



INTERNATIONAL ELECTION OBSERVATION MISSION Montenegro — Early Parliamentary Elections, 29 March 2009

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Podgorica, 30 March 2009 – The International Election Observation Mission (IEOM) for the 29 March 2009 early parliamentary elections in Montenegro is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE).

The elections are assessed for their compliance with the OSCE commitments and Council of Europe standards for democratic elections, as well as with Montenegrin legislation. This statement of preliminary findings and conclusions is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, including the tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The delegation of the PACE will present its report at the April 2009 part of the plenary session of the Assembly in Strasbourg.

The institutions represented in the IEOM wish to thank the Montenegrin authorities for their cooperation and stand ready to continue their support for the conduct of democratic elections.

PRELIMINARY CONCLUSIONS

The 29 March 2009 early parliamentary elections in Montenegro met almost all OSCE and Council of Europe commitments, although the process again underscored the need for further democratic development. A key challenge is public confidence; frequent allegations of electoral fraud and a blurring of state and party structures have created a negative atmosphere among many voters.

Other important fundamental issues include harmonization and reform of the electoral framework, lack of adequate legal redress, and insufficient critical reporting by most broadcast media.

The election campaign allowed a wide range of electoral lists to present their programmes to voters freely. Meetings, door-to-door canvassing and rallies were common features of the campaign. Again this year, issues regarding party financing and the blurring of state and party resources were raised by most opposition parties, especially in regards to buildings owned by the governing party and rented to the government. However, the recent passage of a new Law on State Property should remedy the issue in the future.

As in previous years, allegations of pressure on voters and ID buying were commonly reported by some opposition parties, media and a number of individuals. Although allegations (which are a regular opposition concern) are notoriously difficult to quantify and mostly not substantiated, the authorities again failed to take sufficient measures to properly address such allegations, which could have enhanced public confidence in the electoral process.

The media offered extensive and informative coverage of all contestants in its election-related programming, providing voters a wide array of viewpoints, including those critical of the government. However, the news programming on all TV stations monitored predominantly covered the activities of government and state officials, offered mainly in an uncritical light.

Overall, the elections were professionally organized and there is confidence in the election administration bodies. State Election Commission (SEC) sessions were open to observers and there was a high degree of transparency regarding its activities.

The parliamentary elections are regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. However, the legal framework has yet to be fully harmonized with the new Constitution and does not provide adequate mechanisms for processing election-related complaints. The Constitutional requirement of two-year residency is not consistent with the principle of universal suffrage. The right to elect and be elected should be granted to all citizens as a fundamental human right, and any practical considerations for the implementation of this right should be addressed in legislation.

Other positive aspects of the election process included:

- A variety of safeguards are in place to protect the integrity of the ballot;
- The SEC took an inclusive approach during candidate registration, with no political contestants rejected;
- The voter registration system has benefitted from an improved legal framework, voter registers are generally accurate and the process for registration and review was well organized and transparent;
- Regular debates and talk shows on public and private TV broadcasters provided a broad opportunity for electoral contestants to present their platforms to voters.

Additional shortcomings that were noted included:

- The right to seek legal redress in election disputes was undermined by a lack of clarity in complaint procedures and a failure to substantively consider some complaints;
- Courts' consideration of election cases could have benefitted from a higher degree of transparency and due process by allowing greater access to the proceedings;
- Half of mandates won by an electoral list can be allocated to the candidates in any order by the party leadership, limiting transparency and potentially misleading voters;
- A general absence of civic information programmes, in particular protection of suffrage rights, either on the part of election commissions or civil society.

Election day was well organized with very few incidents reported. Overall, IEOM observers assessed the voting process positively in 98 per cent of polling stations visited. However, IEOM observers noted a small number of irregularities. Procedures were not always followed in the order established by law, especially regarding the signing of voter lists, inking, and receipt of ballots. Group voting was observed in 6 per cent of cases, and there were three instances of tension or unrest noted inside polling stations, as well as two cases of voters taking photographs of their ballots. The process of closing and counting was observed by 67 observer teams and was evaluated positively in all but one case.

Background

Early parliamentary elections were called by the President of Montenegro on 27 January, the day after the parliament voted to shorten its mandate. These were the first parliamentary elections held under the new Montenegrin Constitution, which was adopted in October 2007. Although elections were expected before the end of 2009, certain parts of the opposition have criticised the timing and some parties challenged the legal framework.

The Montenegrin Constitution establishes a unicameral parliament of 81 deputies, elected for four-year terms. The Law on the Election of Councillors and Representatives (Election Law) provides for the allocation of mandates, with a 3 per cent threshold, on the basis of a proportional list system, within a single nationwide constituency. Five of these mandates, however, are allocated to a ‘special’ constituency comprising 70 polling stations designated for these elections by parliament; these are in areas populated primarily by ethnic-Albanians.

By law, one half of the mandates won by an electoral list must be awarded to candidates in the order in which they appear on the list, while the other half can be allocated to the remaining list of candidates in any order by the party leadership. This mechanism has been criticized by the OSCE/ODIHR and the Council of Europe in past reports, as it limits transparency and may be misleading to voters who cannot be certain which candidates will represent them.

Legal Framework

The 2007 Constitution generally guarantees fundamental civil, political, and human rights and freedoms. The Constitution provides that the right to elect and stand for office shall be granted to every Montenegrin citizen (*državljanin*) 18 years or older, with at least two years of residence in the country. The two-year residency requirement, inherited from the pre-independence period, is not consistent with the principle of universal suffrage. The right to elect and be elected should be granted to all citizens as a fundamental human right, and any practical considerations for the implementation of this right should be addressed in legislation.

Parliamentary elections are regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. However, the legal framework has yet to be fully harmonized with the Constitution, and most issues in the recommendations made by previous OSCE/ODIHR reports have not been fully addressed. Concerns included issues with voter lists, candidate registration, voter education, voting, count and tabulation, complaints and appeals, campaign financing and the blurring of state and party structures.

The Election Law is the primary piece of legislation regulating parliamentary elections. It was initially adopted in 1998 and amended several times, most recently in 2006. Discussions to harmonize the Election Law with the Constitution, which requires a two-thirds parliamentary majority, stalled in the parliamentary working group, mainly due to a lack of consensus over implementation of the Constitutional provision for “authentic representation” of national minorities in parliament. Political parties have disparate views of the mechanism that would best enshrine this principle. The current deadline for finalizing this harmonization process is October 2009, but this is an extension from the initial deadline of January 2008.

Election Administration

Elections are administered by three levels of election commissions; the State Election Commission (SEC) and 21 Municipal Election Commissions (MECs) are professional bodies, while some 1,155 Polling Boards (PBs) were appointed just prior to the elections. All bodies have a ‘permanent’ composition, which includes a minority nominated by opposition parties and that generally reflect the political composition of the body that appointed them and to which they are responsible: the SEC to Parliament and the MECs to municipal assemblies. By law, these commissions are appointed for four-year terms, although in practice they are reappointed after each election. Although not prohibited by legislation, some permanent members concurrently held local government appointments, or were members of the judiciary, which could lead to potential conflicts of interest.

Submitters of candidate lists can appoint authorised representatives as ‘extended’ members of election administration bodies. This promotes inclusiveness and transparency, although these members join SEC and MECs after many decisions have already been made. The law does not require remuneration for these members; however, in the last elections, the SEC took a decision to do so. In these elections, the SEC determined that there were insufficient public funds to pay these members.

The elections were professionally organized and there is confidence in the election administration bodies. SEC sessions were open to domestic and international observers; on occasion, lively discussions took place among SEC members. There was a high degree of transparency regarding commission activities, such as ballot printing. Election commissions at all levels met most deadlines required by the law. As was in the case in past elections, there were no information programmes organized by the SEC regarding citizens’ electoral rights.

Voter Registration

The 2008 Law on Registers of Electors (LRE) does not fundamentally alter the voter registration procedures, nor does it provide for the creation of new electoral registers. However, it does provide that *državljanin* rather than *građanin*,¹ are eligible for registration as electors. This brings the LRE into line with the Constitution and the Law on Citizenship.

After the adoption of the new LRE, four municipal authorities began to delete entries of people who had not acquired Montenegrin citizenship but who had previously voted, causing several individual appeals to be filed to the Administrative Court. In all cases, the court upheld the appeals on grounds including that the LRE does not provide explicitly for deletion of pre-existing entries. Thus, a significant number of people who are not citizens of Montenegro remain on the voter registers and were able to vote in these elections. There are also a large number of people whose citizenship is unknown.

There is a high level of confidence in the accuracy of the voter registers. The 2008 LRE retains provisions that afford a high degree of transparency in the registration of electors and election contestants’ access to voter registration source data, the latter of which raises concerns over data protection. The LRE improves procedures for resolving registration-related complaints and appeals. Very few appeals were filed with regards to voter registration. On 19 March, the day after the closing of the registers, it was announced that 498,305 electors were registered to vote; an increase of some 1.6 per cent since the April 2008 presidential election.

¹ Defined as citizens of Federal Republic of Yugoslavia and, subsequently, the State Union of Serbia and Montenegro who are permanently resident in Montenegro.

Candidate Registration

Political parties and groups of citizens may register to contest elections separately or in coalition on the basis of election (candidate) lists. Lists must be supported by the signatures of 1 per cent of the electorate, except for lists who “represent Albanians in Montenegro” who are required to provide only 1,000 supporting signatures. The Election Law does not require the SEC to scrutinise the lists of signatures, but only confirm that the required number was submitted.

All major parties contested the election. Ten parties and six coalitions were registered by the SEC. In total, 24 parties and 970 candidates contested 81 parliamentary seats. The SEC took an inclusive approach in the registration of all candidate lists and no political contestants were rejected; the provision allowing for corrections of errors within 48 hours was applied reasonably by the SEC.

Campaign Environment

For these elections, the governing Democratic Party of Socialists (DPS) - the Social Democratic Party (SDP) remained in coalition, joined by the Croatian Civic Initiative (HGI) and the Bosniak Party (BS) under the banner, “European Montenegro–Milo Đukanović”. The Democratic Centre (DC) entered a coalition with the Liberal Party (LP) to contest the vote as “For a Different Montenegro” coalition. New Serb Democracy (NOVA) ran separately from a new Serb National List (SNL) coalition composed of the Serb Radical Party (SSR) and the Party of Serb People (SSN). The Socialist People’s Party (SNP) and the Movement for Change (PzP) also ran independently. The Montenegrin Communists, a new Party of Pensioners and Invalids (SPI) and a coalition between the People’s Party (NS) and the Democratic Serb Party (DSS) also stood. Four parties and two coalitions from national minority groups participated in the elections.

Overall, the campaign environment was peaceful and parties/coalitions campaigned freely throughout the country. The campaigns of most contestants focused on the economy, crime and corruption, and the financial crisis. Local issues also featured prominently. Political parties seemed to have largely reached a consensus over the desirability of Montenegro’s movement towards EU integration. Positions regarding membership in NATO remained ambivalent. The recent recognition of Kosovo’s independence by the Montenegrin government did not appear to be a major feature of the campaign. Rallies ranged from 50 to 1,000 participants and parties reported that they were focusing on door-to-door campaigning.

Small opposition parties tended to advertise themselves through local broadcasters, while the large parties ran their media campaigns centrally, on national TV stations. Billboards were used extensively by a number of different parties and coalitions. Most appeared after the drawing of list order by the SEC on 11 March and featured the contestants’ list number.

Many opposition parties complained to the OSCE/ODIHR EOM about the new campaign financing system, established by the 2008 Law on Financing of Political Parties; certain parties noted their income had been reduced by some 30 per cent. Although the law provides an initial state subvention (17,000 EUR in these elections) to each electoral list, parties could also expect 13,500 EUR in additional subvention for each mandate won. Also, the new law established criteria for soliciting individual and corporate donations for campaigns.

Financing of political parties has, however, been a longstanding concern among the opposition. They believe that they are at a disadvantage vis-à-vis the ruling parties, as the DPS rents its party building to the government for a reportedly substantial fee. This also creates a blurring between state and party structures, contradicting Montenegro's commitment under paragraph 5.4 of the 1990 OSCE Copenhagen Document. It is expected that the new Law on State Property, which took effect on 28 March, should remedy the issue in the future.

As in previous elections, some opposition parties claimed that vulnerable groups (including teachers, students and state workers) were intimidated by the governing DPS. A news report by *Vijesti* on teachers being pressured to support the DPS resulted in the Ministry of Education issuing a letter to all educational establishments stressing that such actions are illegal and that appropriate measures would be taken in any such cases. In a national interview, the Parliamentary Speaker did not rule out that isolated instances of intimidation may have occurred. However, to the knowledge of the OSCE/ODIHR EOM, no official investigations over the allegations were undertaken.

Allegations that the authorities engaged in buying the ID cards from opposition supporters and undecided voters to suppress voting were common among certain opposition parties and were covered by certain newspapers. The OSCE/ODIHR EOM looked into the matter extensively, with only one individual stating first-hand that she had been approached as part of such a scheme. Although these allegations (which are a regular opposition concern) are notoriously difficult to quantify and mostly not substantiated, the authorities again failed to take sufficient measures to properly address such allegations, which could have enhanced public confidence in the electoral process.

The Media

Montenegro has a diverse media environment, generally enabling freedom of expression and offering voters a wide range of political views. However, there are a number of unresolved issues, such as the downgrading of competencies and autonomy of the broadcast media regulator, unresolved cases of violence against media professionals and disproportionately high fines in defamation cases.

Television is, by far, the most important source of news and information. Publicly funded Radio Television Crna Gora (*RTCGI*), in particular, offered voters an opportunity to compare contestants on four televised debates and with free coverage, provided equally as per adopted rules to all registered contestants and often with political parties criticizing the government. Private broadcasters aired talk shows and special election programmes attended by different political parties and candidates. Paid advertising was used extensively by a number of contestants, although some complained to the OSCE/ODIHR EOM about high advertising prices.

Despite the pluralistic media environment, most outlets remain strongly influenced by their owners and questions exist about broadcast media's independence from political influence. In primetime news, all monitored TV stations provided extensive coverage of the activities of the authorities, many of who are standing as candidates, outside of the campaign context. There was a notable tendency to cover their work and activities positively, often pointing out achieved results and successes. Critical and independent opinions on the authorities' performance were generally absent in the news programmes of monitored broadcast media.

During the media monitoring of the four weeks preceding the elections,² Public TV devoted 61 per cent of its political and election prime time news coverage to governing bodies. This included 40 per cent of time going to the government, 3 per cent to the president, 4 per cent to the speaker of the parliament and 14 per cent to the ruling coalition. 80 per cent of the government's coverage was positive in tone. By comparison, the coalition "For a Different Montenegro", PzP and SNP received 6 per cent respectively. This coverage was mainly positive or neutral in tone.

Private broadcasters monitored adopted a similar approach and devoted extensive, favourable coverage to the incumbents. The most popular private broadcaster TV IN devoted 67 per cent of its political and election prime time news coverage to governing bodies. This included 37 per cent of time going to the government, 1 per cent to the president, 3 per cent to the speaker of the parliament and 26 per cent to the ruling coalition, which was mainly positive or neutral in tone. The second most-featured political party was the SNP (11 per cent, mainly positive coverage), followed by the "For a Different Montenegro" coalition (10 per cent, mainly positive coverage).

Other private TV stations devoted more than half of their political and election-related prime time news to the activities of government ministers, all of which was overwhelmingly positive or neutral in tone. On the other hand, regular talk shows and special programmes provided contestants with the opportunity to inform voters of their policies and platforms.

The Broadcasting Agency, which deals with media-related complaints, received only one official complaint on media coverage of the campaign.

Print media provided lively coverage of the election campaign and a plurality of views. State-funded *Pobjeda* supported the government and their coalition parties. By contrast, private newspapers *Dan* and *Vijesti* provided their readers with more analysis and critical reporting of the government. Opposition parties (especially NOVA and SNP) received the bulk of coverage in *Dan*, whereas *Vijesti* gave comparable coverage to opposition and incumbent parties.

Complaints and Appeals

The Election Law does not comprehensively and clearly address the mechanisms for processing complaints about various electoral violations and there is apparent confusion among interlocutors as to the procedures for filing complaints on certain issues.

A number of challenges to the legal framework's constitutionality were brought by SNP. They included legal arguments that the extension of the deadline for harmonization of the Election Law with the Constitution by a simple majority was not legitimate and that the Election Law was, thus, unconstitutional. These cases, as well as others challenging the constitutionality of the LRE and the five mandates for the ethnic Albanian areas, were all rejected by the Constitutional Court.

Two complaints were filed by opposition parties to the SEC challenging MEC appointments of PBs in Kolašin and Herceg Novi. The parties argued that they were not given

² Media monitoring commenced on 2 March. It included *RTCGI*, privately owned TV IN, NTV *Montena*, MBC, TV *Pink M* and TV *Atlas* and the daily newspapers *Vijesti*, *Dan* and *Pobjeda*.

representation on PBs, as was their apparent right under the Election Law. The SEC held that the issue was beyond its competence, although in the Kolašin case the SEC recommended that the MEC act on the proposal of the complaining party. In this case, the Constitutional Court confirmed the SEC decision on 20 March. The Administrative Court also held that it had no jurisdiction over this complaint, a decision confirmed by the Supreme Court on 27 March. The substance of these complaints were left unconsidered before the election, thus limiting the ability to seek legal redress against actions of the election administration. Furthermore, that the SEC was found not responsible for such complaints underscores its lack of oversight of lower level election administration bodies.

Hearings of the Constitutional Court and Administrative Court were not always open to parties in the dispute, the public or election observers. This was in apparent contravention of the Law on the Constitutional Court and the Election Law and undermined important principles of transparency and due process in adjudication of electoral disputes.

No election-related criminal conduct was reported to the authorities. Political parties and NGOs told the OSCE/ODIHR EOM that citizens feared for their economic security (i.e., losing jobs in public institutions) if they were to come forward as witnesses. Certain opposition parties also expressed a lack of confidence in the election administration, law enforcement bodies and courts to effectively protect their rights.

Participation of Women

According to the Constitution, both genders enjoy equal rights, freedoms and opportunities. The 2007 Law on Gender Equality provides measures for achieving balanced representation of men and women at all levels in the legislative and executive branches of the state. No legally established electoral quotas for women are currently in place.

Political party membership is predominantly male. In the outgoing parliament, only 11 per cent of all deputies were women (9 of 81). The Vice Prime Minister for European Integration is the only woman currently in government. Women were under-represented on the candidate lists for these elections (15 per cent, overall). The majority of parties / coalitions had no female candidates in their top five places on the lists and only five lists contained more than one woman among their top ten contestants.

In the election administration, 3 of 11 SEC members were women. In polling stations visited on Election Day by observers, 19 per cent of polling board chairpersons were women and there were only two female MEC chairpersons.

Participation of National Minorities

Montenegro's ethnic composition, according to the 2003 census, is 43 per cent Montenegrin, 32 per cent Serbian, 8 per cent Bosniak, 5 per cent Albanian, 4 per cent Muslim, 1 per cent Croat, and a further 7 per cent of other ethnic groups. The ethnic-Albanian population is concentrated mainly in the municipalities of Ulcinj, Plav and the Tuzi district of Podgorica. The Bosniak population lives predominantly in the northern part of the country in the municipalities of Berane, Rožaje and Bijelo Polje. A sizeable population of Roma also exists, spread throughout the country, with the biggest concentration around Podgorica.

A large percentage of Roma still do not possess personal identity documents; the situation is even more complicated when it comes to the Roma, Egyptians and Ashkali who fled Kosovo.

On 8 November 2007, the government endorsed the Strategy for the Improvement of the Position of Roma Population. The participation and integration of national minorities in Montenegro into the country's electoral and political processes has generally been positive.

Domestic Observers

The legislative framework provides for access of international and domestic observers to observe the preparation and the conduct of the election. Two domestic non-party observer organizations – the Centre for Democratic Transition (CDT) and the Centre for Election Monitoring (CEMI) – engaged in election observation activities during the election period. This included observation of the pre-campaign period, the campaign and Election Day, as well as a partial parallel vote tabulation. Domestic non-party observers were present in 40 per cent of polling stations visited by IEOM observers.

Election Day

Election day was well organized with very few incidents reported. IEOM observers attended 60 opening procedures and all observers evaluated the overall conduct of the openings as good or very good. Voting was observed in some 700 polling stations and observers evaluated the conduct of voting as good or very good in 98 per cent. The process of closing and counting was observed by 67 observer teams and was evaluated positively in all but one case.

Certain problems during the opening of polling stations included mainly procedural issues such as not drawing lots to determine responsibilities of polling board (PB) members, ballot boxes not being sealed in the presence of the first voter, and control slips not being signed by all PB members and the first voter.

The voting process was also evaluated in highly positive terms by observers with only limited irregularities noted. Authorized party representatives were noted in 93 per cent of polling stations visited. However, the legal requirement to have two PB members appointed from opposition parties was not respected in 5 per cent of cases. As well, ballot boxes were reported to not have been properly sealed in 5 per cent of polling stations visited. Procedural issues were again not always followed in the order established by law, especially regarding the signing of voter lists, inking, and receipt of ballots. Group voting was observed in 6 per cent of cases, giving rise to some concern. Proxy voting and identical signatures in the voter lists were both noted in 3 per cent of polling stations observed. Three instances of tension or unrest were noted inside polling stations, as were two cases of voters taking photographs of their ballots. Very positively, observers reported high levels of transparency in all aspects of election day procedures.

During the 67 closing and counting procedures observed, all but two teams noted the following of procedures positively, and organization was also assessed positively in all but two polling stations. Transparency of the count was evaluated as good or very good in all polling stations observed. Procedures were not always followed in the order established by law, but this did not appear to impact the overall transparency of the counts. In a limited number of cases, observer teams reported that people waiting to vote at closing time but were not allowed to do so. Domestic observers were observed as being present in 55 per cent of cases. There were five cases of special marks on ballots (circles, squares, triangles, etc.) observed. Observers were given unrestricted access in all cases.

Although the number of teams that observed the entire tabulation process at MEC was limited, 13 MEC tabulations were followed and all were evaluated as good or very good. In 5 cases, MECs instructed PBs to correct their Records of Work and in one case the MEC itself made a change to a PB Record. However, this did not appear to impact the overall transparency of the process.

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

MISSION INFORMATION AND ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission arrived in Podgorica on 26 February with 13 experts in the capital and 14 long-term observers deployed throughout Montenegro. On election day, some 189 short-term observers were deployed in an International Election Observation Mission (IEOM), including an 22-member delegation from the OSCE Parliamentary Assembly (OSCE PA) and a 15-member delegation from PACE. In total, there were observers from 41 OSCE participating States. The IEOM observed voting in over 700 polling stations out of a total of 1,155, and counting in some 67 polling stations. The IEOM also observed the tabulation process in 13 MECs.

Mr. Roberto Battelli (Slovenia), Special Representative for South East Europe of the OSCE Parliamentary Assembly and Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observer mission and Mr. Andreas Gross (Switzerland) headed the delegation of the Parliamentary Assembly of the Council of Europe. Dr. Artis Pabriks (Latvia) is the Head of the OSCE/ODIHR Election Observation Mission.

The IEOM wishes to thank the Speaker of Parliament for the invitation to observe the elections, the State Election Commission for providing accreditation documents, and other state and local authorities for their assistance and co-operation. The IEOM also wishes to thank the OSCE Mission to Montenegro for their co-operation and support.

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