



Office for Democratic Institutions and Human Rights

MONTENEGRO

PARLIAMENTARY ELECTIONS
30 AUGUST 2020

ODIHR Limited Election Observation Mission
Final Report



Warsaw
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TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGMENTS	3
III.	BACKGROUND AND POLITICAL CONTEXT	4
IV.	ELECTORAL SYSTEM AND LEGAL FRAMEWORK	5
V.	ELECTION ADMINISTRATION	7
VI.	VOTER REGISTRATION	8
VII.	CANDIDATE REGISTRATION	10
VIII.	ELECTORAL CAMPAIGN	11
IX.	CAMPAIGN FINANCE	13
X.	MEDIA	15
A.	MEDIA ENVIRONMENT	15
B.	LEGAL FRAMEWORK	16
C.	MEDIA MONITORING FINDINGS	17
XI.	PARTICIPATION OF NATIONAL MINORITIES	18
XII.	COMPLAINTS AND APPEALS	19
XIII.	ELECTION OBSERVATION	21
XIV.	ELECTION DAY	21
A.	OPENING AND VOTING	21
B.	COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS	22
XVI.	RECOMMENDATIONS	24
A.	PRIORITY RECOMMENDATIONS	24
B.	OTHER RECOMMENDATIONS	25
	ANNEX I: FINAL ELECTION RESULTS	28
	ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION	30
	ABOUT ODIHR	31

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I. EXECUTIVE SUMMARY

Following an official invitation by the Montenegrin authorities and in accordance with its mandate, ODIHR established a Limited Election Observation Mission (LEOM) on 5 August to observe the 30 August 2020 parliamentary elections. The mission assessed compliance of the election process with OSCE commitments and other international obligations and standards for democratic elections, and domestic legislation. The ODIHR LEOM did not carry out systematic or comprehensive observation of election-day proceedings, in line with ODIHR's methodology for limited election observation missions. Mission members did, however, visit a limited number of polling stations on election day.

The Statement of Preliminary Findings and Conclusions issued by the International Election Observation Mission (IEOM) on 31 August, concluded that “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 electoral legal framework provides sufficient regulations for democratic conduct of elections, but gaps, ambiguities and inconsistencies undermine legal certainty and allow for selective implementation and circumvention. It remained largely unchanged since the last parliamentary elections, with the exception of campaign finance. A number of previous ODIHR recommendations remain unaddressed, including those related to an audit of the Voter Register (VR), measures against the misuse of state resources, as well as certain limitations of suffrage rights.

The election administration met legal deadlines and generally managed 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, the SEC left unaddressed some important procedural aspects, such as the verification of signatures for candidate registration, and the tabulation of results. 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 COVID-19 protection measures on election day underwent several changes and were difficult to implement.

The final VR included 540,026 voters. Voters could verify the accuracy of their personal data through a dedicated website or in person and could request amendments. Authorized representatives of candidate lists and accredited observer organisations had the right to inspect the VR online. By law, citizens living abroad maintain their resident status in the country, unless they request to be deregistered. While voter registration was overall efficient and transparent, erroneous understanding

¹ The English version of this report is the only official document. An unofficial translation is available in Montenegrin.

by some electoral stakeholders, including contestants, of legal provisions on the status of citizens residing abroad decreased the confidence in its accuracy.

The candidate registration process was overall inclusive and resulted in a diverse field of contestants. Prospective contestants were required to submit lists of candidates with voters' supporting signatures and to have at least 30 per cent candidates of the underrepresented gender on the lists. Candidate lists representing national minorities below 15 per cent of the population are required to submit fewer supporting signatures for registration. There are no comprehensive rules on the registration of candidate lists with national minority status that enjoy lower thresholds for gaining seats. The SEC registered 11 of 12 lists, five represented national minorities.

The campaign was peaceful, despite a confrontational tone, and focused on issues of national identity and the church. Whereas the official 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. While pandemic-related protective measures and public health concerns altered the style of campaigning, contestants were still able to reach out to the voters and convey their messages, primarily through small gatherings and online. 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, contrary to OSCE commitments. Additionally, various forms of misuse of office and state resources gave the ruling party an undue advantage in the campaign and could influence the will of the voters. Notably, extraordinary welfare benefits were disbursed to 'vulnerable' groups and pensioners, and temporary employment in the public sector was offered. The ODIHR LEOM received credible allegations about pressure on voters, including public employees, to vote for the ruling party.

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 in an election year in case of a pandemic. The Agency for the Prevention of Corruption oversees campaign finance and the use of state resources by public institutions. Despite some improvements, the legal framework does not establish effective safeguards against circumvention of campaign finance rules.

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

While contestants may file complaints on every aspect of the process, voters' right to file complaints is limited to violations of their own voting rights, which does not fully ensure effective remedy. Moreover, a narrow interpretation of the law by the SEC does not allow challenges of the tabulated election results and ambiguous provisions allow for arbitrary decisions on the invalidation of the results established by polling boards (PBs). Prior to election day, numerous complaints were filed to the SEC on PB membership and locations of polling stations, as well as by voters alleging forgery of their signatures in support of candidate lists. The Constitutional Court received five appeals, including against the early call for elections, the SEC denial to register a candidate list, its decision to uphold mergers of polling stations and the instructions on mobile voting, including for voters in quarantine.

In the limited number of polling stations visited by the IEOM, the process was transparent and generally well administered, despite some inconsistent application of counting and tabulation procedures. COVID-19 related health protocols were generally respected but not in full. The SEC made preliminary results available in real time after the tabulation started. The turnout was reported at 76.64 per cent.

This report offers a number of recommendations to support efforts to bring elections in Montenegro closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to a need for a comprehensive electoral reform following public consultations, reviewing the legal competence and residency requirements for suffrage rights, regulating tabulation procedures by the Municipal Election Commissions, prescribing sanctions for inaccurate financial reporting, reviewing the legal provisions concerning the invalidation of PB election results, and providing for legal challenges of the tabulated results. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the authorities of Montenegro and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 5 August to observe the 30 August 2020 parliamentary elections.²

The Mission assessed the compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, as well as with national legislation. For election day, ODIHR LEOM joined efforts with a delegation of the OSCE Parliamentary Assembly (OSCE PA) to form an International Election Observation Mission (IEOM). Ms. Margareta Cederfelt, Vice-President of the OSCE PA and head of the OSCE PA delegation, was the leader of the Short-term Observers (STOs) and Mr. Tamás Meszerics (Hungary) was the Head of the ODIHR LEOM. Both institutions involved in this IEOM have endorsed the 2005 Declaration of Principles for International Election Observation. The IEOM did not carry out systematic or comprehensive observation of the voting, counting and tabulation proceedings on election day, in line with ODIHR's methodology for limited election observation missions. Mission members did, however, visit a limited number of polling stations on election day. This final report follows a Statement of Preliminary Findings and Conclusions released on 31 August 2020.³

The ODIHR LEOM consisted of an 11-member core team based in Podgorica and 10 long-term observers (LTOs) deployed on 11 August to five locations across the country. Mission members were drawn from 15 OSCE participating States. The LEOM members remained in country until 8 September to follow post-election day developments. The OSCE PA delegation included five international observers.

The IEOM wishes to thank the authorities of Montenegro for their invitation to observe the elections, and the State Electoral Commission (SEC) and the Ministry of Foreign Affairs for the assistance. It also expresses appreciation to other state institutions, the judiciary, political parties, media, civil-

² In its Needs Assessment Mission report in relation to these elections, ODIHR had recommended the deployment of an Election Observation Mission (EOM), that would include, in addition to a core team of analysts, 16 long-term observers to follow the process countrywide, as well as 100 short-term observers (STOs) for the observation of election day procedures. However, the deployment of STOs was considered not feasible due to the extraordinary circumstances caused by the COVID-19 pandemic and subsequent travel restrictions across the OSCE region. Therefore, ODIHR changed the format of the observation activity from an EOM to a LEOM.

³ See previous [ODIHR election-related reports on Montenegro](#).

society organizations, international community representatives, and other interlocutors for their co-operation and for sharing their views.

III. 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.⁴ 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, respectively.⁵ The opposition parties obtained 39 seats.⁶ However, they refused to accept the election results, as a protest to the arrests of a number of individuals on the eve of elections, for allegedly planning a coup d'état which the opposition considered as fabricated.⁷ 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.⁸

After December 2018, criminal proceedings were initiated against five opposition MPs and one was arrested.⁹ There was no prior waiver of immunity by parliament, as required by the Constitution.¹⁰ In January 2019, a corruption scandal, the 'envelope affair', triggered street protests supported by civil society groups and opposition parties.¹¹ Subsequently, the opposition gradually and partly resumed boycott, as a response to the demands by protesters. The adoption of the Law on Freedom of Religion in 2019 further deepened the national and political divide.¹² Referring to the above cases, some ODIHR LEOM interlocutors pointed to a democratic backslide and a lingering political crisis with lack of genuine political dialogue.

⁴ Local elections were held in Andrijevica, Budva, Gusinje, Kotor, and Tivat. The ODIHR LEOM followed the local elections only to the degree they affected the process and preparations for these parliamentary elections.

⁵ DPS had 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 (HGI) – 1.

⁶ Democratic Front (DF) – 18, Democrats – 8, Key Coalition (Demos, SNP, URA) – 9, Social Democratic Party (SDP) – 4.

⁷ In June 2017, 14 people were indicted for preparing a conspiracy against the constitutional order and security of Montenegro and an attempt to organize a terrorist act. In May 2019, the Supreme Court of Montenegro convicted 13 persons, including 2 opposition leaders.

⁸ DF, SDP, DEMOS, and SNP returned to parliamentary sessions while URA and Democrats continued abstaining.

⁹ In December 2018, detention orders were issued for two DF MPs: one 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, another three DF MPs received conditional sentences for verbal and physical attacks against DPS MPs in February 2017 and criminal proceedings were initiated against additional three DF MPs.

¹⁰ The detention orders were temporarily suspended by the Constitutional Court while the final decision on the constitutionality of the detentions was pending in September 2020.

¹¹ A [video](#) appeared on internet featuring prominent businessman handing an envelope with money to the former mayor of Podgorica, as donation for the DPS 2016 election campaign. The Special Prosecutor initiated criminal proceedings. Following the release of the video, opposition MPs sued the president and the Chief Prosecutor for money laundering and forming an organised criminal group.

¹² The Law on Freedom of Religion or Belief and the Legal Status of Religious Communities aims at reviewing the property ownership of religious organizations, mainly the Serbian Orthodox Church (SOC).

Several ODIHR LEOM interlocutors questioned the legality of the early call for elections and claimed that this timing gave the ruling party an undue advantage.¹³ A constitutional complaint was filed citing the failure of the parliament to shorten its mandate, as required by the Constitution.¹⁴ The authorities claimed that the appointment of the date took into consideration challenges related to the COVID-19 pandemic.

IV. 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. Preferential rules apply for lists representing national minorities not exceeding 15 per cent of the total population. 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, last amended in 2018 by the Constitutional Court) supplemented by SEC instructions.¹⁵ 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. Positively, several representatives of the academia and the civil society participated in its work as associate members. The draft election law elaborated by the Committee addressed some prior ODIHR recommendations but was not put to a vote in parliament.¹⁶

On 27 December 2019, some election-related laws were amended.¹⁷ The changes were introduced without public consultations and without effective involvement of relevant stakeholders, at odds with international commitments.¹⁸ The amendments among other things transferred the oversight of the VR from the SEC entirely to the Ministry of Interior (MoI), extended the list of election campaign misdemeanours and criminalized campaign funding from prohibited sources. The rules for opening campaign finance accounts were clarified, in line with a prior ODIHR recommendation. However, a number of recommendations remain unaddressed, including to conduct an audit of the VR, harmonize the electoral legislation, reconsider the length of residence and legal competency requirements for

¹³ The outgoing parliament was constituted on 7 November 2016, thus its mandate was to expire on 6 November 2020. The new MPs were 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 previous convocation.

¹⁴ The complaint was filed in June, after elections were called, by the NGO 'Civic Alliance' and was pending decision after elections. The Constitution stipulates shortening of parliament's mandate by majority vote of all MPs upon proposal of the president, the government or at least 25 MPs; mandatory dissolution if the parliament fails to elect the government and optional dissolution in case it does not perform its duties for a prolonged period of time.

¹⁵ Other applicable legislation includes the laws on Financing of Political Entities and Election Campaigns (2019), on Political Parties (2004), on Public Assemblies and Public Events (2015), on Voter Register (VR, 2014), on Media and relevant provisions of the Criminal Code, and the Law on Misdemeanours.

¹⁶ 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.

¹⁷ The laws on VR, on Territorial Organization and relevant provisions of the Criminal Code were amended and a new Law on Financing Political Entities and Election Campaigns (political finance law) was adopted.

¹⁸ For example, most of the Agency for Prevention of Corruption (APC) proposals, developed with international support, were not incorporated, the Ministry of Finance did not participate in the preparation of the political finance law, while the SEC was invited to participate only after the draft amendments to the Law on VR were finalised. Paragraph 5.8 of the [1990 OSCE Copenhagen Document](#) provides that legislation will be adopted at the end of a public procedure.

suffrage rights, enhance the measures against misuse of state resources, improve the regulations for candidate registration and electoral dispute resolution.

Overall, the electoral legal framework provides sufficient regulations for democratic conduct of elections. However, gaps, ambiguities and inconsistencies in the legal framework, including the lack of comprehensive SEC instructions, allow for selective implementation and circumvention. Gaps, among others, pertain to provisions on verification of supporting signatures, liability of candidate list submitters for falsified documents, sanctions for violations and tabulation of results. The rules on invalidation of results allow for arbitrary decisions and the deadlines for challenging election day irregularities and invalidating results extend beyond the deadline for final results. In addition, the deadlines for provision of VR extracts to PBs are not aligned in the election law and the Law on VR.

Consideration should be given to undertaking a comprehensive reform to harmonize the electoral legal framework and regulate all key aspects of the elections. In line with international commitments, the reform process should be inclusive, ensure public discussion and should be completed well in advance of the next elections.

Measures adopted as a response to the COVID-19 pandemic, included a ban on public gatherings and political rallies and affected the conduct of the elections. 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).¹⁹ However, there was no previous call of a state of emergency by parliament, as required by the Constitution.²⁰ Derogations on fundamental freedoms without a state of emergency are at odds with international commitments.²¹

The Constitution falls short of sufficiently regulating some issues pertaining to parliamentary elections. Namely, while early elections shall be conducted only if parliament is dissolved or its mandate is shortened, the Constitution is silent about the conditions that trigger the reduction of the mandate.²² In addition, it provides wide discretionary powers to the president on nomination of the prime minister and the formation of the new government, which may incur dissolution of the parliament, in case the nominated prime minister fails to obtain a vote of confidence.²³

¹⁹ The NCB was established in March 2020 to coordinate the fight against the COVID-19 pandemic and recommends actions and measures, including possible cancellation or postponement of the elections.

²⁰ The Constitution permits derogations of human rights in cases of a state of emergency 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 state of emergency is adopted by the majority of all MPs. The Law on Protection of the Population from Infectious Diseases conditions the Ministry of Health to limit gatherings due to epidemiological situations only after the announcement of a state of emergency by parliament. See also the [2020 ODIHR Report “OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic”](#) that cites Montenegro as lacking sufficient parliamentary oversight over the COVID-19 pandemic related protection measures adopted by government.

²¹ Paragraph 9.2 of the [1990 OSCE Copenhagen Document](#) states that everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards; 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 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 prescribes an obligation to officially proclaim an state of emergency.

²² While the Constitution stipulates that parliament may be dissolved in case the nominated PM after elections fails to obtain a vote of confidence within 90 days, it does not mention any grounds for shortening the mandate of the parliament.

²³ The Constitution does not require the president to nominate a prime minister from the party or coalition which won most votes or has the parliamentary majority and does not provide for an alternative if the nominated prime minister fails to obtain a vote of confidence.

Consideration should be given to prescribing a precise list of grounds that trigger reduction of parliamentary mandate and call of early elections.

V. 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). SEC and MECs are permanent bodies; PBs are appointed for each election. The SEC is composed of a chairperson and 10 members;²⁴ MECs of a chairperson and four members. While the appointment method provides for a balanced political representation in the SEC, a lack of pluralism can arise in the permanent composition of MECs.²⁵ Each PB comprises a presiding officer and four members.²⁶ Authorized representatives of the contestants could join all election bodies 20 days prior to election day, with full voting rights. All contestants appointed their representatives at the SEC and a varying number of them at MEC level.²⁷ Women remained underrepresented in all levels of the election administration.²⁸

The election administration managed efficiently the technical aspects of the electoral preparations and met legal deadlines, with the exception of the appointment of PB members, which was delayed by a few days in some municipalities.²⁹ However, the SEC instructions regarding the implementation of the election law remained incomplete, and some of the key decisions taken by SEC raised concerns.³⁰ Notably, the SEC recommendations about the COVID-19 protection measures on election day underwent several changes between their publication and election day, were difficult to implement and some provisions were abrogated by the Constitutional Court as adopted beyond the SEC competence.³¹

The SEC should address emerging challenges and aspects of the process that are not sufficiently regulated by the statutory law by promulgating clear, consistent, timely and fully implementable instructions and decisions within its mandate.

The SEC made most of its instructions and decisions available on its website, although not always in a timely manner. SEC sessions, however, were not open for representatives of media and were not

²⁴ Four SEC members 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.

²⁵ MECs chairpersons are nominated by the party that won most mandates in the given municipality in the previous municipal elections; two members by the majority in the municipal council and two by the opposition, if any. In Gusinje, Nikšić, Petnjica, Plav, Rožaje, Ulcinj and Tuzi all MEC members were nominated by the ruling coalition.

²⁶ PB members are nominated by political parties and coalitions represented in the municipal assemblies; they may be replaced by their nominating bodies up to 12 hours before the voting starts.

²⁷ The number of appointed candidate representatives varied between two (Andrijevića and Žabljak), and eight (Podgorica, Nikšić, Kotor, Budva and Ulcinj). Only DPS nominated representatives to each MEC.

²⁸ At the SEC, one member and one authorized representative were women. At the MECs, six chairpersons, and 41 of the 120 permanent MEC members were women. According to data from the Center for Monitoring and Research (CeMI), some 24.6 per cent of PB members were women.

²⁹ ODIHR LEOM noted delays in Cetinje and Kotor, due to the lack of applications by opposition parties.

³⁰ Several NGO representatives criticized SEC with regards to some procurement decisions, including the printing of ballot papers, the software for the verification of support signature and the rent of premises. The ballots procurement and premises rent contracts were subsequently challenged in the court.

³¹ 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.

broadcast online. The information published online by MECs, including on complaints against election day irregularities, was not always consistent and timely.³²

To further increase transparency and public confidence in the work of the election administration, additional measures could be considered, including live online broadcast and access of media to SEC sessions, as well as publication of all relevant documents produced by all levels of the election administration, in a timely manner.

Due to the pandemic, PB members were trained through a video material produced by the SEC, broadcasted on television and available online. The lack of an interactive component and the late start limited the efficiency of the training, which negatively impacted the respect of procedures on election day, especially during closing and counting.

To ensure consistent application of the election procedures, an efficient and comprehensive training for all polling board members should be provided, including authorised representatives of contestants, with a focus on the counting procedures.

The voter information campaign conducted by the SEC mainly consisted of short videos broadcast on television and general information available on its website in Montenegrin language. There was no information available in sign language or formats easily accessible to persons with disabilities, including subtitles or easy-to-read format materials.

VI. VOTER REGISTRATION

The right to vote is granted to every citizen at least 18 years of age on election day. Those declared legally incapacitated by a court decision, including on the basis of intellectual or psychosocial disability, may not vote, contrary to international standards.³³ At odds with international good practice, the Constitution provides the right to vote to citizens who have resided in the country for two years, and the election law further restricts the right to those who were residents for two years immediately before election day.³⁴

To allow for broader electoral participation on an equal basis, the legal capacity and residency requirements for voting and standing for election should be reviewed in line with the international standards and good practice.

Voter registration is passive. The VR is a permanent database maintained by the MoI, automatically updated with information extracted from the registers of citizenship, residence, births and deaths. Prior to election day, some 70,000 voters verified their entries in the VR electronically and via the dedicated hotline, and the MoI received 7,884 requests for changes or corrections. The MoI finalised

³² The MEC in Kolašin did not publish any information about these elections on its website; four MECs (Bijelo Polje, Petnjica, Plužine, Žabljak) published only partial information. Only five MECs (Andrijevica, Budva, Cetinje, Mojkovac and Tivat) made available the minutes of all their sessions online.

³³ Article 29 of [Convention on the Rights of People with Disabilities](#) (CRPD) requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others”. Article 12 of the [CRPD](#) requires states to “recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Paragraph 9.4 of the [2013 CRPD Committee’s Communication 4/2011](#) provides that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability.”

³⁴ Paragraph I.1.1.c.iii of the [Venice Commission Code of Good Practice in Electoral Matters \(Code of Good Practice\)](#) states that “a length of residence requirement may be imposed on nationals solely for local or regional election.”

the VR within the legal deadline and provided disaggregated registration data per municipality and polling station. On 20 August, it announced the final number of registered voters at 540,026.³⁵

Parliamentary parties and the SEC have permanent online access to the VR. Accredited observer organisations and authorized representatives of contestants have the right to inspect the VR online in the pre-election period upon request.³⁶ While this access allows for a meaningful verification of the individual entries, some ODIHR LEOM interlocutors criticized the legal provisions on data protection that prohibit the extraction and printing of the data stored in the VR. The MoI has made an effort to make the voter registration process more inclusive and transparent, including through the creation of an expert team for monitoring the accuracy of the VR. Many ODIHR LEOM interlocutors voiced concerns that the VR contains too many voters in comparison with the official census-based population data, and a high number of citizens who *de facto* reside abroad. The MoI, in response, pointed out that census-based population and VR figures do not permit a proper comparison, due to the different methodology of processing the two sets of data.³⁷ By law, citizens living abroad maintain their resident status in the country, unless they request to be deregistered.

Two days prior to election day, the MoI carried out a computerized cross-checking of the fingerprints attached to entries in the VR to demonstrate that the VR is free of systemic errors. The exercise established that 528 voters share partially or fully identical fingerprints in the data base. Experts of the MoI opined that this number is within the margin of error and attributed it to technical problems occurring when voters provided fingerprints. The fingerprints identified were not inspected before election day.³⁸ The planned improvement of the address system, foreseen by the December 2019 amendments of the Law on the Territorial Division was suspended due to the restrictions related to the pandemic.

In order to enhance public trust in the Voter Register, the authorities should consider a comprehensive audit, for example through conducting field tests, and allow stakeholders to monitor such exercise.

The SEC, upon consultation with the NCB and the Ministry of Health, issued recommendations aiming at facilitating voting of citizens staying in private or institutional quarantine or hospitals due to COVID-19. However, the unclear decision-making competences among the relevant authorities resulted in recommendations that were not comprehensive, underwent several changes between their publication and election day and were issued late.³⁹ Positively, in order to provide for a solution for voters not having valid identification documents, the MoI expedited the issuance of IDs, while the

³⁵ This constitutes a decrease of 1,206 since the call of the elections, and an increase of 7,427 since the 2018 presidential election. According to the MoI, the VR contains approximately 7,500 voters, who never had any ID document issued by Montenegrin authorities after the independence in 2006.

³⁶ They may request online access to the data stored in the VR but not to the documentation backing the changes in entries, which is not accessible on the grounds of personal data protection. According to the MoI, one citizen observer group and seven contestants were granted online access to the VR.

³⁷ The [2012 ODIHR Handbook for the Observation of Voter Registration](#) states that: “it is possible, by statistical calculations based on census data, to produce an estimate for the proportion of eligible citizens among the population... and compare it with the official number of registered voters... However, such comparisons should be treated cautiously due to the different natures of the exercises and methodologies applied for a census and for population registration.”

³⁸ The MoI has communicated to the ODIHR LEOM that all multiple fingerprints would undergo forensic examination after election day. The highest number of identical fingerprints was reported from Bar (163) and Podgorica (73).

³⁹ The recommendations were adopted on 7 August and amended on 10 August. The scope of applicability was modified by the Constitutional Court decisions of 20 and 24 August, the NCB recommendations of 25 August and the Ministry of Health instruction of 27 August. Only voters in quarantine who had tested positive could request mobile voting while other voters in quarantine received by the Ministry of Health a one-time waiver to vote in polling stations.

SEC extended the possibility of voting for voters with expired documents, provided that these are recognised by the electronic identification devices at polling stations.

After elections, the Agency for Personal Data Protection initiated inspection of the software maintained by a political party for identifying voters living abroad and registered in the VR.⁴⁰ It concluded that the use of this software was unlawful, as it stored and processed personal data without permission of the concerned individuals and by an entity not entitled to process such data.

VII. CANDIDATE REGISTRATION

All voters are eligible to stand as candidates. Political parties, coalitions and groups of voters may nominate candidate lists. The law prescribes a gender quota of at least 30 per cent and placement rules as a prerequisite for registration.⁴¹ Additionally, candidate lists were to include at least 54 candidates and to be supported by a minimum of 4,261 voters' signatures.⁴² Lists representing national minorities were required to contain at least 27 candidates and to submit 1,000 supporting signatures (300 for those representing a minority constituting up to two per cent of the population). Contrary to international good practice and previous ODIHR recommendations, a voter may sign in support of only one list.⁴³

To further promote pluralism in electoral process, consideration could be given to removing the restriction to sign in support of only one candidate list.

A total of 12 applications were submitted by the 4 August deadline and the SEC registered 11 lists. Out of 778 candidates, 268 were women. Only the SDP list was headed by a female candidate. The registration of the lists was overall inclusive; however, the lack of clear criteria for the determination of the national minority status of the lists prompted the SEC to use wide discretionary powers to interpret and implement the law. Namely, the SEC denied registration to a list which claimed to represent the 'Yugoslav community', arguing that they did not qualify as a minority in the sense of the Law on Rights and Freedoms of Minorities, due to the absence of legally prescribed cultural determinants.⁴⁴

To ensure equal and fair representation of national minorities, the election legislation should provide clear guidance on criteria while determining the national minority status of candidate lists, and ensure that the special provisions for national minority lists cannot be abused.

The verification of voters' signatures supporting candidate lists is not sufficiently regulated. The SEC requested the IT department of the parliament to enter the data of all signatories in a database and cross-check them against the VR. Of the 131,855 submitted signatures, 19,558 were declared invalid on the grounds that the data provided was incomplete, the voter supported multiple lists, or the signatory was not a registered voter. The SEC established a web application allowing voters to check if their signatures appear in the database. A total of 24 voters alleged that their signatures were forged in support of some lists. The SEC eliminated these signatures from the database, however, only after

⁴⁰ Namely by the New Serbian Democracy which is coalition partner of the 'For the Future of Montenegro'.

⁴¹ At least one of each group of four candidates on a list must belong to the underrepresented gender.

⁴² The required support signatures equals 0.8 per cent of the registered voters at the last elections of any kind.

⁴³ 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."

⁴⁴ In the 2011 census, 1,154 citizens declared themselves Yugoslavs.

the candidate registration process had been completed. Similar complaints were filed to prosecutor, who initiated two cases.

To safeguard the integrity of candidate registration, consideration could be given to providing clear criteria for signature verification, and adequate and timely sanctions for violations.

VIII. ELECTORAL CAMPAIGN

The campaign was competitive with a range of contestants promoting certain national identities and geopolitical orientations. Most visible competition was between the long-ruling DPS and three opposition coalitions.⁴⁵ The ruling party presented these elections as the most important in the history of Montenegro with a potential of reversing the pro-Western direction and independence of the country if the opposition wins. The opposition aimed to mobilize the voters to end the thirty-year domination of DPS, what they regarded as resulting in endemic corruption and state capture. The Law on Freedom of Religion became the most central theme of the campaign and the opposition coalition ‘For the Future of Montenegro’ effectively used the adoption of this law and religious rhetoric and symbols to campaign and mobilize the voters.⁴⁶

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 measures.⁴⁷ Due to these restrictions and public health concerns, the contestants significantly modified their campaigns focusing on online media and social networks rather than physical campaigning. 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.

The campaign was generally peaceful, despite some protests. The opponents largely aimed at discrediting each other, using at times confrontational language, rather than presenting campaign programs. The supporters of the Serbian Orthodox Church (SOC) with participation of some opposition parties, organized car processions and religious marches throughout the country, after the ban on public gatherings was lifted.⁴⁸ The SOC was significantly involved in the campaign and, with their actions and statements, confronted the ruling party.⁴⁹ On 17 August, the NCB defined the gatherings “organized by SOC and certain political actors” as “the greatest threat to re-escalation of infection and thus to public health.”⁵⁰ The SOC denied organizing any gatherings. On 23 August, a car procession from several regions to Podgorica was temporarily blocked by police. On 24 August, the police filed criminal charges against the leader of the ‘For the Future of Montenegro’ list and five priests from SOC for not complying with public health protocols during a campaign event. Subsequently, misdemeanour charges were brought against 67 persons, while criminal charges were

⁴⁵ ‘For the Future of Montenegro’ led by DF, ‘Peace is our Nation’ led by Democrats, and ‘In Black on White’ led by URA.

⁴⁶ During the campaign, the leader of the opposition list visited churches and monasteries including in Nikšić, Žabljak, Cetinje, Danilovgrad, Plužine, Zeta, Bar, Kotor, Gusinje, Pljevlja.

⁴⁷ From 25 June to 23 July there was a ban on public gatherings; from 23 July to 7 August, public attendance was limited to 40 persons outdoors and 20 indoors; from 7 to 10 August political rallies were banned; after 10 August public attendance in political rallies was limited to 50 persons indoors and 100 outdoors.

⁴⁸ The ODIHR LEOM observed marches on several occasions including in Žabljak, Podgorica, Kotor, Pljevlja, Bar and Berane, whereby participants often carried Serbian flags.

⁴⁹ On 11 June, the Head of the SOC in Montenegro, called on voters not to vote for parties that supported the Law on Freedom of Religion and on 19 August, he reiterated his statement while calling on Montenegrins to go to vote.

⁵⁰ On 14 August, a march was held in Berane with around 2,000 people, attended also by the coalitions ‘Peace is our Nation’ and ‘For the Future of Montenegro’, exceeding the permissible number for attendants.

filed against 11 persons. Ahead of elections, the political tension was rising, while on the election day, the leaders of the SOC and the opposition (DF and Democrats) called on citizens not to organize any public gatherings and to stay at home.

At odds with paragraph 7.7 of the 1990 Copenhagen Document and international good practice, various forms of misuse of office and state resources gave the ruling party an undue advantage in the campaign and could unduly influence the will of the voters.⁵¹ Notably, members of the government inaugurated a number of public infrastructure projects across the country, with public attendance.⁵² Although not a candidate, the president, as the head of DPS, was a key figure in the campaign and extensively participated in campaign and institutional events.⁵³ Notably, on 28 August, the president spoke at an event celebrating 110th anniversary of the Kingdom of Montenegro in the historic capital Cetinje. These events received extensive coverage in the media and on the social networks campaign accounts of the ruling party. In spite of the election silence, the prime-minister tweeted on the election day praising the government's achievements.

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 for pensioners.⁵⁴ 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.⁵⁵ A legal ban on public recruitment after the call of elections was circumvented by new temporary employment contracts. The Agency for Prevention of Corruption (APC) initiated a number of cases of possible misuse of state resources and violations of the legislation on state employment.⁵⁶ Some ODIHR LEOM interlocutors also alleged vote buying practices, including in Roma settlements, and sponsoring of travel expenses of diaspora voters.⁵⁷

⁵¹ Paragraph 7.7 of the [1990 Copenhagen Document](#) calls for "political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution". See paragraphs 4.2 and B.1.1, B.1.2 and B.1.4 of the [Venice Commission and ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#); and 1-33 of the [Venice Commission Report on Misuse of Administrative Resources during Electoral Processes](#).

⁵² From 6 until 26 August, public officials attended some 50 institutional events; the president attended 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. In the same period, various public officials held 25 inaugurations of public infrastructure and private business (roads, school, kindergarten, faculty supermarket, day-care facilities, mini sport field, hotel, creative hub, youth center, factory etc), 11 visits to municipalities, 8 meetings with local entrepreneurs and 5 visits to hospitals.

⁵³ For example, from 11 until 25 August, the president inaugurated reconstruction of roads in Gusinje and Pljevlja, 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 Kolašin; he also spoke at DPS campaign events, including in Zeta, Stara Varoš, Cetinje, Pljevlja, Kotor, Podgorica and Nikšić. The Constitution prohibits the president from performing any other 'public duty', without specifying which these public duties are.

⁵⁴ 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. In July and August, the expenditure from the budgetary reserve was over EUR 34.5 million. Of this amount, EUR 10.4 million was allocated for extraordinary social benefits. In the same period in 2019 total budgetary reserve expenditure was EUR 7.3 million.

⁵⁵ 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."

⁵⁶ The Agency for Prevention of Corruption (APC) initiated 293 inspections on the use of state resources in the campaign, 123 on violations of monthly spending restrictions and 101 on violation of employment restrictions during the campaign. ODIHR LEOM interlocutors in Berane, Rožaje, Žabljak alleged that temporary and permanent contracts were offered after the call of elections.

⁵⁷ For example, in Budva, Nikšić, Kotor, Berane, in the form of food and money offers.

Some cases of alleged pressure on voters, including public employees, to vote for the ruling party were noted;⁵⁸ the prosecutor initiated *ex officio* two cases.⁵⁹

To prevent the misuse of office and state resources, additional legal safeguards could be considered. The authorities should ensure that the election campaign is conducted in an atmosphere free from intimidation and fear of retribution and undertake measures to prevent pressure on voters, including employees of state or state-affiliated institutions. Any instances and allegations of pressure should be thoroughly investigated and prosecuted by relevant authorities, and the outcomes should be publicly reported.

IX. CAMPAIGN FINANCE

Campaign finance is regulated by the 2019 Law on Financing Political Entities and Election Campaigns (political finance law).⁶⁰ 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 funding from prohibited sources. Amendments adopted in April 2020 legalized the distribution of welfare benefits in an election year in case of pandemic.

The legal framework maintains gaps and conflicting provisions, undermining legal certainty. Absence of sanctions for inaccurate reporting limits the effectiveness of oversight.⁶¹ The law also lacks regulation for the use of loans and comprehensive methodology for evaluation of in-kind donations.⁶² There is a sanction for early campaigning, but the law fails to clearly define the activities that constitute early campaigning. At odds with international good practice, 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.⁶³ There is general public mistrust in the campaign finance regulatory system, as currently implemented, and despite some improvements, the legal framework does not establish effective safeguards against corruption or circumvention of campaign finance rules.⁶⁴

⁵⁸ Three military servicemen reported to the ODIHR LEOM that they were relocated and downgraded allegedly for self-declaring as Serbs, being followers of the SOC and refusing to support DPS. On 15 August, the servicemen filed relevant complaints with the court.

⁵⁹ Two leaked audio recordings suggest that the ruling party's [approval](#) and the applicant's [will](#) to vote for DPS were requested from individuals to be employed at a public service. Another audio-recording captured the planned [purchase](#) of four voter ID cards by DPS.

⁶⁰ Supplemented by the APC instructions.

⁶¹ Paragraph 215 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that “Irregularities in financial reporting [...] should result in the loss of all or part of such funds for the party. Other available sanctions may include the payment of administrative fines by the party.” Paragraph 224 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that “Sanctions should be applied to political parties found in violation of relevant laws. Sanctions at all times must be objective, enforceable, effective and proportionate to their specific purpose”. Article 16 of [Committee of Ministers of the Council of Europe Rec \(2003\)4 On common rules against corruption in the funding of political parties and electoral campaigns](#) stipulates that “States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.”

⁶² The regulation allows contestants to calculate the average price of gratuitous services at their discretion. In addition, the discounts are not reported as donations.

⁶³ Paragraphs 202 and 203 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) state that “all disclosure reports should be produced on a consolidated basis to include all levels of party activities” and that “the nature and value of all donations received by a political party should be identified in financial reports.”

⁶⁴ See Article 7 of the [UN Convention against Corruption](#). In 2019, Montenegro was placed 66 on the Transparency International [Corruption Perception Index](#), scoring 45 of 100. Some Council of Europe Group of States Against Corruption (GRECO) [recommendations](#) remain unaddressed. See Article 7 of the [UN Convention against Corruption](#).

The law should be reviewed to address gaps and ambiguities, including regulating the use of loans, developing a comprehensive methodology for evaluation of in-kind donations and defining the activities that constitute prohibited early campaigning.

Parliamentary political parties are entitled to annual public funding.⁶⁵ In line with the law, additional public funding totalling EUR 2.3 million was allocated for the election campaign. As required, 20 per cent of these funds, namely EUR 473,561, were distributed in equal amounts among all contestants on 14 August. The remainder had to be disbursed after elections among elected contestants proportionally to the number of seats won after submission of their final campaign finance reports, provided no financial sanctions for irregularities had been imposed by the APC. For 2020, the compensation for each parliamentary mandate won amounted to EUR 23,386.

Election campaigns can be also financed from monetary and in-kind donations from individuals and legal entities, loans and party funds. The new law increased donations from individuals from EUR 2,000 to EUR 5,000 and for legal entities from EUR 10,000 to EUR 20,000.⁶⁶ Several ODIHR LEOM interlocutors opined that the expenditure limit of EUR 2.3 million remains unreasonably high, allowing for excessive spending with potentially undue influence on the will of voters.⁶⁷

The APC is tasked with the oversight of campaign finance as well as the use of state resources of public institutions, including their possible misuse for campaign purposes. 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.⁶⁸ The APC verified the legality of 706 donations by requesting the Ministry of Justice and the Ministry of Finance to verify if the donors were involved in organised crime or public procurement. The APC did not publish the results of the verification.

To improve accountability, an effective mechanism could be considered to enable the APC to directly cross-check donors against a database for public procurement contractors and law enforcement databases and to identify multiple donations by a single donor.

Within the 25 August deadline, all contestants submitted their interim expenditure reports.⁶⁹ The APC published the reports but no conclusions, as this is not explicitly required by law. In line with established practice, the APC contracted a private agency to collect information on campaign expenditures, including monitoring and documenting of the print, broadcast and online media and

⁶⁵ In 2020, the public funding for parliamentary parties amounted to EUR 9 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.

⁶⁶ Legal entities that donated to a party or campaign may not participate in public tenders for four years.

⁶⁷ See paragraphs 195 and 196 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) “Reasonable limitations on campaign expenditures might be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or political party” and “The maximum spending limit usually consists of an absolute sum or a relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services.”

⁶⁸ Prior to elections, DPS reported 643 individual donations totalling EUR 500,552 and ‘For the Future of Montenegro’ 51 donations worth EUR 181,448. Seven contestants did not report any donations. The NGO MANS [reported](#) that most donations to DPS were made on the same day by public employees and members of municipal councils, often in amounts exceeding their monthly earnings. Paragraph 210 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that “Public employees (civil servants) should not be required by a political party to make payments to the party. This is a practice the law should prohibit as an abuse of state resources.”

⁶⁹ The highest expenditures were reported by the SD in the amount of some EUR 300,000, ‘For the Future of Montenegro’ -EUR 242,000, DPS -EUR 230,200, ‘Peace is Our Nation’ - EUR 185,000 and SDP -EUR 85,200.

social networks, the use of billboards and rallies.⁷⁰ According to several ODIHR LEOM interlocutors, some political parties ensured that their campaign contracts allowed for late payment from the public funding allocated after elections.⁷¹ Such practices do not safeguard against exceeding the campaign expenditure limits and hinder transparency. Some interlocutors alleged largely unequal financial capacities of the contestants, due to the access of the ruling DPS to state resources, preferential access to public premises for campaign events and public media space for promotion, as well as pressure on voters, including for receiving contributions. The choice of contractors by some parties was seen as cronyism and an opportunity to prove parties' loyalty to the authorities.

The contestants submitted final campaign finance reports by 29 September. These were published on the APC website in a user-friendly format.⁷² The reporting template disclosed donors, contractors and beneficiaries, displayed the status of payments and expenditures disaggregated per categories, but not the total amounts of incomes and expenditures.⁷³ While the APC is obliged to issue its conclusions on campaign finances two months after the announcement of election results, the reports are audited by the National Audit Office (NAO) only in the year following the elections.⁷⁴ Furthermore, the reporting template for annual party reports adopted in 2012 and used by the NAO has not been reviewed to reflect the changes introduced by the new law.⁷⁵

To ensure transparency, accountability and integrity of campaign finance, the law should be amended to prescribe effective, proportionate and dissuasive sanctions and to provide for an explicit obligation of the oversight body to identify and publish the information on inaccuracies, including unreported incomes and expenditures.

X. MEDIA

A. MEDIA ENVIRONMENT

A high number of diverse media outlets operate in a financially limited advertising market.⁷⁶ While television is still the primary source of political information, younger voters rely on digital sources. Many ODIHR LEOM interlocutors voiced concerns that media dependence on political and business

⁷⁰ The APC has been co-operating with the media monitoring agency [Arhimed](#) since 2016 and renewed its contract in January 2020 after a public call but without competition. The agency reports on its findings to the APC on a 10-day basis. The same agency is employed by the majority of political parties for their marketing strategy research.

⁷¹ The law requires all campaign payments to be made from the campaign account, but allows for liabilities and payments after closing the campaign accounts, i.e., from the regular party accounts.

⁷² DPS reported donations totalling EUR 496,452, party funds – EUR 650,000 and expenditure – EUR 848,303; 'For the Future of Montenegro' donations totalling EUR 195,693, party funds –EUR 211,000 and expenditure – EUR 1.5 million (including EUR 1.1 million for media advertising, of which 50 per cent paid almost equally to TV Vijesti and TV Pink); 'In Black on White' reported public and party funds of EUR 104,000 and expenditure EUR 190,000. 'Peace is Our Nation' – income of EUR 156,551 (including EUR 113,500 party funds) and expenditure of EUR 640,000; SDP income – EUR 235,248 and expenditure EUR 227,442; SD – income EUR 302,725 (of which 250,000 bank loan) and expenditure - EUR 385,403. BS reported relying on public funds, and expenditure of EUR 43,000.

⁷³ Expenditures were attributed mostly to campaign materials, traditional and online media advertising and billboards.

⁷⁴ NAO audits the campaign finance reports only with the regular political party finance annual audits, which fails to cover campaign finances of contestants nominated by the groups of voters.

⁷⁵ The template, *inter alia*, does not reflect the newly introduced limitations on political parties' commercial activities, such as operations with real estate and shares. The campaign finance section only requires a total value of budgetary funds and donations without categorization, it does not require disclosure of loans or party funds used for the campaign, discounts or in-kind donations.

⁷⁶ Besides public Radio Televizija Crne Gore (RTCG), 5 local public television and 14 radio stations, the Agency for Electronic Media (AEM) has licensed 3 commercial television stations with nation-wide coverage, 14 local television stations, 35 radios, and has registered 82 online media outlets.

interests undermines editorial autonomy, investigative journalism and genuine pluralism.⁷⁷ Thus, the media landscape reflects the political polarization and, according to ODIHR LEOM interlocutors, leads to self-censorship by journalists. In addition, some media and civil society representatives reported to the ODIHR LEOM on the non-transparent and biased allocation of public and private advertising to pro-ruling party media outlets.⁷⁸

According to the ODIHR LEOM interlocutors from the media sector, the lack of independence of the Public Service Broadcaster *Radio and Television of Montenegro* (RTCG) and of the regulator Agency for Electronic Media (AEM) undermines their ability to ensure that balanced and comprehensive information is provided to the public by media.⁷⁹ The new Media Law, which came into force on 13 August, aims to address 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. A new law on the Public Service Broadcaster also came into force on the same day. The law contains transparency provisions on ownership and editorial responsibility, allocation of public funding and state advertising to media outlets and the creation of a public fund to enhance media pluralism.

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’.⁸⁰ Since the beginning of 2020, 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 networks.⁸¹

Provisions on defamation and false information which are contrary to international standards on freedom of expression should be removed from the legislation.

B. LEGAL FRAMEWORK

The election law and the Law on Electronic Media contain general provisions on campaign coverage by broadcasters. As required by the law, on 26 June the AEM adopted its rulebook that provides for

⁷⁷ See [Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards](#), 2017, pp. 20-22.

⁷⁸ See the 2019 [EU Progress Report on Montenegro and Montenegro Media Sector Inquiry with Recommendations for Harmonisation with the Council of Europe and European Union standards](#), 2017, pp. 70-72 .

⁷⁹ 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 of these 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.

⁸⁰ 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 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. [UNHCR General Comment 34 on Article 19](#) 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’.

⁸¹ See the report [Monitoring of freedom of expression and the right to privacy during COVID-19 outbreak](#) of the NGO ‘Human Rights Action’.

equal conditions for contestants and for “truthful, timely and impartial” information to voters. 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 labelled as such. The same rules apply to the coverage of contestants’ campaign in the news.

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. While complaints filed to the AEM by contestants must be reviewed within 24 hours, the deadline for complaints filed by other stakeholders is 30 days, which does not ensure a timely remedy prior to election day. The AEM informed that it did not receive any appeals from contestants during the campaign period; six complaints filed by other stakeholders were dismissed and the decisions were published only at the end of the campaign period.⁸²

To ensure a prompt remedy of media disputes during the electoral campaign, the law should be amended to prescribe that complaints by all stakeholders should be filed and reviewed within short timeframes. The AEM should consider acting ex officio upon possible irregularities, in a timely manner.

C. MEDIA MONITORING FINDINGS

[Click Here to Read Media Monitoring Results](#)



The results of the ODIHR LEOM media monitoring reflect the lack of independence of broadcasters and their polarization.⁸³ The lack of editorial coverage undermined the quality of information available to voters. Reportedly, footage from campaign events was, in most cases, produced by the contestants themselves and presented by the media for free, including in the news programmes; this practice *de facto* equates it with political advertising without labelling it 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 and again presented for free and part of the news and current affairs. Media coverage of events based almost exclusively on the content provided by contestants and the government, takes editorial responsibility off journalists, thus undermines journalism as such, and does not contribute to providing voters with analytical information.

Additional effort could be made by broadcasters to improve the quality of editorial coverage of the campaign and to develop their own electoral content rather than using footage provided by contestants.

The RTCG1 generally complied with its legal obligation to provide an equal amount of free airtime to contestants.⁸⁴ The monitored commercial television stations displayed bias in their campaign coverage. While *TV Vijesti* devoted the majority of its coverage (25 per cent) to the ruling DPS, 31 per cent of it was in a negative tone. *TV Nova M* and *TV Prva* devoted 79 and 39 per cent respectively

⁸² Five complaints were filed by the NGO ‘Media Center’, mostly alleging disproportionate airtime given to public officials in prime time news on RTCG and *TV Prva*. On 28 August 2020, the AEM rejected these complaints ruling that the disputed news coverage did not contain any hidden campaign advertising in favour of contestants.

⁸³ Starting from 6 August, the ODIHR LEOM conducted monitoring of the *RTCG1*, *TV Nova M*, *TV Prva*, and *TV Vijesti*, broadcasters. It also followed election-related content in five online media outlets: the CDM, *Vijesti*, *Analitika*, Fos Media and IN4S.

⁸⁴ Each contestant was entitled to three minutes of campaign coverage immediately after the two prime time news programs, to minimum 200 seconds of free advertising spots daily, and equal participation in at least two debates per week. RTCG reported that some contestants did not provide sufficient material to fill all of the free airtime.

to the DPS, overwhelmingly in positive or neutral tone.⁸⁵ Government representatives were regularly covered in their official capacity in prime time news on RTCG1, overwhelmingly 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 a vastly positive tone. At the same time *TV Vijesti* covered the government officials mostly (63 per cent of the coverage) in a negative tone.

In the course of the campaign, RTCG1 and *TV Vijesti* broadcasted four and five debates, respectively. While all contestants were represented on the debates on RTCG1, DPS refused to participate in the debates on *TV Vijesti*. The discussions held during the debates provided an important platform for presentation of contestants' positions on such topics as economy, foreign policy, health, education and human rights. In news, electoral campaign coverage and discussion programmes on monitored television stations women politicians received 20 per cent less coverage comparing to men.⁸⁶

The monitored online media outlets also displayed significant bias in their political coverage during the campaign. While all portals devoted a majority of space to the ruling DPS, the tone disclosed clear bias.⁸⁷

XI. 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.⁸⁸ It recognizes Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats and "others" as "peoples and national minorities" who live in Montenegro.

Albanians, Bosniaks and Croats are well-represented in politics by their corresponding national minority political parties, and they are also integrated, as voters, members and candidates, in major political parties.⁸⁹ 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 10 minority parties and civic organizations contested these elections either independently or in coalitions.⁹⁰ Two coalitions comprising seven parties represented the Albanian national minority and one party the Bosniak population. For the first time, a second Croat national minority party was running. Some 6.8 per cent of the ballot papers were bilingual (in Montenegrin and Albanian) for polling stations in municipalities with significant number of Albanians.

⁸⁵ *TV Vijesti* devoted 23 per cent to 'Peace is our Nation', 18 to 'For the Future of Montenegro', 14 to 'In Black on White' and 9 to *SD* respectively, predominantly in a positive or neutral tone. All other contestants received less than 8 per cent of coverage. *TV Nova M* devoted to all other contestants less than 10 per cent of coverage. *TV Prva* devoted 15 per cent to 'Peace is our Nation', 12 to 'For the Future of Montenegro' and 10 to *SD* and *SDP* each.

⁸⁶ In the debates broadcasted by RTCG1 and *TV Vijesti*, only 15 and 19 percent of the invited interlocutors were women. In the news only 3, 12, 2 and 10 per cent of the coverage on RTCG1, *TV Nova M*, *TV Prva* and *TV Vijesti* were given to female political actors, including candidates, respectively. Only 4, 8 and 11 per cent of their campaign coverage was devoted to women on the *TV Nova M*, *TV Prva* and *TV Vijesti* respectively.

⁸⁷ *Analitika*, *CDM*, *FOS Media*, *In4s* and *Vijesti* devoted 60, 49, 51, 43 and 45 per cent of coverage respectively to the ruling DPS. While on *Analitika* and *CDM* at least 90 per cent of that coverage was in a positive and neutral tone, on *FOS Media*, *In4s* and *Vijesti* 23, 95 and 44 per cent was in a negative tone.

⁸⁸ 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.

⁸⁹ In the outgoing government, BS had three ministers, including one Deputy PM, and DUA (Albanian minority party) and HGI (Croat minority party) - one minister each. The vice-president of parliament was from Forca (Albanian minority party).

⁹⁰ Namely, the Albanian coalition 'Unanimously' (Democratic Party, Democratic Union of Albanians, Democratic Union in Montenegro); the 'Albanian List Genci Nimanbegu - Nik Djeljosaj-' (Albanian Alternative, FORCA, Democratic Association of Albanian, Tuzi Union and Civic Initiative *Perspektiva*); the Bosniak Party (BS); the Croatian Civic Initiative (HGI) and the Croatian Reform Party (HRS).

The Roma community did not have a minority party and was not represented in parliament. They have limited access to voter education due to lack of targeted awareness programmes provided by authorities. Roma representatives complained that, unlike some other minorities, they are not entitled to a reserved seat in parliament. The ODIHR LEOM received allegations of vote buying and intimidation of members of the Roma community.⁹¹ On a few occasions, verbal and physical attacks against members of national minorities were noted.⁹² Both ruling and opposition parties denounced the insulting messages and urged the authorities to prosecute the perpetrators.

XII. COMPLAINTS AND APPEALS

Voters, candidates and submitters of candidate lists can file complaints to election commissions and the courts. SEC decisions can be appealed to the Constitutional Court. Voters are entitled to challenge violations only of their individual voting rights before the Constitutional Court, which deprives them of a possibility to challenge, among other things, candidate registration and the election results, at odds with international good practice.⁹³ Complaints on voter registration are filed to the MoI and reviewed at the Administrative Court, until ten days prior to the election day.

To ensure effective remedy, consideration should be given to extending the rights of voters to file complaints on all aspects of the electoral process, including the possibility to challenge election results.

By law, in case of irregularities affecting the election results, the Constitutional Court may decide to invalidate election results, entirely or partly. However, the SEC opined that the announcement of tabulated election results by MECs and the SEC does not constitute formal MEC and SEC decisions and therefore may not be appealed. This narrow interpretation of the law, contrary to international good practice, deprives stakeholders, including contestants, of the opportunity to challenge the results and significantly undermines the effectiveness of dispute resolution.⁹⁴

In addition, there are ambiguous legal provisions on the invalidation of polling station results for election day irregularities. Namely, the law lists 13 grounds for optional invalidation of results;⁹⁵ and

⁹¹ These were received in Budva, Nikšić, Kotor, Berane. ODIHR LEOM interlocutors informed about threats to Roma community in Nikšić for their support to the ruling party.

⁹² On 9 August, graffiti insulting a national minority was noted on a number of houses in Berane. On the eve of elections, the police in Berane detained a person suspected of inciting ethnic hatred on social networks.

⁹³ Paragraph II.3.3.f of the [Code of Good Practice](#) states that ‘all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections’. In the case of [Davydov and others v Russia](#) (application no. 75947/11; 13/11/2017), the European Court of Human Rights (ECtHR) stated that “serious irregularities in the process of counting and tabulation of votes can constitute a breach of the individual right to free elections guaranteed under Article 3 of Protocol No. 1 to the Convention, in both its active and its passive aspects.”

⁹⁴ Paragraph II.3.3.e of the [Code of Good Practice](#) states that “the appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station.”

⁹⁵ Optional invalidation is prescribed in cases of multiple and proxy voting, casting a non-certified ballot, presence of armed person in the PS, failure of a voter to sign the voter list (VL) upon receipt of a ballot, campaign materials displayed at the PS or within 100 meters, PB members influencing voters, failure of a PB to explain the voting procedure upon a voter’s request or to ensure undisturbed voting, absence of some PB members or their deputies during voting, failure of the PS setting to ensure the secrecy of vote, overcrowding and presence of unauthorised persons.

eight grounds for mandatory invalidation.⁹⁶ The MECs have wide discretionary powers to decide whether to invalidate results and repeat elections, which does not safeguard against inconsistent or arbitrary decisions.⁹⁷ Some irregularities imply the involvement of law enforcement, which lacks expedited criminal proceedings, despite previous ODIHR recommendations. The law conditions requests for invalidations of PB results upon having recorded the alleged irregularity in the PB protocol, which safeguards against *post factum* claims for irregularities.

To prevent arbitrary application and ensure effective remedy the provisions on challenging and invalidation of election results established by the PBs should be reviewed. The law should be amended to prescribe that the decisions on preliminary results may be appealed, including up to the highest level courts.

Despite previous ODIHR recommendations, the election law does not prescribe procedures for handling election complaints and the SEC did not issue any guidance on this matter. The SEC did not maintain a publically available complaints register, and no complaint template was elaborated, contrary to international good practice.⁹⁸ In addition, the SEC, MECs and the Constitutional Court did not publish all their decisions on complaints, undermining transparency of election dispute resolution.⁹⁹ The Constitutional Court does not hold public sessions, at odds with the Constitution and international standards and despite previous ODIHR recommendations.¹⁰⁰

Consideration could be given to adopting procedural guidelines and complaints templates. To enhance transparency of the election dispute resolution a publicly accessible register of complaints should be created and the Constitutional Court should hold public hearings, with parties having the right to attend and to present their cases.

Prior to election day, six appeals were filed to the SEC, challenging MEC decisions on PB membership and locations of polling stations. Three were rejected on merits and two as inadmissible due to late submission. The ODIHR LEOM was made aware of 24 complaints filed by voters to the SEC and the prosecutors alleging forgery of their signatures for support of candidate lists. As the deadlines for investigation and prosecution are long, these cases were pending after election day. The law contains no liability of candidates or their proxies for possible forgery in the nomination documents.¹⁰¹

⁹⁶ Mandatory invalidation is prescribed in case the setting of the PS does not ensure the secrecy of the vote, the voting process is disrupted, voters are not allowed to vote at closing, the control coupon is not found in the ballot box, modification of the VL, discrepancies between the numbers of ballots found in the ballot box and signatures in the VL or control coupons, the serial number of several control coupons does not correspond to the particular PS or the numbers of several control coupons are the same.

⁹⁷ In the case of *Riza and Others v. Bulgaria* (applications nos. 48555/10 and 48377/10; 13/01/2016), the ECtHR reiterated that “the decision-making process on ineligibility or contestation of election results is accompanied by criteria framed to prevent arbitrary decisions. In particular, such a finding must be reached by a body which can provide a minimum of guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be exorbitantly wide; it must be circumscribed, with sufficient precision, by the provisions of domestic law.”

⁹⁸ Paragraph 96 of the [Code of Good Practice](#) states that “The procedure must also be simple, and providing voters with special appeal forms helps to make it so.”

⁹⁹ The law does not establish deadlines for publication of complaints but requires immediate publication by MECs and the SEC of information significant for conducting the elections.

¹⁰⁰ 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” and commits the States to “accept [...] the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts.” See also Article 10 of the [Universal Declaration of Human Rights](#) and Article 14 of the [ICCPR](#).

¹⁰¹ Some 1,300 similar complaints submitted during the 2018 presidential election were still pending investigation.

The Constitutional Court received five appeals. It rejected a challenge against the decision of the president setting the election date on the grounds that it was an individual act outside the Constitutional Court's control. This decision of the Constitutional Court is at odds with international good practice.¹⁰² The court rejected an appeal of the SEC denial to register a candidate list and an appeal against the SEC decision to uphold mergers of seven polling stations by the MEC in Podgorica that alleged discrimination and disenfranchisement of voters.¹⁰³ 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, including for voters in quarantine, and health-related safety measures that created obligations for voters.¹⁰⁴

XIII. ELECTION OBSERVATION

The law provides for citizen and international observation of all aspects of the election process. The accreditation requirements and deadlines were reasonable. The SEC accredited 1,824 citizen observers and a total of 265 international observers, including local staff. 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, and started publishing its results online and on television from 9pm on election day. Out of 265 international observers, 115 were from the European Network of Election Monitoring (ENEMO).

XIV. ELECTION DAY

A. OPENING AND VOTING

In accordance with standard practice for LEOMs, members of the mission did not observe election day proceedings in a systematic or comprehensive manner, but 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. Tactile ballot guides were generally, but not always, provided to visually impaired voters. In a number of those polling stations visited, and according to some ODIHR LEOM interlocutors,¹⁰⁵ voters with disabilities could not vote independently and secretly and the majority of polling stations either were not accessible for persons with physical disabilities or did not provide ballots and materials in accessible formats.

In order to facilitate equal participation of persons with disabilities, efforts should be undertaken to ensure that polling station premises and layout are suitable for independent access by voters with

¹⁰² Under Article 148 of the Constitution, individual legal acts shall be in conformity with the law and are subject to judicial review. [CoE Committee of Ministers Rec\(2004\)20](#) on judicial review of administrative acts states that all administrative acts - individual and normative - should be subject to judicial review.

¹⁰³ The dissenting opinion to the judgment of the Constitutional Court 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 polling stations was filed by the Democratic Montenegro.

¹⁰⁴ The complaints were filed by the Centre for Democratic Transition (CDT) and the Centre for Civic Education. The Court accepted that the right of voters to request mobile voting was unduly limited by the requirement that they are located on election day within the municipality they resided, while the right for mobile voting was unduly extended to voters who were not entitled to it by law due to age, disability or treatment at hospital or social care institution.

¹⁰⁵ Including the Association of Youth with Disabilities, the Association of the Blind in Montenegro and CEMI.

disabilities. Additional measures could be considered, including voter information material in multiple formats, and effective training on disability inclusion to lower-level election commissions.

In some cases, the small size of polling stations and the large number of PB members and voters contributed to overcrowding, especially in the late morning and early afternoon hours. While personal protective equipment against the COVID-19 pandemic, such as masks, gloves and hand sanitizer, was provided, it was not used consistently. Procedural shortcomings noticed in some instances included identification of voters wearing masks and loud announcement of the voters' names, contrary to the law. The secrecy of the vote was at times compromised by voters who did not fold their ballots appropriately and by PB members who were removing the control coupon from the ballots.

Mobile voting could be requested by voters due to sickness, disability or age. Voters could cast their mobile votes on election day anywhere in the country, regardless of their place of registered residence.¹⁰⁶ A total of 13,578 votes, equivalent to some 3.3 per cent of all votes, were cast through mobile voting.

B. COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS

The few counts observed were in general smooth and efficient. As the law and the SEC instructions did not provide full clarity on all procedural safeguards, such as the process to determine the number of detached ballot coupons and voter identification slips, procedures were sometimes inconsistently followed. There is no requirement to post a copy of the PB protocol outside the polling station for public scrutiny, at odds with international good practice and contrary to prior ODIHR recommendation.¹⁰⁷

Upon the receipt of the election material, MECs verified if the PB protocols were complete and figures reconciled, and representatives of the IT department of the parliament entered the data. The tabulation at the MECs observed was well-organized, but not always conducted in a uniform way. Specifically, there were no written criteria regarding MECs procedures on non-reconcilable figures from PBs protocols.

On election 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 available the preliminary results at its website per municipality and per polling station in real time after the tabulation started, but the announcement of results in the media was based on the parallel vote tabulation by the citizen observers. While the election law stipulates that MECs publish on their website all documents relevant to the conduct of elections, the scanned PB result protocols were not made available online.

To ensure the accountability and enhance transparency of the process, tabulation procedures at MECs should be regulated in detail, particularly with regards to handling PB result protocols when figures do not reconcile. Consideration could be given to broaden the access to PB results protocols, such as by promptly posting the protocols at the polling stations and publishing them online.

¹⁰⁶ The Constitutional Court decision of 24 August abrogated the residency requirement in the SEC Rules on Mobile Voting. The SEC, in its opinion issued on 26 August, advised that polling boards, within their discretion, should give priority to voters physically staying in the municipality, and visit voters in other municipalities only if they have time and capacity.

¹⁰⁷ See paragraph 3.2.2.4.46 of the [Code of Good Practice](#), "There must be enough copies of the record of the proceedings to distribute to ensure that all the aforementioned persons receive one; one copy must be immediately posted on the notice-board, another kept at the polling station and a third sent to the commission or competent higher authority".

XV. POST-ELECTION DAY DEVELOPMENTS

Based on the preliminary results, three opposition coalitions jointly gained a slim majority in parliament, namely 41 of the 81 seats.¹⁰⁸ All contestants accepted the election results. DPS acknowledged defeat and initiated attempts to form a new political bloc, which it labeled as “the alliance for European, civil and anti-fascist Montenegro”.¹⁰⁹ President Milo Đukanović stated that he was willing to cooperate with a minority government (composed of the Democrats and URA), provided that it would pursue the strategic course of Montenegro and stressed the vulnerability of the country vis-à-vis “greater Serbian nationalism.” Opposition leaders attempted to settle these concerns by stating that the country’s independence and its pro-Western course are irreversible. On 9 September, three leaders of the coalitions led by DF, Democrats and URA publicly signed an agreement outlining the principles and obligations of the new coalition and declared their intention to form an government composed of experts rather than party representatives.¹¹⁰ Only 18 women (22 per cent) were elected to the new parliament, representing a decrease from 19 (increased to 24 in 2018) in the outgoing parliament and falling short of the 30 per cent quota for candidate lists.¹¹¹

Authorities should consider additional measures to achieve balanced representation of women and men holding publicly elected positions. Political parties could consider internal measures to promote women to senior positions within party structure and to increase visibility of female candidates during election campaigns.

Following the announcement of preliminary results, opposition leaders made calls to their supporters to celebrate the victory at home. However, opposition supporters (mostly DF) organized celebrations in various parts of the country, occasionally leading to small-scale confrontations.¹¹² On 2 September, the Islamic community centre in Pljevlja was vandalized.¹¹³ DPS accused the opposition of endangering the interethnic harmony and peace. The opposition in their turn blamed DPS for artificially instigating violence to cause fear among citizens, particularly the minorities.¹¹⁴ URA introduced heightened security for its leader, due to pressure on him regarding his intention to form a coalition with DF and Democrats. On 3 and 6 September, DPS organized rallies in Cetinje and Podgorica.

The election law allows representatives of the contestants to inspect and photocopy electoral materials following election day, including protocols, signed voter lists and the ballots. Contestants from

¹⁰⁸ ‘For the Future of Montenegro’ obtained 27 seats, ‘Peace is our Nation’- 10, ‘Black on White’- 4, while the former ruling coalition obtained 38 seats (DPS - 30, BS - 3, SD - 3, Albanian minority parties- 2). SDP, which obtained 2 seats, defined itself as opposition but did not side with any bloc.

¹⁰⁹ On 2 September, a meeting was held by DPS with SD, BS, Albanian Alternative, DUA, FORCA, LP and HGI.

¹¹⁰ Principles of the [agreement](#) included honouring the country's international obligations, implementing necessary reforms for EU accession, committing to respect the Constitution and laws, revising discriminatory laws and bylaws, including the Law on Freedom of Religion, upholding the recognition of Kosovo and Montenegro’s national symbols.

¹¹¹ Namely, 7 out of 30 DPS MPs, 6 out of 27 ‘For the Future of Montenegro’, 2 out of 10 of ‘Peace is our Nation’, 1 of 4 URA, 1 of 3 Bosniak Party and 1 of the 2 SDP MPs are women. Women continue to be underrepresented in high-ranking positions in parliament as well as in party leadership positions.

¹¹² DPS and SD reported attacks in some party premises in Plužine and Pljevlja. In Podgorica a fight broke out between DPS and opposition supporters, leading to several injuries. Serbian flags with nationalist messages appeared in Tuzi, where Albanian minority population lives.

¹¹³ Subsequently, the Democrats organised guarding of the premises of the Islamic community while the holder of the list ‘For the future of Montenegro’, together with local priests, opened a banner in front of the Hussein Pasha mosque in Pljevlja stating that they protect the mosque.

¹¹⁴ The Minister of Interior blamed for this situation those who held ‘nationalist speeches’ while URA leader stressed that provocations and incidents would be beneficial for DPS.

various parties exercised this right in most municipalities. In one case, the police was involved, due to allegedly stolen ballot coupons during the inspection, which would trigger a repeat election.¹¹⁵

On 10 September repeat elections took place at one PS in Petnjica municipality.¹¹⁶ The final results were announced by the SEC on 13 September. A total of 413,894 voters voted, which equals a turnout of 76.64 per cent. Of the 81 elected MPs, 18 were women.

After election day, some 13 official complaints were filed to the MECs and five of them were appealed to the SEC.¹¹⁷ Five of these were filed by contestants alleging election day irregularities and requesting recounts or invalidation of PB results.¹¹⁸ Whereas all requests were rejected on the grounds that the alleged irregularities had not been previously entered in PB protocols, one was upheld, which indicates inconsistent application of the law.¹¹⁹ Some additional requests for invalidation of results were filed informally. The prosecutors initiated investigation into nine alleged election day violations, including buying of voter IDs, vote buying, pressure of voters and breach of the secrecy of vote.

XVI. RECOMMENDATIONS

These recommendations as contained throughout the text are offered with a view to further enhance the conduct of elections in Montenegro and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations that have not yet been addressed. ODIHR stands ready to assist the authorities of Montenegro to further improve the electoral process and to address the recommendations contained in this and previous reports.¹²⁰

A. PRIORITY RECOMMENDATIONS

1. Consideration should be given to undertaking a comprehensive reform to harmonize the electoral legal framework and regulate all key aspects of the elections. In line with international commitments, the reform process should be inclusive, ensure public discussion and should be completed well in advance of the next elections.

¹¹⁵ The case referred to a DPS representative inspecting the election material of PB 63 in Podgorica.

¹¹⁶ MEC Petnjica ordered repeat elections at PS 7 upon a complaint by DPS regarding two missing ballot coupons.

¹¹⁷ Several complaints by voters concerned the PB failure to conduct mobile voting, inclusion in the VL, violation of the secrecy of vote and were rejected as unfounded. Three challenges of the constitutionality of the closed party list system were rejected by the SEC based on the 2016 Constitutional Court decision rejecting similar claims by the same applicants. The SEC granted one complaint concerning the possibility to copy election materials.

¹¹⁸ Complaints were filed in Rozaje, Petnjica, Tivat and Kotor after the inspection of the election materials by the parties, primarily by the DPS, the Liberal Party and the Democratic Montenegro, and concerned mismatching numbers of control coupons, ballot papers and ID slips.

¹¹⁹ One complaint led to repeat elections, while two similar complaints alleging more significant discrepancies in Rozaje were rejected as unfounded.

¹²⁰ In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by the ODIHR LEOM as follows: recommendation 12 from the final report on the 2016 parliamentary elections is fully implemented. Recommendation 15 from the final report on the 2016 parliamentary elections and recommendation 16 from the final report on 2018 presidential elections are mostly implemented. The recommendations 1, 2, 7, 8, 14 and 18 from the final report on the 2016 parliamentary elections, 3, 10, 14 from the final report on the 2018 presidential election are partially implemented. See also [ODIHR Electoral Recommendations Database](#).

2. The SEC should address emerging challenges and aspects of the process that are not sufficiently regulated by the statutory law by promulgating clear, consistent, timely and fully implementable instructions and decisions within its mandate.
3. To allow for broader electoral participation on an equal basis, the legal capacity and residency requirements for voting and standing for election should be reviewed in line with the international standards and good practice.
4. To ensure transparency, accountability and integrity of campaign finance, the law should be amended to prescribe effective, proportionate and dissuasive sanctions and to provide for an explicit obligation of the oversight body to identify and publish the information on inaccuracies, including unreported incomes and expenditures.
5. To prevent arbitrary application and ensure effective remedy the provisions on challenging and invalidation of election results established by the PBs should be reviewed. The law should be amended to prescribe that the decisions on preliminary results may be appealed, including up to the highest level courts.
6. Authorities should consider additional measures to achieve balanced representation of women and men holding publicly elected positions. Political parties could consider internal measures to promote women to senior positions within party structure and to increase visibility of female candidates during election campaigns.

B. OTHER RECOMMENDATIONS

Legal Framework

7. Consideration should be given to prescribing a precise list of grounds that trigger reduction of parliamentary mandate and call of early elections.

Election Administration

8. To further increase transparency and public confidence in the work of the election administration, additional measures could be considered, including live online broadcast and access of media to SEC sessions, as well as publication of all relevant documents produced by all levels of the election administration in a timely manner.
9. To ensure consistent application of the election procedures, an efficient and comprehensive training for all polling board members should be provided, including authorised representatives of contestants, with a focus on the counting procedures.

Voter Registration

10. In order to enhance public trust in the Voter Register, the authorities should consider a comprehensive audit, for example through conducting field tests, and allow stakeholders to monitor such exercise.

Candidate Registration

11. To further promote pluralism in electoral process, consideration could be given to removing the restriction to sign in support of only one candidate list.

12. To ensure equal and fair representation of national minorities, the election legislation should provide clear guidance on criteria while determining the national minority status of candidate lists, and ensure that the special provisions for national minority lists cannot be abused.
13. To safeguard the integrity of candidate registration, consideration could be given to providing clear criteria for signature verification, and adequate and timely sanctions for violations.

Electoral Campaign

14. To prevent the misuse of office and state resources, additional legal safeguards could be considered. The authorities should ensure that the election campaign is conducted in an atmosphere free from intimidation and fear of retribution and undertake measures to prevent pressure on voters, including employees of state or state-affiliated institutions. Any instances and allegations of pressure should be thoroughly investigated and prosecuted by relevant authorities, and the outcomes should be publicly reported.

Campaign Finance

15. The law should be reviewed to address gaps and ambiguities, including regulating the use of loans, developing a comprehensive methodology for evaluation of in-kind donations and defining the activities that constitute prohibited early campaigning.
16. To improve accountability, an effective mechanism could be considered to enable the APC to directly cross-check donors against a database for public procurement contractors and law enforcement databases and to identify multiple donations by a single donor.

Media

17. Provisions on defamation and false information which are contrary to international standards on freedom of expression should be removed from the legislation.
18. Additional effort could be made by broadcasters to improve the quality of editorial coverage of the campaign and to develop their own electoral content rather than using footage provided by contestants.
19. To ensure a prompt remedy of media disputes during the electoral campaign, the law should be amended to prescribe that complaints by all stakeholders should be filed and reviewed within short timeframes. The AEM should consider acting ex officio upon possible irregularities, in a timely manner.

Complaints and Appeals

20. To ensure effective remedy, consideration should be given to extending the rights of voters to file complaints on all aspects of the electoral process, including the possibility to challenge election results.
21. Consideration could be given to adopting procedural guidelines and complaints templates. To enhance transparency of the election dispute resolution a publicly accessible register of complaints should be created and the Constitutional Court should hold public hearings, with parties having the right to attend and to present their cases.

Election Day

22. In order to facilitate equal participation of persons with disabilities, efforts should be undertaken to ensure that polling station premises and layout are suitable for independent access by voters with disabilities. Additional measures could be considered, including voter information material in multiple formats, and effective training on disability inclusion to lower-level election commissions.
23. To ensure the accountability and enhance transparency of the process, tabulation procedures at MECs should be regulated in detail, particularly with regards to handling PB result protocols when figures do not reconcile. Consideration could be given to broaden the access to PB results protocols, such as by promptly posting the protocols at the polling stations and publishing them online.

ANNEX I: FINAL ELECTION RESULTS¹²¹

The SEC announced the final election results on 14 September 2020.

Total number of registered voters	540,026
Total number of votes cast	413,894
Total number of valid votes	409,393 ¹²²
Total number of invalid votes	4,500
Turnout (percentage)	76.64

NR on the ballot	Candidate List	Votes won	Mandates won	Percentage of valid votes
1	Social Democrats - Ivan Brajović - We Decide Consistently	16,761	3	4.09
2	Bosniak Party - Rightfully - Rafet Husović	16,279	3	3.98
3	HGI - With the All the Heart for Montenegro!	1,106	0	0,27
4	SDP - Strong Montenegro!	12,835	2	3,14
5	Croatian Reformist Party of Montenegro - HRS	496	0	0,12
6	Dr Dritan Abazović - Black on White - Dr Srđan Pavićević - (Civic Movement "URA", Reconciliation and Justice Party, Group of Citizens "Civis" and Independent Intellectuals) - Citizens!	22,679	4	5,54
7	Albanian Coalition "Unanimously" Democratic Party, Democratic Union of Albanians, Democratic Union in Montenegro	4,675	1	1,14
8	Decisively for Montenegro! DPS - Milo Đukanović	143,515	30	35,06
9	For the Future of Montenegro Democratic Front (New Serbian Democracy, Movement for Changes, Democratic People Party), Socialist People's Party, True Montenegro, United Montenegro, Workers Party, Party of United Pensioners and Disabled, Yugoslav Communist Party of Montenegro, Serbian Radical Party, Party of Pensioners, Disabled and Social Justice	133,261	27	32,55

¹²¹ Source: [CEC Decision of 26 July 2017](#).

¹²² The total number of votes cast is one less than the sum of valid and invalid votes, as at PS no. 1 in Kolašin municipality the PB found one ballot less in the box than the number of votes cast, and the PB did not count the missing ballot as valid or invalid.

10	Albanian List - Genci Nimanbegu, Nik Gjeloshaj	6,488	1	1,58
11	Aleksa Bečić - Miodrag Lekić - Peace Is Our Nation – Democrats - Democratic Montenegro - Demos - Party of Pensioners, Disabled and Restitution - Civic Movement “The New Left”	51,298	10	12,53%

ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION

OSCE Parliamentary Assembly

Margareta Cederfelt	Special Co-ordinator	Sweden
Christian Jensen	MP	Denmark
Hana Dogović	OSCE PA Secretariat	Bosnia and Herzegovina
Michael Andreas Baker	OSCE PA Secretariat	Canada
Dimitrije Todorovic	OSCE PA Secretariat	Serbia

ODIHR EOM Core Team

Tamás Meszerics	Head of Mission	Hungary
Rashad Shirinov		Azerbaijan
Elena Kovalyova		Belarus
Elma Sehalić		Germany
Elissavet Karagiannidou		Greece
Marcell Nagy		Hungary
Robert Lech		Poland
Valeriu Mija		Romania
Roman Railean		Romania
Karolina Semina		Russian Federation
Ruslan Ovezdurdyev		Russian Federation
Chris Taylor		United Kingdom

ODIHR EOM Long-term Observers

Joself Orisko	Czech Republic
Patrik Taufar	Czech Republic
Kine Rusten	Denmark
Niels Henrik Nielsen	Denmark
Gorica Atanasova-Gjorevska	North Macedonia
Lars Tollemark	Sweden
Astrid Nunez	Sweden
Iryna Khanenko	Ukraine
Bujar Ajdari	United States of America
Daniel Villegas	United States of America

ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas, including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance and non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).