lists were registered for the elections by the following parties and coalitions: Social Democratic Party of Montenegro, under the list "SDP - Strong Montenegro!"; Social Democrats of Montenegro, under the list "Social Democrats - Ivan Brajovic - We decide CONSISTENTLY"; Democratic Montenegro, DEMOS, Party of Pensioners, Disabled and Restitution of Montenegro and Civic Movement New Left, under the list "ALEKSA BECIC - MIODRAG LEKIC - "PEACE IS OUR NATION" - DEMOCRATS - DEMOCRATIC MONTENEGRO - DEMOSPENSIONERS PARTY, DISABLED PEOPLE AND RESTITUTIONS - CIVIC MOVEMENT NEW LEFT"; Black on White Coalition: Civic Movement URA, Justice and Reconciliation Party, CIVIS Voter Group, under the list "Dr. Dritan Abazović - Black on White - Dr. Srdjan Pavičević - (Civic Movement URA, Justice and Reconciliation Party, Group CIVIS voters and independent intellectuals) - Citizens!"; Democratic Party of Socialists of Montenegro, under the list "Decisive for Montenegro! DPS - Milo Djukanovic"; Bosniak Party, under the list "The Bosniak Party - Correct - Rafet Husovic"; Croatian Reform Party of Montenegro, under the list "Croatian Reform Party of Montenegro - HRS"; Coalition

The “SNEŽANA JONICA – SOCIALISTS OF MONTENEGRO - TO LIVE AS YUGOSLAVS” list submitted its candidacy as a Yugoslav minority list, but was rejected by the SEC, claiming that the conditions to run as a minority party were not met.²⁹ On 14 August, the party’s appeal to the Constitutional Court was also rejected³⁰. It remains unclear on which legal grounds the appeal was rejected³¹.

It is important to note that international standards such as the Code of Good Practice in Electoral Matters clearly states that “*Parties representing national minorities must be permitted*” (Paragraph 2.4 a)), while the ICCPR Article 25 stipulates that “*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;*”, and Article 26: “*In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*” ENEMO will continue to closely follow the development of this case and whether the Constitutional Court’s decision is in compliance with national legislation as well as international standards.

Electoral Campaign and Campaign Finance

Electoral Campaign

The rules for electoral campaigning are provided by the Law on the Election of Councilors and Members of Parliament³² and additionally in the Law on Financing of Political Entities and Election Campaigns. The law specifies that electoral contestants³³ have the right to campaign from the day when their electoral list is officially registered³⁴ until the end of the campaign 24 hours before Election Day³⁵.

The law provides for a general definition of campaigning, which includes the right to organize conferences and public gatherings to present their programs and candidates³⁶, as well as preparing

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, the Party of Pensioners, Disabled Persons and Social Justice of Montenegro, under the list "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.”; Coalition AA - FORCA - DSA - UT – PERSPECTIVE, under the list "ALBANIAN LIST - Genci Nimanbegu, Nik Gjeloshaj”; Albanian Coalition Democratic Party, Democratic Union of Albanians and Democratic Alliance in Montenegro, under the list Albanian Coalition "Unanimously"; Democratic Party, Democratic Union of Albanians and Democratic Alliance in Montenegro.”; Croatian Citizens' Initiative HGI Tivat., under the list "HGI. WITH ALL MY HEART FOR MONTENEGRO!"

²⁹ <https://dik.co.me/wp-content/uploads/2020/08/Rjesenje-Socijalisti-CG.pdf>

³⁰ <http://www.ustavnisud.me/ustavnisud/objava/blog/7/objava/73-saopstenje-sa-vii-sjednice-ustavnog-suda-crne-gore>

³¹ The Constitution in its preamble guarantees the recognition of national minorities in Montenegro.

³² Articles 50 to 64.

³³ Referred to in the law as “submitters of electoral lists”.

³⁴ Article 50 of the Law on Election of Councilors and Members of Parliament.

³⁵ Article 64a.

³⁶ Article 58.

election posters, advertisements, leaflets, videos, photographs, etc. and to place them in public places designated by state authorities³⁷.

However, concerns should be raised regarding contradicting provisions within the legal framework in the timeframes for campaigning. While the Law on the Election of Councilors and Members of Parliament stipulates that electoral contestants have the right to campaign only upon official registration of their lists, the Law on Financing of Political Entities and Election Campaigns, amended in 2020, stipulates Article 2 that “*an election campaign is a set of activities of a political entity from the day of calling the elections to the day of announcing the final election results*”. In addition to not providing legal certainty, this contradiction in the laws risks having confused electoral contestants regarding when they had the right to start their campaigns. This may have also created conditions for early campaigning affecting equality of opportunity, in addition to challenging the integrity of the process.

Overall, the mission observed that political parties and candidates respected the principle of starting their campaigns officially following the registration of their respective electoral lists. However, in some cases, early or indirect campaigning may have affected the fairness of the campaign, such as early publication of billboards before registration of the lists³⁸.

Restrictions to campaigning which have been brought forth by the NCB include a ban on political rallies gathering over 100 people in open public places and 50 people in closed places³⁹. Concerns should therefore be raised that the Covid-19 pandemic limits the possibility for electoral contestants to campaign through traditional means of campaigning, including outdoor rallies and other field work to gather voters’ support. No explicit measures have been pronounced regarding the possibility to conduct door-to-door canvassing, despite this type of activity increasing the risk of infection. It should be noted that both increased health risks of conducting campaign activities and NCB mandatory regulations limit opportunities for campaigning in these elections, which may affect electoral contestant’s rights to campaign freely.

Additionally, serious concerns should be raised regarding the fact that, as of the publication of this report, no further specific guidelines or regulation have been published by the SEC and other public authorities regarding safety conditions for campaigning⁴⁰. Although drafts of the Technical recommendations for holding elections with the goal of epidemiological protection of voters prepared by the SEC contained more detailed provisions on Covid-19 prevention measures, ENEMO notes that the published version of the document has omitted any guidance regarding Covid-19 prevention measures for campaigning specifically. ENEMO deems this could put the health of all participants in campaign events at risk, and lack of official instructions could lead to breaches in the general prevention principles put forward by the NCB.

³⁷ Article 60.

³⁸ For instance, billboards bearing the mention “Mi Odlucujemo” (“We Decide”) appeared before registration of the lists. Although not considered strictly as campaigning since there was no mention of a party nor the elections, practically identical billboards with the same slogan were posted after registration of the lists, this time bearing the name of the list and logo of the party. Likewise, videos promoting the above slogan were broadcasted on Facebook and YouTube before the official registration of the lists.

³⁹ Additionally, the NCB’s measures oblige respecting a physical distance of at least two meters between persons at those events, wearing protective masks and disinfecting hands with appropriate disinfectant. http://www.gov.me/naslovna/mjere_i_preporuke/

⁴⁰<https://dik.co.me/wp-content/uploads/2020/08/Tehnicke-preporuke-za-odrzavanje-izbora-u-cilju-epidemioloske-zastite-biraca-1.pdf>

Campaigning at the start of the reported period was low key overall, mainly due to the Covid-19 pandemic. Interlocutors of the mission unanimously stated that campaigning for these elections is expected mainly to occur on social networks and electronic media. However, the days following the official registration of most electoral lists showed a considerable increase in the amount of paid campaign ads on social media, namely Facebook and YouTube⁴¹. Additionally, billboards, branded buses containing campaign advertisements, and some rallies and door-to-door activities also became visible mostly after official registration of the candidate lists, as reported from most regions by ENEMO observers.

However, despite the possibility for voters to inform themselves online regarding programs submitted by political entities when registering their lists, the overall amount of visible campaign advertising in the public space was assessed as lower than in previous elections by ENEMO interlocutors. Concerns should be raised regarding lower visibility of the campaign, as this affects both the possibility for electoral contestants to properly advertise their campaign platforms, while also limiting the possibility for voters to make an informed decision. Additionally, depending on the regions, interlocutors of the mission have claimed that billboard space was not always accessible to all electoral contestants, due to many of them having been purchased in advance by the main political parties⁴².

According to campaigning observed so far, main campaign themes included the economic development of Montenegro over the past four years, effects of the Covid-19 on the economy, unemployment, retirement and social benefits, improving living standards, preserving the integrity of the state, and the abovementioned Law on Freedom of Religion.

ENEMO observers reported on isolated cases of negative campaigning and allegations of “black PR”, including insults towards opposition MPs, discrediting politicians on physical grounds, mentioning the private life of their families, personal intimidations and professional degradations on social networks, and other inappropriate means of communication⁴³.

Limitations in the legal framework on campaigning of state officials, potential abuse of office, and avoiding blurring of lines between parties and State are overall in line with international standards⁴⁴. However, reports of ENEMO observers indicate considerable allegations of pressure or intimidation towards public-sector employees (and, to a lesser extent, private sector employees), exerted by non-renewal of contracts, blocking professional advancement, pressure on employees’ families, and threats of demotion in cases where employees would refuse to support the ruling

⁴¹ In particular those of the Social Democrats (SD), Democratic Party of Socialists (DPS), Civic Movement United Reform Action (URA), Democratic Front (DF) and the Social Democratic Party (SDP).

⁴² Concerns were voiced to the mission that this could lead to posting of posters and other campaign materials in places inappropriate to that effect, local administration bodies lacking the capacity and legal grounds for removing illegally placed campaign materials.

⁴³ This was namely reported in the municipality of Budva, where municipal elections are also scheduled to take place on 30 August 2020, and on social networks (Facebook).

⁴⁴For instance, according to Article 50a of the Law, public officials appointed by the Government of Montenegro or elected or appointed by local government, civil servants and State employees are not allowed to take part in election campaigns nor publicly express their positions regarding elections, during working hours (while on duty). Police officers and members of the National Security Agency may not participate in election campaigns in any manner. However, State officials and local government officials are allowed to act as representatives of candidate lists during election campaigns and during their media appearances in electronic public, commercial and non-profit media. They are allowed to promote election programmes and candidate lists to the extent in which the law prescribes media presentation of candidate list representatives during election campaigns. Officials referred to above are prohibited during election campaigns from misusing their media appearances in the capacity of State or other public officials and from using them for advertising a candidate list or its electoral program.

coalition. On the other hand, allegations of promises of employment or services as means of indirect vote buying were reported to ENEMO observers in several instances⁴⁵.

Although observed rallies seem to mostly comply with the maximum number of participants according to NCB rules, in some cases, rallies were reported to have taken place in municipal premises during working hours, using campaign materials and party paraphernalia (flags, banners)⁴⁶.

Additionally, several ENEMO interlocutors expressed their concern to the mission regarding the lack of alternance in power for the past thirty years, claiming that the ruling party benefits from a considerable institutional advantage affecting the fairness of the process.

Campaign Finance

Political and campaign finance is mainly regulated in the recently (2020) amended “Law on Financing of Political Entities and Electoral Campaigns”. The Law provides for funding to political entities and electoral campaigns both from public and private sources. Private donations during elections can be raised from natural and legal persons, within specific limits enshrined in the law. Amendments to the Law have raised the ceiling of donations from 2.000 to 5.000 euro per year for individuals, and from 10.000 to 20.000 for legal entities. Additionally, the law prohibits anonymous donations⁴⁷, as well as donations from other states, companies and legal persons outside the territory of Montenegro, natural persons and entrepreneurs who do not have the right to vote, trade unions, religious organizations, NGOs, etc. The law also bans legal and natural persons from donating if they concluded a public contract in the period of two years before the election, as well as two years following the termination of the contract⁴⁸.

ENEMO notes that according to these legal provisions, Montenegrin citizens officially residing abroad and who therefore do not meet the two year residency requirement to participate in the election are not allowed to donate to political entities. This provision prevents Montenegrin citizens from financing political parties while residing abroad and can be deemed excessive, as it restricts the principle of freedom of association.

Twenty percent of public funding is distributed from the State budget to all political entities with registered electoral lists before the election in equal amounts⁴⁹, within eight days from the

⁴⁵ Above mentioned cases were reported to observers of the mission in Budva, Zabljak, Berane, Niksic, Tivat, Kotor, Cetinje, Herceg Novi, Danilovgrad and Bar.

⁴⁶ Reported in Danilovgrad.

⁴⁷ Article 33 of the Law on the Financing of Political Entities and Electoral Campaigns stipulates: “*Political entities are prohibited from receiving material, financial assistance and non-monetary contributions from: other states, companies and legal entities outside the territory of Montenegro, natural persons and entrepreneurs who do not have the right to vote in Montenegro, anonymous donors, public institutions, legal entities and companies with the participation of state capital, trade unions, religious communities and organizations, non-governmental organizations, casinos, bookmakers and other organizers of games of chance. A person convicted of a crime with elements of corruption and organized crime is prohibited from financing a political entity. [...]*”

⁴⁸ Ibid “*Legal entities, companies and entrepreneurs and related legal and natural persons, who, on the basis of a contract with the competent authorities, in accordance with the law, performed activities of public interest or concluded a contract in the public procurement procedure, for a period of two years which precedes the conclusion of the contract, for the duration of that business relationship, as well as two years after the termination of that business relationship, may not make contributions to political entities.*”

⁴⁹ According to the APC, approximately 475,000 euro: http://www.antikorupcija.me/media/documents/Plan_kontrol_e_i_nadzora-2020_00000003.pdf

expiration of the deadline for submission of the lists. Eighty percent of this funding is disbursed to political entities that have won parliamentary mandates⁵⁰, in proportion to the number of mandates won.

For the purpose of acquiring financial resources to finance election campaign costs, political entities with submitted lists were obliged to open a dedicated “giro account” on the day following verification of the candidate list at the latest. They were obliged to inform the APC within three days from the day of opening of the account⁵¹. ENEMO notes that all candidate lists opened a separate giro account within the deadlines set forth in the law.

Oversight of the financing of political entities and election campaigns is conducted by the Agency for the Prevention of Corruption. The maximum election campaign expenditure per party as calculated by the APC amounts to slightly under 2.5 million euro⁵². Political entities participating in the election are obliged to report to the APC on a bi-weekly basis (every two weeks) regarding contributions to their accounts from legal entities and individuals, as well as submit an interim report on campaign expenses five days before Election Day. Political entities are obliged to submit a final report on funds collected and spent during the campaign 30 days after the day of the election.

The 2020 amended legislation has brought the framework overall more in line with international standards, and generally complies with GRECO anti-corruption standards. For instance, the law provides an extensive framework aimed at identifying and prohibiting abuses such as use of state mechanization and equipment, use of official cars during the campaign period (except for official duty needs), prohibition to allocate social benefits in the year in which parliamentary elections are held (except in the case of a state of war, a state of emergency, epidemics or pandemics of infectious diseases). Subsidies for electricity, water and subsidies in payment for utilities are also prohibited from the day of calling elections, as well as writing off debts or liabilities based on tax exemptions.

The role of the APC and its mandate have been extended to provide effective oversight of campaign finance. The Council of Europe, in cooperation with international experts and local civil society organisations⁵³, has provided support to aid the APC in better framing and monitoring potential abuse of state resources during elections⁵⁴.

The APC may issue warnings, pronounce a measure of partial or full loss of entitlement to budgetary assets for financing of the election campaign costs in case of misuse of funds, and may forward cases of misdemeanors to the Prosecutor’s Office. The law provides for an array of fines depending on the gravity, nature and author of the offense.

⁵⁰ Slightly under 2 million euro: http://www.antikorupcija.me/media/documents/Plan_kontrole_i_nadzora-2020_00000003.pdf

⁵¹ This dedicated account cannot be used for any purpose other than campaign expenses, and all campaign costs should be derived from that account.

⁵² As put forth by the Agency for the Prevention of Corruption:
http://www.antikorupcija.me/media/documents/Opredjeljena_sredstva.pdf

⁵³ <http://cemi.org.me/en/2020/07/odrzana-radionica-za-unaprjedenje-kapaciteta-ask-u-oblasti-nadzora-kontrole-zloupotrebe-javnih-resursa-u-susret-parlamentarnim-izborima-u-crnoj-gori/>

⁵⁴ <https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/novosti/2006291225-govor-vd-direktora-ask-dr-sava-milasinovica/>

A plan for controlling and monitoring the financing of political campaigns for the 30 August election was published by the APC in June 2020⁵⁵. The document contains detailed insight into the control mechanisms at the disposal of the APC, reporting requirements of political entities during the electoral period, and methods of calculation to detect possible irregularities or infringement of financing rules. ENEMO deems positive the steps taken by the APC to transparently publish its methodology in advance of the election, although the performance of the APC under the newly amended framework is yet to be fully assessed.

One of the key issues faced by the APC is the difficulty of implementing field controls and supervising possible cases of misusing public funds or human resources, due to lack of capacity and limited possibilities to prevent or eliminate abuse. Montenegrin civil society organizations have raised concerns regarding the limited instruments given to the APC in terms of investigative powers and the overall passive role of the institution in previous elections. Additionally, interlocutors of the mission have voiced their concerns regarding alleged “shadow funding” of electoral campaigns as part of a larger concern regarding corruption in the country.

Since the announcement of the election, the APC has reported having received 85 complaints from NGO “MANS” regarding violations of the Law on Financing of Political Entities and Election Campaigns. According to the APC, in all 85 mentioned cases, the Agency initiated administrative proceedings⁵⁶. Additionally, the Agency initiated 239 proceedings towards authorities and 83 proceedings aiming at gathering information to establish facts regarding services provided to political entities in the election campaign⁵⁷.

Media

Montenegro has an overall diverse media landscape, although polarized according to editorial policies based on political orientations and ownership (state-owned or for profit private corporations). Despite television remaining the main source of political information, online and social media play an increasing role both for voters to inform themselves and for electoral contestants to outreach voters through campaigning and political advertising.

The overall legal framework for media, including laws and the Constitution, generally provide for freedom of speech and freedom of the press. However, transparency regarding media ownership is limited and under regulated, in particular for online and social media.

Articles 50 to 64 of the Law on Election of Councilors and Members of Parliament stipulate the general obligations of political entities and media outlets regarding coverage of the electoral campaigns, including equal visibility to all candidates. Media are also generally regulated by the Media Law, the Electronic Media Law which regulates audiovisual media services, electronic publication services, status and funding of the Agency for Electronic Media (AEM) and defines concepts such as media concentration and media pluralism. Additionally, the Law on the Public

⁵⁵ http://antikorupcija.me/media/documents/Plan_kontrole_i_nadzora-2020_00000003.pdf

⁵⁶ Until now, at least 23 first instance decisions have been made. For the remaining cases, legal proceedings are ongoing.

⁵⁷ <https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/novosti/2008131305-saopstenje/>

Broadcasting Services of Montenegro provides the obligations and responsibilities of the National Public Broadcaster.

According to the law, the National Public Broadcaster (Radio Television Montenegro – RTCG) is obliged to provide electoral contestants with political and campaign TV-clips or audio-clips, for a duration of at least 200 seconds a day, depending on the planned number of advertising blocks; and a three-minute coverage of promotional gatherings, twice a day, at the time immediately after the central evening informative TV and Radio shows⁵⁸. Additionally, the law plans that debates should be scheduled during the campaign in the timeslot from 20:00 to 23:00⁵⁹. For these elections, at least 4 thematic debates are scheduled, in which all confirmed electoral lists will be allowed to take part. The first debate is scheduled for 17 August, in prime time at 20:00⁶⁰.

ENEMO notes that the order of coverage provided to political parties by the RTCG is determined on the basis of first registered, first in order of broadcasting during advertising blocks. Although this does not put into question equal duration of coverage, no randomization of the order of coverage for electoral advertisement is provided.

Registered lists have the opportunity to provide content and materials for promotion free of charge. However, media that are broadcasting advertisements of candidate lists promoting the elections, electoral programmes and candidates on a commercial basis are obliged to signal the mention “paid electoral advertisement”⁶¹.

The main body responsible for media oversight is the Agency for Electronic Media. 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. The AEM monitors 75 traditional media, in addition to overseeing 85 news portals and 7 cable operators. During the campaign, they are tasked with monitoring equal access to all registered lists and obligations of all registered broadcasters, as well as ruling on complaints and appeals⁶².

ENEMO notes that the deadlines for consideration of media related complaints are general and not election specific during the electoral cycle. Two types of complaints are receivable by the AEM: from representatives of confirmed lists, which provides for a twenty-four hour consideration deadline; while complaints on the implementation of program standards provides for a thirty day period. Concerns should be raised that these timeframes are significantly short regarding the former, while excessively long regarding the latter. In the case of complaints regarding program

⁵⁸ In addition, the RTCG mentioned the mission that 15 hours of TV programs and 14 hours of Radio programs are broadcasted on a daily basis, through 3 TV channels, 2 radio stations, and its online news portal. For the first time, the RTCG plan a virtual studio on election night.

⁵⁹ It should be noted that the RTCG declined to assist the SEC with the preparation of voter education and preparation of polling boards’ materials, although the institution agreed to broadcast these materials.

⁶⁰ The RTCG’s rules for reporting on the election campaign for the parliamentary elections were adopted on July 10, 2020.

⁶¹ The APC in a statement published on 3 July accepted submitted price lists by outlets for media advertising, in order to enable equal representation of all political entities and ensure the coverage of the election campaign, according to the Agency: <https://www.antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/novosti/2008031304-saopstenje-agencije-za-sprjecavanje-korupcije/>

⁶² The AEM informed the mission that as of the period covered by this report, less than 10 complaints had been submitted to the Agency, a number significantly lower than in previous elections.

standards, this could lead to a decision of the AEM only after Election Day, limiting the possibility for legal redress.

The sanctions available to the AEM include warnings and temporary or permanent suspension of broadcasting license. ENEMO notes that further possible sanctions to create a progressive array of sanctions are not provided for in the laws. For instance, the possibility to administer fines after a warning is not included as part of the legal instruments at the disposal of the AEM.

The “Law on Election of Councilors and Members of Parliament” contains general provisions on members of Government or State officials’ presence in the media during the campaign⁶³. Civil society organizations focused on media monitoring⁶⁴ have raised concerns regarding the appearance of state officials used as a means to increase the coverage of the lists in which they are running, outside the dedicated advertising blocks. Concerns should be raised that this may affect the principle of equality of opportunity, as well as the obligation of impartiality in the coverage of the electoral campaign⁶⁵.

ENEMO notes that the Parliament adopted two new laws, labelled under the “Law on Media and the Law on National Public Broadcaster (RTCG)” in the midst of the electoral cycle. Concerns should be raised at the possibility for the legal provisions regulating media and the public broadcaster to be changed so close to the election⁶⁶, which is not in line with good practice and risks creating additional overlaps and inconsistencies in the legal framework for media.

Gender Representation

The “Law on Election of Councilors and Members of Parliament” stipulates that there should be at least 30 per cent of candidates on the candidate list from the underrepresented sex. Additionally, among each four candidates in the candidate list order there should be at least one candidate who is a member of the underrepresented sex⁶⁷.

⁶³ Article 51a. Additionally, Article 6, paragraph 2 of the RTCG’s Rules states that “reports on the activities of state bodies, officials and representatives of local self-government, in their regular state affairs during the election campaign, may not contain messages of election and party propaganda.”

⁶⁴ For instance, the organization “Media Center” monitors election coverage of the two public broadcasters and 3 commercial televisions with a national frequency (Television of Montenegro, Television Nikšić, Prva TV, Nova M, TV Vijesti), and presented findings from their media monitoring of the electoral campaign on 14 August, 2020.

⁶⁵ See in this regard the Code of Good Practice in Electoral Matters of the Venice Commission, Guideline I.2.3.a, underlining the principle of the equality of opportunity for competing parties and candidates.

⁶⁶ Additionally, the new law on media would oblige journalists to reveal their sources in cases when the state prosecutor would consider it a matter of national security. Refusing to comply with these provisions could end up in custody of journalists refusing to reveal their sources. European Commission Spokeswomen Ana Pisonero raised concerns regarding these provisions: “*The timing of adoption of legislation is the responsibility of Montenegro’s authorities. The protection of journalistic sources is crucial for the freedom of the press. Therefore, disclosure of journalistic sources represents serious interference in the freedom of expression which should be limited to strictly exceptional circumstances only.*” <https://europeanwesternbalkans.com/2020/07/28/the-parliament-of-montenegro-adopted-the-law-on-media-and-the-law-on-national-public-broadcaster-rtcg/>

⁶⁷ 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.*”

Candidate lists which did not meet these requirements were invited to make corrections to the list in conformity with the law. For parliamentary elections, the SEC was required to refuse to register candidate lists that did not remove these shortcomings.

ENEMO notes that all lists registered in the election complied with the above requirement, while all lists only fulfilled the required minimum of women on their lists, with the exception of the Croat minority list “Croatian Reform Party of Montenegro - HRS” which contains 20 women out of 28 candidates (70%). In total, there are 263 women competing in the upcoming elections, which accounts for less than 34% of all candidates. However, no measures are in place to avoid female candidates being ranked in non-winning positions. In addition, no provisions in the law ensures the replacement of a winning female candidate with the next female candidate on the list in cases where the candidate withdraws her candidacy after the election.

Along with being significantly underrepresented⁶⁸, women rarely hold managerial positions within EMBs. Campaign messages do not target participation of female voters nor promote inclusiveness, while parties and candidates rarely address women. Additionally, only one candidate list is led by a woman in these elections.

National Minorities

According to the last official State census dated from 2011⁶⁹, nearly 45 percent of the population declared themselves as Montenegrins, while slightly over 28 percent declared themselves as Serbs. Other recognized ethnic groups in the Constitution include Bosniaks (approximately 8.5 percent), Albanians (nearly 5 percent), Muslims (slightly over 3 percent), Croats (around 1 percent), according to MONSTAT latest census⁷⁰.

The Bosniak, Albanian, Croat minorities are well-represented by specific national minority political parties, with all three minorities benefitting from representation in the current Parliament through the Bosniak Party, New Democratic Force (Forza), and Croatian Civic Initiative, respectively.

In these elections, a newly formed Yugoslav minority list was rejected by the SEC, following a controversial registration process (see section above on Registration of Candidates), and despite 0.18 percent of citizens declaring themselves as Yugoslavs.

In the northern part of the country, Serbian and Roma minorities reportedly face difficulties regarding the unemployment rate and citizen rights. In Berane municipality for instance, there are approximately 4,500 refugees from ex-Yugoslavian countries out of which approximately 3,000

⁶⁸ The latest composition of Montenegrin parliament consisted of 29.63% of women. There is only one female member of SEC’s permanent composition along with one female commissioner of the extended composition. Additionally, MECs in Rozaje, Gusinje and Petnica have no female members.

⁶⁹ The next State census is planned for 2021.

⁷⁰ Additionally, Roma (around 1 percent) 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>)

Serbs and 1,500 Roma. Out of this number, 1,500 refugees still do not have Montenegrin citizenship even though declaring having lived in Montenegro for over 20 years.

ENEMO observers have reported on isolated cases of unknown individuals having sprayed heinous graffiti messages targeting minorities on houses in Berane⁷¹.

In the two municipalities with dominant Albanian minorities, specifically Tuzi and Ulcinj, the government has provided considerable financial support to the Albanian communities from the state institutions (e.g. formation of new MEC in Tuzi). In line with previous elections, bilingual Montenegrin-Albanian ballot papers are expected to be printed by the SEC and distributed to a selected number of polling stations.

Inclusion of Persons with Disabilities

The election law requires legal competence for suffrage rights. Article 24 of the Constitution provides that “*guaranteed human rights and freedoms may be limited only by the law, within the scope permitted by the Constitution [...]*”. Deprivation of the right to vote on the basis of mental impairment is at odds, among others, with Art. 12 and 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD)⁷².

A law on the Prohibition of Discrimination against Persons with Disabilities was adopted in 2015, in order to comply with the UN Convention. However, the election law does not include requirements during the campaign period for information to be also provided in a format adapted to the needs of PwDs⁷³. There are no provisions obliging public broadcasters to air campaign-related content in an accessible format. For example, the SEC website does not feature resizable text and other adjustable formats, to enhance readability for persons with visual impairments.

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 standards⁷⁴. There are no similar

⁷¹ Reportedly, out of four houses, two graffiti with a picture of chetnik leaders and messages against Muslim/Bosniak minorities appeared on domiciles where Bosniak/Muslim communities live. Different messages also included “Serbian Autonomy” on some of the houses in Berane area.

⁷² Montenegro has signed and ratified the 2006 UN CRPD. By ratifying the Convention, the government of Montenegro committed to harmonize domestic legislation and policies with CRPD provisions to secure the rights of persons with disabilities, including electoral rights. The current National Action Plan is scheduled for 2017-2021. UN Convention on the Rights of Persons with Disabilities: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁷³ 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*”.

⁷⁴ Article 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*”.

obligations for electoral contestants requiring sign language interpretation to be provided during campaign events and for campaign materials such as leaflets and videos to be adjusted for PwDs.

The election law does not require PSs to be accessible for PwDs. However, ENEMO notes that the SEC is collaborating with the Association of Youth with Disabilities and Montenegro Union of the Blind⁷⁵ and inviting MECs to ensure that polling stations are accessible for PwDs, despite no additional regulation being adopted to ensure protection and effective implementation of voting rights of PwDs to bring the process more in line with international standards and national legislation⁷⁶.

On the other hand, most PSs are situated on ground floors of public institutions, while some MECs are located on higher floors and remain 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 ramps for polling stations. ENEMO notes that there has been no systemic response to the pandemic crisis with special emphasis on accessibility of PwDs.

ENEMO observers reported that persons with disabilities are rarely, if at all addressed in the election campaign.

Complaints and Appeals

The system of appeal in Montenegro is overall in line with international standards. Complaints regarding electoral irregularities may be filed by voters, candidates and submitters of candidate lists.

The system of appeals in Montenegro is overall in line with international standards. The electoral disputes' resolution system is administered by electoral commissions with subsequent appeal to a court. The electoral commission is the first instance of appeal and the competent court (the Constitutional Court) is the final one.

The Constitutional Court is the higher authority in electoral dispute resolution as the final appellate instance, and the only body of the judiciary branch which participates in considering electoral complaints. Courts of the general jurisdiction do not participate in electoral disputes' resolution.

⁷⁵ <https://dik.co.me/misija-oeps-a-u-crnoj-gori-podrzava-razgovore-drzavne-izborne-komisije-i-saveza-slijepih-o-pristupacnosti-birackih-mjesta/>

⁷⁶ Art. 9 of the CRPwD requires that “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”.

On 14 August the Constitutional Court issued decisions which resolved the electoral disputes over rejection of the Yugoslav national minority list and review of the constitutionality of Technical Recommendations for the Epidemiological Protection of Voters.

Based on the information received to date, ENEMO deems that contestants have an overall adequate understanding of the complaints and appeals process and deadlines. However, reportedly, stakeholders often refrain from lodging electoral complaints due to a lack of trust in institutions.

The legal framework provides for a single hierarchical structure of dispute resolution excluding parallel handling of complaints. The same complaint cannot be submitted to different instances.

Some specific issues are decided by other bodies. The violations of the Law on Financing Political Entities and Election Campaigns are considered by the Agency for Prevention of Corruption. Voter registration complaints are handled by the Ministry of Interior (MoI), while appeals are submitted to the Administrative Court. Some violations with financing of election campaigns are considered by the Agency for Electronic Media.

Verdicts or actions of Polling Boards can be challenged at the MEC, verdicts or actions of the MEC at the SEC, and decisions of the SEC at the Constitutional Court. Electoral commissions as appeal bodies are able to rectify or set aside decisions taken by lower electoral commissions.

Any competent election commission in Montenegro is able to annul elections at a particular polling station. In full accordance with international recommendations, in the event of annulment, a new (repeated) election must be called in the area concerned.

ENEMO assesses that time-limits for lodging and deciding appeals in Montenegro meet international standards overall⁷⁷. The complaint should be lodged within 72 hours of the time of rendering the decision or performing an action. The competent election commission should render a decision within 24 hours of receipt of the complaint and should deliver it to the submitter of the complaint. However, these timeframes have been criticized by stakeholders as not sufficient for effective legal remedy.

The criminal procedure law does not stipulate a specific expedited procedure for electoral disputes resolution.

Observers

Among three different types of observers (partisan national observers, non-partisan national observers and international observers) the first type is formally absent in Montenegro. However, political entities participating in elections have representatives in electoral commissions. Empowered members of electoral commissions also perform functions of partisan electoral monitoring.

⁷⁷ According to the Venice Commission, they should be three to five days for each in first instance.

Among domestic organizations, only NGOs registered to monitor the exercise of political freedoms and rights may observe the course of elections and the work of election management bodies. It is the only pre-condition for a domestic organization to be entitled to register electoral observers. Individual citizens' electoral observation is not provided for by the legislation.

Election management bodies are obliged to enable foreign and domestic observers to monitor the course of elections and the work of election management bodies. On Election Day, polling boards should state the presence of observers at the polling station in their register. Official authorization for observers is issued by the SEC. The electoral law does not contain the criteria by which the SEC can refuse to issue an authorization for observers⁷⁸.

The rights of electoral observers, domestic and international, are enshrined in Article 111. However, the electoral law 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.

Domestic organisations registered for public opinion polling are allowed to perform public opinion polls after the polling, in accordance with the law, provided it has official permission from the SEC. Requests for authorization should be submitted at the latest five days before Election Day.

As of publication of this report, the SEC has accredited three international organizations as international observers: ENEMO, OSCE-ODIHR, and the US Embassy in Montenegro. The SEC also accredited three domestic election monitoring organizations: the Center for Monitoring and Research (CEMI), the Center for Democratic Transition (CDT), and NGO "Phoenix"⁷⁹.

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 September 29, 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

⁷⁸ The interested foreign observers should deliver the applications for electoral observation to the Ministry in charge of foreign affairs, which submits applications to the SEC. Legislation does not set the pre-conditions for international organizations to be entitled to register electoral observers. The law stipulates that the European Union, other international organisations, international non-governmental organisations and authorized representatives of foreign countries may also monitor the conduct of elections, which includes the work of election management bodies and other state bodies, media reports on the pre-election campaign, voting rights and other related political and civic rights in the election process, etc.

⁷⁹<https://dik.co.me/izbori/za-izbor-poslanika-u-skupstinu-crne-gore/2020-3-god/sluzbena-ovlascenja-za-posmatranje-izbora-2020-3-god/>

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 Parliamentary elections 2012 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.