



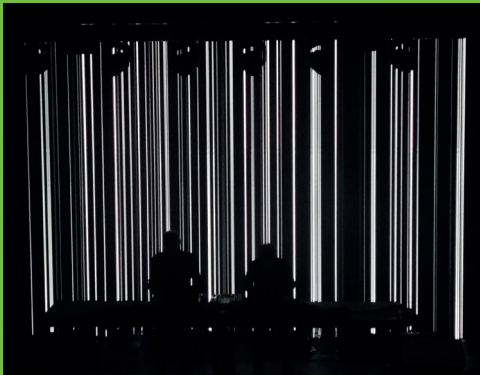
A road to stabilization or radicalization of politics?

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The defining moment of this report is the now certain failure of electoral reform.

Experts who participated in our research rated the area of Elections with an average score of 2.52 on a 1-5 scale. This ranking indicates that politicians have not capitalized on the previous mandate to solve one of society's most pressing issues. The average score in the 2018 survey was 2.64.

These assessments should mostly be attributed to political stakeholders evading compromise. As far as the legislative framework goes, the conditions for holding elections have not changed much, as major regulations remained more or less unaltered as compared to 2016. However, key institutions are not the same, in fact, some of them are now severely deteriorated, run by acting heads and officials with disputable mandates.

And though it may sound hard to believe, the political environment surrounding elections is in fact even more unpromising than back in the tension-fraught 2016, when we at least had some sort of political agreement and a transitional government.

The direct impact of the Law on Freedom of Religion on electoral reform, the Envelope affair and other recent events have deepened the already profound distrust between political stakeholders and radicalized the political scene and public discourse. Such an environment triggers an unstoppable decline in citizens' trust in elections, which is conducive to extreme views and scenarios and seriously hinders peaceful and democratic election process.

The election process is still encumbered by election authorities made up of partisan representatives who put their parties' interest first, voting frauds by using fictitious residence, inefficient regulation of media reporting, as well as numerous problems related to illegal party financing and uncontrolled misuse of public funds.

Institutions act selectively in trying to protect the power-holders from scandals that keep piling up, which only increases the belief that the system is an utterly unjust one.

Very few politicians sincerely advocate a comprehensive electoral system reform that would guarantee better elections, as most parties see reform as an opportunity to hammer out more favorable outcomes for themselves.

Comparative practices offer the tried-and-true solutions to the said issues, and such solutions were proposed to the Committee on Comprehensive Reform of Electoral Legislation. Some day, some more responsible political elites just might take them into serious consideration.



Until then, a radical reform will have to give way to the next best thing - a political agreement that would result in at least the most essential legislative changes and a model for a better control and enforcement of existing rules. Of course, assuming that all political actors set this issue as their priority and enter into open dialogue in search of a solution as soon as possible. The absence of such a dialogue can have very adverse consequences for the state and society as a whole.

A failed reform and unmet expectations

Having been set up with the strong support of the European Union in late 2018, the Parliamentary Committee for the Electoral Legislation Reform did not operate at full capacity at any point in time. Its work has been marked by political frays, outwitting and blackmail. The Democrats left the Committee due to the announced adoption of the Law on Freedom of Religion in December 2019, thus putting a stop to a potential reform.

Many sound proposals were drafted and exchanged during the work of the Committee. They will be put on hold in the await of a more responsible political elite, which will place an improved overall electoral environment before petty and major partisan interests.

The failed reform is also an opportunity missed to incorporate some of the most important recommendations of international and domestic organizations, especially those from the OSCE/ODIHR reports, which will take its toll on future election assessments and the democratization process in Montenegro.

Montenegro's first election delay in recent history took place when local elections in Tivat had to be postponed due to the outbreak of the pandemic. This was yet another indication of flawed and ill-considered laws that do not cater solutions for such legal situations. The President of Montenegro resorted to a legal loophole, probably assuming that he is allowed to take an action as long as it is not explicitly forbidden, and postponed the elections by amending his previous decision to call elections¹, although jurists from the ruling coalition had previously been claiming that this option could only be used in case of emergency or a state of war² The legal gap was filled subsequently by amending the Law on Local Self-Government³.

¹ DECISION to amend Decision to call for elections of councilors in the assembly of Tivat municipality, <https://bit.ly/3bGC39I>

² Luković S, Matijašević B, “Đukanović postpones elections by changing his decision”, 21.03.2020, Vijesti, <https://bit.ly/367xuEw>

³ The Parliament of Montenegro website, 24.04.2020, <https://bit.ly/36cffov>

Partisan electoral administration

⁴ Matijašević B, “Ivanović president of SEC, Vučurović waves a tricolor flag”, 04.03.2020, Vijesti, <https://bit.ly/3fVB9JR>

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The proposal of the Center for Democratic Transition (CDT) for the professionalization of electoral administration was incorporated in the first draft of the Law on the Election of Councilors and MPs prepared by the Committee for Comprehensive Electoral Legislation Reform.

However, given that the law was not adopted, Montenegro is embarking on a new election process with an election authority that is predominantly composed of partisan members that serve their parties' agendas instead of representing public interest.

The Montenegrin State Election Commission is headed by a new president. His predecessor was appointed back in March 2019, even though it was evident at the time that he would be eligible for old-age pension in 2020. As a result, the position of president of SEC was vacant for a while in early 2020. The new President of SEC Aleksa Ivanović was elected in March 2020.⁴

No solution for dispelling distrust in electoral register

A unilateral adoption of amendments to the Law on the Electoral Register produced changes that are technical for the most part.

Distrust in the electoral register is for the most part fuelled by suspicion that a large number of emigrants still hold fictitious residence in Montenegro and therefore claim the right to vote. The situation has not changed, as changes would necessitate amendments to the Law on Registers of Temporary and Permanent Residence, followed by extensive field inspection.

The ruling majority decided to amend the law by way of abolishing the State Election Commission's competence to oversee the electoral roll. Instead of oversight, there is now the phrase "establishing cooperation", and the SEC is only allowed to inspect and access data. This was merely a way of legalizing what was already a common practice - the SEC was never exercising its powers of supervision over the electoral roll in the first place. Even though the review of this provision was overdue, lifting the SEC's oversight powers without agreement with the parliamentary opposition and without devising a better control mechanism can only further diminish public trust.

In the scope of the Alliance for Europe initiative, the CDT proposed the introduction of a new mechanism of control that would significantly improve its quality, expand its scope and thereby increase trust in the electoral process. The proposal envisaged setting up an inter-sectoral team to control the accuracy of voter registration, the likes of a team set up in the Ministry of the Interior in the pre-election period in 2016, with revamped procedures for the team's operation and personal data protection.

Awaiting media laws...

⁵ Uljarević D, Vuković D, *Media in Montenegro – between the stranglehold of power and the struggle for the profession*, 2020, Center for Civic Education, <https://bit.ly/2Z9JB2f>

⁶ European Commission, *Montenegro 2019 Report*, 29.05.2019, <https://bit.ly/2LxOvxQ>

⁷ Director General of RTCG Andrijana Kadija, TVCG Director Vladan Mićunović and Editor of the First Channel of TVCG Aleksandar Mirković.

Media laws are also put on hold, and so are the recommendations for a more balanced media reporting and equality of all participants in the elections, as well as for protecting citizens from uncontrolled exposure to sponsored party propaganda during election campaigns.

There is no self-regulation, and the conduct of media during an election campaign is monitored by the Agency for Electronic Media (AEM), which does not have sufficient authority to impose effective sanctions, nor has it thus far demonstrated impartiality and consistent application of the law so that all offenders are treated the same⁵. The European Commission's latest report also expresses serious concern over the ongoing political interference in the work of the AEM⁶.

Suspicious of an orchestrated politicization of the public broadcasting service RTCG were fuelled by the final judgments rendered by the Supreme Court, which confirmed that former Public Broadcaster's top managers⁷ were unlawfully sacked.

In the era of media digitalization, democracies watch over their electoral processes by preventing misinformation from swaying public opinion and fake news from permeating electoral processes. More precise definition and stricter regulation of the issue of election-related misinformation has not yet made it to Montenegro's agenda.

More money and less control for parties

The ruling majority also adopted the new Law on financing of political entities and election campaigns⁸. The positive changes in the law are mostly related to procedures and certain prohibitions that are now made more specific.

Our proposal for amendments to the Criminal Code was adopted to a certain extent. New criminal offenses related to illegal campaign funding have been introduced - Violation of freedom of persuasion in the financing of political entities and election campaigns, and Acceptance of contributions from prohibited sources.

However, the newly-adopted provisions can hardly lead to improvements in the area, because the critical point was disregarded - who applies the law and how.

The CDT's proposals tabled before the Committee on Electoral Legislation Reform were geared towards a greater independence of the Anti-Corruption Agency (ASK) by increasing the competences of its Council and establishing an efficient performance accountability system.

There was no political will to reform the ASK Council through amendments to the Law on Prevention of Corruption so as to make

⁸ Law on financing of political entities and election campaigns ("Official Gazette of Montenegro", No 3/2020 and 38/2020)

ASK more resilient to political influences we have been witnessing in the previous years. The "Envelope" affair has demonstrated their selective approach in defending interests of the ruling party.

In addition, nothing has been done to pin down ASK's legal obligations to conduct in-depth, meaningful and consistent control over the financing of parties and campaigns. The ASK is still calling the shots here through in-house decisions and bylaws.

The State Audit Institution (SAI) is no longer under obligation to perform regular annual audits of consolidated financial statements of all political entities. Instead, it shall from now on audit at least one annual financial statement of each parliamentary entity in a four-year period, which further impedes control in this area. This will undeniably decrease the transparency of party funding. Also, if SAI keeps picking out its auditees, it may completely trash what's left of its reputation.

New amendments also entail more money for political parties. Contribution limits have been increased, and parliamentary parties are allowed to redirect the extensive funds obtained for their regular work to election campaigns. Parties will also be allocated additional budget funds for the functioning of their women's wings.

Finally, the ban on employment and recruitment in companies has mysteriously vanished from the law. It is prescribed that, during election period, state and local authorities, public institutions and state funds can employ persons for a fixed term or conclude temporary service contracts only exceptionally, so as to ensure uninterrupted and regular work, as based on the decision of the competent authority, and only if so provided by the act on job classification. In the previous version of the law, this restriction also applied to public enterprises. In several articles, the phrase public enterprises is now replaced by the phrase: companies whose founder and / or majority or partial owner is the state. However, whether accidentally or intentionally, this article bears no mention of companies whatsoever.

From "Audio Recording" to "Envelope" – a growing mistrust and a vicious circle of boycott

Public trust in elections started to take a steep decline back in 2013, when "Audio Recording" affair came to surface. Seven years have passed since then, and the root causes of distrust still prevail. Scandals continue to pile up, with no satisfactory legal outcome. The latest addition to the list is the "Envelope" affair, which, despite harsh criticism by not just the opposition-inclined public, was "covered up" through procedural ambiguities and outcomes where perpetrators went unpunished.

A passive approach by competent institutions that often demonstrate unwillingness to stand up to political power-holders and



thoroughly investigate and effectively prosecute cases of undue pressure, clientelism and introduction of tainted money into politics feed the widespread belief that the system is unfair and that violators are bound to go unpunished.

Recent research have also revealed a disturbingly high percentage of citizens who do not trust the electoral institutions and believe that elections are not fair and free.⁹

This results in the delegitimization of the electoral process and of all the institutions and processes involved. This is no longer just a politically opportune decision of opposition parties, but a view held by all opposition voters.

This sets in motion a vicious circle of boycotts, extra-institutional action and further collapse of institutions, all of which have been present to a greater or lesser extent since 2013.¹⁰

This is a particularly concerning outlook given that parliamentary elections are planned for this autumn. Opposition parties are announcing a boycott of the elections. Even if they were to reconsider, as they depend on participation in elections and budget financing, a post-election boycott still seems to be a safe bet. Yet another four-year period of blocked institutions and processes would put an end to reform processes and Montenegro's EU aspirations.

⁹ Center for Monitoring, “Decline of citizens' trust in the electoral process”, 04.07.2019, <https://bit.ly/2y7NKbQ>

¹⁰ Westminster Foundation for Democracy, Parliamentary Boycotts in the Western Balkans, 2019, <https://bit.ly/2WCuyML>



Milica Kovačević
President

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A set of indicators is used to examine the quality of the strategic and legal framework, institutional and financial capacity, as well as the results achieved in six areas: elections, judiciary, fight against corruption and organized crime, media and public administration reform. The six areas are laid out in a topic per document model. Our analyses contain assessments of the fulfillment of the criteria that we have come up with by summarizing and articulating the views and evaluations of experts monitoring the quality of implementation of EU standards, as well as by analyzing the implemented normative and institutional reforms and their practical results.

The first part of the research tackles the quality of public administration reform. We have been evaluating this area as based on **39 indicators**, alongside consultations held with five experts in the field.

We remain open to all suggestions, well-intentioned criticisms and discussions that may arise from our research. We are also ready to offer concrete solutions to all the issues we have labeled as problematic and thus contribute to this important reform.

We would like to express our sincere appreciation to the the Balkan Democracy Fund and the Embassy of the Kingdom of Norway for their trust and financial support.



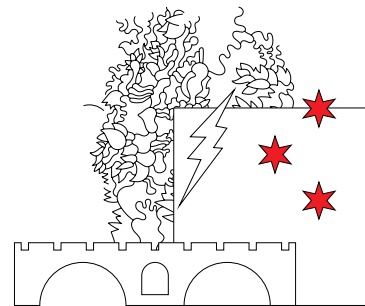
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