



INTERNATIONAL ELECTION OBSERVATION MISSION Montenegro – Presidential Election, Second Round, 2 April 2023

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

In a competitive run-off, candidates were able to campaign freely and enjoyed equal opportunities to reach out to the voters; however, their harsh rhetoric and biased coverage of the campaign by some media did not contribute to the ability of voters to make an informed choice. The law lacks explicit regulation on almost all aspects of the second round and important clarifications were not given on the regulation of campaign finances and the media, detracting from legal certainty. Still, the election administration implemented provisional solutions on a number of procedural issues, which addressed some of the legislative gaps, and adequately managed the process. In general, election day proceeded orderly and the voting process was well administered.

On 20 March, the State Election Commission (SEC) announced the preliminary results of the first round of the presidential election held on 19 March. No candidate received the legally mandated absolute majority to be elected. As a result, on 23 March, the SEC announced a second round to be held on 2 April between the two frontrunners, the incumbent Milo Đukanović and Jakov Milatović. None of the first round candidates questioned the results of the first round.

The legal framework is adequate for the conduct of democratic elections but it lacks regulation on almost all aspects of the second round, including on composition and work of election administration, voter registration, accreditation of observers, the campaign, campaign finance, and media; this results in legal uncertainty. Further, the timeline for submitting and resolving appeals on the first-round results does not ensure that the first round can be finalised in time for the second round. The SEC regulated certain aspects of the second round, thus reducing legal uncertainty and contributing important safeguards to the integrity of the process.

Overall, the second round was administered efficiently. The SEC concluded that the two rounds constitute a single electoral process and decided *inter alia*, that the composition of election commissions remains unchanged and that also authorized representatives of all first-round candidates retain their mandates for the second round. While this decision was consistent with the SEC's interpretation of the law, given the endorsement of both candidates by several parties the decision resulted in a greater representation of parties supporting Mr. Milatović on Municipal Election Commissions (MECs). Despite some procedural shortcomings identified on election day in the first round, particularly pertaining to counting, no additional training for lower-level commissions was organized and no voter education was conducted between the two rounds. In total, 13 of the 25 MECs did not publish first round results disaggregated per polling station, as required by law, limiting transparency and possibility for public scrutiny.

The SEC decided that all previously accredited observers may continue to observe the second round and new observers from already accredited organizations may be accredited, enhancing the transparency and accountability of the process. During the second round campaign, one national citizen observer organization, the Center for Monitoring and Research (CeMI) received death threats necessitating police protection, raising concerns about their ability to conduct their observation activities free from intimidation.

The law does not state whether the voter register should be updated between the two rounds. As such, the voter register was not updated ahead of the second election day. Several ODIHR EOM interlocutors

alleged that voters from abroad would vote in the second round, raising concerns about the accuracy of the data on permanent residents and the absence of clear and objective criteria for determining how to acquire and lose permanent residence status.

The second-round campaign took place in an overall calm environment, with campaign activity more subdued than before the first round. Fundamental freedoms of assembly and expression continued to be respected and the candidates enjoyed equal opportunities to reach out to the electorate. Mr. Milatović organized rallies across the country while Mr. Đukanović mostly held closed meetings. Both candidates also actively appealed to diaspora communities. The campaign took on a more negative tone during the second round, with candidates framing the choice between them in increasingly severe terms. Neither of the candidate's campaigns included messages specifically addressing women.

The law lacks sufficient regulation of campaign finances for the second round and the candidates were not adequately informed about their obligations, potentially having a negative effect on accountability. Campaign expenditure limits are provided for but it is not clear whether the limit applies to one or both rounds. According to the Agency for the Prevention of Corruption (APC), mandated with oversight of campaign regulations, all regulations, including donation reporting requirements, are applicable also to the second round, including for the unsuccessful first-round candidates. The two second-round contestants submitted their bi-weekly donation reports, which were published by the APC; this contributed to the information available to voters. By law, expenditure reports are due five days prior to election day, however, the APC informed the ODIHR EOM that no expenditure reports had to be submitted before the second round. The fact that the APC did not issue any written regulations detracted from clarity and created some confusion among the stakeholders. Some of the first-round candidates actively campaigned during the second round in favour of one candidate. Third-party campaigning is not regulated by law, undermining the transparency of campaign finances.

While the candidates enjoyed equal access to the public media, the media landscape continued to be polarized along political lines and media outlets remained highly vulnerable to internal and external influence from corporate and political interests. The Agency for Electronic Media (AEM) informed the ODIHR EOM that the election-related provisions pertaining to the media, including its regulations issued prior to the first round are applicable also to the second round. The AEM did not publish this clarification on its website nor communicated it to broadcasters, contributing to legal uncertainty on this matter. The national public broadcaster held one debate and, in line with the law, offered the candidates free airtime under equal conditions, while the broadcaster of the Municipality of Podgorica showed a clear bias in favour of one candidate. The ODIHR EOM media monitoring concluded that the private broadcasters offered limited and at times biased news coverage, thus not contributing to an environment enabling voters to make an informed choice.

Following the first round, lower-level commissions did not receive any complaints alleging election day irregularities. According to the SEC and the Constitutional Court, the announcement of tabulated preliminary results is viewed only as an arithmetical calculation and therefore no challenges on the first-round results could be filed with the two bodies. The accountability of the process was thus limited and effective means of legal address were not ensured, which is at odds with international standards and OSCE commitments. Before the second round, the Constitutional Court reviewed all complaints filed prior to the first round; the court session was closed but observed by the ODIHR EOM. No decisions were published limiting the transparency of the process.

The IEOM did not observe election day proceedings in a systematic or comprehensive manner but visited a limited number of polling stations across the country. The election day was generally calm, and orderly with procedures followed in polling stations visited. The presence of authorized representatives and citizen observers enhanced transparency of the process. On election day and the day preceding, police conducted investigations of one party's premises pertaining to allegations of buying

voter identity cards. The counting process was transparent where observed and the tabulation in the 10 municipalities visited was conducted mostly in an orderly and efficient manner, but the layout of the facilities did not always allow for a meaningful observation by IEOM observers.

PRELIMINARY FINDINGS

Background and Post-First Round Developments

On 20 March within the legal deadline, the State Election Commission (SEC) published the preliminary results of the first round of the presidential election held on 19 March. None of the seven candidates obtained the 50 percent of the vote necessary to secure a first-round victory. On 23 March, the SEC established that a second round would be held on 2 April between the two candidates with the most votes, the incumbent Milo Đukanović (Democratic Party of Socialists) and the former Minister of Economic Development Jakov Milatović (Movement Europe Now).¹ Following the election, no candidate questioned the results of the first round.

The ongoing institutional and constitutional crisis and the political impasse that led to early parliamentary elections being called continued to characterize the background of the second round. Three days before the first round, on 16 March, President Đukanović dissolved parliament, and on the following day, he called early elections for 11 June.² On 17 March, a constitutional complaint was filed by 41 members of the parliament (MPs) against the presidential decree, alleging that it did not cite any legal grounds for the parliament's dissolution.³ On 24 March, the President publicly declared that MPs who disregard his decree dissolving parliament will be held criminally liable. In the period leading up to the election, a number of police officers and public officials were arrested as part of an ongoing effort to combat organized crime. Related to this, on 30 March, the director of police was dismissed by the government upon the proposal of the Minister of Interior.⁴

Electoral System and Legal Framework

The second round is held between the two frontrunners of the first round and the candidate who receives the most votes is elected. By law, the SEC is required to announce the final results after the expiry of the deadlines for filing complaints. However, the legal timeframe for appealing the first-round results

¹ In total, 341,551 votes were cast, of which 338,381 were valid. Mr. Đukanović obtained 119,673 votes (35.37 per cent) and Mr. Milatović 97,858 votes (28.92 per cent).

² The presidential decree cited article 92.3 of the Constitution which only states that the president dissolves parliament by decree without making any reference to the grounds for the dissolution. Article 92.1 of the Constitution stipulates that the parliament shall be dissolved if it fails to elect the government within 90 days from the date when a candidate for prime minister was nominated by the president. Articles 7e and 7f of the amended Law on the President prescribe the same grounds and timeframe for the parliament to elect the government in case the prime minister is nominated by the parliamentary majority, and article 24a stipulates that the 90 days deadline starts from the day the amended law entered into force (16 December 2022). In his address to the nation, the President noted that he took into consideration that the Prime Minister-designate and the parliamentary majority failed to establish a government within 90 days. He stated that the Law on the President is not in compliance with the Constitution, however, it is part of the legal system until the court deems it unconstitutional. On 8 March, the Advisor of the President had filed a complaint against the constitutionality of these amended provisions of the Law on the President.

³ In their complaint, the 41 MPs requested the suspension of the decree and all acts related to it, until the final decision of the court. They alleged that the decree is unconstitutional as it only refers to article 92.3 of the Constitution which stipulates that parliament is dissolved by presidential decree but it does not refer to any grounds.

⁴ The justification for the dismissal was the alleged dysfunction of the police as an institution. Several political parties and civil society organizations expressed their disapproval with the decision and questioned its legality.

does not enable finalization of the first round in a timely manner for the second round.⁵ The SEC decided to consider the two rounds as a single electoral process and therefore only the second-round results as final. Although this constituted a broad interpretation of the law, it enabled the SEC to call the second round and, eventually, to administer the process.

Overall, the electoral legal framework constitutes an adequate basis for the conduct of democratic elections. However, it does not provide for legal certainty for the second round as it contains regulation only with respect to the electoral system, the timing of holding a second round and the distribution of public funds to candidates. The law lacks regulation on all other aspects of holding a second round, including on the composition and work of the election administration, voter registration, accreditation of observers, the campaign, campaign finance, and media.⁶ The SEC established in its sessions observed by the ODIHR EOM that, due to absence of legal provisions on the conduct of second rounds, it lacked a legal basis to issue regulations or other official decisions.⁷ Subsequently, after discussing the issue in three public sessions, the SEC issued so-called “conclusions” regulating some aspects of the election process, thus reducing legal uncertainty and contributing to the integrity of the process.

Election Administration

Following the first round election day, in absence of legal requirements, the SEC did not publish any partial preliminary results after they were transferred and tabulated by the Municipal Election Commissions (MECs).⁸ Out of the 25 MECs, only 12 published, as required by law, the preliminary results disaggregated by polling station on their websites and those that did used different formats.⁹ An additional 5 MECs published scanned MEC protocols with aggregate results,¹⁰ while 8 MECs did not publish any information on results.¹¹ There is no legal deadline for the MECs to release the results and this along with the lack of a defined format in which MECs should publish disaggregated results does not ensure transparency and limits the possibility for public scrutiny.

After the first round, the election administration continued to manage the electoral preparations overall efficiently and transparently. On 23 and 24 March, the SEC issued “conclusions” stating that the location of polling stations, the membership of MECs and Polling Boards (PBs), including authorized representatives of all first round candidates, the format of the ballot and the numbers assigned to

⁵ Complaints against Polling Boards (PB) results may be filed within 72 hours and Municipal Election Commissions (MECs) have 24 hours to review them; appeals against MEC decisions on these complaints may be filed within an additional 72 hours and the SEC has 24 hours to review them; an appeal against a SEC decision may be filed within 48 hours with the Constitutional Court, which has 48 hours to decide, after it receives information from the SEC. The SEC must publish the final results within 12 hours after expiry of the complaints’ deadline.

⁶ The Law on the Election of the President (LEP) regulates the electoral system, candidate registration, invalidation of ballots, establishment of results while all other aspects of the presidential election are regulated by the Law on Elections of the Councilors and Representatives (election law), which contains no provisions related to run-offs.

⁷ In its 21 March session, the SEC stated that the legal framework does not provide any regulation of the second-round election preparations.

⁸ Polling Boards (PBs) have 12 hours from closing to deliver the PB results to the MECs; MECs have an additional 12 hours to establish, publish and submit the tabulated results to the SEC, which has an additional 12 hours to establish and publish the preliminary results. Voting results were established in all polling stations with the exception of PB 6 in Savnik municipality, where voting was disrupted. On 22 March, the SEC scheduled a repeat voting at this PS for 26 March.

⁹ The MECs in Berane, Budva, Cetinje, Gusinje, Herceg Novi, Kolašin, Mojkovac, Niksić, Petnjica, Pluzine, Podgorica, and Rozaje published disaggregated data either in scanned excel files or scanned individual PB protocols. Some scans were illegible.

¹⁰ These were the MECs in Andrijevica, Danilovgrad, Pljevlja, Tuzi and Zabljak.

¹¹ The MECs in Bar, Bijelo Polje, Kotor, Plav, Savnik, Tivat, Ulcinj, Zeta did not post any information on results by 2 April.

candidates on the ballot would remain unchanged.¹² By law, the mandate of the authorized representatives of candidates expires when the final results are announced. The SEC's decision to retain the mandate of the authorized representatives of all first-round candidates was consistent with the SEC's interpretation of the law. Nevertheless, given the endorsement of both candidates by several parties, the decision resulted in a greater representation of parties supporting Mr. Milatović on the municipal election commissions.¹³ On the same day, the SEC adopted an instruction specifying that PB chairpersons remain assigned to the same PBs as for the first round and the first-round deadlines for replacement of PB members remain applicable to the second round. Similar to the first round, on certain decisions most members continued to vote along political lines.¹⁴

In response to requests, the SEC determined that all previously accredited observers may continue to observe the second round and new observers from already accredited organizations may be accredited.¹⁵ This approach enhanced the transparency and accountability of the election process. Two large citizen observer organizations, the Center for Monitoring and Research (CeMI) and the Center for Democratic Transition continued to observe the election process. Prior to the second round election day, CeMI received death threat messages, raising concerns about their ability to conduct their observation activities free from intimidation; the police and the prosecutor initiated investigation and granted CeMI observers police protection on election day.

Despite procedural shortcomings identified on election day in the first round, particularly pertaining to counting, there was no coordinated effort to enhance the performance of PBs in this regard. According to MECs, no additional training for lower-level commissions was organized as it was determined that the same, already trained, PB members would administer the process. A video on voting procedures remained posted on the websites of the SEC and some MECs. The voting procedures remained the same and no additional voter education was conducted between the two rounds.

Voter Registration

The law does not state whether the voter register should be updated between the two rounds. The Ministry of Interior (MoI) informed the ODIHR EOM that they considered the relevant legal provisions on repeat voting applicable also to the second round. Subsequently, no amendments were made to the voter register between the two rounds. After the 19 March election day, in line with its instruction, the MoI collected the Electronic Voter Identification Devices (EVID), formatted and re-distributed them to the PBs prior to the election day for the second round.¹⁶

To be included in the voter register, citizens over 18 years of age are required by law to have permanent residence in Montenegro over the past 24 months before election day. Several IEOM interlocutors alleged there is a long-standing practice of voters residing abroad voting and raised concerns that a

¹² In the lottery drawn before the first round, Mr. Đukanović was assigned number 1 and Mr. Milatović number 2 on the ballot.

¹³ Still, 15 out of 25 MEC Chairpersons represented Mr. Đukanović's party. For the first round, out of the total of 125 members, Mr. Milatović's party only had 2 permanent MEC members and 19 authorized representatives, and Mr. Đukanović's party had 44 permanent MEC members and 18 authorized representatives. Following the endorsements of both candidates by several parties, for the second round Mr. Milatović had 52 permanent MEC members, and 53 authorized representatives and Mr. Đukanović had 66 permanent MEC members and 23 authorized representatives. Seven permanent MEC members were nominated by parties which did not publicly endorse any of the two candidates.

¹⁴ For instance, in granting the Democratic Party of Socialists (DPS) request to photocopy the voter lists of all PBs in the municipality of Berane and in retaining in the second round the mandate of the authorized representatives of the unsuccessful first-round candidates.

¹⁵ In total, 15 new international and 119 new domestic observers were accredited for the run-off.

¹⁶ Despite the daylight-saving time change on 26 March, the time in the EVIDs remained unchanged.

significant number would vote in the second-round.¹⁷ Although these individuals are on the voter register, concerns were raised about the accuracy of permanent residence data and the criteria determining how to acquire and lose permanent residence.¹⁸

Campaign Environment

The law lacks regulation on the campaign in the second round, including when the campaign for the second round starts, whether only the two second-round contenders can campaign and whether the campaign regulations are applicable to the second round.

The two candidates began campaigning within four days after the first round. Three first round candidates, Mr. Mandić (Democratic Front, DF), Mr. Bečić (Democratic Montenegro), and Mr. Danilović (United Montenegro, UCG) declared their support for Mr. Milatović in the second round.¹⁹ Mr. Mandić and Mr. Bečić quickly converted their campaign billboards to expressions of support for Mr. Milatović. On 11 March, before the first round, the Prime Minister's party, United Reform Action (URA), which did not field a candidate in these elections, announced that it would enter into an alliance with the Democrats, and subsequently expressed its support for Mr. Milatović. On 21 March, DEMOS, the party of Miodrag Lekić, who had been attempting to form a new government since September 2022, to replace the Abazović government, also announced it would support Mr. Milatović. Both the Social Democratic Party (SDP) and the Social-democrats endorsed the incumbent. The Bosniak Party (BS), the Croatian Citizens' Initiative (HGI), the Democratic Party of Albanians and the Democratic Union of Albanians participated in the campaign for Mr. Đukanović while the Justice and Reconciliation Party (former Bosniak Democratic Union of Sandzak) and the Albanian Alternative endorsed Mr. Milatović. Other political parties representing these national minorities did not publicly endorse either candidate.

On 31 March, the last day of the second round campaign, the Serbian Orthodox Church in Montenegro published an announcement on its official website stating that the incumbent conducts an "open anti-church campaign" and called once more on the voters to come out and vote in the second round to overcome such policies.

Fundamental freedoms were respected during the second round and both candidates enjoyed equal opportunities to reach out to the electorate. Candidates addressed the public via TV, radio, and online advertisements, billboards, and social networks as well as meetings and rallies.²⁰ Mr. Milatović held rallies in most major municipalities across the country, though as in the first round the size of the rallies observed was limited. DPS informed the ODIHR EOM Long-term observers (LTOs) in some regions that Mr. Đukanović's campaign meetings were closed and in one instance ODIHR LTOs were refused

¹⁷ IEOM interlocutors did not allege massive use of this practice in the first round. For the second round, it was alleged that some 15,000 voters came to Montenegro from abroad, including from Austria, Germany, Kosovo, Luxembourg, the Netherlands and Switzerland.

¹⁸ The law does not prescribe clear and objective criteria to determine how a citizen acquires or loses permanent residence. In January 2023, the amendments to the Law on Permanent and Temporary Residence granted the MoI discretionary powers to deregister a citizen's permanent residence; in case of doubt, the police may conduct field visits to verify whether citizens *de facto* permanently reside where registered. The MoI explained that this doubt may be based on any information that they receive. Some IEOM interlocutors noted that these amendments were adopted without a public debate.

¹⁹ Mr. Mandić obtained 65,386 votes (19.32 per cent) and Mr. Bečić 37,562 votes (11.10 per cent). Draginja Vuksanović Stanković garnered 10,669 votes (3.15 per cent); Goran Danilović 4,659 votes (1.38 per cent); and Jovan Radulović-2,574 votes (0.76 per cent).

²⁰ After the first round, ODIHR EOM long-term observers (LTOs) observed in total 9 campaign events by Mr. Milatović in Bar, Berane, Bijelo Polje, Danilovgrad, Herceg Novi, Nikšić, Pljeljva, Podgorica, and Rozaje, and 3 campaign events of Mr. Đukanović, all in Podgorica.

entry to a campaign event.²¹ He also focused on mobilizing supporters that were inactive in the first round, including among national minorities. Both candidates actively appealed to diaspora communities.²² Neither candidate was observed to mount a significant door-to-door campaign operation. Women featured as speakers in all nine campaign events of Mr. Milatović observed by the ODIHR EOM at which women were an estimated 30 per cent of the attendants; the percentage of women in attendance was higher in the three observed events held by the incumbent, although they did not feature as speakers. After the first round, Mr. Milatović requested and was granted close protection by the Montenegrin Police.²³

The president's powers are highly circumscribed, and neither candidate presented a detailed program. Both candidates indicated their support for the country's accession to the EU and pledged to work to restore its economic prospects. Neither candidate's campaign included messages specifically addressing women. To distinguish themselves, both candidates turned to negative campaigning. Mr. Milatović framed his candidacy as a victory over 30 years of discrimination, and himself as the representation of a youthful future to the President's past. President Đukanović alleged that Mr. Milatović was a proxy for Serbia and the Serbian Orthodox Church and had subjected the country to crippling debt while serving as a Minister. The tone of the campaign in the media and on social networks, while temperate in the first round, became somewhat more heated in the second, with seemingly staged or doctored videos intended to discredit either one candidate or the other circulating on different messenger channels. Facebook remained the dominant forum for campaigning online, with Twitter and Instagram also used by candidates to promote their campaigns.

Campaign Finance

The Law on Financing of Political Parties and Election Campaigns lacks regulation on the reporting requirements for the second round and contestants were not sufficiently informed about their obligations, limiting accountability. The law only stipulates that the two second-round contenders shall receive 40 per cent of the total public funding (EUR 353,819) and that this sum shall be distributed proportionally based on the votes obtained, after the publication of final results.²⁴ The law establishes a campaign expenditure limit but does not specify whether it applies to one or both rounds. The law requires final donation and expenditure reports within 30 days after election day but it is unclear whether it refers to the first round or the second-round election day.

According to the Agency for the Prevention of Corruption (APC), mandated with oversight of campaign regulations, all regulations, including donation reporting requirements, are applicable also during the second round, including for the first-round unsuccessful candidates, and the established expenditure ceiling of EUR 1.7 million applies to both rounds.²⁵ By law, expenditure reports are due five days prior to election day, however, the APC informed the ODIHR EOM that no expenditure reports had to be

²¹ DPS informed the LTOs in Berane, Petnjica and Rozaje that the campaign meetings were closed. LTOs were denied access to a campaign event of Mr. Đukanović in Bijelo Polje on 27 March.

²² On 25 March, Mr. Đukanović appeared alongside the Bosniak Party leader Ervin Ibrahimović at an Iftar meal organized by the diaspora community in Hanover, Germany. Both candidates sent letters to diaspora communities.

²³ On 10 March, during the first round, Mr. Milatović was physically accosted while entering the venue of a campaign rally in Cetinje. Mr. Milatović repeatedly alleged that the incident, in which protesters physically confronted him for remarks he allegedly made in 2021 but has denied, was organized by President Đukanović.

²⁴ Of the EUR 884,549 public funding allocated for this presidential election, 20 per cent (EUR 176,909) was distributed equally to the seven candidates registered for the first round. Following the announcement of the final results, 40 per cent will be distributed proportionally to all candidates who received more than 3 per cent of the votes in the first round and 40 percent to the two contenders of the second round.

²⁵ The law requires donation reports every 15 days during the campaign and expenditure reports 5 days before election day. The law stipulates that candidates may start campaigning after the call of elections provided that they open a campaign fund and the campaign ends once the final results are published.

submitted before the second round. The APC did not issue any written regulation clarifying these matters for stakeholders, which potentially created confusion. Some of the unsuccessful candidates from the first round actively campaigned in favour of one second round candidate, but third-party campaigning is not regulated by law, undermining the transparency of campaign finances.²⁶

After the first round, the two second-round contestants and two other first-round candidates submitted their bi-weekly donation reports. Positively, the APC published these reports within the legal deadline, contributing to the information available to voters. From the start of the campaign, Mr. Đukanović reported income totaling EUR 32,550 while Mr. Milatović income of EUR 34,761. According to the law, the APC does not have the auditing powers which are necessary for effective oversight. Still, before the election day of the first round, the APC conducted field visits to campaign offices. However, as these visits are not explicitly foreseen nor regulated by the law the practice is susceptible to misuse.²⁷

Media

While the candidates enjoyed equal access to the public media, the media landscape continued to be polarized along political lines and media outlets remained highly vulnerable to internal and external influence from corporate and political interests. The Agency for Electronic Media (AEM) considered the media-related provisions of the election law as well its election regulations issued on 23 January applicable also to the second-round. According to the AEM, the campaign in the media for the second round could start on the evening of 20 March, after the SEC announced the preliminary results of the first round.²⁸ The AEM did not publish this clarification on its website nor communicated it to the broadcasters, limiting clarity on this matter.²⁹

For the second round, the ODIHR EOM continued to monitor a sample of eight TV channels.³⁰ The public service broadcaster *Radio and Television of Montenegro* (RTCG) offered candidates free airtime for campaign spots and equal access to free broadcast time covering their campaign activities. This content, alongside interviews with the two candidates, continued to be aired almost solely on the *RTCG Parliamentary* TV channel, which enjoys low-viewership. For the second round, the interviews with the two candidates were aired on the main public *RTCG TV* channel, in addition to the one election debate between the two candidates held on the last day of the campaign.³¹ This contributed to the voters' opportunity to make an informed choice. The public broadcaster of the Municipality of Podgorica *Gradska TV* had the most extensive news coverage of the candidates and the election among the monitored broadcasters; it displayed a clear bias in favour of Mr. Đukanović, devoting to the incumbent 63 per cent of its news coverage and 22 per cent, often with a negative tone, to Mr. Milatović.³²

²⁶ For instance, Mr. Bečić advertised on Facebook and, both him and Mr. Mandić placed billboards in favor of Mr. Milatović; URA placed Facebook advertisements in favour of Mr. Milatović and against Mr. Đukanović.

²⁷ See paragraphs 267-271 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#); Paragraph 268 states that “bodies charged with the supervision of political parties shall refrain from exerting excessive control over party activities and limit their investigations to cases where there has been an indication of wrongdoing by an individual party”.

²⁸ During the press conference held on 24 March to present the media monitoring report for the first round, the AEM mentioned that the campaign on media for the second round started on 20 March.

²⁹ For instance, *Adria TV*, *RTTV Herceg Novi* and *Radio Tivat* informed the ODIHR EOM that rules for the coverage of the second-round election campaign were not clear and that they would have welcomed more guidelines from the AEM.

³⁰ ODIHR EOM monitored the *RTCG 1*, *Vijesti TV*, *Prva TV*, *Adria TV*, *E TV* and *Gradska TV* from 18:00 to 24:00, as well as the election-related coverage of *RTCG2* and *RTCG Parliament*. The ODIHR EOM also followed election-related content in three online media outlets: *Vijesti*, *CDM*, and *Borba*.

³¹ During the first round, only the election debate of six candidates was aired on the *RTCG 1* while interviews with all candidates were aired on the *RTCG Parliamentary TV*.

³² *Gradska TV* started broadcasting on 30 September 2021 and is funded by the Municipality of Podgorica.

Private TV channels covered the short election campaign mainly by inviting political representatives and analysts in their talk shows. They also attempted to organize interviews with candidates who often did not show an interest in participating. Milatović had one interview on *Vijesti TV* and one on *Prva TV*, while Mr. Đukanović participated in an interview on *E TV*. Private TV channels offered limited news coverage of the second-round campaign. *Adria TV* offered a similar amount of news coverage to both candidates, but DF representatives, including Mr. Mandić, who endorsed Mr. Milatović, also received a considerable amount of news coverage. Significantly more news coverage than the two candidates was also given DF representatives on *Prva TV*. *E TV* offered a limited news coverage of the election campaign, nevertheless displaying a clear bias in favour of Mr. Đukanović.

As mandated, the AEM monitored the broadcasters' compliance with the Law on Electronic Media (LEM), its regulations and other by-laws. On 24 March, it published and presented a media monitoring report for the first-round. The AEM identified 30 violations and initiated *ex officio* procedures against 16 broadcasters. However, the report included the names of only 2 of the broadcasters which breached the regulations and no information on the content of the 12 complaints received and the identity of the complainants, thus not fully providing transparency.³³ As of 2 April, the AEM published on its website 21 warnings against 15 broadcasters and information about 1 rejected complaint.³⁴ Some of the warnings issued by the AEM did not deter further violations, demonstrating the ineffectiveness of its sanctioning powers.³⁵ While the AEM is not mandated with overseeing media-related provisions of the election law, its media monitoring identified some violations.³⁶ Although the AEM went beyond its competences, its' monitoring enhanced transparency.

Election Dispute Resolution

After the 19 March election day, the MECs did not receive any complaints alleging election day irregularities or any requests for invalidation of PB results.³⁷ However, there are no requirements for MECs to inform the SEC about complaints received and there is no centralized database for the complaints. The announcement of tabulated results by the MECs and the SEC are viewed as "arithmetical calculations" and in line with past practice, neither the MECs nor the SEC adopted any decision on the preliminary results.³⁸ The accountability of the process was thus limited and effective means of legal redress were not guaranteed, as no challenges could be filed with the SEC and the

³³ The AEM has 30 days to review complaints filed by citizens and civil society. Of the 12 complaints filed by civil society or citizens, the AEM rejected one complaint while others were pending review. The AEM has 24 hours to review appeals filed by the candidates and the SEC against broadcasters but no such complaints were filed before the first round and no such complaints have been filed for the second round.

³⁴ Warnings were issued to TV channels for not separating the "election news block" from news programmes, not submitting their rulebook to the AEM prior to covering the election campaign, unlabeled paid political advertising, placing political advertisements 15 minutes before or after children programmes and using minors in the campaign. AEM rejected one complaint as it was referring to a breach of the election law, thus outside of its oversight mandate.

³⁵ The AEM is empowered only to issue warnings or to revoke a broadcast media license, with no possibility of imposing administrative or financial sanctions.

³⁶ The AEM is mandated to monitor compliance of the broadcast media with the LEM, AEM's regulations and other relevant bylaws, but not with the election law. The election law does not allow national and local public broadcasters to sell and air paid political advertising. The AEM monitoring detected that four out of six local public TV channels (*TV Pljevlja*, *TV Herceg Novi*, *TV Rožaje* and *TV Budva*) breached the election law by airing paid political advertisement.

³⁷ The election law provides MECs with wide discretionary powers to decide on the invalidation of polling results for election day irregularities which does not safeguard against arbitrary decisions. The law lists 13 grounds for the optional invalidation of results and 7 for mandatory.

³⁸ The SEC did not vote to adopt the preliminary results and it did not call the announcement of the results a decision.

Constitutional Court.³⁹ However, the law stipulates that the Constitutional Court may annul partially or fully the election results, if they identify significant violations; although these violations are not defined by the law.

The SEC received one appeal against the MEC Berane decision rejecting a request of DPS to photocopy the signed voting lists of all PBs in the municipality; the SEC granted the request.⁴⁰ Disclosure of the signed voter lists is allowed by the law but it compromises the secrecy of the vote, at odds with international standards.⁴¹ On 24 March, the Constitutional Court reviewed all 12 complaints filed before the first round of the presidential election, including 7 on the registration of candidates for the first round.⁴² The court session was closed without the presence of the parties but was observed by the ODIHR EOM. The court deemed seven appeals as inadmissible, as they were sent by post.⁴³ Finding complaints inadmissible on such technical grounds constitutes a formalistic approach and does not ensure effective remedy.⁴⁴ The court rejected five complaints related to candidate registration on their merits, although they also cited that these complaints should be considered inadmissible as no complaints were previously filed to the SEC. In absence of an explicit legal requirement, the court did not publish the decisions on these appeals, limiting the transparency of the process.

Election Day

The IEOM did not observe election day proceedings in a systematic or comprehensive manner, however, mission members visited a limited number of polling stations in 16 of the 25 municipalities. As in the first round, the SEC regularly announced the voter turnout per municipality but did not publish this data on their website; the preliminary turnout was reported at 69.33 per cent. In most polling stations visited, all PB members or their deputies as well as candidates' authorized representatives were present; citizen observers were present in half of the visited polling stations, contributing to transparency. As in the first round, the IEOM observers noted that several polling stations visited were not independently accessible for persons with disabilities.

The IEOM assessed the opening in the observed polling stations as orderly. During voting in the polling stations visited, the atmosphere was calm and the procedures were followed. With a few exceptions, the electronic voter identification functioned well. Observers noted that as in the first round, in some instances, the secrecy of vote was not fully safeguarded, mainly due to the voters' failure to fold their ballots properly or accidentally unfolding them while removing the voting slip. In a few instances,

³⁹ Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Paragraph 92 of the Venice Commission Code of Good Practice states "If the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results".

⁴⁰ The MEC noted that the law is not clear on who has the right to review electoral materials as it does not clarify if right to review election materials belongs only to presidential candidates or nominating entities.

⁴¹ Paragraph 7.4 of the 1990 OSCE Copenhagen document states that state should ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public. Paragraph 4.c of the Venice Commission Code of Good Practice states that the list of persons actually voting should not be published.

⁴² Five complaints challenged the incumbent's eligibility for a third term, two complaints were against the registration of Mr. Danilović and Mr. Mandić alleging they have dual citizenship.

⁴³ Article 97 of the Law on the Constitutional Court stipulates that complaints must be filed in-person or by fax. These complaints pertained, *inter alia*, to the eligibility of the incumbent to stand for a third term, the failure of the SEC to publish its decision on the registration of a candidate in a timely manner, thus not enabling the filing of a complaint within the legal deadline, denial of candidate registration, challenging the 10 year permanent residence requirement to stand for election and the permanent composition of all PBs in the MEC Kolasin.

⁴⁴ Paragraph 3.3 b of the Venice Commission Code of Good Practice states that the procedure must be simple and devoid of formalism, in particular concerning the admissibility of appeals.

individuals outside polling stations were observed to be apparently tracking the voters who came to vote, which is of concern for voters ability to vote free of intimidation.

On the eve of election day, the police conducted investigations in several municipalities, including Podgorica, Bijelo Polje and Niksic, pertaining to allegations of buying voter identity cards. On election day, the DPS issued an official announcement that dozens of their party premises were searched and raided by the police accusing the police of aiming to cause riots and intimidate voters. Citizen observers also publicly reported that they observed indications of voters' identity cards being bought on election day. IEOM observers directly observed voters, including from diaspora communities, queuing inside and outside DPS offices in Gusinje and Plav.

The counting process was transparent in the nine observations in eight municipalities. IEOM observers noted that PBs had no difficulty filling-in the result protocols and the figures reconciled. Procedures were observed to be closely followed with a few exceptions, where some important safeguards were omitted including not counting unused ballots, control coupons, signed printed slips and the number of signatures on the voter list or properly recording these figures. In one case, the PB results protocol was pre-signed.

Tabulation was observed in 10 MECs. The reception and verification of PB protocols as well as the entering of data in the MECs observed was mostly conducted in an orderly and efficient manner, but the layout of the MECs did not always allow for a meaningful observation by IEOM observers. IEOM observers reported that PB protocols did not always reconcile and MECs at times introduced minor changes to the figures to reconcile them without impacting the overall results for the polling station.

On election night, President Đukanović gave a concession speech acknowledging the results and congratulating his opponent.

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

MISSION INFORMATION & ACKNOWLEDGEMENTS

Podgorica, 3 April 2023 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP). 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.

Joe O'Reilly headed the PACE delegation and Georgios Kyrtzos headed the EP delegation. Tamás Meszerics is the Head of the ODIHR EOM, deployed from 8 February.

Each of the institutions involved in this International Election Observation Mission (IEOM) 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 vote 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 two months after the completion of the electoral process. The PACE will present its report at the April 2023 Part Session in Strasbourg. The EP will present the report at the upcoming meeting of the Committee for Foreign Affairs and the Delegation EU-Montenegro of the European Parliament.

The ODIHR EOM includes 11 experts in the capital and 14 long-term observers deployed throughout the country. On election day, 38 observers from 27 countries were deployed, including 28 observers deployed by ODIHR, as well as a 3-member delegation from the PACE and 7-member delegation from the European Parliament.

The observers wish to thank the authorities for their invitation to observe the election, and the State Election Commission and the Ministry of Foreign Affairs of Montenegro for the assistance. They also express their appreciation to other state institutions, candidates, political parties and civil society organizations and the international community representatives for their co-operation.

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