

EUROPEAN
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ENEMO

FINAL REPORT

August 2020

International Election Observation Mission
Montenegro Parliamentary Elections
30 August 2020

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DECEMBER 2020

The English version of this report is the only official document of ENEMO EOM.

**International Observation Mission
to Montenegro Parliamentary Elections,
30 August 2020**



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EXECUTIVE SUMMARY

ENEMO assessed that the 30 August 2020 parliamentary elections took place in a generally peaceful atmosphere, despite a tense political environment in the pre-election period and challenges largely related to the COVID-19 pandemic.

In line with the results of the election, a total of nine out of 11 registered lists obtained seats in the new Parliament (composed of 81 seats), following the announcement of official results by the SEC. Opposition lists gathered a historic number of votes, in particular opposition parties under the previous parliamentary legislature.

The provisions of the electoral law for parliamentary elections are mostly in line with international standards, with the only gross violation being the two-year residency qualification for passive and active suffrage. Other disadvantages of the electoral system include unfavorable conditions for independent politicians; absence of clear rules for candidate selections; and lack of ability to vote for certain candidates and to affect the ranking of candidates in lists.

ENEMO overall positively assessed the professionalism and transparency of the SEC. Recommendations adopted by the SEC for Election Day against the spread of COVID-19 were welcomed, including the use of personal protective equipment and enabling mobile voting for citizens in private or institutional quarantine. However, last minute changes due to appeals to the Constitutional Court regarding different aspects of the Technical Recommendations, showed insufficient cooperation among competent bodies and put the competency of the SEC in question, as some crucial parts of the document were deemed unconstitutional.

ENEMO raised concerns over late changes in regulations which caused confusion among voters about how to exercise their right to vote, especially when it comes to institutionally quarantined, hospitalized and self-isolated voters. By choosing to provide merely recommendations rather than regulations, the SEC demonstrated limited proactiveness and accountability in this matter. Few cases of procedural irregularities observed by ENEMO on the day of voting did not affect the overall process. Although the election was well conducted and the administration met most of the prescribed legal deadlines, ENEMO noted that late adoption of rules for conducting elections is at odds with international best practices.

Voters had the possibility to register or submit changes to their data in the voter registry up until ten days before the day of voting. However, ENEMO assessed that the two-year residency requirement in national elections provided under the Constitution is at odds with international standards, namely the Venice Commission's Code of Good Practice in Electoral Matters.

All submitted candidate lists were registered by the SEC, with the notable exception of a self-declared Yugoslav minority list. Considering that the stated grounds for rejection were that the list was not eligible to run as a minority, ENEMO raised concerns that the opportunity was not given to submit their candidacy as a non-minority list. The legislation does not clearly and consistently define which national minorities have the right to political representation, leaving space for excessive discretionary power to the SEC in the registration process.

ENEMO welcomes the fact that all party lists fulfilled the required minimum of women candidates on their lists. However, no measures are in place to avoid female candidates being ranked in non-winning positions. In addition, no provision 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.

Campaigning in these elections was low key overall, mainly due to the COVID-19 pandemic, and mostly conducted via social media and online outlets. ENEMO raised concerns regarding contradicting provisions within the legal framework in the timeframes for campaigning, increasing the risk of early campaigning which was observed in a few cases. Although campaigning was assessed as generally peaceful despite a tense political environment, ENEMO observers reported on negative campaigning and “black PR”.

ENEMO welcomes the limitations in the legal framework on campaigning of state officials, potential abuse of office, and avoiding blurring of lines between parties and State. However, these limitations were insufficient in addressing the increase in the number of official visits carried out by incumbent public officials throughout the country during the last weeks of campaigning, raising the question of partisan political activity by public officials while on duty. Visits and inaugurations by the President, Prime Minister, and local self-government body representatives in their capacities of state officials during the campaign were at times used to promote party accomplishments and visibility in the media rather than to conduct strictly official matters.

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

The overall legal framework for media, including laws and the constitutional provisions, generally provide for freedom of speech and freedom of the press. However, ENEMO noted that the framework regulating media was not harmonized in advance of these elections, while the role of the Agency for Electronic Media (AEM) should be strengthened.

The system and practice of electoral dispute resolution is overall in line with international standards. However, most of the complaints were considered by the Constitutional court at close sessions, limiting the transparency of the complaints adjudication process.

INTRODUCTION AND ACKNOWLEDGMENTS

On 15 July 2020, the European Network of Election Monitoring Organizations (ENEMO) officially announced the deployment of an International Election Observation Mission (IEOM) to Montenegro to observe the 30 August 2020 Parliamentary Elections. The mission was composed of seven Core Team members, eight Long-Term observers (LTOs), and was reinforced by an additional 38 Short-Term observers (STOs) to observe at polling stations on Election Day. After observing the pre-election period and preparations for the holding of the election, the mission issued an Interim Report on 15 August. Through its observers deployed at polling stations on 30 August, the mission additionally observed the process of opening, voting, closing and counting, and transfer of election materials to Municipal Electoral Commissions (MECs) on Election Day. The IEOM issued its Statement of Preliminary Findings and Conclusions on 31 August.

The mandate and scope of the IEOM was limited to monitoring of the 30 August Parliamentary Elections; the IEOM did not monitor Local Elections which were held in parallel on the same day in five municipalities. However, selected aspects of the Local Elections were taken into account in the analysis when necessary, to the extent that they affected certain elements of the Parliamentary Elections.

Over the duration of the mission, ENEMO long-term observers conducted 446 meetings, 126 with election management bodies, 155 with political parties and electoral candidates, 56 with state officials, 47 with media, 37 with domestic civil society organizations and 25 with other interlocutors, in addition to observing 11 campaign activities (meetings or rallies).

Additionally, the Core Team observed all sessions of the State Election Commission during the deployment period, and conducted meetings with international and domestic stakeholders at the central level. The mission monitored and assessed 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 aspects of the process, based on international standards for democratic elections and the national legal framework of Montenegro.

This final report is based on ENEMO observers' findings, interviews with stakeholders, and analysis of the legal framework and other documents. The report includes findings, assessment of the framework and conduct of the elections, and recommendations to key-election stakeholders, with the aim of addressing observed shortcomings and improving aspects of the electoral process in Montenegro.

ENEMO would like to express its gratitude to all interlocutors, representatives of public institutions; electoral management bodies, especially the State Election Commission; election contestants; civil society; media; international community; and all other organizations, institutions, and individuals in Montenegro for their cooperation and support throughout the duration of the IEOM.

The International Election Observation Mission of ENEMO to Montenegro for the 2020 Parliamentary Elections was made possible thanks to the generous support of the National Democratic Institute (NDI) and the National Endowment for Democracy (NED).

I. BACKGROUND AND POST - ELECTION DEVELOPMENTS

The 2020 parliamentary elections in Montenegro are scheduled to take place on 30 August 2020, following President Milo Đukanović' Decision 01-1212 dated 20 June 2020¹. In addition, municipal elections were held in five municipalities on the same day, for municipal assembly councilors of Andrijevica, Budva, Gusinje, Kotor and Tivat.

ENEMO assessed that the 30 August 2020 parliamentary elections took place in a generally peaceful atmosphere, despite a tense political environment in the pre-election period. In particular, the Law on Freedom of Religion or Beliefs and the Legal Status of Religious Communities, passed in December 2019, led to public protests by a part of the opposition and supporters of the Serbian Orthodox Church. These protests took various forms throughout the year, including during the election period and up until election day, through marches, processions, as well as public liturgies (litja) in the form of drive-by demonstrations against the new law². Due to the polarizing nature of the law among religious followers and political forces, mass protests in Podgorica and throughout the country took place, led by the opposition and supporters hostile to the law. ENEMO noted the involvement of ecclesiastical leaders representing the Serbian Orthodox Church during the campaign as well as after the elections, blurring the lines between religious communities and state³.

Coincidentally, prospects for electoral reform in Montenegro ahead of the elections fell short in December 2019, 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. Therefore, the stakes of these parliamentary elections were particularly high regarding the legitimacy of Montenegro's next parliamentary legislature, as well as aspirations of the country for joining the European Union.

Additionally, the contestation of the fairness of the process by the opposition of the previous 2016 parliamentary elections had led most opposition parties to collectively boycott parliamentary sittings. The opposition boycott took the form of street protests in reaction to prominent corruption cases, contestation of the ruling coalition (led by the Democratic Party of Socialists of Montenegro (DPS) since 1991, while its leader, Milo Đukanović, has been alternating in the positions of president and prime minister and elected as president for the second time in 2018)), and announcing their potential contestation of the 2020 election results should they deem the process unfair⁴.

Additionally, the context of these elections was 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 later. In particular, increases in the infection rates in the country throughout the months of July and August 2020 raised public health concerns and affected the conditions for holding the election.

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

² The provisions set forth in the law imply appropriation of part of the real-estate property of the Serbian Orthodox Church (religious facilities and land with ownership until December 1918) by the Montenegrin state.

³ At odds with Article 14 of the Constitution of Montenegro which stipulates that: "Religious communities shall be separated from the state".

⁴ <https://rezultati.dik.co.me/>

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

ENEMO assessed that Election Day was generally calm and the process well organized, with few cases of procedural irregularities observed on the day of voting which did not affect the overall legitimacy of the process. The pre-election period took place in a socially and politically polarized environment, generally competitive, while ENEMO notes that the results of the election and the prospects of political alternance were overall accepted by all stakeholders including former ruling coalition parties.

In total, 11 candidate lists were running in the parliamentary elections. According to data officially published by the State Election Commission (SEC), the turnout was higher than in 2012 and 2016 parliamentary elections, with 76.64 per cent (413,894 votes cast out of a total of 540,026 voters registered in the election).

In line with the results of the election, a total of nine registered lists obtained seats in the new Parliament (composed of 81 seats), following the announcement of official results by the SEC (see Annex I). Opposition lists gathered a historic number of votes, in particular opposition parties under the previous parliamentary legislature (For the Future of Montenegro, Peace is our Nation, United Reform Action (URA), and the Social Democratic Party). Three of these opposition lists, For the Future of Montenegro, United Reform Action, and Peace is our Nation parties, which altogether won a combined majority of 41 mandates, announced the formation of a coalition government.

II. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Legal framework

The legal framework for parliamentary elections in Montenegro is constituted by the provisions set forth in the Constitution, ordinary laws and regulations adopted by the SEC.

Only a small set of electoral norms is determined by the Constitution of Montenegro. The Constitution enshrines the citizens' electoral rights⁵, voting age, fundamental electoral standards. The Constitution in Montenegro does not contain norms about electoral management bodies; it also omits any norms about the electoral system, electoral administration, and electoral disputes resolution.

Parliamentary elections are primarily regulated by the Law on the Election of Councilors and Members of Parliament. Election related norms are also contained 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. One of the features of the Montenegrin electoral legislation is that many acts containing electoral rules also provide sanctions for violations.

The fundamental elements of the electoral law, in particular the electoral system proper and membership of electoral commissions, meets international standards and remained unchanged since the previous parliamentary elections in Montenegro in 2016. Most recent amendments to the Law on the Election of Councilors and Members of Parliament were made on 16 of February, 2018. The parliamentary Committee for a Comprehensive Reform of Electoral and Other Legislation in 2018-2019 prepared draft election law to bring the legislation in line with the ODIHR/OSCE recommendations, but only minor changes were adopted.

Despite the absence of organic laws in Montenegro, the Constitution provides a specific legal mechanism for stabilizing the electoral legislation: the law regulating the electoral system should be adopted by a two-third majority of the total number of the Members of Parliament⁶. Such a procedure impedes changes to the electoral law and allowed the opposition to halt the electoral reform process in 2019.

SEC regulations contain not only technical questions and matters of detail, but also a wide range of significant electoral norms: the SEC lays down some norms of electoral management and administrations⁷, including uniformed standards for election materials⁸. For instance, active electoral rights are prescribed and regulated by SEC decisions, such as the Rules on Voting by Letter (2017) and Technical recommendations for the Epidemiological Protection of Voters

⁵Including the limitation for both passive and active electoral right by two-year residency qualification.

⁶Article 91 of the Constitution

⁷Rules of Procedures of the SEC (2015), Rules on the Work of Polling Stations (2019), Rules on the Determination and Arrangement of Polling Stations and on Measures to Ensure the Secrecy of the Ballot (2017), Code of Ethics for Election Management Bodies (2010).

⁸Rules on Uniform Standards for Election Material (2018), Instructions on Uniform Forms for Conducting Election Activities (2014), Instructions on How to Handle and Submit Election Material (2020), etc.

during Elections (2020). Considering the latter, the Constitutional Court found that the area of SEC regulations was conflicting with the law and abolished some parts of the document⁹. ENEMO notes that the SEC regulations contain issues that should be determined by law, while the extent to which the SEC can bring forth new regulations is unclearly defined.

The COVID-19 outbreak did not lead to a change of election rules, but to temporary restrictions such as limitations on political rallies imposed on 25 June. The attempt of the SEC to change voting procedures for persons having been placed in quarantine was abolished by the Constitutional Court.

Electoral System

Elections to the unicameral Parliament in Montenegro take place every four years. The 81 members of the Assembly are elected according to a closed list proportional representation system in a single nationwide constituency. Seats are distributed among candidate lists that pass the electoral threshold using the d'Hondt method.

The electoral rules provide for freedom of association: political parties do not require registration or obtaining the status of legal entity before submitting candidates. Candidate lists may be nominated by registered political parties, coalitions of political parties or groups of voters. Registered political parties and other groups of voters have equal rights in the nomination of candidate lists.

Independent candidates are still not allowed, and politicians are highly dependent on political organizations. Citizens willing to run for election require joining an existing political entity or to create a new candidate list. For independent politicians, it remains practically difficult to create a new candidate list, insofar as it must contain at least 54 candidates (2/3 of the seats in the Assembly).

The electoral law provides excessive powers to political parties' leaders in candidate selection, while the legislation does not set transparent procedures for candidate selection. The electoral law does not address the order of rankings on the candidate list, leaving this issue fully at the discretion of party leaders. Lack of ability to vote for certain candidates and to affect the ranking of candidates in a list is harshly criticized in Montenegro, and may reduce public confidence in the electoral system. Due to the absence of electoral districts, territorial divisions of political parties cannot nominate candidates and remain dependent on the party's central leadership in the selection process.

ENEMO recommends that State financing of regular work and pre-electoral campaigns of political parties should be legally conditioned by introducing into the statutes and implementing a democratic procedure of selection of candidates for MP office, as well as direct selection of a party's leadership by the members of that same party.

The introduction of sub national districts should also be considered, in order to improve the process of accountability of elected MPs towards the constituents of the respective district.

Positively, the electoral threshold is 3 percent of the valid votes, which is in line with international standards and ensures a high level of parliamentary representation. Additionally, there are two

⁹Decision of the Constitutional Court, 2020, August 20, case U-II No. 45/20.

special thresholds for the representation of minorities: the candidate lists of a certain national minority or minority ethnic community received at least 0.7 percent of valid votes to acquire the right to participate in the allocation of seats as a single - general candidate list; one candidate list representing the Croatian minority acquires the right to one parliamentary seat if it gains at least 0.35 percent of valid votes.

III. ELECTION MANAGEMENT BODIES

Parliamentary elections were administered by a three-tiered election administration: the State Election Commission (SEC), 24 Municipal Election Commissions (MECs), and 1,217 Polling Boards (PBs)¹⁰.

The SEC's main responsibilities include coordinating MECs, overseeing election materials, reviewing and publishing official candidate lists and ascertaining and publishing election results¹¹. The SEC additionally plays supervisory roles in campaign finance.

ENEMO notes that deadlines were overall respected by the election administration. In general, commissioners at national and municipal levels conducted their work in an efficient manner and showed cooperation between the different levels of election management bodies¹².

State Election Commission (SEC)

The SEC is a permanent body composed of a chairperson and ten members, along with additional members representing party lists competing in the election. The present composition of the commission was appointed following the 2016 electoral cycle, and is headed by its current chairperson since March 2020.

The SEC is composed of four members from the parliamentary majority, four from the parliamentary opposition, one from the minority entity that received the most votes in the previous elections¹³ and one from civil society¹⁴, as well as a representative of each candidate list. Their term of office runs from the date of appointment by the confirmed electoral list to the date of publication of final election results. Only one SEC member is a woman, while parties appointed only one woman to the SEC's extended composition..

All SEC members, with the exception of the chairperson and a representative of the civil sector are entitled to a deputy, and each member must be a citizen of Montenegro with passive voting rights and must have a law degree. The SEC and MECs are permanent bodies that serve four-year terms, while the PBs are appointed ahead of each election.

ENEMO considers the term of office of both the SEC and the MECs could be extended from four to five years. This term is thus longer than the term of office of the MPs, which may improve the independency of the CEC members¹⁵.

When it comes to SEC membership, ENEMO notes that the requirement prescribing that all members must hold a law degree is excessive and not necessarily contributing to the professionalism of the body.

¹⁰In the last nationwide (presidential) election held in 2018, there were 1,214 PBs.

¹¹Art. 32 of the Law on Election of Councilors and Members of Parliament.

¹²MECs reached out to the SEC frequently, while the SEC provided them with clarifications within the prescribed deadlines.

¹³Appointments followed the parliamentary elections of 2016.

¹⁴Art. 30 of the Law on Election of Councilors and Members of Parliament.

¹⁵It is also reflected in the Urgent Joint Opinion on the Draft Law on Elections of Councilors and Members of Parliament, Venice Commission Opinion 989/2020 - OSCE/ODIHR Opinion ELE-MNE/375/2020, 3 July 2020.

SEC sessions were generally conducted in a professional and collegial manner and were open to accredited observers, but not to media representatives due to the COVID-19 pandemic. Such practice raised concerns over the transparency of the SEC. ENEMO assesses that public commission's meetings were partially transparent also due to a lack of live broadcasting¹⁷. With regards to social media activity by the SEC in these elections, no account was updated regularly.

To enhance transparency and public trust, it is recommended that all SEC sessions are broadcasted live and afterwards available on the SEC website.

The SEC published the agenda of the upcoming sessions in advance and provided draft decisions upon request. SEC Minutes were adopted in the next regular session, and decisions and minutes of its sessions were published to be available online. ENEMO notes that this requirement was overall respected.

On 6 August, the SEC adopted recommendations for Election Day against the spread of COVID-19, including the use of personal protective equipment and enabling mobile voting for citizens in private or institutional quarantine¹⁸. However, last minute changes due to appeals to the Constitutional Court regarding different aspects of the Technical Recommendations, including the residency requirement and voting by hospitalized voters and those in self-isolation, showed insufficient cooperation among competent bodies¹⁹. It also put the competency of the SEC in question, as some crucial parts of the document were deemed unconstitutional.

ENEMO condemns late changes in regulations which caused confusion among voters about how to exercise their right to vote, especially when it comes to institutionally quarantined, hospitalized and self-isolated voters. ENEMO deems that by choosing to provide merely recommendations rather than regulations, the SEC demonstrated limited proactiveness and accountability in this matter.

ENEMO positively assessed televised and online video material prepared by the SEC which provided for a broad voter education campaign. On the other hand, voter education videos were broadcast only on the last days of the election period and reposted on the official webpage of the SEC²⁰, which raised concerns over reaching out to the broad public.

In addition, the SEC established a hotline where voters could obtain information on voting procedures. At the MoI, a hotline for voters was additionally established where they could check their data and confirm their assigned polling station.

On Election Day the SEC released six updates on the conduct of voting to the media and public. Final results were published by the SEC within 15 days of Election Day in the Official Gazette of Montenegro.²¹

¹⁶2002 Code of Good Practice in Electoral Matters of the Venice Commission, par. 3.1. states that the members of central election commissions should have at least one member of the judiciary, while other members (besides the representative of the MoI and national minorities) must be qualified in electoral matters, rather than holding a law degree.

¹⁷And without archiving on the SEC website.

¹⁸Technical recommendations for holding elections with the goal of epidemiological protection of voters have become the subject for electoral dispute and were revised by the Constitutional Court. See Complaints and Appeals.

¹⁹Primarily SEC, National Coordination Body, Institute for Public Health and Ministry of Health.

²⁰Election educational and motivational videos accentuating the importance of voting were produced, such as "Your Choice Determines the Future".

²¹Repeated election was held within the legal deadline in the municipality of Petnjica, on September 10.

Municipal Election Commissions (MECs)

MECs consist of a chairperson and four permanent members appointed following the municipal elections, as well as authorised representatives of the competing electoral lists. MEC chairpersons were appointed by the party that won most mandates in the previous municipal elections; two members were nominated by the majority in the municipal council, and two by the opposition. Overall, five of the 24 MEC chairpersons were women.

In the initial phase of the campaign, the SEC faced many requests for clarifications by different MECs, showing the lack of clear understanding of prescribed procedures by the MECs. As the Election Day approached, more challenges in the work of the MECs were reported by ENEMO observers, especially when it came to appointing PB members according to party affiliation and in a lawful manner (Tuzi, Cetinje, Danilovgrad, Kotor, Podgorica). Closer to Election Day, problems also occurred with the stamping and issuing of ballots to PBs (Budva, Danilovgrad and Plav), resulting in the withdrawal of spare ballots to supplement the spoiled ones. Late delivery of election material was reported by ENEMO observers in Berane, Bijelo Polje, Niksic and Kotor. A number of MECs failed to publish their decisions and instructions in a timely manner (Zabljak, Petnjica, Pluzine, Ulcinj, Kolasin, Bijelo Polje), despite being instructed to do so by the SEC, especially the MEC in Plav which failed to publish any information on the 2020 Parliamentary Elections. MEC members expressed dissatisfaction with the SEC instructions, particularly regarding late and non-comprehensive COVID-19 preventive measures.

ENEMO observers reported significant differences in the quality of preparedness, professionalism and performance of MECs, mostly due to lack of experience and motivation. Additionally, some MECs struggled to operate properly and to conduct regular sessions due to the requirement for all MEC members to hold a law degree, which ENEMO deems excessive.

ENEMO recommends that quality and comprehensive trainings are held for all MEC members to ensure equal performance of all commissions. Education requirement for all MEC members to hold a law degree should be revised to overcome the risk of insufficient staff available, for instance by requiring MEC members to hold a university degree, or a university degree in a specific area (education, politics and other).

Polling Stations (PS) and Polling Boards (PBs)

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

The PBs consist of a presiding officer and four members, who were mostly appointed by the 20 August deadline, with the exception of the Cetinje MEC, where some PB members were appointed late due to a lack of candidates. Chairpersons are nominated by political parties represented in a given municipal council, in proportion to their representation. Of the four PB members, two are nominated by the ruling party or coalition, and two by the opposition. Nominating entities could withdraw their nominees up to 12 hours before the voting started.

The PBs directly implemented the organization of the voting at the polling station. Commission members also maintained order at the polling station during the voting. PB duties were determined by drawing lots before the start of the voting.

Due to the epidemiological situation, the SEC organized online training for PB members. PB training varied significantly, leading to quality inconsistencies. Moreover, ENEMO condemns the lack of regulatory mechanisms for ensuring that all PB members attended the online training. Many PB members insisted on receiving print materials after attending this training, while some MECs took the initiative to additionally train PB chairpersons during the takeover of material. Meanwhile, additional training for other election stakeholders was not provided while last-minute replacements of PB members affected their performance due to the lack of training. As a result, the levels of preparedness among commission members for these elections varied. In several cases, knowledge of opening and especially counting and tabulation procedures varied among PB members, although this did not significantly affect the process on Election Day.

ENEMO recommends unifying the way trainings are held to ensure a uniform and equal level of preparedness of all PB members, primarily when it comes to minimizing mistakes and procedural issues during the voting process. Moreover, a regulatory mechanism should be introduced to ensure that all commission members participated in the training, for instance through checking the attendance or by obligatory certification of PB members.

ENEMO recommends to enhance the content of the handbooks for training the PB members, mainly by including more detailed information on possible deviations from the prescribed procedures, violations and irregularities, to ensure better preparedness of PB members on Election Day.

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

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

ENEMO recommends that effective safeguards should be considered to ensure full impartiality and independence of election commissions from state and local government authorities and to prevent misuse of administrative resources for partisan ends, as required by the law.

IV. REGISTRATION OF VOTERS

The Law on Voters Register stipulates that the voters' list is an electronic collection of personal data of Montenegrin citizens who have the right to vote. The voter list serves as a database and is derived from several registries (citizenship, residence, birth, and death). Any citizen who is at least 18 years old by Election Day is legally competent and has been a permanent resident for a minimum of two years ahead of Election Day has the right to vote²². Out-of-country voting was not permitted for these elections. Voters could register or submit changes to their data in the voter registry up until ten days before the day of voting.

The two-year residency requirement in national elections is provided under the Constitution, although it is not in line with international standards, being at odds with the Code of Good Practice in Electoral Matters²³.

It is recommended that the provisions on the length of residency requirement in national elections be removed from the Constitution and the law.

The voter list was finalized on 20 August in line with the provisions set forth in the law²⁴. The MoI confirmed there were 540,026 eligible voters on the electoral roll²⁵, of which 270,717 were women, out of a total population of 678,497. There were 23,207 newly registered voters, of which 20,634 were first-time voters who had turned eighteen²⁶.

Many ENEMO IEOM interlocutors claimed that the voter list contains a high number of citizens de facto residing abroad. However, the law does not foresee the possibility of loss of resident status, unless actively requested by the citizens affected, including those abroad. Concerns were raised by mission interlocutors regarding the accuracy and reliability of the voter list, in particular possible discrepancies in the number of voters and the demographics in Montenegro.

ENEMO recommends that additional mechanisms should be developed for the MoI to be able to increase the transparency of the voter lists by conducting cross checks, publishing data online and issuing messages to the public with information about the voter list verification and location of polling stations.

Additional concerns were reported to ENEMO observers related to the presence of deceased citizens on the list, outdated lists of residents, possible false ID cards, and multiple voters registered at the same address. However, ENEMO did not find evidence that this negatively impacted the voter identification process on Election Day overall and no complaints were filed.

Taking into account that the devices used by PBs on polling stations contain only an excerpt of the voters list database that concerns only the respective polling station²⁷, it was not possible for the PB members to know whether the same person voted at another polling station.

²²Art. 11 of the Law on Election of Councilors and Members of Parliament.

²³Venice Commission Code of Good Practice in Electoral Matters, 1.1 c. iii. "a length of residence requirement may be imposed on nationals solely for local or regional elections", 1.1 c. iv. "the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities", and additionally "The freedom of movement of citizens within the country, together with their right to return at any time is one of the fundamental rights necessary for truly democratic elections."

²⁴Art. 18 of the Law on the Voter Register states that "The Ministry of Interior shall conclude the voter list with a decision 10 days before the day set for the elections."

²⁵<https://dik.co.me/wp-content/uploads/2020/08/biracki-spisak-2020-1.pdf>

²⁶According to MoI data of 28 Aug 2020. This data shows a number of newly registered voters since the last nationwide (presidential) election held in 2018.

ENEMO recommends introducing a legal obligation to integrate the data from voter identification devices from polling stations at the state level in order to check for double voting.

ENEMO welcomes the efforts of the SEC to extend the possibility of voting for voters possessing expired ID documents, provided that these documents are recognised by the electronic identification devices at polling stations, given the COVID-19 pandemic²⁸. This enabled a significant number of citizens to vote.

²⁷*EVID devices were not connected online and could not verify the voters' information within the national voters registry.*

²⁸*Since the start of the Covid-19 pandemic, a moratorium was introduced on the obligation of Montenegrin citizens to renew their documents, including IDs, making them valid even after they expired to avoid queues of citizens in public institutions.*

V. CANDIDATE REGISTRATION

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, while the nomination of individual candidates is not allowed²⁹.

ENEMO deems that the possibility for individual candidates to be nominated should be enabled, while the two year residency requirement to stand for election should be harmonized with international standards, and either reconsidered entirely or not exceeding six months.

Candidate lists are registered with the SEC, while no provisions of the law consider the possibility of withdrawal of lists after they are registered³⁰. A political party or coalition is required to submit signatures of at least 0.8 percent of the voters³¹, 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. In total, parties collected 131,855 signatures, out of which 112,297 were deemed valid (85%).

By limiting voters to sign in support of only one electoral list, political pluralism is undermined³², while the secrecy of the vote could be endangered by revealing the voters' political preferences. Additionally, political entities could potentially abuse the process of collecting signatures by gathering a higher number to deprive other lists from obtaining sufficient signatures, since the law does not prescribe an upper limit for signatures collected per party.

Restrictions in the law limiting the number of signatures a voter can assign to a candidate list, as well as the possibility of parties to collect an indefinite number of signatures, should be harmonized with international standards.

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.

Comprehensive guidelines on the criteria for the validity of individual signatures that include visual verification of signatures should be introduced to minimize the possibility of forged signatures and excessive discretionary power of the data entry clerks.

²⁹Paragraph 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."

³⁰Article 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."

³¹In 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/>

³²The OSCE/ODIHR and Venice Commission 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."

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. The only exception was the “SNEŽANA JONICA – SOCIALISTS OF MONTENEGRO - TO LIVE AS YUGOSLAVS” list that submitted its candidacy as a Yugoslav minority list. The SEC requested additional documents from the candidate list, which complied in a timely manner and in line with the law, but the SEC³³, and later the Constitutional Court³⁴, refused to admit Yugoslavs as a national minority and rejected the candidate list.

Considering that the stated grounds for rejection were that the list was not eligible to run as a minority, ENEMO raised concerns that the opportunity was not given to the applicant to submit their candidacy as a non-minority list. ENEMO assesses that this case reveals that the legislation does not clearly and consistently define which national minorities have the right to political representation, leaving space for excessive discretionary power to the SEC in the registration process.³⁵

Clear criteria should be defined in the legislation when it comes to minority representation and their right to participation in the electoral process. Furthermore, the process concerning the registration of electoral lists by the SEC should be clear enough to avoid the possibility of discretionary power influencing the decision-making process.

³³<https://dik.co.me/wp-content/uploads/2020/08/Rjesenje-Socijalisti-CG.pdf>

³⁴<http://www.ustavnisud.me/ustavnisud/objava/blog/7/objava/73-saopstenje-sa-vii-sjednice-ustavnog-suda-crne-gore>

³⁵It 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.”

VI. ELECTORAL CAMPAIGN AND CAMPAIGN FINANCE

Electoral Campaign

The rules for electoral campaigning are stipulated in the Law on the Election of Councilors and Members of Parliament and additionally in the Law on Financing of Political Entities and Election Campaigns.

The law specifies that electoral contestants have the right to campaign from the day when their electoral list is officially registered until the end of the campaign 24 hours before the day of voting. ENEMO analyzed that the law provides for a general definition of campaigning, including the right to organize public gatherings and conferences to present programs and candidates, as well as preparing election posters, advertisements, leaflets, videos, photographs, etc. and to place them in public places designated by public authorities. However, several possible instances of campaigning, such as social networks specifically or other forms of campaigning, are not referred to explicitly within the law.

A more comprehensive and inclusive definition of electoral campaigning should be provided in the legal framework, to more extensively define the notion of campaigning. Campaigning on social media requires further efforts by the legislator to be better framed in the legislation, and monitored through dedicated institutions such as the Agency for Electronic Media.

ENEMO raised concerns 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 may have led to the confusion of electoral contestants as to the starting date from which they had the right to begin their campaigns. Lack of clarity regarding which rules apply may therefore have created conditions for early campaigning affecting equality of opportunity.

Despite these uncertainties, ENEMO’s mission observed that political parties and candidates overall respected the principle of starting their campaigns officially following the registration of their respective electoral lists. However, ENEMO observed a few cases of early publication of billboards before registration of the lists which may to some extent have affected the fairness of the campaign³⁶.

ENEMO recommends that timeframes for campaigning should be harmonized in the laws, in order for all electoral contestants to have the possibility to start their campaigns at the same time. All deadlines for registration of candidates should expire before the official campaign period begins, as to allow for all electoral contestants to begin campaigning at the same date to create a level playing field.

³⁶Namely, billboards containing slogans without mention of a specific party, which were then changed after the registration period and start of the campaigns. The changed billboards included the same slogan and color scheme, but this time contained the name of the party list.

Additionally, dissuasive sanctions should be enforced to discourage political parties and candidates from campaigning before the official starting date. Likewise, the date upon which political entities should end their campaigns should be harmonized among the laws containing provisions on timeframes for campaigning.

For these elections, due to the COVID-19 pandemic, restrictions to campaigning enforced by the National Coordination Body included a ban on political rallies gathering over 100 people in open public places and 50 people in closed places. ENEMO raised concerns that the pandemic and its effects limited the possibility for electoral contestants to campaign through traditional means, including outdoor rallies and other field work to gather voters' support. No explicit measures were pronounced regarding the possibility to conduct door-to-door canvassing, despite this type of activity increasing the risk of infection. Both the increased risks of conducting campaigning activities and limitations due to NCB regulations limited opportunities for campaigning in these elections, which affected electoral contestant's rights to campaign freely.

Also these exceptional measures, despite being justifiable due to public health concerns, risked being legally challenged for being at odds with the provisions on campaigning set forth in the domestic legislation, since decisions and regulations of the SEC or NCB are bound within the limits stated in the electoral law.

ENEMO recommends that epidemiological measures for organizing and holding the elections be the object of a draft law submitted in Parliament ahead of the elections, in order to ensure the principle of legal hierarchy of norms and increase the legitimacy of the adopted measures.

According to ENEMO's observation, campaigning in these elections was low key overall, mainly due to the COVID-19 pandemic. Interlocutors of the mission unanimously stated that most of the campaigning outreach was mainly occurring on social networks and electronic media, which the mission confirmed as being the case through its observations. ENEMO observers reported that parties with registered lists only occasionally conducted rallies. Other campaigning activities included door-to-door canvassing, individual meetings with voters, canvassing small groups of voters in public places and handing out leaflets or party programs at stands. 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 Youtube. This was accompanied by the posting of billboards, branded buses containing campaign advertisements, and some rallies which became visible mostly after official registration of the candidate lists, as reported from most regions by ENEMO observers.

Positively, political entities were required to submit their programs to the SEC as a condition for registration of their lists. However, despite the possibility for voters to inform themselves online regarding these programs, the overall amount of visible campaign advertising in the public space was considered as lower than in previous elections by ENEMO interlocutors. ENEMO raised concerns regarding this low campaign visibility, as this affected 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 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 parties.

The main themes covered during the campaign included the economic development of Montenegro, the effects of COVID-19 on the economy, unemployment, retirement and social benefits, improving living standards, corruption, state stability, EU membership, the Law on Religious Freedom, but also preserving the environment and improving conditions for youth

in the country. Parties representing national minorities addressed the issue of acceptance of diversity as a fundamental value and promoted their efforts to ensure a better status for their communities.

Although campaigning was assessed as generally peaceful despite a tense political environment, ENEMO observers reported on 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 to professionally discredit opponents.

All election stakeholders should refrain from using violent speech, inflammatory language and defamation through any means, whether traditional or digital. Political parties and candidates’ should respect commitments to fair behavior and the principles of fair campaigning.

In general, ENEMO positively assessed the limitations in the legal framework on campaigning of state officials, potential abuse of office, and avoiding blurring of lines between parties and State. These legal provisions are overall in line with international standards. However, ENEMO raised concerns regarding considerable allegations of pressure or intimidation towards public and private sector employees as a means of indirect vote buying³⁷, an offense sanctioned under Article 186 of the Criminal Code³⁸. Although few formal and official complaints were lodged on this matter, ENEMO notes that long-term observers from nearly all observed regions reported these allegations³⁹. Interlocutors of the mission mentioned that this negative practice contributed to the perceived unfair advantage of the former ruling coalition. Whether proven or not, these allegations may have affected public perception of the fairness of the campaign.

Candidates and parties should steer clear of any vote-buying attempts, whether direct or indirect, or any forms of bribing, pressure, or intimidation of voters. Additionally, in order to discourage such fraudulent attempts, citizens and the public generally should be encouraged to file complaints to the police or relevant authorities. Related cases should be appropriately investigated and prosecuted as offenses and, if found guilty by a court of law, perpetrators should be sanctioned in accordance with the provisions of the Criminal Code of Montenegro.

ENEMO observed an increase in the number of official visits carried out by incumbent public officials throughout the country during the last weeks of campaigning, i.e. partisan political activity by public officials while on duty. The 1990 Copenhagen Document, to which Montenegro is committed as a member of the OSCE, clearly stipulates in point 5.4 that participating states agree on “a clear separation between the State and political parties; in particular, political parties will not be merged with the State”. The Venice Commission’s Code of Good Practice in Electoral Matters additionally provides that “Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to: i. the election campaign; ii. coverage by the media, in particular by the publicly owned media; iii. public funding of parties and campaigns.”⁴⁰

³⁷According to ENEMO interlocutors, intimidation of voters ranged from promising or providing employment and promotions, social services, deduction of debt for communal or similar services and threats of deprivation of pension; to threats of professional demotion, blocking professional advancement, pressure on employees’ families, etc.

³⁸Article 186 of the Criminal Code: “(1) Whoever, by force or threat, compels another or in another unlawful manner influences him to exercise or not exercise the right to vote in elections or referendums or to vote for or against a certain candidate, electoral list or proposal, shall be punished by a fine or imprisonment up to three years; (2) The punishment referred to in paragraph 1 of this Article shall be imposed on whoever requests or receives a gift or other benefit or accepts a promise of a gift or other benefit for himself or another to vote or not to vote or to vote for or against a certain person”.

³⁹This was reported from the Ulcinj, Kolašin and Danilovgrad municipalities in the form of a considerable increase in short-term contracts, and more generally regarding the above mentioned cases in Budva, Zabljak, Berane, Niksic, Tivat, Kotor, Cetinje, Herceg Novi, Danilovgrad and Bar.

⁴⁰2002 Code of Good Practice in Electoral Matters of the Venice Commission, par. 2.3. “Equality of opportunity”: <https://rm.coe.int/090000168092af01>

Additionally, the Law on Election of Councilors and Members of Parliament stipulates that *“Public officials appointed by the Government of Montenegro or elected or appointed by the local government, civil servants and state employees may not take part in election campaigns, nor publicly express their positions regarding elections, during working hours, i.e. while on duty”*. Although state officials are allowed to promote election programs and electoral lists during their media appearances, the law also provides that *“State and local self-government officials [...] are prohibited from abusing and using their media appearances in the role of a state or other public official during the election campaign to advertise or advertise an electoral list and/or its election program.”* (Articles 50a and 51a).

Visits and inaugurations by the President, Prime Minister, and local self-government body representatives in their capacities as state officials during the campaign can be assessed as blurring the line between parties and the state, given that their media appearances were at times used to promote party accomplishments and visibility rather than to conduct strictly official matters⁴¹. Concerns were raised by ENEMO regarding the lack of a level playing-field in these cases, which could have affected the principle of equal opportunity in the campaign.

Since the law allows public officials to promote election programs and lists during media appearances, while also prohibiting abuse of these media appearances, ENEMO recommends that the legislator should clarify within the law the notion of “abuse”, in particular regarding high state officials.

Effective and dissuasive sanctions should be reinforced towards all public officials who do not respect the principles of fair campaigning and the provisions set forth within the law. Once properly defined, stricter control by oversight bodies including the Agency for Electronic Media should be conducted to measure cases where media appearances are being abused by state officials to promote electoral campaigns.

Although observed rallies seemed 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).

Regarding the “electoral silence” (end of campaigning 24 hours before Election Day), political entities generally complied with this obligation, despite the contradictions in the legal provisions on the duration of the campaign mentioned above. Only a few cases were reported by ENEMO observers deployed at polling stations on Election Day and, in most instances, campaign materials or messages were removed in time by the appropriate authorities.

In the post-election period as well as during the pre-election period, the increasingly prominent involvement of ecclesiastical leaders representing the Serbian Orthodox Church blurred the lines between religious communities and state. Concerns should be raised regarding this involvement, at odds with Article 14 of the Constitution of Montenegro, as it challenges the principle of separation between religious communities and state.

Religious leaders and influencers should steer clear from attempts at involvement in the electoral process, whether during the pre-election campaign or after attribution of mandates. The legislator should consider amending the electoral law to provide sanctions towards individuals responsible for such involvement.

⁴¹Observed by ENEMO throughout the country, but more specifically in Zabljak, Pljevlja, Budva, Niksic, Berane and Bijelo Polje.

Campaign Finance

The legal framework for political and campaign finance was amended ahead of these elections. It was mainly regulated by the 2020 amended “Law on Financing of Political Entities and Electoral Campaigns”. This law is also complemented by some provisions enshrined within the “Law on Prevention of Corruption”, which contains some provisions related to the main oversight body in the matter, the Agency for Prevention of Corruption⁴².

The Law provides for funding to political entities and electoral campaigns both from public and private sources. Private donations during elections could be raised from natural and legal persons, within specific limits enshrined in the law. Amendments to the Law 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 donations, 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 contract.

ENEMO assessed 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 entities⁴³. 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.

In these elections, in line with the legal provisions, twenty percent of public funding was distributed from the State budget to all political entities with registered electoral lists before the election in equal amounts, within eight days from the expiration of the deadline for submission of the lists. Eighty percent of this funding is disbursed to political entities that have won parliamentary mandates, 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” (electoral fund) 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 account. ENEMO notes that all candidate lists opened a separate giro account within the deadlines set forth in the law.

The maximum election campaign expenditure per party as calculated by the APC amounted to slightly under 2.5 million euro in these elections. Political entities participating in the election were 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.

⁴² In particular Articles 4, 78 and 79 of the law. Article 79 states that “the Agency may on its own initiative or at the request of authorities, companies, legal entities, entrepreneurs or individuals, give an opinion to improve corruption prevention, reduce the risk of corruption and strengthen ethics and integrity in government and other legal entities. persons, which contains an analysis of the risk of corruption, measures to eliminate the risk of corruption and prevent corruption.”

⁴³ The law stipulates that “natural persons and entrepreneurs who do not have the right to vote in Montenegro” are prohibited from financial contributions to political entities (Article 33 of the law)

ENEMO assessed that the 2020 amended legislation brought the framework overall more in line with international standards, which 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 were extended to provide effective oversight of campaign finance. The Council of Europe, in cooperation with international experts and local civil society organisations, provided support to aid the APC in better framing and monitoring potential abuse of state resources during elections.

The APC had the power to 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, as well as forwarding 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.

A plan for controlling and monitoring the financing of political campaigns for the 30 August election was published by the APC in June 2020. The document contained 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 positively assessed the steps taken by the APC to transparently publish its methodology in advance of the election. However, one of the key issues faced by the APC in these elections was 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 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 voiced their concerns regarding alleged "shadow funding" of electoral campaigns as part of a larger concern regarding corruption in the country.

Moreover, in order for the APC to enforce control over public spending and limit the possibilities of abuse of state resources, public institutions including national and local state bodies, were obliged to publish data on their websites and submit their budget expenditures reports to the APC on a weekly basis. In addition to establishing sanctions for the misuse of state resources, the law also prohibits funding from anonymous donors as well as from several types of entities, including religious organizations⁴⁴.

ENEMO raised concerns regarding possible "shadow funding" of election campaigns or misuse of public funds for political advantage, which is not only at odds with international anti-corruption standards, but also a violation of domestic legislation⁴⁵. Additionally, potential abuse of state resources and related allegations in the media or public space may have affected the perception of voters and their level of trust in the electoral process.

⁴⁴In particular, Art. 7 and 33 of the Law on Financing of Political Entities and Electoral Campaigns.

⁴⁵Definitions and sanctions set forth in the Law on Election of Councilors and Members of Parliament and, more extensively, in the Law on Financing of Political Entities and Electoral Campaigns.

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

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

Political entities were obliged to submit their final financial reports on their campaign expenses by the legal deadline on 29 September (within 30 days from the date of the elections). ENEMO notes that the APC initiated misdemeanor proceedings against three political entities that did not submit a report on the origin, amount and expenses of funds collected for their election campaigns within the deadline⁴⁶.

While the APC undertook steps to contribute to increasing the transparency of campaign financing, in line with its legal responsibilities, ENEMO noted a lack of effective and dissuasive sanctions at the disposal of the APC within the amended law, limiting its capacity to prevent and eliminate abuse. During the election, the APC's sanctions were limited to warnings and requests for corrections to submitted financial reports, or loss of entitlement to budgetary assets from public funding. Over the campaign period, the APC considered complaints it received and posted decisions in a timely manner on its website, although ENEMO notes some complaints remained unaddressed and remained to be resolved after the election, limiting the possibility for legal redress before Election Day.

The sanctions at the disposal of the APC should be extended within the law, for instance in the form of further monetary fines or penalties, in order to increase the Agency's capacity to enforce compliance with rules of political finance and prevent abuse. Decisions on complaints related to political finance should be delivered before the day of voting, to the best extent possible.

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

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

Both the APC and the prosecution should envisage closer cooperation and increase transparency, to ensure that cases of abuse or fraudulent attempts are properly followed upon, investigated and prosecuted. The institutional structure should be improved to ensure that prevention, oversight, investigation, prosecution and sanctioning are coordinated efforts in the struggle against political finance abuse.

⁴⁶"Croatian Reform Party", for the parliamentary elections; and additionally "Nova Budva Voter Group", for the elections for councilors of the Municipality of Budva and "Coalition for the Future of Budva - Marko Bato Carevic", for the elections of members of the Municipal Assembly of Budva: http://www.antikorupcija.me/media/documents/izvje%C5%A1taji_o_tro%C5%A1kovima.pdf

VII. MEDIA

The principles of freedom of expression, freedom of press and access to information are enshrined in the Constitution of Montenegro. The overall legal framework for media, including laws and the constitutional provisions, generally provide for freedom of speech and freedom of the press. However, ENEMO noted that the framework regulating media was not harmonized in advance of these elections.

ENEMO assessed the media landscape in Montenegro as overall diverse, although highly polarized according to editorial policies, political orientations and ownership (either state-owned or for private ownership). 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. Transparency regarding media ownership is limited and underregulated, 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 for all candidates. Media are also generally regulated by the Media Law, the Law on Electronic Media 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 Broadcasting Services of Montenegro provides the obligations and responsibilities of the National Public Broadcaster (RTCG - Radio Television Montenegro). A Law on Media and Law on Radio Television of Montenegro was amended and adopted, respectively, by the Parliament of Montenegro in the end of July 2020.

ENEMO recommends that the framework for media should be harmonized, and that the legislator should avoid passing laws affecting the media framework after the start of the electoral cycle.

The National Public Broadcaster RTCG adopted rules for covering the election campaign for the parliamentary elections on 10 July 2020. RTCG was obliged to provide electoral contestants with 200 seconds of political and campaign TV-clips or audio-clips daily, in accordance with the number of advertising segments; and three-minute coverage of promotional gatherings, twice a day, immediately after the central evening TV and radio news shows. RTCG also scheduled political debates for electoral contestants to present their party platforms and inform voters, in line with the requirements of the law. Despite the free coverage provided, ENEMO observed that not all parties had equal or sufficient monetary funds to purchase airtime in commercial media, putting them at a disadvantage in informing citizens about their programs⁴⁷.

ENEMO recommends that consideration should be given to adding provisions within the law to further limit expenditures for airtime in commercial media, to create a more level playing field amongst parties and increasing compliance with the principle of equal opportunity.

ENEMO assessed that compliance with RTCG’s rules was mostly respected, and in line with the law. However, the public broadcaster played an important role in broadcasting visits, inaugurations and activities carried out by state officials on television during the campaign.

⁴⁷The Venice Commission’s Code of Good Practice in Electoral Matters provides that “legal provision should be made to ensure that there is a minimum access to privately owned audiovisual media, with regard to the election campaign and to advertising, for all participants in elections” and that there should be a possibility to “draw up a list of the media organizations (...) to make sure that the candidates or parties are accorded sufficiently balanced amounts of airtime or advertising space”.

Therefore, in addition to their allocated airtime, several parties also benefited from the media presence of high state officials, which may have affected the balance of coverage stipulated in the law as well as equality of opportunity.

The main responsible body for media oversight is the Agency for Electronic Media (AEM). The AEM has an array of legal instruments at its disposal to sanction non-compliance of broadcast media with the provisions of the law, ranging from warnings to suspension of broadcasting licenses. ENEMO noted that the AEM is not legally obliged to publish any media monitoring reports for the elections before Election Day, and chose not to do so, limiting the opportunity for voters to inform themselves of the AEM's monitoring activities⁴⁸.

ENEMO recommends that the Agency for Electronic Media should publish media monitoring reports on a regular basis during the electoral period. This would not only increase media transparency, but also provide voters and other electoral stakeholders (CSOs, political parties and candidates, etc.) with meaningful information on the media coverage of the campaign.

Given the considerable importance played by social media during the campaign and due to the circumstances of COVID-19, ENEMO raised concerns that social media and their use during elections is under-regulated in Montenegro. ENEMO's mission assessed that although advertising on social media is subject to existing legislation, the AEM does not track spending on social media and no monitoring is provided of advertisements purchased through third parties. This holds the risk of unregulated third-party activities influencing elections through the use of social media or other online tools, particularly in ways not covered by existing advertising regulations. In particular, it remains unclear whether Montenegrin authorities have the technical and regulatory capacity for regulating speech on social media platforms, particularly platforms based in foreign states.

Additional resources and monitoring tools should be provided to the Agency for Electronic Media in order to closely monitor publications of political entities and spending trends on social media. Information should be disclosed on a regular basis, and an analysis conducted to better inform election stakeholders and the public.

⁴⁸The AEM monitors 75 traditional media, in addition to overseeing 85 news portals and 7 cable operators. During the campaign, it was tasked with monitoring equal access for all registered lists and the obligations of all registered broadcasters, as well as ruling on complaints and appeals.

VIII. 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 sex⁵⁰. Candidate lists which did not meet these requirements were invited to make corrections to the list in conformity with the law. Even though the SEC was required to refuse to register candidate lists that did not remove these shortcomings, no lists were rejected on these grounds.

ENEMO notes that 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” that contained 69 percent of female candidates. In total, there were 263 women competing in the elections, which accounts for less than 34 percent of all candidates.

However, no measures are in place to avoid female candidates being ranked in non-winning positions. In addition, no provision 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.

ENEMO recommends to adopt the law to ensure equal representation of both genders (50 percent). Moreover, parties should be obliged to update and revise the party lists by replacing candidates respecting the gender requirement and ensuring that female candidates are replaced by women, and male candidates by men.

Along with being significantly underrepresented⁵¹, women rarely hold managerial positions within EMBs. PBs were most often composed of eight members, out of which 31.25 percent were women at observed polling stations. Overall, each fourth PB Chairperson and each third PB Deputy Chairperson was a woman.

Campaign messages did not target participation of female voters nor promote inclusiveness, while parties and candidates rarely addressed women. Additionally, only one candidate list was led by a woman in these elections.

ENEMO recommends to implement positive norms that would increase the participation and engagement of women in different level EMBs as well as women holding more managerial positions within EMBs. Moreover, political entities should be more inclusive towards women to ensure their equal participation in the election process, both as voters and candidates.

⁵⁰Article 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.”

⁵¹The 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.

IX. NATIONAL MINORITIES

According to the last official state census conducted in 2011, nearly 45 percent of the population declared themselves as Montenegrins, while slightly over 28 percent declared themselves as Serbs. Other ethnic groups recognized in the Constitution include Bosniaks (approximately 8.5 percent), Albanians (nearly 5 percent), Muslims (slightly over 3 percent) and Croats (around 1 percent), according to the state statistics bureau, MONSTAT⁵².

ENEMO observed that in these elections, a newly formed Yugoslav minority list was rejected by the SEC following a controversial registration process, despite 0.19 percent of citizens declaring themselves as Yugoslavs, therefore meeting the conditions and rights set forth in the Law on Election of Councilors and Members of Parliament⁵³, and in the Constitution in Article 79 point 9 which states that persons belonging to minority nations and other minority national communities shall be guaranteed the rights and liberties, which they can exercise individually or collectively with others, including *“the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action”*.

The list appealed the rejection, but the Constitutional Court upheld the SEC’s decision. International standards consecrate the right of parties to represent national minorities and to enjoy political representation, such as the International Covenant on Civil and Political Rights (ICCPR), Article 25 which states 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;(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;”* and the Venice Commission’s Code of Good Practice in Electoral Matters which states paragraph 2.4. point aa. that *“Parties representing national minorities must be permitted”*.

In order to avoid being at odds with the Constitution and international standards, and to avoid confusion or misinterpretation, ENEMO recommends clarifying the provisions in the law which set forth the obligation of the SEC to register all national minority lists provided the necessary conditions are gathered. These conditions should be clear and limit interpretation or excessive discretionary power of bodies responsible for registration, to the best extent possible.

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

During the pre-election period, ENEMO observed isolated cases of hateful speech targeted at minorities, while some national minority voters faced challenges in fully exercising their voting rights reportedly due to being functionally illiterate. In two municipalities with dominant Albanian minorities, specifically Tuzi and Ulcinj, the government provided financial support to the Albanian communities (for instance, the formation of the new MEC in Tuzi). Continuing the practice from previous elections, 37,866 bilingual Montenegrin-Albanian ballots were

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

⁵³Article 43 paragraph 3 states that an electoral list which represents a minority nation or a minority ethnic community constituting up to 2% of the Montenegrin population according to the last population census results may be accepted if supported by the signatures of at least 300 voters

printed by the SEC and distributed to a selected number of polling stations in these elections. Praise should be given to these efforts, although they should be extended to outreach a broader number of individuals from national minorities. ENEMO notes that no broad voter education activities targeting minorities were conducted.

The SEC should conduct additional outreach efforts, in the form of voter education campaigns, to promote voter registration and active participation in elections. This should include encouraging voters from national minority backgrounds to engage in their civic rights, whether active or passive suffrage.

ENEMO deems that all cases of violent messages towards minorities, discrimination, and xenophobia during the electoral period and election campaign should be identified and reported, and further investigated and acted upon by the state police.

X. INCLUSION OF PERSONS WITH DISABILITIES

Montenegro has signed and ratified the 2006 UN Convention on the Rights of Persons with Disabilities (UN CRPD). By ratifying the Convention, the government of Montenegro committed to harmonize domestic legislation and policies with CRPD provisions⁵⁴ to secure the rights of persons with disabilities, including electoral rights.

The election law prescribes that only legally competent individuals can exercise their right to vote. However, 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 Convention⁵⁵.

ENEMO recommends reconsidering the restrictions of legal competence and mental impairment for individuals to have suffrage rights.

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 prescribe for any election-related information targeted to voters to be provided in the format suitable for PwDs⁵⁶.

There are no provisions obliging public broadcasters to air campaign-related content in an accessible format. Moreover, the SEC website does not feature resizable text and other adjustable formats, to enhance readability for persons with visual impairments.

ENEMO deems that the election law should include strengthened provisions obliging public broadcasters to air campaign-related content in an accessible format.

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 standards⁵⁷. There are no similar 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 collaborated with the Association of Youth with Disabilities and Montenegro Union of the Blind⁵⁸ and invited MECs to ensure that polling stations are accessible for PwDs. Nevertheless, no additional regulation was adopted to ensure protection and effective implementation of voting rights of PwDs and to bring the process more in line with international standards and national legislation⁵⁹.

⁵⁴The current National Action Plan is scheduled for 2017-2021.

⁵⁵UN Convention on the Rights of Persons with Disabilities: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁵⁶ODIHR'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".

⁵⁷Article 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".

⁵⁸<https://dik.co.me/misija-oeps-a-u-crnoj-gori-podrzava-razgovore-drzavne-izborne-komisije-i-saveza-slijepih-o-pristupacnosti-birackih-mjesta/>

⁵⁹Art. 9 of the CRPD 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".

Throughout the Election Day, 52.9 percent of the PSs observed by ENEMO during voting were assessed as accessible for persons with physical disabilities - with step free access and adapted polling booths, while 24.9 percent of polling stations required minor assistance and 22.2 percent of the polling stations observed were assessed as not suitable for PwDs; a few polling stations were located on second floors and the layout of some was inadequate. Some MECs were located on higher floors and remained mostly inaccessible to PwDs. Municipalities do not have a specific budget line for electoral purposes and do not have enough resources to install ramps for polling stations.

ENEMO recommends that the election administration and other relevant institutions should take further measures to improve the accessibility of polling stations to PwDs.

ENEMO notes that there has been no systemic response to the pandemic crisis with special emphasis on PwDs.

XI. COMPLAINTS AND APPEALS

Montenegro has the system of electoral dispute resolution that is the most recommended by international organizations: first by electoral commissions and subsequently to a court. Verdicts or actions of an electoral commission of lower levels can be challenged at an upper commission, while decisions of the SEC can be challenged in the Constitutional Court as the final appellate instance. According to the existing single hierarchical structure of electoral dispute resolution, simultaneous handling of complaints is excluded and the same complaint cannot be lodged in different instances. ENEMO notes that the system and practice of electoral dispute resolution during Montenegrin Parliamentary elections in 2020 were mostly in line with international standards.

During the 2020 Parliamentary elections, few complaints and appeals were received by the SEC and the Constitutional Court. During the entire electoral cycle, only 12 complaints were filed to the SEC (including six after Election Day) and five were filed to the Constitutional Court (none were filed after Election Day). Relatively few complaints were received by MECs⁶⁰.

Only one complaint passed the two final stages of appeal, including the SEC and the Constitutional Court: the objection of party “Democratic Montenegro” to the decision of the Election Commission of the capital city of Podgorica on determining polling stations⁶¹.

All possible types of submitters prescribed by the law lodged electoral complaints – voters, candidates, submitters of a candidate list, and NGOs.

The short deadlines for filing complaints (72 hours) were criticized by stakeholders as not sufficient for effective legal remedy, and two complaints were rejected by the SEC as untimely. However, these rejections were rather due to a considerable delay of submission (16 days)⁶². The bodies of appeal made timely decisions on all submitted complaints. The SEC made decisions no later than the next day after the date of the complaint.

The share of fully or partly satisfied complaints is substantial: two positive decisions by the SEC and one by the Constitutional Court. The SEC adopted the objection against the MEC Kotor that violated the law by not publishing the election calendar on its website⁶³; and complaint against the MEC Plav for rejecting the request for photocopying of election material⁶⁴. The Constitutional Court satisfied the complaint of NGO Center for Civic Education and abolished the parts of Technical Recommendations adopted by the SEC, which prescribed the possibility of remote voting for persons in self-isolation or quarantine by a decision of the sanitary inspection⁶⁵. The Court admitted that the SEC Recommendations did not ensure the voting procedure for persons who have been placed in quarantine facilities outside their place of residence. As a result of a complaint by another NGO, the Center for Democratic Transition, the Constitutional Court indicated that parts of the SEC Rules on mobile voting restrict the exercise of the right to vote of all persons undergoing home or hospital treatment or self-isolation outside their place of residence.

⁶⁰For instance, in Podgorica, no official complaints were submitted to MECs during Election Day and post-election period.

⁶¹Rejected by the SEC on the 12th of August and by the Constitutional Court on the 20th of August.

⁶²The SEC decisions on the 6th of August.

⁶³The SEC decisions on the 22nd of July.

⁶⁴The SEC decisions on the 5th of September.

⁶⁵20th of August, case U-II No. 45/20.

Amongst the complaints rejected by the SEC there were objections related to the determination of polling stations, composition of a MEC, draw of polling stations, and failed attempts at requesting mobile voting. Two complaints were submitted to the SEC against the electoral system: against the rules for determining the order of candidates in a candidate list and the impossibility to submit individual candidacies.

Among the objections rejected by the Constitutional Court the most significant dispute was related to the electoral list Snezana Jonica - Socialists of Montenegro - To live as Yugoslavs. The Court confirmed the refusal of the SEC to admit Yugoslavs as a national minority and refused to register their candidate list on preferential terms as for minorities. As mentioned above, ENEMO assesses that this case reveals that the legislation does not clearly and consistently define which national minorities have the right to political representation, leaving space for excessive discretionary power to the SEC in the registration process.

The results of electoral disputes resolutions were promptly published by the SEC and the Constitutional Court. As a procedural flaw however, it can be noted that four out of five cases were considered by the Constitutional Court at close sessions, negatively influencing the transparency of the Court's decision-making process and the overall handling of complaints and appeals.

ENEMO recommends to revise and improve the procedure of handling the election-related complaints and appeals by all competent bodies they are submitted to. Additionally, the Constitutional Court, as the highest competent body, should deal with election-related cases in a more transparent way. The Constitutional Court's sessions that deal with electoral issues should comply with the international standards and be open to the general public.

XII. ELECTION DAY

On Election Day, ENEMO deployed 23 multinational teams of observers to follow the process of the preparation and opening of polling stations, the voting and counting process, as well as the transfer and intake of election materials by the MECs. Observation teams, composed of 8 LTOs and 38 STOs, monitored the opening procedures at 23 polling stations, voting in 315 polling stations⁶⁶ (nearly 26 per cent of the total number of polling stations in these elections), and closing and counting in 23 polling stations. ENEMO observed the intake of election materials and tabulation of results in 23 MECs.

The head of ENEMO's mission additionally visited eight polling stations on the day of voting, including two prisons in Podgorica, in order to observe suffrage rights of prisoners⁶⁷.

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

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

Opening procedures

ENEMO STOs observed opening processes at 23 polling stations, out of which 21 were assessed positively, including their surrounding environment⁶⁸.

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

When it comes to observed irregularities, at two polling stations observed the protocol was either not filled out or improperly filled⁶⁹, while the setup of one polling station was assessed as unacceptable⁷⁰. PBs generally conducted the opening in an orderly manner and according to the procedures prescribed for polling stations. However, there were isolated cases of a PB rushing through procedures, a PB substantially undermining the secrecy of the vote by not removing a video camera within the polling station, and one PB opening the precinct without completing opening procedures⁷¹.

⁶⁶10 of which were visited more than once by ENEMO observers.

⁶⁷On this point, ENEMO observed that in several cases, prisoners and detainees were not allowed to exercise their right to vote due to not having IDs.

⁶⁸In 2 other polling stations observed, one polling station had two cameras and only one was covered, while the second one was operating. At one polling station observed in Bar, ENEMO observers witnessed campaigning messages in the form of graffiti near the polling station which was repainted on election morning.

⁶⁹In one case, the PB Chairperson declared he would complete the opening protocol at the closing, while in the other case, the opening protocol was signed by members present signing for absent members.

⁷⁰In one case, the polling booths were placed beneath the stairs, putting at risk the secrecy of vote.

⁷¹The PB Chairperson declared he would fill out the opening protocol at the closing.

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

Voting process

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

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

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

There were isolated cases of EVID malfunctioning which caused short delays (2.2 per cent). In some cases the voter identification process was not closely followed (2.8 per cent), while at 8.3 per cent of polling stations observed some voters were not found on the voter list⁷². On average, 11 requests for homebound voting were submitted to each polling station observed, while 2.8 per cent of requests were rejected for different reasons⁷³.

With respect to the secrecy of the vote, it was not respected in 1.8 per cent of the observed polling stations due to cases of more than one voter being in the polling booth, the set up of polling booths, and voters revealing their vote or taking a photo of a marked ballot paper. PBs managed the process properly and functioned in an orderly manner at 95.7 percent of polling stations observed. Observers reported two cases of a disorganized or confusing process, while at nearly all polling stations observed (98.8 per cent), no campaigning was observed inside the polling station and/or within 100 meters⁷⁴.

ENEMO recommends to revise the decision prescribing that the voter whose ballot was invalidated due to the infringement of the secrecy of vote is not entitled to receiving another ballot. Disrespecting the secrecy of vote should not automatically deprive one's right to vote, while repeated violations of this kind could be prevented by introducing sanctions.

⁷²According to PB explanations, this was mostly due to some voters arriving at the wrong polling station.

⁷³The most common reasons for rejecting requests for homebound voting included voters residing in another municipality, attempts to submit requests for more than one person, submitting late requests or insufficient documentation.

⁷⁴However, at four polling stations, observers reported campaigning or campaign materials inside or in the vicinity of polling stations.

In order to reinforce secrecy of the vote, ENEMO recommends that each polling station should provide the pen to the voter. Only those tools should be allowed for a valid vote.

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

PBs operated generally according to procedures (94.5 per cent), rarely intentionally deviating from these (1.2 per cent), while in one case the PB lost control over the process. The work of PBs at polling stations observed were evaluated by observers as either “good” or “very good” in 95.8 per cent of cases; while 4.3 were assessed as “bad” or “very bad”⁷⁵.

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

Counting process

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

Counting started on time at 20 observed polling stations⁷⁶. Counting procedures were followed properly at 19 observed polling stations, while at three polling stations the counting protocol was not marked after each counting step. In one case, the stationary ballot box was opened before the mobile ballot box and ballot box seals were already broken before the counting started.

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

At 17 polling stations observed, protocols were filled out in accordance with the law, while in six cases the PB somewhat deviated from procedures without affecting the results⁷⁷. In 21 cases copies of the protocols were given to all entitled individuals and posted at the polling station observed. In two cases, the protocol was not posted after the counting procedure finished, while at one observed polling station the protocol was not posted in front of the precinct.

⁷⁵At four polling stations observed, this was assessed as a result of intention of fraud (at one polling station, the PB was taking ballot papers out of the ballot box to check for whom voters had voted; while at three polling stations observed in Ulcinj, STOs reported the following violations: violation of vote secrecy, PB members revealing IDs, keeping track of voters or instructing voters for whom to vote, intimidation of voters, and voters revealing their votes or using markers).

⁷⁶While counting at polling stations observed started with delays shorter than 15 minutes in three cases.

⁷⁷These deviations from procedures included omitting making marks in the protocol after each stage of counting, or the protocol being completed only after counting.

Formal complaints were submitted at only one polling station observed during counting⁷⁸. When it comes to packing and sealing election material, at one polling station slight procedural deviations were observed, while two polling stations did not seal the election material. The closing and counting procedures at observed polling stations were positively evaluated by ENEMO observers in 21 cases (either “good” or “very good”), while in two cases they were assessed as “bad” although due to negligence rather than attempts at fraud.

Transfer of materials to MECs and MEC activity

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

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

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

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

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

⁷⁸Reportedly a PB member and one Deputy Chairperson were scrutinizing the voter list when voters were not present in order to make statistics for their personal use. The second complaint was filed by a PB member saying another PB member (authorized representative of a political entity) called voters after scrutinizing the voter list and persuaded voters to come and vote.

XIII. OBSERVERS

The rights of electoral observers, domestic and international, are enshrined in Article 111 of the Law on Election of Councilors and Members of Parliament. ENEMO notes that the electoral law 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 entitled to be present while conducting observation activities.

ENEMO recommends amending the law to provide additional clarifications regarding the rights of observers for different aspects of the electoral process.

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.

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. This is the only pre-condition for a domestic organization to be entitled to register and accredit 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 had to state the presence of observers at the polling station in their register. Official authorization for observers is issued by the SEC, and the electoral law does not contain the criteria by which the SEC can refuse to issue an authorization for observers.

Domestic organisations registered for public opinion polling were 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 had to be submitted at the latest five days before Election Day.

In these elections, the SEC accredited seven international organizations as international observers: ENEMO (74 registered), OSCE-ODIHR (51 registered) and the OSCE Parliamentary Assembly (17 registered), the US Embassy in Montenegro (38 registered), the Delegation of the European Union to Montenegro (22 registered), the Embassy of the United Kingdom (9 registered), and the Embassy of the Republic of Kosovo in Montenegro (4 registered).

The SEC also accredited four domestic election monitoring organizations: the Center for Monitoring and Research (CEMI) (1355 observers registered), the Center for Democratic Transition (CDT) (463 observers registered), NGO "Feniks" (5 observers registered), and the Center for Civic Education (CGO) (1 observer registered)⁷⁹.

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

Domestic CSOs actively monitored the pre-election period as well as Election Day, in addition to filing appeals regarding voters' rights in the context of Covid-19. NGO CEMI was conducting the broadest Parallel Vote Tabulation (PVT) campaign with nearly all polling stations observed, and delivered a parallel vote count on the Election Day evening. CEMI announced voter turnout throughout the day and projected preliminary results, allowing for independent tabulation and increasing the integrity of the process⁸⁰. NGO CDT appealed to court regarding voters rights, in particular voters in quarantine or self-isolation (see *Complaints and Appeals* section), and also delivered sample based monitoring of polling stations on Election Day⁸¹. ENEMO positively assessed the involvement of civil society organizations in conducting sound and statistically relevant observation of these elections, playing an instrumental role in increasing transparency and accountability.

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

⁸⁰<https://cemi.org.me/en/2020/08/tri-opozicione-koalicije-koje-su-najavile-saradnju-nakon-izbora-imace-najmanje-41-mandat/>

⁸¹<http://www.cdtmn.org/projekti-kategorije/demokratske-institucije/#>

RECOMMENDATIONS Priority Recommendations

- ENEMO recommends further harmonization of the legal framework for elections, through comprehensive and inclusive electoral reform. Overlapping of existing laws containing contradicting or unclear provisions limit legal certainty and leave space for abuse, and should therefore be addressed through an overhaul of the Law on the Election of MPs and Councillors in unison with other laws.
- ENEMO recommends that epidemiological measures for organizing and holding the elections be the object of a draft law submitted in Parliament ahead of the elections, in order to ensure the principle of legal hierarchy of norms and increase the legitimacy of the adopted measures.

Other Recommendations

To the Parliament of Montenegro

- ENEMO recommends that State financing of regular work and pre-electoral campaigns of political parties should be legally conditioned by introducing into the statutes and implementing a democratic procedure of selection of candidates for MP office, as well as direct selection of a party's leadership by the members of that same party. The introduction of sub national districts should also be considered, in order to improve the process of accountability of elected MPs towards the constituents of the respective district.
- ENEMO considers the term of office of both the SEC and the MECs could be extended from four to five years. This term is thus longer than the term of office of the MPs, which may improve the independence of the CEC members.
- ENEMO recommends that effective safeguards should be considered to ensure full impartiality and independence of election commissions from state and local government authorities and to prevent misuse of administrative resources for partisan ends, as required by the law.
- It is recommended that the provisions on the length of residency requirement in national elections be removed from the Constitution and the law.
- ENEMO recommends that additional mechanisms should be developed for the MoI to be able to increase the transparency of the voter lists by conducting cross checks, publishing data online and issuing messages to the public with information about the voter list verification and location of polling stations.
- ENEMO recommends introducing a legal obligation to integrate the data from voter identification devices from polling stations at the state level in order to check for double voting.
- ENEMO deems that the possibility for individual candidates to be nominated should be enabled, while the two year residency requirement to stand for election should be harmonized with international standards, and either reconsidered entirely or not exceeding six months.
- Restrictions in the law limiting the number of signatures a voter can assign to a candidate list, as well as the possibility of parties to collect an indefinite number of signatures, should be harmonized with international standards.

- Clear criteria should be defined in the legislation when it comes to minority representation and their right to participation in the electoral process. Furthermore, the process concerning the registration of electoral lists by the SEC should be clear enough to avoid the possibility of discretionary power influencing the decision-making process.
- In order to avoid being at odds with the Constitution and international standards, and to avoid confusion or misinterpretation, ENEMO recommends clarifying the provisions in the law which set forth the obligation of the SEC to register all national minority lists provided the necessary conditions are gathered. These conditions should be clear and limit interpretation or excessive discretionary power of bodies responsible for registration, to the best extent possible.
- A more comprehensive and inclusive definition of electoral campaigning should be provided in the legal framework, to more extensively define the notion of campaigning. Campaigning on social media requires further efforts by the legislator to be better framed in the legislation, and monitored through dedicated institutions such as the Agency for Electronic Media.
- ENEMO recommends that timeframes for campaigning should be harmonized in the laws, in order for all electoral contestants to have the possibility to start their campaigns at the same time. All deadlines for registration of candidates should expire before the official campaign period begins, as to allow for all electoral contestants to begin campaigning at the same date to create a level playing field.
- Dissuasive sanctions should be enforced to discourage political parties and candidates from campaigning before the official starting date. Likewise, the date upon which political entities should end their campaigns should be harmonized among the laws containing provisions on timeframes for campaigning.
- Since the law allows public officials to promote election programs and lists during media appearances, while also prohibiting abuse of these media appearances, ENEMO recommends that the legislator should clarify within the law the notion of “abuse”, in particular regarding high state officials.
- Effective and dissuasive sanctions should be reinforced towards all public officials who do not respect the principles of fair campaigning and the provisions set forth within the law. Once properly defined, stricter control by oversight bodies including the Agency for Electronic Media should be conducted to measure cases where media appearances are being abused by state officials to promote electoral campaigns.
- Religious leaders and influencers should steer clear from attempts at involvement in the electoral process, whether during the pre-election campaign or after attribution of mandates. The legislator should consider amending the electoral law to provide sanctions towards individuals responsible for such involvement.
- The sanctions at the disposal of the APC should be extended within the law, for instance in the form of further monetary fines or penalties, in order to increase the Agency’s capacity to enforce compliance with rules of political finance and prevent abuse. Decisions on complaints related to political finance should be delivered before the day of voting, to the best extent possible.
- ENEMO recommends that the framework for media should be harmonized, and that the legislator should avoid passing laws affecting the media framework after the start of the electoral cycle.
- ENEMO recommends that consideration should be given to adding provisions within the law to further limit expenditures for airtime in commercial media, to create a more level playing field amongst parties and increasing compliance with the principle of equal opportunity.

- ENEMO recommends to adopt the law to ensure equal representation of both genders (50 per cent). Moreover, parties should be obliged to update and revise the party lists by replacing candidates respecting the gender requirement and ensuring that female candidates are replaced by women, and male candidates by men.
- ENEMO recommends reconsidering the restrictions of legal competence and mental impairment for individuals to have suffrage rights.
- The election law should include strengthened provisions obliging public broadcasters to air campaign-related content in an accessible format.
- ENEMO recommends to revise the decision prescribing that the voter whose ballot was invalidated due to the infringement of the secrecy of vote is not entitled to receiving another ballot. Disrespecting the secrecy of vote should not automatically deprive one's right to vote, while repeated violations of this kind could be prevented by introducing sanctions.
- ENEMO recommends amending the law to provide additional clarifications regarding the rights of observers for different aspects of the electoral process.

To Political Parties and Candidates

- All election stakeholders should refrain from using violent speech, inflammatory language and defamation through any means, whether traditional or digital. Political parties and candidates' should respect commitments to fair behavior and the principles of fair campaigning.
- Candidates and parties should steer clear of any vote-buying attempts, whether direct or indirect, or any forms of bribing, pressure, or intimidation of voters. Additionally, in order to discourage such fraudulent attempts, citizens and the public generally should be encouraged to file complaints to the police or relevant authorities. Related cases should be appropriately investigated and prosecuted as offenses and, if found guilty by a court of law, perpetrators should be sanctioned in accordance with the provisions of the Criminal Code of Montenegro.
- ENEMO recommends to implement positive norms that would increase the participation and engagement of women in different level EMBs as well as women holding more managerial positions within EMBs. Moreover, political entities should be more inclusive towards women to ensure their equal participation in the election process, both as voters and candidates.

To the State Election Commission

- To enhance transparency and public trust, it is recommended that all SEC sessions are broadcasted live and afterwards available on the SEC website.
- ENEMO recommends that quality and comprehensive trainings are held for all MEC members to ensure equal performance of all commissions. Education requirement for all MEC members to hold a law degree should be revised to overcome the risk of insufficient staff available, for instance by requiring MEC members to hold a university degree, or a university degree in a specific area (education, politics and other).
- ENEMO recommends unifying the way trainings are held to ensure a uniform and equal level of preparedness of all PB members, primarily when it comes to minimizing the mistakes and procedural issues during the voting process. Moreover, a regulatory mechanism should be introduced to ensure that all commission members participated in the training, for instance through checking the attendance or by obligatory certification of PB members.

- ENEMO recommends to enhance the content of the handbooks for training the PB members, mainly by including more detailed information on possible deviations from the prescribed procedures, violations and irregularities, to ensure better preparedness of PB members on election day.
- ENEMO recommends that effective safeguards should be considered to ensure full impartiality and independence of election commissions from state and local government authorities and to prevent misuse of administrative resources for partisan ends, as required by the law.
- Comprehensive guidelines on the criteria for the validity of individual signatures that include visual verification of signatures should be introduced to minimize the possibility of forged signatures and excessive discretionary power of the data entry clerks.
- The SEC should conduct additional outreach efforts, in the form of voter education campaigns, to promote voter registration and active participation in elections. This should include encouraging voters from national minority backgrounds to engage in their civic rights, whether active or passive suffrage.
- ENEMO deems that all cases of violent messages towards minorities, discrimination, and xenophobia during the electoral period and election campaign should be identified and reported, and further investigated and acted upon by the state police.
- ENEMO recommends that the election administration and other relevant institutions should take further measures to improve the accessibility of polling stations to PWDs.

To the Government and Other Institutions involved in the Electoral Process

- Both the APC and the prosecution should envisage closer cooperation and increase transparency, to ensure that cases of abuse or fraudulent attempts are properly followed upon, investigated and prosecuted. The institutional structure should be improved to ensure that prevention, oversight, investigation, prosecution and sanctioning are coordinated efforts in the struggle against political finance abuse.
- ENEMO recommends that the Agency for Electronic Media should publish media monitoring reports on a regular basis during the electoral period. This would not only increase media transparency, but also provide voters and other electoral stakeholders (CSOs, political parties and candidates, etc.) with meaningful information on the media coverage of the campaign. Additional resources and monitoring tools should be provided to the Agency for Electronic Media in order to closely monitor publications of political entities and spending trends on social media. Information should be disclosed on a regular basis, and an analysis conducted to better inform election stakeholders and the public.
- ENEMO recommends to additionally revise and improve the procedure of handling the election-related complaints and appeals by all competent bodies they are submitted to. Additionally, the Constitutional Court, as the highest competent body, should deal with election-related cases in a more transparent way. The Constitutional Court's sessions that deal with electoral issues should comply with the international standards and be open to the general public.

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 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 34 international election observation missions to ten countries: Moldova 2020, Presidential elections; Ukraine 2020, Local elections; Montenegro 2020, Parliamentary elections; 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 DEC; 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; PROM-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; Belarussian 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.

LIST OF ABBREVIATIONS

AEM: Agency for Electronic Media

APC: Agency for Prevention of Corruption

CRPwD: Convention on the Rights of Persons with Disabilities

CSO: Civil Society Organization

CT: Core Team

ENEMO: European Network of Election Monitoring Organizations

EVID: Electronic Voter Identification Device

ICCPR: International Covenant on Civil and Political Rights (1966)

LTO: Long-Term Observer

MEC: Municipal Election Commission

NGO: Non-Governmental Organization

PB: Polling Boards

PS: Polling Station

PwDs: Persons with Disabilities

RTCG: Radio Television Montenegro (Public Broadcaster)

SEC: State Election Commission

STO: Short-Term Observer

ANNEX I: FINAL RESULTS OF PARLIAMENTARY ELECTIONS 2020

List	Number of votes	Percentage of votes
Social Democrats - Ivan Brajović - We decide CONSISTENTLY	16 761	4,09 %
Bosniak Party - Correct - Rafet Husovic	16 279	3,98 %
HGI. WITH ALL MY HEART FOR MONTENEGRO!	106	0,27 %
SDP - STRONG MONTENEGRO!	12 835	3,14 %
CROATIAN REFORM PARTY OF MONTENEGRO – HRS	496	0,12 %
Dr. Dritan Abazović - Black and White - Dr. Srdjan Pavićević - (Civic Movement URA, Party of Justice and Reconciliation, CIVIS Voter Groups and Independent Intellectuals) - Citizens!	22 679	5,54 %
Albanian Coalition "Unanimously" Democratic Party, Democratic Union of Albanians and Democratic Alliance in Montenegro	4675	1,14 %
Decisive for Montenegro! DPS - Milo Djukanovic	143 515	35,06 %
FOR THE FUTURE OF MONTENEGRO - Democratic Front (New Serbian Democracy, Movement for Change, Democratic People's Party), Socialist People's Party of Montenegro, True Montenegro, United Montenegro, Workers' Party, Party of United Pensioners and the Disabled, Yugoslav Communist Party of Montenegro, Serbian Radical Party, Party of Pensioners with Disabilities and Social Justice	133 261	32,55 %
ALBANIAN LIST - Genci Nimanbegu, Nik Gjelošhaj	6488	1,58 %
ALEKSA BEČIĆ - MIOBRAG LEKIĆ - "PEACE IS OUR NATION" - DEMOCRATS - DEMOCRATIC MONTENEGRO - DEMOS - PARTY OF PENSIONERS WITH DISABILITIES AND RESTITUTIONS - CIVIC MOVEMENT NEW LEFT	51 298	12,53 %
TOTAL	409 393	100 %

Party	Number of seats attributed in Parliament
Democratic Party of Socialists	30
For the Future of Montenegro	27
Peace is our Nation	10
United Reform Action	4
Social Democrats	3
Bosniak Party	3
Social Democratic Party	2
Albanian List	1
Albanian Coalition	1
TOTAL:	81

ANNEX II: STATISTICAL REPORT ON EVALUATION OF PBs BY ENEMO STOs

Environment around PS	Number of answers	Percentage
Regular (no influence on voter's choice)	21	91.3
Other	2	8.7

PS Accessibility for Persons with Disabilities	Number of answers	Percentage
Easy	10	43.48
Not suitable	7	30.43
Requires minor assistance	6	26.09

Did PB receive equal number of ballots as number of voters on the main list (for any type of ballots)	Number of answers	Percentage
Yes	21	91.3
No	2	8.7

No of stationary ballot boxes	Median	Mode	Standard deviation
1.22	1.00	1.00	0.42

PB Chairperson	Number of answers	Percentage
Man	21	91.3
Woman	2	8.7

PB Deputy Chairperson	Number of answers	Percentage
Man	14	60.87
Woman	9	39.13

Essential Materials	Number of answers	Percentage
All essential materials are present	23	100

Protocol	Number of answers	Percentage
Protocol filled out properly and procedure was transparent	21	91.3
Protocol was not filled out at all	1	4.35
Protocol was improperly filled	1	4.35

Stationary Ballot Box	Number of answers	Percentage
Stationary ballot boxes properly sealed and placed according to procedures	23	100

Mobile Ballot Box	Number of answers	Percentage
Mobile ballot box properly sealed	16	69.57
Some procedures of sealing mobile ballot box were violated	7	30.43

Ballots	Number of answers	Percentage
Ballots are in prescribed format	23	100

Polling Station set up	Number of answers	Percentage
Acceptable	21	91.3
Unacceptable	2	8.7

Respecting the protective measures	Number of answers	Percentage
All individuals respected Covid-19 protective measures	14	60.87
Two-meter distance between individuals not respected	6	26.09
Individuals not wearing protective masks properly	5	21.74
Individuals not using hand sanitizer after entering and before leaving the PS	3	13.04

Opening	Number of answers	Percentage
PS was opened on time (7 am)	21	91.3
PS opened with delay of less than 15 minutes	2	8.7

Observation	Number of answers	Percentage
All authorized observers able to observe properly	23	100

Formal (official) complaints submitted on the opening procedures	Number of answers	Percentage
There were no formal complaints	23	100

Presence of unauthorized persons inside PS	Number of answers	Percentage
None (only authorized persons present)	22	95.65
Other	1	4.35

PB Conduct	Number of answers	Percentage
PB generally conducted opening in order and according to the procedures	20	86.96
PB opened precinct without completing opening procedures	1	4.35
PB was rushing through the opening process and did not care for transparency	1	4.35
PB substantially damaged transparency of the opening process	1	4.35

Evaluation of MEC	Number of answers	Percentage
GOOD	12	52.17
VERY GOOD	9	39.13
BAD	2	8.7

2. VOTING

Environment around PS	Number of answers	Percentage
Regular (no influence on voter's choice)	309	95.08
Large groups of voters in front of the PS	12	3.69
Other	6	1.85
Campaigning activities within 100 m around PS	1	0.31
Voter intimidation	1	0.31
Acts of violence	1	0.31

PS Accessibility for Persons with Disabilities	Number of answers	Percentage
Easy	172	52.92
Requires minor assistance	81	24.92
Not suitable	72	22.15

Did PB receive equal number of ballots as number of voters on the main list (for any type of ballots)	Number of answers	Percentage
Yes	311	95.69
No	14	4.31

No. of mobile ballot boxes	Median	Mode	Standard deviation
1.21	1.00	1.00	0.44

PB Chairperson	Number of answers	Percentage
Man	249	76.62
Woman	76	23.38

PB Deputy Chairperson	Number of answers	Percentage
Man	221	68
Woman	104	32

Essential Materials	Number of answers	Percentage
All essential materials are present	323	99.38
Ballot boxes are missing	1	0.31
Ballot papers are missing	1	0.31
Masks and hand sanitizers are missing	1	0.31

Stationary Ballot Box	Number of answers	Percentage
Stationary ballot boxes properly sealed and placed according to procedures	320	98.46
Stationary ballot box not properly sealed	5	1.54

Mobile Ballot Box	Number of answers	Percentage
Mobile ballot box properly sealed	220	67.69
NA	76	23.38
Mobile ballot box not properly sealed	29	8.92

Polling Station set up	Number of answers	Percentage
Acceptable	317	97.54
Unacceptable	8	2.46

Respecting the protective measures	Number of answers	Percentage
All individuals respected Covid-19 protective measures	248	76.31
Individuals not wearing protective masks properly	52	16
Two-meter distance between individuals not respected	45	13.85
Individuals not using hand sanitizer after entering and before leaving the PS	19	5.85
Other	1	0.31

Voters Identification/ Issuing Ballots	Number of answers	Percentage
Identification procedures always followed properly	316	97.23
NA (no voters voted while the team was at the PS)	8	2.46
Other	2	0.62

Electronic devices for registration of voter's Operators (EVID)	Number of answers	Percentage
EVID device functions properly	318	97.85
EVID device faces some minor technical issues but cope well	4	1.23
Other	3	0.92

Voter list	Number of answers	Percentage
All voters were found in the list	288	88.62
Some voters were not found in the list	27	8.31
NA (no voters voted while the team was in the PS)	9	2.77
Information about some of the voters was wrong or incomplete	1	0.31

Secrecy of the Vote	Number of answers	Percentage
Secrecy of voting respected	310	95.38
NA (no voters voted while the team was in the PS)	9	2.77
More than one person in the booth (except assisted voting to disabled voter)	3	0.92
Other violations of the secrecy of the vote	2	0.62
Voters could not vote in secrecy due to set up of booths	2	0.62
Voters were revealing their vote	1	0.31
Voters taking photo of marked ballot paper	1	0.31

Serious violations (inside polling station)	Number of answers	Percentage
No serious violations observed	310	95.38
Other	8	2.46
NA (no voters voted while the team was in the PS)	5	1.54
Intimidation or harassment of voters	1	0.31
Voters in the list not allowed to vote	1	0.31

Organization of PS	Number of answers	Percentage
Polling station is managed properly and PB functions orderly (there are no more voters than the number of polling booths inside the PS)	311	95.69
NA (no voters voted while the team was in the PS)	7	2.15
Other	4	1.23
PS disorganized, process is confusing and/or more voters than the number of polling booths are inside the PS	2	0.62
PS is overcrowded, disorganized, makes it impossible to properly monitor the voting process	1	0.31

Homebound voting	Number of answers	Percentage
All requests for homebound voting were accepted	290	89.23
There were no requests for homebound voting	26	8
Some requests were rejected for other reasons	8	2.46
Some requests were rejected for listed reasons (old age, disability, hospitalization, home treatment, staying at homes for elderly)	1	0.31

Campaigning	Number of answers	Percentage
There was no campaigning or campaign materials inside the PS and/or within 100m from the PS	321	98.77
There was campaigning or campaign materials within 100m from the PS	3	0.92
Other forms of campaigning inside and/or within 100m from the PS	1	0.31

Formal (official) complaints submitted on the voting or opening	Number of answers	Percentage
There were no formal complaints	316	97.23
There were some minor, not substantial formal complaints	8	2.46
PB received substantial formal complaints	1	0.31

Observation	Number of answers	Percentage
All authorized observers able to observe properly	320	98.46
Observers could not observe properly due to set up of the polling station (e.g. sitting too far, PS in the hallway, etc.)	4	1.23
Observers could not observe properly due to overcrowded PS	1	0.31

Presence of unauthorized persons in PS	Number of answers	Percentage
None (only authorized persons present)	322	99.08
Unknown Persons, non-accredited persons (e.g. persons that didn't have observation badge)	3	0.92
Representative of Local Authorities,	1	0.31
Police, Military and other uniformed personnel,	1	0.31

Facilities for persons with disabilities	Number of answers	Percentage
No facilities for persons with disabilities	228	70.15
No polling booth with adequate stairs or shelves for voters of short stature	73	22.46
Ramps for wheelchairs	50	15.38
Other	18	5.54

PB Conduct	Number of answers	Percentage
PB generally conducted voting in an orderly fashion and according to the procedures	307	94.46
NA (no voters voted while the team was in the PS)	9	2.77
PB intentionally deviated from procedures	4	1.23
Other	4	1.23
PB lost control over precinct	1	0.31

Evaluation of MEC	Number of answers	Percentage
GOOD	157	48.31
VERY GOOD	154	47.38
BAD	12	3.69
VERY BAD	2	0.62

3. CLOSING, COUNTING

PB Chairperson	Number of answers	Percentage
Man	18	78.26
Woman	5	21.74

PB Deputy Chairperson	Number of answers	Percentage
Man	13	56.52
Woman	10	43.48

Closing time	Number of answers	Percentage
Polling station closed on time (20:00)	23	100

Voters at closing time	Number of answers	Percentage
No queue of voters at closing	22	95.65
Voters in queue at time of closing were not allowed to vote	1	4.35

Did PB decide to use option Statistics in EVID device after closing	Number of answers	Percentage
No	13	56.52
Yes	10	43.48

Counting started on time	Number of answers	Percentage
Counting started on time (20:00 or the arrival time of the last mobile ballot box to the PS, but not more than one hour later)	20	86.96
Counting started with delay of less than 15 minutes	3	13.04

Counting Procedures	Number of answers	Percentage
Counting procedures were followed properly and in the right sequence (process was legitimate)	19	82.61

Counting Procedures	Number of answers	Percentage
Counting procedures were followed properly and in the right sequence (process was legitimate)	19	82.61
Stationary ballot box was opened before mobile ballot box	3	13.04
Marks in protocol not made after each step of counting	3	13.04
Ballot boxes seals were already broken	2	8.7
Other	2	8.7
PB members did not count the unused ballots	1	4.35
Each ballot in doubt was not considered and voted on by the PB	1	4.35

Observation	Number of answers	Percentage
All authorized observers able to observe properly	22	95.65
Observers could not observe properly due to set up of the polling station (e.g. sitting too far, PS in the hallway, etc.)	1	4.35

Presence of unauthorized persons in PS	Number of answers	Percentage
None (only authorized persons present)	23	100

Completion of protocol	Number of answers	Percentage
Protocols were filled out in accordance with the law	17	73.91
PB somewhat deviated from procedures, without affecting the results	6	26.09

Protocol distribution	Number of answers	Percentage
Protocols given to all entitled individuals to receive them and posted in PS immediately	21	91.3
Protocols not posted at the PS after vote count	1	4.35
Protocols not given to all entitled persons and not posted	1	4.35

Formal (official) complaints submitted on the counting, voting or opening	Number of answers	Percentage
There were no formal complaints	22	95.65
PB received substantial formal complaints	1	4.35

Election material	Number of answers	Percentage
All election material was packed and sealed in full accordance with the procedures	20	86.96
Election material was mostly packed and sealed in accordance with the procedures (slight procedural deviations)	3	13.04

Evaluation of MEC	Number of answers	Percentage
GOOD	13	56.52
VERY GOOD	8	34.78
BAD	2	8.7

4. TRANSFER TO MEC, MEC ACTIVITY

Transfer of election materials to MEC	Number of answers	Percentage
Transport to MEC was made in an orderly manner by required composition of PB members	22	95.65
Composition of transferring PB team was not according to the law	1	4.35

Observation of MEC	Number of answers	Percentage
MEC activity was transparent and straightforward	23	100

Adequacy of MEC premises	Number of answers	Percentage
MEC premises were spacious and adequate for delivery of the materials	23	100

Overcrowding	Number of answers	Percentage
MEC was not overcrowded	14	60.87
Long lines of persons in the MEC, however it was easy to enter and move about	8	34.78
MEC was too overcrowded, it was very hard to move about	1	4.35

Respecting the protective measures	Number of answers	Percentage
Individuals not wearing protective masks properly	11	47.83
Two-meter distance between individuals not respected	10	43.48
All individuals respected Covid-19 protective measures	9	39.13
Individuals not using hand sanitizer after entering and before leaving the PS	3	13.04

Complaints	Number of answers	Percentage
There were no complaints about MEC activity	23	100

PB protocols at MEC	Number of answers	Percentage
There was no need for PB protocols corrections	18	78.26
There were cases of corrections of PB protocols at the MEC	4	17.39
There were cases that PB were sent back to PS due to mistakes (potentially to even perform the recounting)	1	4.35

Observation	Number of answers	Percentage
All authorized observers able to observe properly	23	100

Evaluation of MEC	Number of answers	Percentage
VERY GOOD	13	56.52
GOOD	9	39.13
BAD	1	4.35

ANNEX III: ENEMO IEOM MONTENEGRO 2020 - COMPOSITION

Core Team

Name / position	Position	Country
Gianluca Passarelli	Head of Mission	Italy
Ana Mihajlovic	Deputy Head of Mission	Serbia
Kristina Kostelac	Election Administration Analyst/CEC & DEC observer	Croatia
Oleg Reut	Election Administration Analyst (remote)	Russian Federation
Pierre Peytier	Electoral Campaign Analyst	France
Nikolai Grishin	Legal Analyst (remote)	Russian Federation
Gazmend Agaj	LTO Coordinator and Security Officer	Albania

Name	ENEMO member organization	Country
Dunja Pejic	Gong	Croatia
Peter Nemeth	Obcianske Oko	Slovakia
Stanislav Zholudiev	CVU	Ukraine
Monika Valecic	Gong	Croatia
Dragan Nikodijevic	CeSID	Serbia
Ion Ciobanu	Promo-LEX	Moldova
Filip Korac	Gong	Croatia
Peter Novotny	Obcianske Oko	Slovakia

Short-Term Observers

Name	Country	Organisation
Aleksandar Velan	Croatia	Gong
Aikokul Ibraeva	Kyrgyzstan	CeSID
Antuela Male	Albania	KRIIK
Vladimir Zhilkin	Russian Federation	Golos
Daryna Sokolova	Ukraine	CeSID
Mladen Kobasevic	Croatia	Gong
Lori Liko	Albania	KRIIK
Jelena Ramadza	Croatia	Gong
Maria Teratcuiantc	Russian Federation	Golos
Patrik Dubovsky	Slovakia	Obcianske Oko
Josipa Dika	Croatia	Gong
Flordon Dema	Albania	KRIIK
Toni Erdfeld	Croatia	Gong
Elena Iakovenko	Russian Federation	Golos
Murad Rustambayli	Azerbaijan	EMDS
Alketa Lamani	Albania	KRIIK
Ljiljana Bjeličić	Serbia	CeSID
Mammad Mammadzada	Azerbaijan	EMDS
Ditmar Mara	Albania	SDC
Emir Škrijelj	Serbia	CeSID
Dragan Savić	Serbia	CeSID
Mirjana Grbac	Croatia	Gong
Rigers Bena	Albania	SDC
Elena Veselovscaia	Romania	Promo-LEX
Eglantina Alliaj	Albania	SDC
Mihael Rukavina	Croatia	Gong
Danijel Stjepanović	Bosnia and Herzegovina	CCI
Kseniia Honcharova	Ukraine	CeSID
Ivor Fuka	Croatia	Gong
Beatrix Boonekamp	Slovakia	Obcianske Oko
Lucija Vulić	Croatia	Gong
Erjon Lushi	Albania	KRIIK
Isida Verija	Albania	SDC
Dragana Stojic	Croatia	Gong
Ardit	Salaj	KRIIK
Shafag Fatullayev	Azerbaijan	EMDC
Ermir Cota	Albania	SDC
Natalia Menkova	Russian Federation	Golos

ANNEX IV: OTHER DATA COLLECTED BY THE IEOM

Two substitutions in published results

A set of captures of the official website rezultati.dik.co.me were made using web.archive.org to watch if the published results change after being published. Two changes have been made in total.

The first changes were done somewhere between 01.09.2020 and 10.09.2020. Nikšić,608 (4) commission's results were changed. HRS and URA votes were 31 and 0 correspondingly before changes and then these numbers were substituted with 0 and 31, i.e. 31 votes were moved from HRS to URA.

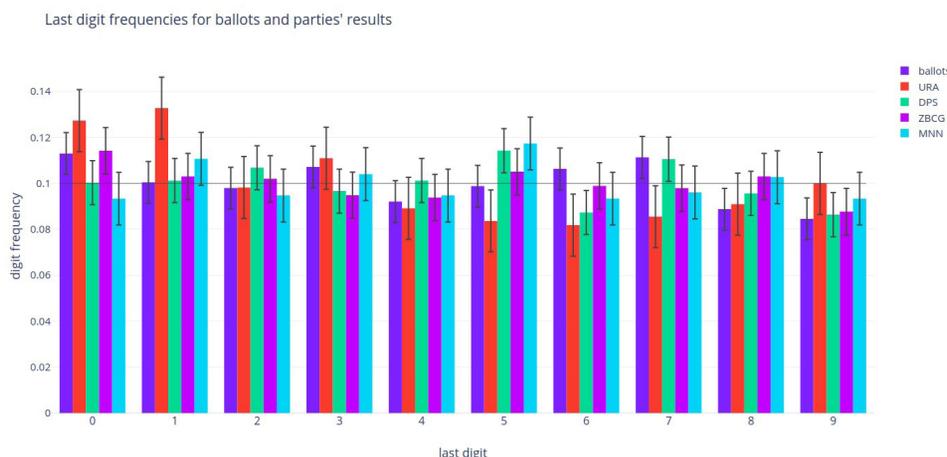
The second changes were performed between 10.09.2020 and 26.09.2020. Petnjica,427 (7) commission's results were changed. Number of votes decreased from 210 to 152. Votes given to particular parties were changed substantially: votes of (SD, BS, HGI, SDP, HRS, URA, AK, DPS, ZBCG, AL, MNN) changed from (13, 13, 0, 4, 0, 6, 0, 135, 27, 0, 10) to (5, 6, 0, 0, 0, 5, 0, 102, 21, 0, 11), i.e. all seven non-zero results were changed.

NB: It was not checked whether these changes affected seats distribution.

Last digit frequency test

Last digit analysis was performed to test whether published results are distributed naturally or not. An analysis of last digit frequency was made for a set of 5 parameters. These are the number of ballots (both valid and invalid) and number of votes given to parties, which got more than 5 per cent in total, URA, DPS, ZBCG and MNN.

Significant fraction of results were lower than 10 votes for a party. 297 out of 1217 polling stations have zero votes for the URA party, it is the party with the largest ratio of zeros in results. This fact does not allow to analyse the whole set of numbers due to Benford's law. Nevertheless, it was possible to analyze all the results that have at least two digits in the number. The distribution of last digit frequencies is represented on the following bar chart.

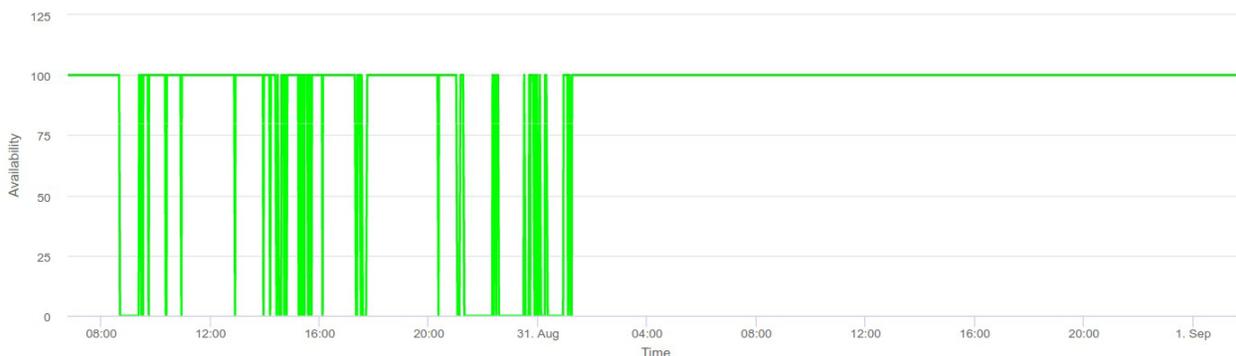


Error bars for standard deviation (σ) are shown. Mostly the frequencies (34 out of 50) are within one sigma around natural frequency, 15 out of 50 are within two sigmas and one is within three sigmas. To conclude, there is no indication that numbers of final results are distributed not naturally.

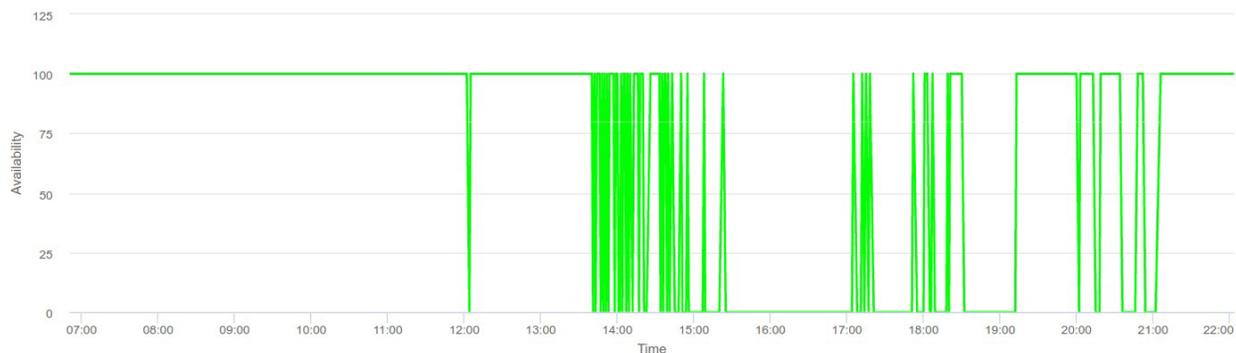
Websites' availability

Key websites availability was measured by checking its statuses every minute. Three sites were analysed, SEC website dik.co.me, voters service biraci.me and website with officially published results, rezultati.dik.co.me.

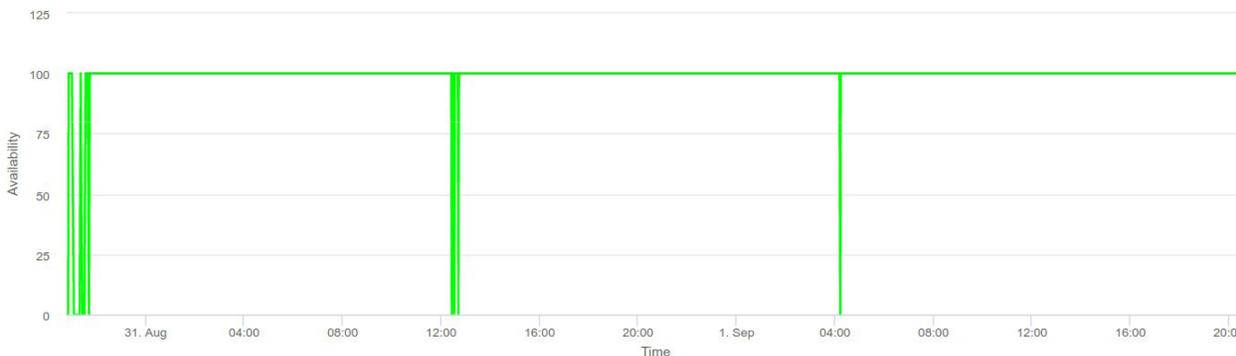
SEC website had issues during the election day until 01:16 AM on 31st Aug 2020.



Biraci.me service was completely available until 01:38 PM on the election day, then it faced connection problems and was almost unavailable until 09:06 PM.



Preliminary and final results were published on rezultati.dik.co.me. This website was partially unavailable the first two hours after its launch, then it worked quite stable with minor problems.



Voters list and results

The comparison of voters list and published results were made for 18 regions. The number of voters in published results was compared to the same number in the voters list, which was accessed online via a certified device at 11:30P M on 31st of Aug 2020. The differences in voters numbers are small enough, they are less than 0.25% for all the regions checked.

Region	Number of voters in the lists	Number of voters according to published results	Difference	Difference percentage
Andrijevica	4106	4107	1	0,02%
Bar	39376	39406	30	0,08%
Berane	23729	23752	23	0,10%
Bijelo Polje	39913	39916	3	0,01%
Budva	18062	18078	16	0,09%
Cetinje	13766	13799	33	0,24%
Danilovgrad	13095	13110	15	0,11%
Gusinje	4607	4607	0	0,00%
Herceg Novi	25485	25501	16	0,06%
Kolašin	6319	6323	4	0,06%
Kotor	18478	18495	17	0,09%
Mojkovac	6891	6897	6	0,09%
Nikšić	58342	58420	78	0,13%
Petnjica	6198	6197	-1	-0,02%
Plav	9202	9211	9	0,10%
Plužine	2436	2436	0	0,00%
Pljevlja	25394	25405	11	0,04%
Podgorica	152404	152616	212	0,14%

