



## **INTERNATIONAL ELECTION OBSERVATION MISSION Montenegro – Parliamentary Elections, 30 August 2020**

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

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#### **PRELIMINARY CONCLUSIONS**

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The elections were competitive and took place in an environment highly polarized over issues of church and national identity. Contestants were able to convey their messages, but the ruling party gained an undue advantage through misuse of office and state resources and dominant media coverage. The lack of independent campaign coverage by the media further undermined the quality of information available to voters. The law provides basic regulations for the conduct of democratic elections but gaps and ambiguities allow for circumvention, particularly in campaign finance. The elections were run overall transparently and efficiently, although the State Election Commission (SEC) did not properly fulfil its regulatory role. COVID-related restrictions limited physical campaign opportunities and increased online outreach, but did not prevent voters from turning out in high numbers. Election day was orderly and the process was generally transparent and well administered, while health protocols were not implemented consistently.

The legal framework remained largely unchanged since the last parliamentary elections, with the exception of campaign finance. A number of ODIHR recommendations remain unaddressed, including introducing an audit of the Voter Register (VR) and measures against the misuse of state resources, as well as reconsidering certain limitations of suffrage rights.

The elections took place amid a backdrop of concerns about inconsistent adherence to the constitution. These include that the elections were called early without shortening of the parliament's mandate; the COVID-19 related restrictions on fundamental freedoms, including a ban on public gatherings and political rallies, that were introduced without calling a state of emergency by parliament; and that criminal proceedings and arrests of several MPs were initiated without a prior waiver of their immunity by parliament, at odds with national legislation and international commitments.

The election administration met legal deadlines and generally worked transparently and managed the technical aspects of the electoral preparations efficiently. The SEC held regular sessions open for observers but not to the media. While it issued a number of instructions on issues insufficiently regulated by law, it did not entirely fulfill its regulatory role, leaving several important aspects, such as the verification of supporting signatures for candidate registration, the criteria for registration of the lists with national minority status, and the tabulation of results, unaddressed. In some of its decisions, like the rejection of a candidate list, the SEC used wide discretionary powers to interpret and implement the law. The recommendations on the epidemiological protection of voters and the applicability of mobile voting for voters in quarantine were unclear and difficult to implement.

The final VR included 540,026 registered voters. Voters could verify the accuracy of their personal data until 20 August through a dedicated website or in person at local offices of the Ministry of Interior and could request amendments. Authorized representatives of candidate lists and accredited observer organisations had the right to inspect the VR online. While the compilation of the voter register was overall efficient and transparent, conflicting legal provisions on maintaining registration of those who may reside abroad decrease confidence of some electoral stakeholders in its accuracy.

The candidate registration process was overall inclusive and resulted in a diverse field of contestants. The SEC registered 11 of the 12 candidate lists that applied to contest the elections. Lists were required to submit voters' supporting signatures and to have at least 30 per cent candidates of the underrepresented

gender. Women remain, however, underrepresented in political life. Only one of the 11 lists was headed by women.

To promote inclusion, candidate lists representing national minorities below 15 per cent of the population are required to submit fewer supporting signatures for registration. Lower thresholds for seat allocation in parliament are applicable under conditions. Of the eleven registered candidate lists, five represented national minorities. The SEC rejected one candidate list seeking registration as representing the “Yugoslav minority” citing their lack of minority status.

The outgoing parliament was boycotted by some or all opposition parties during most of its term. In 2019, the public discourse was dominated by allegations of corruption and illegal donations to the ruling party. The adoption of the Law on Freedom of Religion in December 2019 and the ensuing public protests have further deepened the societal and political divide.

Whereas the campaign started from the call of elections, public gatherings, including political rallies, were banned from 25 June until 23 July due to the COVID-19 pandemic. Extensive involvement of the president, who was not a candidate and other high-ranking government officials in the campaign blurred the line between the state and the ruling party. The ruling party gained an undue advantage through various forms of misuse of office and state resources, such as offering temporary employment in the public sector, and distributing extraordinary welfare benefits to ‘vulnerable’ groups based on unclear criteria. The ODIHR Limited Election Observation Mission (LEOM) received allegations about pressure to vote for the ruling party; official investigation was initiated on two cases.

The campaign was peaceful despite a confrontational tone. Pandemic-related safety measures and public health concerns significantly altered the style of campaigning, as contestants reached out to the voters and conveyed their messages primarily through online and social media, campaign buses and small gatherings. The campaign discourse focused on the national identity and the law on freedom of religion, as well as the geopolitical orientation of the country, the fight against corruption and the effects of the pandemic.

A new political finance law adopted in 2019, among other things, increased the limit for private donations and decreased the expenditure ceiling. It was amended in April 2020 to legalize the distribution of welfare benefits throughout an election year in case of a pandemic. The Agency for the Prevention of Corruption oversees campaign finance and the activities of public institutions for potential misuse of state resources. Despite some improvements, the legal framework does not establish effective safeguards against circumvention and corruption, and overall trust in the campaign finance regulatory system is lacking.

The media landscape is diverse and largely partisan. Dependence on politically-affiliated business interests limits editorial autonomy and journalistic pluralism. While defamation of individuals is decriminalized, criminal provisions related to defamation remain in the legislation and have resulted in detention of citizens and journalists, limiting freedom of expression and contrary to international standards. Broadcasters, including the public RTCG1, provided free airtime to the contestants. However, the campaign coverage footage was overwhelmingly produced by contestants, and the lack of editorial coverage undermined the quality of information available to voters. The legally required separation of campaign coverage from the news gave more prominence to the institutional coverage of government officials.

Voters and contestants could file complaints to election commissions and the courts, including appeals of SEC decisions to the Constitutional Court. The election dispute resolution system does not ensure effective remedy, due to the lack of transparency and short deadlines. The ODIHR LEOM has been

made aware of six appeals filed to the SEC, challenging the decisions of MECs on polling board formation and locations of polling stations. Five complaints were filed to the Constitutional Court who discussed four of them in closed sessions and did not publish its decisions undermining transparency of the election dispute resolution process.

The IEOM did not undertake systematic or comprehensive observation of election day proceedings. In the limited number of polling stations visited, the process was transparent and generally well administered, despite some inconsistent application of counting and tabulation procedures. Pandemic-related health protocols were not fully respected. The SEC made preliminary results available in real time after the tabulation started, but the public announcement of results in media was based on the parallel vote tabulation by the citizen observers. The preliminary turnout was reported at 76.7 per cent.

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## PRELIMINARY FINDINGS

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### Background and Political Context

On 20 June, the president called parliamentary elections for 30 August. Subsequently, local elections in five municipalities were also called to be held concurrently.<sup>1</sup> The Democratic Party of Socialists (DPS) has been in power since 1991 and its leader, Milo Đukanović, has been alternating in the positions of president and prime minister. He was elected as president for the second time in 2018.

Following the 2016 parliamentary elections, the DPS formed a ruling coalition with 42 members of parliament (MPs), with the support of five other parties, including three representing the Albanian, Bosniak and Croat minorities.<sup>2</sup> The opposition parties obtained 39 seats.<sup>3</sup> However, they refused to accept the election results, due to the arrest of several individuals for allegedly planning a *coup d'état*.<sup>4</sup> As a result, all six opposition parties boycotted parliamentary sessions until October 2017, demanding a fair investigation. Subsequently, four parties returned to parliament but two continued the boycott.<sup>5</sup> Subsequently, in December 2018 and December 2019 criminal proceedings were initiated against five opposition MPs and one was arrested.<sup>6</sup> There was no prior waiver of immunity by Parliament, as required by the Constitution.<sup>7</sup> A corruption scandal, the 'envelope affair', saw publicity, triggering

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<sup>1</sup> Local elections were held in Andrijevića, Budva, Gusinje, Kotor, Tivat. Concurrently with the 2018 presidential election, local elections were held in 12 municipalities. There is a recurring practice of holding partial local elections, as opposed to conducting them simultaneously in all municipalities. The ODIHR LEOM follows the local elections only to the degree they affect the process and preparations for the parliamentary elections.

<sup>2</sup> DPS has 36 seats (including one seat won by Liberal Party), Social Democrats (SD) – 2, the Bosniak Party (BS) – 2, New Democratic Force (Forca) – 1, the Croatian Civic Initiative (CCI) – 1.

<sup>3</sup> Democratic Front (DF) won 17 seats, Democrats – 8, coalition "For the Benefit of all" (DSI) – 7, Social Democratic Party (SDP) – 4, Demos – 2 and United Reform Action (URA) – 1.

<sup>4</sup> In June 2017, 14 people were indicted for preparing a conspiracy against the constitutional order and the security of Montenegro and an attempt to organize a terrorist act. In May 2019, the Higher Court of Montenegro convicted 13 persons, including 2 opposition leaders.

<sup>5</sup> Starting from October 2017, DF, SDP, DEMOS, and SNP returned to parliamentary sessions while URA and Democrats continued abstaining.

<sup>6</sup> In December 2018, proceedings were initiated and detention orders were issued for two DF MPs: one was detained, while the other avoided arrest by remaining inside the Parliament. The arrested MP served three months in prison for an attack on a police officer during the October 2015 protests. In December 2019, criminal proceedings have also been initiated against three other DF MPs.

<sup>7</sup> The detention orders were temporarily suspended by the Constitutional Court; to date, the final decision on the constitutionality of the detentions is pending. Criminal proceedings have also been initiated against additional three DF MPs.

protests by civil society groups and opposition parties.<sup>8</sup> Subsequently, the opposition gradually and partly resumed boycott, as a response to the demands by protesters.

Several ODIHR LEOM interlocutors questioned the legality of the election date and claimed that this timing gave the ruling party an undue advantage.<sup>9</sup> A constitutional complaint was filed citing the failure of the parliament to shorten its mandate, as required by the Constitution.<sup>10</sup> The authorities claimed that the appointment of the date took into consideration conditions related to the pandemic.

## Electoral System and Legal Framework

The 81-member unicameral parliament is elected for a four-year term from closed candidate lists under a proportional representation system in a single nationwide constituency. The lists are eligible for seats if they obtain at least three per cent of the valid votes cast. Preferential rules apply for lists representing national minorities not exceeding 15 per cent of the total population.<sup>11</sup> If none of such lists surpasses the three per cent threshold, all lists representing the same national minority that have obtained each at least 0.7 per cent of the votes are granted up to three seats, jointly, based on the sum of their votes. The frontrunner among the Croat minority lists is granted a seat provided that it has obtained at least 0.35 per cent of the votes.

Parliamentary elections are primarily regulated by the 2007 Constitution and the 1998 Law on Elections of Councillors and Members of Parliament (the election law).<sup>12</sup> The SEC instructions supplement the laws. The electoral legal framework remains largely unchanged since the last parliamentary elections, with the exception of campaign finance. A parliamentary Committee for a Comprehensive Reform of Electoral and Other Legislation functioned from 2018 until 2019 with limited participation of the opposition. The draft election law elaborated by the Committee addressed some prior ODIHR recommendations but was not put to a vote in parliament.<sup>13</sup>

On 27 December 2019, some election-related laws were amended.<sup>14</sup> The amendments, *inter alia*, transferred the oversight of the Voter Register (VR) from the SEC to the Ministry of Interior (MoI), extended the list of election campaign misdemeanours and criminalized receiving campaign funding from prohibited sources. Some prior ODIHR recommendations, including prescribing a deadline for

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<sup>8</sup> In January 2019, a [video](#) appeared on internet featuring businessman Dusko Knežević handing an envelope with money to the former mayor of Podgorica, as donation for the DPS 2016 election campaign. The Special Prosecutor initiated criminal procedure against both. Following the release of the video, several opposition MPs filed a lawsuit against the President and the Chief Prosecutor for money laundering and forming an organised criminal group.

<sup>9</sup> The current convocation of parliament was constituted on 7 November 2016, thus its mandate expires on 6 November 2020. The mandates of the new MPs have to be confirmed within 30 days from the 30 August elections, hence by 1 October, 36 days before the expiration of the mandate of the current convocation. The ODIHR LEOM interlocutors opined that calling elections significantly earlier than envisaged date limited capacities of the ruling parties' opponents to properly prepare and conduct their campaigns.

<sup>10</sup> The complaint was filed in June, after the elections were called, by the local NGO, Civic Alliance. To date, the Constitutional Court has not issued a decision. The Constitution stipulates that the parliament decides on shortening its mandate by the majority of all MPs upon the proposal of the president, the government or at least 25 MPs and also that the parliament shall be dissolved if it fails to elect the government within the prescribed deadlines, and may be dissolved in case it does not perform its duties for a prolonged period of time.

<sup>11</sup> The Constitution defines 'Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats and others' as the peoples and national minorities who live in Montenegro. Both Montenegrins and Serbs exceed 15 per cent of the total population.

<sup>12</sup> Other applicable legislation includes the laws on Financing of Political Entities and Election Campaigns, on Political Parties, on Public Assemblies and Public Events, on Voter Register, on Media and relevant provisions of the Criminal Code, and the Law on Misdemeanours.

<sup>13</sup> See the [ODIHR and Venice Commission Urgent Joint Opinion on the draft law on election of members of parliament and councillors](#) published in July 2020.

<sup>14</sup> Amendments were introduced to the laws on Voter Register, on Territorial Organization of Montenegro and relevant provisions of the Criminal Code. A new Law on Financing Political Entities and Election Campaigns was adopted.

opening campaign accounts, were addressed. However, a number of recommendations remain unaddressed, including introducing an audit of the VR, harmonizing the electoral legislation, reconsidering the length of residence and legal competency requirements for suffrage rights, improving candidate registration regulation and enhancing the measures against the misuse of state resources. Overall, the electoral legal framework provides a basic regulation for the conduct of democratic elections but gaps, ambiguities and inconsistencies allow for selective implementation and circumvention.

As a response to the COVID-19 outbreak, a number of measures were adopted by the government, affecting also the conduct of the elections.<sup>15</sup> The measures were introduced by decisions of the government and the Ministry of Health, following recommendations of the National Coordination Body for Communicable Diseases (NCB). These measures introduced, among other things, derogations from fundamental freedoms, including a ban on public gatherings and political rallies imposed on 25 June. However, no state of emergency has been declared by parliament, as required by the Constitution.<sup>16</sup> The derogations from the freedoms implemented in such way undermine the rule of law, at odds with international commitments.<sup>17</sup> The Constitutional Court abrogated several provisions of the SEC instruction on mobile voting and the technical recommendations on epidemiological protection of voters in the electoral process as unconstitutional and recognised that the SEC adopted some measures exceeding its competence (See *Complaints and Appeals* section).

## **Election Administration**

Parliamentary elections were administered by a three-tiered election administration comprising the SEC, 24 Municipal Election Commissions (MECs) and 1,217 Polling Boards (PBs). The SEC and MECs are permanent bodies; PBs are appointed for each election. The SEC is composed of a chairperson and 10 members; MECs consist of a chairperson and four members.<sup>18</sup> PBs comprise a presiding officer and four members each. Most PBs were appointed by MECs within legal deadline, no later than ten days prior to election day, upon the nomination of political parties.<sup>19</sup> Authorized representatives of the contestants could join election commissions 20 days prior to election day, with full voting rights. All lists appointed their representatives to the SEC, and a varying number of representatives joined the MECs.<sup>20</sup> The representation of women in election commission remained low. Only one SEC member and one

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<sup>15</sup> On 15 March, the government introduced special measures, which limited freedom of movement and assembly. It also created the National Coordination Body for Communicable Diseases (NCB) to coordinate the fight against the pandemic and recommend actions and measures, including possible cancellation or postponement of the elections.

<sup>16</sup> The Constitution permits derogations of human rights in cases of a state of emergency (SoE) or war; allows for temporary restrictions of the freedom of assembly due to threat to public health and in line with the law and stipulates that the decision on the SoE is adopted by the majority of all MPs. The Law on Protection of the Population from Infectious Diseases conditions the competence of the Ministry of Health to limit gatherings due to epidemiological situations to the announcement of a SoE by parliament.

<sup>17</sup> Article 4(1) of the International Covenant on Civil and Political Rights ([ICCPR](#)) allows for derogation from human rights “[i]n time of public emergency [...] the existence of which is officially proclaimed”; paragraph 25.1 of the [1990 OSCE Copenhagen Document](#) requires that “measures derogating from [international human rights] obligations must be taken in strict conformity with the procedural requirements laid down in those instruments”, and paragraph 25.2 prescribes an obligation to officially proclaim an SoE. See also article 15 of the ECHR. The [Venice Commission Compilation on Emergency Powers](#) recommends that “[d]e facto SoE should be avoided, and emergency rule should be officially declared”. See also paragraphs 51 and 52 of the [Venice Commission Rule of Law Checklist](#).

<sup>18</sup> Four members of the SEC are nominated by the parliamentary majority, four by the opposition, one by the civil society and one by the national minority party that won the highest number of votes in previous elections. MEC chairpersons are nominated by the party that won most mandates in the given municipality in previous municipal elections. Two members are nominated by the majority in the municipal council and two by the opposition.

<sup>19</sup> Delays were reported in Cetinje and Kotor.

<sup>20</sup> The number of appointed candidate representatives varied between 2 (in Andrijevica and Žabljak municipality), and 8 (in Podgorica, Niksic, Kotor, Budva and Ulcinj municipalities). Only DPS nominated representatives to each MEC.

authorized representative, and 40 of the 117 permanent MEC members were women.

The election administration met legal deadlines and generally managed efficiently the technical aspects of the electoral preparations. The SEC held regular sessions open for observers. Media representatives were not able to attend despite prior ODIHR recommendations. It issued a number of instructions on issues insufficiently regulated by law.<sup>21</sup> It made most of its decisions, instructions and minutes of its sessions available on its website, which enhanced transparency. Voter education was low-key, and mainly limited to television spots. No additional arrangements were made for persons with disabilities, including the accessibility of the polling stations and electoral information. Overall, the SEC did not properly fulfill its regulatory role, leaving important aspects of the electoral process, such as the verification of supporting signatures and detailed procedures for results tabulation unaddressed. Many ODIHR LEOM interlocutors raised questions whether all decisions of the SEC were lawful, sufficiently justified and comprehensive.<sup>22</sup>

The quality and quantity of information published online by different MECs varied significantly.<sup>23</sup> Most MEC sessions observed by the ODIHR LEOM were open to journalists. Due to the pandemic, the training of PB members was conducted online and broadcast on television. ODIHR LEOM interlocutors expressed concern that the training was of limited efficiency, as it was lacking an interactive component.

## **Voter Registration**

The right to vote is granted to every Montenegrin citizen at least 18 years of age on election day, except those declared legally incapacitated by a court decision, contrary to international standards.<sup>24</sup> Voters are required to maintain a resident status in the country for at least two years preceding election day, at odds with international good practice.<sup>25</sup>

Voter registration is passive. The VR is a permanent database maintained by the MoI, based on information extracted from four different registers.<sup>26</sup> In the public scrutiny period, the MoI received a total of 7,884 requests for changes or corrections from voters. The MoI finalised and locked the VR for changes on 20 August, within the legal deadline; it announced the final number of registered voters at 540,026, and provided disaggregated registration data per municipality and polling station.

Overall, the voter registration process was transparent, but the lack of public confidence in the VR remains a concern. Parliamentary parties and the SEC have permanent online access to the VR. Accredited observer organisations and authorized representatives of candidate lists have the right to

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<sup>21</sup> To date, for these elections, the SEC adopted 17 regulations, including on candidate lists nomination, the location of polling stations, rules of procedure for polling boards, storage and handling of election materials, technical guidelines on the epidemiological protection of voters in the electoral process, extended mobile voting to voters in quarantine, and issued an opinion on the possibility to vote with expired ID documents. The SEC also adopted the electoral calendar and issued opinions upon stakeholders' requests.

<sup>22</sup> Some ODIHR LEOM interlocutors claimed that the SEC may have misused discretionary power by rejecting one of the candidate lists and raised concerns about the constitutionality of the SEC Recommendations about the Epidemiological Protection of Voters.

<sup>23</sup> MEC in Kolašin did not publish any information about these elections on its website, and four only published partial information (Bijelo Polje, Petnjica, Plužine, Žabljak). Only five MECs (Andrijevica, Budva, Cetinje, Mojkovac and Tivat) made available the minutes of all their sessions online.

<sup>24</sup> Article 29 of [Convention on the Rights of People with Disabilities](#) requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”.

<sup>25</sup> Paragraph I.1.1.c.iii of the [Venice Commission Code of Good Practice in Electoral Matters](#) states that “a length of residence requirement may be imposed on nationals solely for local or regional election”.

<sup>26</sup> The VR is updated from the registers of citizenship, residence, births and deaths.

inspect the VR online in the pre-election period upon request.<sup>27</sup> Two days prior to the election, the MoI conducted a cross-checking exercise of the data stored in the VR, and established that 528 voters share partially or fully identical fingerprints. The MoI considered this a technical matter that has no considerable impact on the accuracy of the VR.<sup>28</sup> Some ODIHR LEOM interlocutors claimed that the VR 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. Many ODIHR LEOM interlocutors also raised doubts about the accuracy and reliability of the VR, but did not provide any substantive evidence to support these allegations.

The SEC adopted an instruction to facilitate the exercise of voting rights amidst the COVID-19 pandemic. These recommendations in the instruction were unclear and difficult to implement. The final version of the instruction was adopted late in the process which neither ensured legal certainty nor allowed for voter awareness or a meaningful training of the PBs. The SEC also extended the possibility of voting for voters possessing expired ID documents, provided that these documents are recognised by the electronic identification devices at polling stations.

### Candidate Registration

All voters are eligible to stand as candidates. As assessed earlier, the residence requirement of two years preceding the election day is an undue barrier to candidacy. Political parties, coalitions and groups of citizens may nominate candidate lists supported by 4,261 signatures from voters.<sup>29</sup> Lists representing national minorities are required to submit 1,000 supporting signatures (300 for those representing a minority constituting up to 2 per cent of the population). Contrary to international good practice and previous ODIHR recommendations, a voter may sign in support of only one list.<sup>30</sup> At least 30 per cent of the candidates on each list must belong to the underrepresented gender.

A total of 12 nominations were submitted by the 4 August deadline. The SEC registered eleven lists and rejected one, arguing that the submitter claimed to represent the “Yugoslav community” which is not officially considered a national minority.<sup>31</sup> In total, 778 candidates competed for 81 parliamentary seats; 268 of them were women. Only SDP list was headed by a female candidate. Five lists represented national minorities – two were Albanian, one was Bosniak and two were Croat. Of the eleven registered lists, six were submitted by political parties and five by coalitions.

Verification of supporting signatures is not regulated by law or SEC instructions. In practice, data of all signatories was inserted in a database and cross-checked against the VR to verify whether the signatories were voters and whether any voter supported multiple lists.<sup>32</sup> As a result of the verification, of the

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<sup>27</sup> Observer groups and candidate representatives may request online access to the data stored in the VR. The documentation backing the changes in the individual entries is not accessible, on grounds of personal data protection. The data stored in the VR may not be downloaded nor extracted for further examination. According to the MoI, one citizen observer group seven candidate list were granted online access to the VR.

<sup>28</sup> The MoI informed the ODIHR LEOM that all identical fingerprints would undergo forensic examination after election day. They attributed identical fingerprints to the malfunction of fingerprint scanner devices or other technical problems occurring when voters provide fingerprints.

<sup>29</sup> Lists are to be supported by signatures from 0.8 per cent of the registered voters from the last elections of any kind.

<sup>30</sup> Paragraph 77 of the [2010 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) recommends that “in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list of only one party. Such a limitation is too easily abused and can lead to the disqualification of parties who in good faith believed they had fulfilled the requirements for registration.”

<sup>31</sup> The SEC ruled that the “Yugoslav people” could not be qualified as a minority in the sense of the Law on Rights and Freedoms of Minorities, due to the absence of legally prescribed cultural determinants. In the 2011 census, 1,154 citizens declared themselves Yugoslavs.

<sup>32</sup> The SEC outsourced the verification of supporting signatures to the IT department of the Parliament.

131,855 submitted signatures, 19,558 were declared invalid. After checking the dedicated web application, a number of voters alleged that their signatures were forged in support of some lists.

While dealing with complaints from the voters on forging of their signature the SEC initially denied having competence over such cases, as they are not regulated by the law, but subsequently decided to eliminate the contested signatures from the signature lists.<sup>33</sup> According to the SEC, these complaints have not been considered in time to influence candidate registration. The SEC also did not timely publish the decisions on these complaints. ODIHR LEOM interlocutors informed that a number of similar complaints were filed to prosecutor's offices who, however, initiated only two cases.<sup>34</sup> The SEC invalidated and deleted from the database supporting signatures of 13 voters, following their complaints. The candidate registration process was overall inclusive, despite the lack of clear criteria to determine the eligibility of candidate lists for national minority status and the lack of regulation for the verification of supporting signatures.

## **Campaign Environment**

The campaign was competitive with a range of contestants representing national identities, rather than political options. Main competition was between the ruling DPS and the DF-led coalition "For the Future of Montenegro".

While prospective contestants could start campaigning after the call of elections on 20 June, all public gatherings, including political rallies, were banned from 25 June until 23 July and from 7 until 10 August, based on pandemic-related safety measures.<sup>35</sup> Various forms of misuse of state resources gave the ruling party an undue advantage in the campaign and could influence the will of the voters. Notably, members of the government inaugurated a number of public infrastructure projects across the country, with public attendance.<sup>36</sup> Although not a candidate, the current president also extensively participated in campaign and institutional events.<sup>37</sup> All these events received extensive media coverage, including on the social media campaign accounts of the ruling party.

During the election period extraordinary welfare benefits were allocated by the government with unclear and allegedly subjective criteria to groups identified as "vulnerable"; additional benefits were allocated

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<sup>33</sup> Paragraph 97 of the [Code of Good Practice](#) states that "the appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative)".

<sup>34</sup> The ODIHR LEOM interlocutors opined that the lack of progress in investigation of alleged misuse of signatures for candidate nomination during the 2018 presidential elections discouraged voters to address the law enforcement in 2020 and discredited the adequacy of the candidate nomination procedure by signature collection.

<sup>35</sup> From 25 June to 23 July there was a complete ban on all public gatherings; the ban was lifted for Podgorica from 16 July; from 23 July to 7 August attendance of public gatherings, including political rallies, was limited to 40 persons outdoors and 20 persons indoors; from 7 to 10 August political rallies were banned again; after 10 August attendance in political rallies was increased to up to 50 persons indoors and 100 persons outdoors.

<sup>36</sup> During the period from 6<sup>th</sup> to 26<sup>th</sup> of August, public officials attended 49 institutional events, including President (10 events), Prime Minister (14), Minister of Agriculture (7), Mayor of Podgorica (5), Minister of Health (4), Minister of Culture (2), Mayor of Cetinje (2). Within the same period, various public officials held 14 inaugurations (supermarket, daily center for children, mini sport field, hotel, creative hub, youth service, factory, etc), 11 visits to municipalities, 8 meetings with local entrepreneurs, 5 visits to hospitals, 4 visits to road reconstruction sites, 4 inaugurations of roads, and 3 visits to the reconstruction of new facilities (school, kindergarten, faculty).

<sup>37</sup> For example, from 11 until 25 August, the President inaugurated reconstruction of roads in Gusinje and Plevlja, a hospital in Cetinje, the highway Cetinje-Čevo-Nikšić, construction of tourism facilities (Portonovi, Kumbor), a supermarket in Danilovgrad, a factory Uniprom Kap in Podgorica, the Faculty of Fine Arts in Cetinje, and visited the pensioners' associations in Kolasin; he also spoke at DPS campaign events, including in Zeta, Stara Varos, Cetinje, Pljevlja, Kotor, Podgorica and Niksic.

for pensioners.<sup>38</sup> Several ODIHR LEOM interlocutors noted that the undue advantage of the ruling party was accentuated by the persistent, systematic practice of offer of state employment in exchange for support.<sup>39</sup> A legal ban on public recruitment after the call of elections was reportedly circumvented by new temporary employment contracts.<sup>40</sup> Some cases of alleged pressure on voters, including public employees, to vote for the ruling party were noted.<sup>41</sup> The ODIHR LEOM has also received allegations that businessmen were reluctant to support opposition due to fear of retribution by the authorities. Some ODIHR LEOM interlocutors also alleged vote buying practices, mainly in Roma settlements.<sup>42</sup> The ODIHR LEOM received allegations that travel expenses of diaspora voters were sponsored by several parties. Red Cross humanitarian aid was often perceived by some voters as distributed by DPS activists.

The campaign was generally peaceful despite some protests.<sup>43</sup> The opponents largely aimed at discrediting each other, using at times confrontational language, rather than presenting campaign programs. The Serbian Orthodox Church (SOC) was significantly involved in the campaign and, with their actions and statements, confronted the ruling party. Due to the pandemic restrictions and public health concerns, the contestants significantly modified their campaigns focusing more on online and social media rather than traditional campaign methods. However, door-to-door canvassing, campaign buses and cars, billboards and smaller gatherings were also used. After the ban on public assemblies was lifted, the permissible number of participants in political rallies remained limited and no large-scale political rallies were observed.

Key campaign topics included the national identity, the geopolitical orientation of the country, fight against corruption and the pandemic, with the Law on Freedom of Religion becoming the most central theme of the campaign.<sup>44</sup> Some ODIHR LEOM interlocutors claimed that this Law was adopted by the ruling party with the aim of diverting the national debate away from the substantial issues related to the economy and corruption; at the same time, the opposition parties effectively used the law and religious rhetoric to campaign and mobilize the voters. The supporters of the SOC with participation of some opposition parties, organized throughout the country car parades (*auto-litije*) and regular religious marches (*litije*) after the ban on public gatherings was lifted.<sup>45</sup> On 24 August the police filed criminal

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<sup>38</sup> Extraordinary welfare allowances were distributed from the state budget through the local administrations. On 17 July, the Law on Pension and Disability Insurance was amended to allow for such additional benefits. According to the APC these benefits totalled EUR 1 billion.

<sup>39</sup> The 2019 [EU Progress Report on Montenegro](#) states that “strong political will is still needed to effectively address the de-politicization of the public service”.

<sup>40</sup> As of 19 August, the APC reported having initiated seven control procedures regarding irregularities in employment at public institutions and 91 on suspected failure to report new employment. ODIHR LEOM interlocutors in Berane, Rozaje, Zabljak alleged that temporary and permanent contracts were offered after the call of elections.

<sup>41</sup> The State Prosecutor initiated *ex officio* two cases related to pressure on voters. Two leaked audio recordings suggest that the ruling party's [approval](#) and the applicant's [will](#) to vote for DPS were requested for individuals to be employed at a public service. Another audio-recording captured the planned [purchase](#) of four voter ID cards by DPS.

<sup>42</sup> For example, in Budva, Niksic, Kotor, Berane, in the form of food and money offers.

<sup>43</sup> In June and July 2020, violent protests erupted in Budva, following the shift of power in the municipality from opposition to the ruling party, resulting in arrests of some opposition leaders and activists. No cases of violence have been reported during the period of observation.

<sup>44</sup> The law on Freedom of Religion or Belief and the Legal Status of Religious Communities aims at reviewing the property ownership of religious organizations, including the Serbian Orthodox Church (SOC), an institution with a high degree of influence among the population of Montenegro. On 11 June, the Head of the SOC in Montenegro, Metropolitan Amfilohije, called on voters not to vote for the parties that supported the law. On 19 August, the Metropolitan reiterated this statement while calling Montenegrins to go to vote.

<sup>45</sup> The ODIHR LEOM observed religious marches on several occasions including in Zabljak, Podgorica, Kotor and Berane. On 14 August, a *litije* was held in Berane with the participation of around 2,000 people, attended also by the coalitions ‘Peace is our Nation’ and ‘For the Future of Montenegro’. On 17 August, the NCB defined the unsanctioned gatherings “organized by SOC and certain political actors” as “the greatest threat to re-escalation of infection and thus to public health”. The SOC stated that the claim was unjustified and denied organizing any gatherings. On 23 August the car *litije* from the several regions to Podgorica was temporarily blocked by police.

charges against Zdravko Krivokapic, the leader of the “For the Future of Montenegro” list and five priests from SOC for not complying with COVID-19 health regulations during a campaign event. In total, misdemeanour charges were brought against 67 persons, while criminal charges were filed against 11 persons.

## Campaign Finance

Campaign finance is regulated by the 2019 Law on Financing Political Entities and Election Campaigns (political finance law).<sup>46</sup> Positively, the new law defined the campaign activities under its scope and disallowed some commercial activities of political parties. Amendments to the Criminal Code criminalized receiving funding from prohibited sources. However, the legal framework maintains gaps and conflicting provisions, undermining certainty and clarity of the regulation. Absence of sanctions for inaccurate reporting limits the effectiveness of oversight. The law also lacks regulation for the use of loans and comprehensive methodology for evaluation of in-kind donations.<sup>47</sup> There is a sanction for early campaigning but the law fails to clearly define the activities that constitute early campaigning. The contestants are able to declare any income to their campaign fund as coming from their regular party account without disclosing the origins of such contributions.

In April, legal amendments legalized the distribution of welfare benefits in an election year in case of pandemic.<sup>48</sup> There is public mistrust in the campaign finance regulatory system, as currently implemented, as, despite some improvements, the legal framework does not establish effective safeguards against circumvention.

Parliamentary political parties are entitled to annual public funding.<sup>49</sup> In line with the law, additional public funding totaling EUR 2.3 million was allocated for the election campaign. As required, twenty per cent of these funds were distributed in equal amounts to all contestants on 14 August, while the remainder has to be disbursed after elections among elected contestants proportionally to the number of seats won after submission of their final campaign finance reports. In addition, election campaigns can be financed from monetary and in-kind donations from individuals and legal entities, loans and party funds. The new political finance law increased donations from individuals from EUR 2,000 to EUR 5,000 and for legal entities from EUR 10,000 to EUR 20,000.<sup>50</sup> A list could spend up to EUR 2.3 million during the entire campaign. The majority of party branches on local level stated that campaign finance is organised and reported centrally.

The Agency for the Prevention of Corruption (APC) oversees campaign financing, as well as spending and recruitment decisions of public institutions for potential misuse of administrative resource. In line with the established practice, the APC contracted a private agency to collect information on campaign activities, including monitoring and documenting of the print, broadcast and online media and social networks, the use of billboards and rallies.<sup>51</sup>

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<sup>46</sup> The APC adopts instructions and methodological tools for campaign finance reporting.

<sup>47</sup> The regulation on determination of price of gratuitous services allows for calculating the average price at the discretion of contestants. The discounts are not reported as donations.

<sup>48</sup> All welfare subsidies paid by municipalities or the Ministry of Finance are published on APC website, however there is no list of beneficiaries available.

<sup>49</sup> In 2020, the public support for the parties amounted to some EUR 6.6 million. While additional public funding is provided for the rental of party premises of their choice, the funding procedure and price limits are not regulated.

<sup>50</sup> Legal entities that donated to a party or campaign may not participate in public tenders for four years.

<sup>51</sup> The APC co-operates with the media monitoring agency [Arhimed](#) since 2016. The APC informed that their contract was renewed in January 2020 after a public call, although there was lack of competition due to the limited market of companies offering a comprehensive online media and social networks monitoring. The Agency reports on its findings to the APC on a 10-day basis and the APC adjusts its oversight activities according to the reported indications.

As of 23 August, the APC announced that campaign accounts were opened by all contestants, as legally required. While contestants had to report on received donations every 15 days from the start of the campaign, most of them did not report any donations.<sup>52</sup> The APC initiated verification of some 700 donors and requested information from the Ministry of Justice on suspected engagement of donors in organised crime and requested the Ministry of Finance to verify if the donors have been involved in public procurement.<sup>53</sup>

Within the 25 August deadline, all contestants submitted expenditure reports. The expenditures reported did not correspond to the findings of the APC. Nevertheless, the APC did not impose any sanctions nor did it publish any conclusions, as this is not a legal requirement. Contestants have to submit their final campaign finance reports within 30 days after the election day.<sup>54</sup> The APC is obliged to issue its conclusions on campaign finances two months after the announcement of election results.

## Media

A high number of diverse media outlets operate in a financially limited advertising market.<sup>55</sup> Many ODIHR LEOM interlocutors voiced concerns that the dependence on financing by political and business interests undermines editorial autonomy, investigative journalism and genuine pluralism.<sup>56</sup> Thus, the media landscape reflects the polarization of political elites and, according to credible reports by the ODIHR LOEM interlocutors, leads to self-censorship by journalists. The lack of independence of the Public Service Broadcaster *Radio and Television of Montenegro* (RTCG) and the regulator *Agency for Electronic Media* (AEM) undermines their responsibility for ensuring balance and comprehensiveness of information provided to the public by media outlets.<sup>57</sup>

Some media representatives, including journalists and civil society, reported to the ODIHR LEOM on the non-transparent and biased allocation of public and private advertising to pro-ruling party media

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<sup>52</sup> The largest amounts were received by the DPS (643 individual donations totalling EUR 500,552), and the coalition “For the Future of Montenegro” (51 donations worth EUR 181,448). Seven contestants did not report any donations, although they actively campaigned. The reports on campaigning in social media contained indications of direct party payments. The research centre MANS [reported](#) that the majority of donations to DPS were made on the same day from public servants from several institutions and members of municipal councils, often in amounts exceeding their monthly earnings.

<sup>53</sup> The APC initiated 293 inspections on the use of public resources in the election campaign, 123 on violations of monthly spending restrictions, and 101 on violation of employment restrictions during the election campaign. Some 20 misdemeanours were initiated, but no corresponding reports and decisions were published. The APC required the stakeholders to address irregularities, primarily without recourse to sanctions, and issued a warning on sanctioning the media outlets that continuously provided campaign advertising without advance submission of pricelists to the APC.

<sup>54</sup> Only this report is a subject to a state audit.

<sup>55</sup> Besides the public RTCG, 5 local public TV and 14 radio stations, the Agency for Electronic Media (AEM) has licensed 3 commercial TV stations with nation-wide coverage, 14 local TV stations, 35 radios, four dailies and has registered 82 online media outlets.

<sup>56</sup> See [Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards](#) by the European Union and the Council of Europe, December 2017, and the 2019 [EU Progress Report on Montenegro](#).

<sup>57</sup> In 2017 and 2018, two RTCG Council members, the RTCG General Director, the Director of RTCG Television and an AEM Council member were dismissed. Four cases were ruled unlawful by courts. The decisions regarding the dismissal of the two Directors were confirmed by the Supreme Court. However, on 27 June 2019, the Supreme Court issued a Principal Legal Position that the election, appointment or dismissal of public officials by parliament may not be challenged in an administrative dispute or in civil proceedings, except when explicitly provided by law. Following an appeal of one of these rulings, the initial decision was annulled and returned to the first instance court, which denied jurisdiction. A decision by the second instance court is pending.

outlets.<sup>58</sup> The new Media law, which came into force on 13 August, addresses some of these issues, including by enhancing the transparency of media ownership, public funding and allocation of public advertising, and creating a public fund for media pluralism.<sup>59</sup>

Defamation of individuals was decriminalized in 2011. However, there are still a number of criminal and other provisions in the existing legislation that are contrary to international standards on freedom of expression, including the “defamation of the reputation of Montenegro”, “insult in public space” and “causing panic by the dissemination of false news”.<sup>60</sup> Since the beginning of the year, at least 24 citizens, including three journalists, have been detained and in at least five cases criminal proceedings were initiated based on these provisions; including at least 14 individuals detained for information posted or shared on social media.<sup>61</sup>

The election law and the law on electronic media contain some general provisions on campaign coverage by public and commercial broadcasters. As required by the law, the AEM Rulebook, adopted on 26 June, provide for equal conditions for contestants and for “truthful, timely and impartial” information to citizens. The RTCG and municipal public broadcasters have to provide an equal amount of free airtime. Political advertising, both in public and commercial media, should be clearly separated in programme blocks and labeled as such.<sup>62</sup> The same rules apply to the coverage of contestants’ campaign, which leaves little room for an editorial coverage of the campaign and gives prominence to coverage of institutional events in news. Reportedly, footage from campaign events was, in most cases, produced by the contestants themselves and presented by the media for free. This practice *de facto* equates it with political advertising that is not clearly labeled as such. In addition, ODIHR LEOM interlocutors noted that the coverage of institutional events held by incumbent contestants, including inaugurations, was often produced by the government itself.

Complaints related to campaign coverage are filed with the relevant broadcaster and referred to the AEM only if the broadcaster does not issue a satisfactory decision. Complaints filed to the AEM by contestants must be reviewed within 24 hours as compared to 30 days for all other. The AEM informed that in the campaign period they have not received any appeals from contestants.

The results of the ODIHR LEOM media monitoring reflect polarization of the broadcasters and the lack of independence.<sup>63</sup> The lack of editorial coverage limited analytical unbiased information available to voters. The RTCG1 generally followed its legal obligation to provide an equal amount of free airtime to

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<sup>58</sup> The issues were also raised in the report [Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards](#) by the European Union and the Council of Europe, December 2017, and the 2019 [EU Progress Report on Montenegro](#).

<sup>59</sup> A new law on the Public Service Broadcaster also came into force on the same day.

<sup>60</sup> Articles 198 and 398 of the Criminal Code penalize ‘public mockery of Montenegro, its flag, coat of arms, or anthem’ with a fine or up to one year of imprisonment and ‘causing panic by the dissemination of false news’ with up to three years of imprisonment, if committed using media. Article 7 of the Law on Public Order and Peace punishes ‘harsh insult in public space’ with a fine of EUR 250-1,000 or imprisonment of up to 30 days. On 24 January, the local NGO *Human Rights Action* filed an [initiative to the Constitutional Court to review the constitutionality of Article 398, Article 19.3 of the ICCPR](#) requires that permissible restrictions on the right to freedom of expression must be provided by law. [General Comment 34 on Article 19](#) by the UNHRC requires that “a norm, to be characterized as a law, must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly”.

<sup>61</sup> See the report of the “Human Rights Action” NGO [“Monitoring of freedom of expression and the right to privacy during COVID-19 outbreak”](#).

<sup>62</sup> On 7 August, RTCG refused to broadcast an advertising spot by the coalition ‘Black on White’, on the grounds that it does not promote the programme of the party that paid for it. The spot implies that the incumbent President is still in power in 2050 and is portrayed in hologram as “Big Brother”.

<sup>63</sup> Starting from 6 August the ODIHR LEOM conducted monitoring of the RTCG1, TV *Vijesti*, TV *Prva*, TV *Nova M* broadcasters. It also follows election-related content in five online media outlets: the CDM, *Vijesti*, *Analitika*, *Fos Media* and *IN4S*.

contestants.<sup>64</sup> Apart from the news programmes, the monitored commercial TV stations displayed bias in their campaign coverage. While *TV Vijesti* devoted the majority of its coverage (25 per cent) to the ruling party, 31 per cent of it was in a negative tone. *TV Nova M* and *TV Prva* devoted 79 and 39 per cent respectively to Decisively for Montenegro, overwhelmingly in positive or neutral tone.<sup>65</sup> While the regulation prohibits campaign coverage in the news, government representatives were regularly covered in their official capacity in prime time news on RTCG1, exclusively in a positive tone, which effectively gave the ruling party an advantage. Commercial *TV Nova M* and *TV Prva* also regularly covered government officials in the news in an overwhelmingly positive tone, and *TV Vijesti* did as well but mostly (63 per cent) in a negative tone.

In the course of the campaign RTCG1 and *TV Vijesti* broadcasted 4 and 5 debates respectively. While on RTCG1 all contestants were represented, the ruling party refused to participate in the debates on *TV Vijesti*. The discussions held during the debate provided a platform for presentation of contestants' positions on such topics as economy, foreign policy, health, education and human rights.

### Participation of National Minorities

The Constitution guarantees the equality of all citizens and provides for full political, civil, and social rights for the persons belonging to national minorities.<sup>66</sup> Whereas the Albanians, Bosniaks and Croats are well-represented by their corresponding national minority political parties, they are also integrated, as voters, members and candidates, in major political parties. By law, bilingual ballot papers in Montenegrin and Albanian have to be available in a number of polling stations.

All minority parties in the parliament have been traditionally allied with the ruling party and have received positions in the government.<sup>67</sup> While most of the non-minority political parties commonly present themselves as "civic" and inclusive of all minority groups, national minority parties appeal to their corresponding communities. A total of ten minority parties and civic organizations contested these elections either independently or in coalitions.<sup>68</sup> For the first time, a second Croat national minority party was running.

The Roma community does not have a minority party and is not represented in the parliament. They have limited access to voter education due to lack of targeted awareness programmes provided by authorities. Representatives of the Roma community complained that they are not entitled to any reserved seat in parliament, although they are more numerous than the Croats, who are entitled to one seat, if they obtain at least 0.35 per cent of the votes. The ODIHR LEOM has received allegations of

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<sup>64</sup> Each contestant is entitled to three minutes of campaign coverage directly following the two prime time news programs. In addition, minimum of 200 seconds of free of charge advertising spots are available for each contestant daily and equal participation in at least two debates per week is guaranteed. RTCG reported that some contestants were not able to send sufficient material to fill all of the free airtime.

<sup>65</sup> *TV Vijesti* respectively devoted 2318, 14 and 9 to *Peace is our Nation, For the Future of Montenegro, In Black on White, and SD*. and, predominantly in a positive or neutral tone. All other contestants received less than 8 per cent of coverage. *TV Nova M* devoted all other contestants received less than 10 per cent of coverage. . The *TV Prva* devoted 15, 12 and 10 to *SD, Peace is our Nation* and *For the Future of Montenegro* and *SDP*.

<sup>66</sup> According to the last census of 2011, Montenegrins comprise 45 per cent of the population, Serbs 28 per cent, Bosniaks – 8, Albanians – 5, Muslims – 3, Roma – 1 and Croats around 0.9 per cent.

<sup>67</sup> Currently, the Bosniak Party has three ministers, including one Deputy Prime Minister, and DUA (Albanian minority party) and HGI (Croat minority party) - one Minister each. The vice-president of Parliament is from Forca (Albanian minority party).

<sup>68</sup> Namely, the Albanian coalition 'Unanimously' (Democratic Party, Democratic Union of Albanians, Democratic Union in Montenegro); the 'Albanian List Nik Djeljosaj-Genci Nimanbegu' (Albanian Alternativ, FORCA, Democratic Association of Albanian, Tuzi Union and Civic Initiative *Perspektiva*); the Bosniak Party (BS); the Croatian Civic Initiative (NGI) and the Croatian Reform Party (HRS).

vote buying among and intimidation of the Roma.<sup>69</sup> On 9 August, graffiti insulting a national minority was noted on a number of houses in Berane. Several political parties, coalitions, and members of the government denounced the insulting messages and urged the authorities to prosecute the perpetrators.

## Complaints and Appeals

Voters, candidates and submitters of candidate lists are entitled to file complaints to election commissions and the courts. SEC decisions can be appealed to the Constitutional Court. Complaints related to voter registration are submitted to the MoI and reviewed at the Administrative Court, until ten days prior to the election day.<sup>70</sup> At odds with previous ODIHR recommendations and international good practice, the deadlines for filing and reviewing complaints remain short.<sup>71</sup> Such short timeframes compromise the possibility of rendering a reflected decision.<sup>72</sup>

Despite previous ODIHR recommendations, the election law does not prescribe procedures for handling election complains and the SEC did not issue any guidance on this matter. The lack of a legal requirement for MECs to publish decisions on complaints, as well as the selective or untimely publication of such decisions by the SEC and the Constitutional Court, challenges the transparency and the effectiveness of the election dispute resolution.<sup>73</sup> The process of appointment of judiciary and law enforcement was not always fully compliant with the Constitution, the law and internal procedures, undermining confidence in the dispute resolution mechanism.<sup>74</sup> A number of ODIHR LEOM interlocutors opined that the judiciary is susceptible to political influence as reflected in their appointment process and decision-making.<sup>75</sup>

Prior to election day, six appeals were filed to the SEC, challenging the decisions of MECs on polling board formation and locations of polling stations. Three were rejected on merits and two as inadmissible. Additional complaints were filed by voters to the SEC and the Prosecutor alleging forgery of their signatures (See *Candidate Registration* section).

During the election period, the Constitutional Court received five appeals; four of them were reviewed at close sessions, at odds with international standards and despite previous ODIHR recommendations.<sup>76</sup> On 23 July, the Court recognized the decision of the president to schedule the elections early as an individual act outside the constitutional court's control and did not examine its constitutionality.<sup>77</sup> The court rejected an appeal of the SEC denial to register a candidate list and an appeal against the SEC

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<sup>69</sup> These were received in Budva, Niksic, Kotor, Berane. ODIHR LEOM interlocutors informed that in Niksic unknown people came to the Roma at midnight and threatened with killing for the support of the ruling party.

<sup>70</sup> The Administrative Court informed the ODIHR LEOM that the judges were on vacations, and no voter registration appeals were received.

<sup>71</sup> Complaints must be filed with election commissions within 72 hours and with the Constitutional court within 48 hours. The commissions and the Administrative Court must decide within 24 hours while the Constitutional Court within 48 hours.

<sup>72</sup> Paragraph 95 of [Explanatory Report to the Venice Commission Code of Good Practice in Electoral Matters](#) recommends a time limit of three to five days both for lodging appeals and making rulings.

<sup>73</sup> Paragraph 5.10 of the [1990 OSCE Copenhagen Document](#) provides that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.”

<sup>74</sup> These appointments pertain to the Presiding Justice of the Constitutional Court, the Judicial Council, the President of the Supreme Court and the Supreme State Prosecutor.

<sup>75</sup> See [ODIHR Final report on 2018 Presidential Election in Montenegro](#) and [2019 European Commission progress report on Montenegro](#).

<sup>76</sup> Paragraph 12 of the [1990 OSCE Copenhagen Document](#) states that “proceedings may only be held in camera in circumstances prescribed by law and consistent with obligations under international laws and international commitments.” See also Article 10 of the [Universal Declaration of Human Rights](#) and Article 14 of the [ICCPR](#).

<sup>77</sup> Under Article 148 of the Constitution, individual legal act shall be in conformity with the law and are subject to judicial protection.

decision to uphold mergers of seven polling stations by the MEC in Podgorica that alleged discrimination and disenfranchisement of voters.<sup>78</sup> In the latter case, the adjudication procedure prevented the SEC from approving the list of polling stations within the legal deadline. Upon two complaints by NGOs, the Constitutional Court abrogated as unconstitutional the residence requirement in the SEC instructions on mobile voting and the reference to that instruction from the COVID-19 related technical recommendations. The decision prescribed that voters in quarantine were entitled to vote in person at polling stations, despite the restriction on movement, while all voters, entitled to mobile voting, including those in self-isolation, could request the polling boards to conduct it, even if the voters stayed in a different municipality.<sup>79</sup> The Court also ruled that the SEC was not competent to adopt health-related regulations and the respective measures contradicted the principle of legality.

### **Citizen and International Observers**

The law provides for citizen and international observation of all aspects of the election process with reasonable accreditation requirements and deadlines. The SEC accredited 1,824 citizen observers. The Center for Democratic Transition (CDT), the Center for Monitoring and Research (CeMI), and the Network for Affirmation of NGO Sector (MANS) were active at observing the campaign, the electoral preparations, political party financing and media monitoring. Despite the organisational challenges posed by the pandemic, CDT accredited 463 and CeMI 1,355 observers. Both organisations conducted parallel voting tabulation. A total of 265 international observers, including local staff, were accredited to observe the elections, including 115 by the European Network of Election Monitoring (ENEMO).

### **Election day**

The IEOM did not observe election day proceedings in a systematic or comprehensive manner, and mission members visited a limited number of polling stations in 13 of the 24 municipalities. In the polling stations visited, the voting process was transparent, and procedures were generally followed. The design and setup of polling stations were often not suitable for use by persons with physical disabilities. Sometimes, the small size of voting premises and the large number of PB members and voters contributed to overcrowding. Although personal protective equipment was provided, health protocols were not implemented consistently. Procedural shortcomings noticed in some instances included identification of voters wearing masks and announcement aloud of the voter's names. The secrecy of the vote was at times compromised by voters who did not fold their ballots appropriately before casting.

The few counts observed were in general smooth and efficient, but procedures were sometimes speeded up and inconsistently followed. Tabulation, when observed, was well-organized, but the lack of uniform procedures applied by MECs underline the need for written guidelines.

Throughout the day, the SEC provided regular updates on voter turnout per municipality. The website of the SEC became unavailable for several hours, which the SEC attributed to a hacking attack. The SEC made preliminary results available at its website in real time after the tabulation started, but the public announcement of results in media was based on the parallel vote tabulation by the citizen observers. The preliminary turnout was reported at 76.7 per cent.

The prosecutor's offices reported that they initiated investigation into nine alleged election day violations, including buying of voter IDs, vote buying, pressure of voters and breach of the secrecy of

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<sup>78</sup> In the dissenting opinion to the judgment of the Constitutional Court, it was stated that the SEC abused its competence and performed the functions of the Administrative Court in assessing the content of the statutory documents of the party. The appeal on the merger of the polling stations was filed by the Democratic Montenegro.

<sup>79</sup> The application concerning the technical recommendations filed by the Centre for Civic Education was partially dismissed, as the relevant residence requirement had in the meantime been abrogated from the SEC recommendations.

vote. Few complaints were filed to the MECs, including one challenging the constitutionality of the closed party system.

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**MISSION INFORMATION & ACKNOWLEDGEMENTS**

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Podgorica, 31 August, 2020 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavor involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly (OSCE PA). The assessment was made to determine whether the elections complied with OSCE commitments and other international obligations and standards for democratic elections and with national legislation.

Ms. Margareta Cederfelt was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observers. Mr. Tamás Meszerics (Hungary) is the Head of the ODIHR LEOM, deployed from 5 August. The OSCE PA Delegation includes 5 international observers. The ODIHR LEOM includes 11 experts in the capital and 10 long-term observers deployed throughout the country. Each of the institutions involved in this International Election Observation Mission has endorsed the 2005 Declaration of Principles for International Election Observation.

This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its next Standing Committee meeting.

The IEOM wishes to thank the authorities for their invitation to observe the elections, and the Central Election Commission and the Ministry of Foreign Affairs for their assistance. They also express their appreciation to other state institutions, political parties, media and civil society organizations, and the international community representatives for their co-operation.

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*The English version of this report is the only official document.  
An unofficial translation is available in Montenegrin.*