

Electoral Process Integrity Assessment

# Parliamentary elections 2020

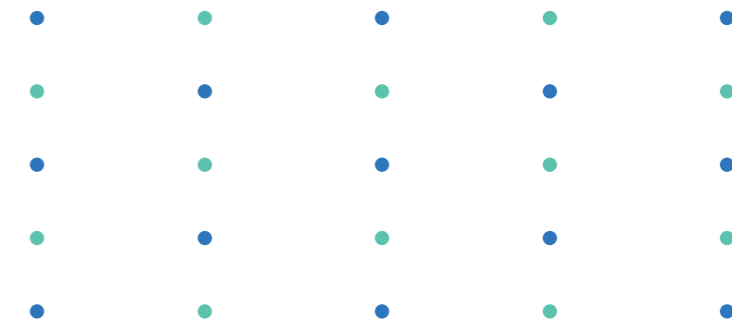
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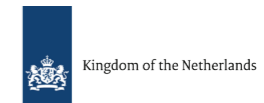
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Podgorica, November 2020

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## I Main findings

The results of parliamentary elections held on August 30 2020 were accepted by all election participants, which set in motion the process of a peaceful handover of power and the establishment of democratic institutions whose legitimacy is derived from elections.

Nevertheless, it can be concluded that this election outcome took place despite, and not because of, the insufficient legislative and inefficient institutional framework, and amid a generally unfavorable environment for the exercise of freedom to cast ballot.

After a failed electoral reform attempt in 2019, the latest election took place under nearly the same legal and institutional electoral framework as in the previous parliamentary election. Old solutions also meant repeating the same old problems. The legislative framework remained vague in a number of areas, allowing for occasional circumvention of laws and regulations. As the elections were held under different and specific circumstances, i.e. during the Covid-19 pandemic and with epidemiological measures prescribed, some previously unnoticed shortcomings in the legislative framework came to light, most notably those that leave plenty of space for restricting voting rights.

This election was managed by the same key electoral management institutions, but the credibility of some of them was further damaged, both due to previous acts or omissions and the fact that they were run by acting heads and officials with disputable mandates. The 2020 election was yet again conducted by a highly politicized election administration. The lack of political outvoting and obstructions ahead of the final outcome is not a product of a spontaneous depoliticization of SEC, but rather came as a result of political parties deciding not to dispute the elections. The election process was already in full swing when a new director of the Agency for the Prevention of Corruption (ASK) was elected, replacing the long-running acting head. The effects of this change have been somewhat visible in terms of an increased openness of this institution, but a fundamental change in bad practices will require thorough legislative and institutional interventions. The reason behind the diminished confidence in the electoral roll remains the same - the register of permanent residence of Montenegrin citizens that is not up to date. The fact that the key institutions of the judicial system are run by officers with multiple or contested mandates has not increased confidence in electoral justice.

Election campaign financing remains one of the most prominent problems affecting Montenegrin elections. After this election, citizens cannot yet again know for sure if campaign funds were collected and spent in accordance with the law and democratic rules, substantive budget funding notwithstanding.

The ruling parties gained an illicit advantage by utilizing state resources and public functions. Suspicions into financing from illicit foreign sources, secret funds and funds originating from dubious capital remained at the level of rumors and speculations. The ASK has failed to develop a methodology and build capacities for tackling these most prominent challenges, and has instead spent enormous resources for meeting administrative and technical, at times irrational, legal requirements.



Recruitment based on party affiliation, the offering of public services and benefits in exchange for votes, abuse of social welfare and other payouts and subsidies and allegations of voter pressure remain unanswered by investigative and judicial authorities.

The election was held in an atmosphere of extreme political polarization that has lasted for years, culminating after the adoption of the Law on Freedom of Religion that prompted a large number of citizens to join protest rallies. The distinctive part of this campaign is reflected in the direct involvement of the Serbian Orthodox Church (SPC), which has expressed political support for those advocating the repeal of the Law on Freedom of Religion.

Media reports clearly reflected the polarization of society. The results of CDT monitoring show that few media outlets had a balanced frequency of mentions of electoral lists in news programs, but no media outlet has been able to strike a balance between positive and negative coverage of election participants. In formal terms, RTCG did meet the requirements of balanced reporting in election marketing blocks, but the news program apparently enabled the “election campaigning by public officials”, thus giving them preferential treatment. Strong support that media outlets voiced to their preferred political options, the absence of educational aspects in election reporting and the lack of high-quality election debate did not contribute to informing voters in a high-standard manner. In this media campaign, disinformation about the participants in the elections were circulated with the greatest intensity so far. The vast majority of disinformation aimed at inflaming inter-ethnic and political tensions was coming from the neighboring countries.

Immediately after the new convocation of the Parliament of Montenegro took seat, CDT sent a public appeal to Parliament Speaker to start the set-up of a parliamentary working body for electoral reform without delay. As with previous cycles, reforms are not carried out before the very elections, so they would not serve as part of pre-election advertising, as thorough reforms cannot be carried out at this stage either way. The goal of electoral reform should be to reach the widest possible agreement on major issues that burden the electoral process - depoliticization of the electoral administration, personalization of the electoral process, updating the permanent residence register and consequently the electoral register, establishing effective control over campaign financing, improving media coverage of elections and addressing the negative foreign influence on elections.

## II The institutional framework for elections

### Inefficient and partisan electoral administration

The election administration in Montenegro is almost entirely composed of representatives of political parties. At the local level, all members of polling boards and municipal electoral commissions are party representatives, selected through a model carefully designed for a precise partisan allocation of posts and control over these bodies. Citizens cannot access election administration as they cannot participate in the election process without being backed by parties. Instead, they can cast vote or else act as NGO observers.

The State Election Commission (SEC) is a permanent body composed of the President and ten members of the standing composition and one authorized representative of the submitter of each electoral list. Two members of SEC, the President and a civil society representative, are appointed by the Parliament following an open competition. The remaining nine of the 11 permanent members are representatives of political parties. Authorized representatives of parties and candidates have the same rights and equal say in decisions in the pre-election period as members of the permanent composition of SEC. In the final stages of the 2020 parliamentary elections, all 11 electoral lists had their authorized representatives in SEC, with a total of 20 political representatives and two members selected in an open competition.

The selection of two non-partisan members is not shielded from political influences either. Public competition is conducted and the decision thereof is made by the working body of the Assembly, which reflects the political proportion in the parliament, which leaves an opportunity for political influence, especially having in mind the imprecise criteria for the election of the SEC president. The only requirement to be elected as the SEC president is to have a law degree and at least 10 years of work experience in the field. The other SEC member that is appointed following an open competition, a civil society representative, must meet much stricter requirements in proving his expertise in the electoral legislation subject matter. In order to be elected as president of SEC, the candidate must not have been a member of a governing body of a political party for the last three years, whereas a civil society representative cannot be appointed into SEC if they have been a member of a body of a political party in the last 10 years.

In practice, such composition reflects on the election management authority’s decision-making. It is virtually a rule to vote on all the politically sensitive issues based on party affiliation, which is the reason behind cases of an absurd “stretching” of legal norms and interpreting them in a creative way in order to attain political goals. While we witnessed the SEC’s use of political tactics in the two previous election cycles, including blocking their work and denying quorum to confirm election results, this has not been the case in this election. However, this cannot be explained by a sudden and spontaneous professionalization of SEC, but by the political decision of the coalition with majority share in SEC to accept defeat and not dispute election results.

The 2020 election once again showed that SEC lacks capacities and resources to administer elections in a high-standard manner.

Its understaffed professional and administrative operations service invested great efforts to perform daily tasks of preparing sessions, acts, organizing trainings and providing support to lower-tier election administration bodies. The non-permanent SEC members would get involved voluntarily, depending on their regular job duties. As a result, SEC sessions were often poorly prepared. Its members were not familiarized with the materials before the sessions, the discussions were long and unproductive due to lack of prior preparation of conclusions and proposals. SEC would adopt decisions following discussions, and they would only subsequently be translated into legal acts by the SEC service, which is why it was often impossible to know what was decided and adopted during and after the sessions.

During the two previous election cycles, SEC developed and successfully implemented a training program for the election administration. Managing elections under COVID-19 pandemic conditions, SEC opted for video trainings of members of polling boards, which were aired by the public broadcaster RTCG. The scope of the training program is still not up to par, covering a limited number of topics intended exclusively for election administration members, without extending to parties, candidates, media and NGOs.

CDT has been warning that SEC capacity building programs should be implemented with donor and expert support from international organizations, given that their sustainability remains uncertain after project completion. For example, OSCE provided support in developing SEC's ICT capacities, but after the program expired, the SEC again had to rely on the ICT support of the employees of the Parliament of Montenegro. On the night of the elections, the SEC website featured a tabulation of election results in real time, but SEC did not advertise it, so all the media were broadcasting projections of non-governmental organizations.

Although it was clear for months that the election would be carried out under coronavirus pandemic conditions, the SEC budget did not provide timely budget allocations to cover the increased costs caused by the complicated working circumstances. Consequently, this so-called independent institution entirely depended on the will of the Government of Montenegro to provide additional funds for the safe conduct of elections, including covering the costs of renting the premises for SEC operations.

SEC has somewhat improved its transparency in this election cycle. Accredited observers had unimpeded access to SEC sessions and to all documents related to the election process. The SEC website also had more information available, with documents and information relevant to the election process being published in a timely manner. Unfortunately, the same cannot be said for municipal election commissions, which continued the practice of violating the law and not publishing information, to the extent that one might not have known that the elections were being held at all, judging by the websites of some of the MECs.

Nevertheless, NGOs made serious objections to SEC's lack of transparency in publishing administrative and financial information<sup>1</sup>. Following an initiative submitted by the Center

1 | Center for Civic Education, "The SEC did not comply with OSCE recommendations, regressing even further", 20.08.2020, <http://cgo-cce.org/2020/08/20/dik-nije-ispunio-preporuke-oeps-a-vec-je-dodatno-nazadovao/>

for Civic Education (CGO), the Agency for Personal Data Protection and Free Access to Information (AZLP) issued a decision which finds that SEC entrusted the processing of signatures of support to Montenegrin Parliament employees, contrary to provisions of the Law on Personal Data Protection<sup>2</sup>.

Contrary to international recommendations, SEC yet again did not open all of its sessions to the media. This can partly be explained by epidemiological measures that limit the number of people present in a room. However, there is no justification for a delayed appointment of a spokesperson, sporadic and brief press releases and long and persistent silence on decisions that spurred public controversy, such as the one on the Technical recommendations for epidemiological protection during elections.

### The inaccurate permanent residence register affecting the electoral register

Electoral register is a derived electronic collection of personal data of Montenegrin citizens with a voting right, formed based on the data drawn from the permanent residence register, the register of Montenegrin citizens, and birth and death registers.

Being a derived database, it gets automatically updated as soon as a change occurs in one of the registers that feed into it. Its accuracy depends on the accuracy of the source registers that make it up, which is why they need to be up-to-date. In the last election cycle, CDT did not come across cases of eligible voters not being registered in the electoral roll. However, the fact remains that some citizens who are not eligible to vote are also listed in the electoral register.

The problem does not lie with the electoral roll itself, but with the out-of-date register of permanent residence of Montenegrin citizens. This inaccuracy affects the electoral register in two ways: firstly, quite a few citizens did not meet their obligation of reporting a change in the place of residence, which is the basis for distribution of polling stations, and so the polling station was often miles away from one's actual place of residence, causing confusion and problems during election day. The main problem lies in an undefined number of people who did not deregister their residence when going abroad for a longer period of time and thus retained the right to cast ballot, which kindles suspicions of voting frauds by using fictitious residence.

The processes of control and verification of the electoral register carried out thus far uncovered a number of deceased persons whose entries could not be deleted for lack of legal grounds. A part of the problem lies with the citizens' lack of administrative culture or ill-intent when omitting to report a death in the family. The Law on Health Care stipulates that a doctor needs to issue a medical certificate of time and cause of death for each deceased person. The second part of the problem arises from the communication lag between the competent services, healthcare and other institutions, due to which some confirmed deaths are not recorded in a timely manner. Also, a lot of citizens who passed away after medical treatment abroad are not filed in the death records.

2 | Center for Civic Education, "AZLP confirms CGO's allegations of SEC violating the law", 21.10.2020, <http://cgo-cce.org/2020/10/21/azlp-potvrđila-navode-cgo-a-da-dik-krsi-zakon/>

There is also the long-running problem of a large number of voters who have not replaced their expired identification documents (issued back in the former state union administration), so they cannot cast ballot since voters are to be identified electronically. There were roughly 9,000 such cases in 2016 and about 7,000 of them this time around. This way, the number of registered voters is “ballooned”, leaving room for possible abuses, as it is not known for certain whether these persons are alive at all.

An extensive control into the electoral register entails supervising the institution in charge of its management. Until 2020, in line with the Law on Electoral Register, this obligation was under the remit of SEC, which has the right to access all registers of citizens, have insight into official documents, as well as the possibility to instruct the Ministry of Interior to remove irregularities detected in the control process. However, two election cycles have shown that this institution failed to build its control capacities, as its role is reduced to cursory and formal controls rather than substantive conclusions about the quality of the electoral register. This became official through amendments to the Law in early 2020, when the supervisory powers of SEC were reduced to “cooperation”.

The second tier of control is in that candidates of certified electoral lists and non-governmental organizations that monitor elections are granted access to an application that gives them significant insight into the data and changes made in the electoral register, as well as the documents that prompted such changes. However, it is not possible to manipulate, compare and perform other operations on the data in the application, as they cannot be copied due to data protection provisions.

For this reason, the last two election cycles saw the setting up of mixed teams within the Ministry of the Interior, with participation of external actors. In the 2016 election, these teams were made up of political parties and non-governmental organizations, whereas in 2020, only NGOs were part of the mixed teams. In both instances, ministers were at the helm of these teams, and provided the highest level of access to data.

### Inefficient control of campaign financing

The Agency for the Prevention of Corruption (ASK) is defined as an autonomous and independent institution, established by the Assembly. The Law on the Prevention of Corruption regulates the work and competencies of ASK pertaining to integrity building and corruption prevention, whereas the scope of work in the field of control of financing of political entities is regulated by a separate law.<sup>3</sup> Ever since it was established in 2016, ASK has been under public criticism for lacking capacity and being under political influence. Political actors, international experts and the civil sector call into question the integrity of this institution due to its selective approach and cursory control processes. ASK has notably been investing efforts to improve transparency in the previous period, but has yet to demonstrate the ability to conduct in-depth controls in all areas of work. The governing bodies of ASK are the Council and director. Members of the Council are elected by the Parliament and their competencies include the appointment of the director, deciding on the budget and the rules of operation of the Agency. Since the current members were elected during the opposition

boycott of the Parliament, the civil sector has been challenging the Council’s ability to work in the public interest.<sup>4</sup>

<sup>3</sup> | The Law on Financing of Political Entities and Election Campaigns (“Official Gazette of Montenegro” No 3/2020 and 38/2020))

<sup>4</sup> | Dimitrije Jovičević, “New president of an independent Agency and high corruption in Montenegro”, Radio Free Europe, 20.08.2019 <https://www.slobodnaevropa.org/a/movcilo-radulovic-agencija-za-sprjecavanje-korupcije/30119490.html>

In this election cycle, ASK improved its methodology for control of political entities and increased its transparency. ASK increased its transparency primarily by producing more content on their website. The problem that still persists is that the documents published are technical and informative, with no analytical reports and conclusions on detected abuses. At the outset of the election process, a special working group has been set up to monitor the election campaign, with NGO representatives as members.

CDT monitoring of the 2020 parliamentary election campaign has shown that the majority of reporting entities did publish the data on public spending as required, however, those who were directly violating the law were not sanctioned. Once again, ASK failed to clearly and unambiguously inform the public about which entities were in breach of law. Despite the controls performed, the public is not being told which institutions fail to publish data on the spending of public funds in the pre-election period, travel orders, municipalities that do not provide information on social aid payouts and the reporting entities that do not even have websites. This way, ASK is failing to set an example and promote the integrity of the electoral process and prevent undesirable practices from recurring.

An extremely weak institutional cooperation in the control process is a matter of particular concern. This is best illustrated by the example of the Public Procurement Administration’s (UJN) handling of a request for performing a check into campaign donors. Instead of answering whether authorized persons of certain contract-awarded companies were making political campaign donations, the UJN submitted 2,200 public procurement contracts for AKS to go through on their own. There is no electronic database of suppliers or at least a list of companies and authorized persons that would facilitate this kind of control. By acting this way, the Public Procurement Administration is not showing readiness for institutional cooperation in the control process.

The State Audit Institution (SAI) is no longer under obligation to perform regular annual audits of consolidated financial statements of all political entities, which further undermines control over their financing. Instead, it shall from now on audit at least one annual financial statement of each parliamentary entity in a four-year period, which is a step back both in terms of transparency of political party financing and the quality of the control performed.

### AEM does not guarantee balanced reporting

The Agency for Electronic Media (AEM) is an independent regulatory body that monitors compliance with the electronic media law and program standards of electronic media, and decides on complaints.

The Law on Election of Councilors and MPs prescribes the obligation to establish a parliamentary committee to monitor the implementation of electoral legislation’s media-related provisions. The European Commission criticized the said provision, citing overlapping jurisdiction, as the AEM should be the only body responsible for overseeing broadcasters during elections.<sup>5</sup> In addition, the deeply divided media community has from the outset been fairly unanimous in their criticism of the solutions that envision political control of the media.<sup>6</sup> The committee was set up, with its first session scheduled for the day before the election, but the session was not held due to lack of quorum.<sup>7</sup>

<sup>5</sup> | European Commission, Montenegro 2020 Report, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf)

<sup>6</sup> | Dragan Koprivica and Milica Kovačević, Legitimacy and integrity of elections – a necessary step towards European values, Center for Democratic Transition, October 2018, [http://www.cdtmn.org/wp-content/uploads/2018/11/policy\\_legitimite-izbora-24-10-18.pdf](http://www.cdtmn.org/wp-content/uploads/2018/11/policy_legitimite-izbora-24-10-18.pdf)

<sup>7</sup> | Parliament of Montenegro, “Lack of quorum for holding the First Session of the Committee for Monitoring the Implementation of the Law on the Election of Councilors and MPs in the part relating to the media”, 29.08.2020, <http://skupstina.me/index.php/me/ostale-aktuelnosti/item/4613-odbor-za-pracenje-primjene-zakona-izboru-odbornika-i-poslanika-u-dijelu-medija-nije-odrzo-prvu-sjednicu-zbog-nedostatka-kvoruma>

AEM has the legal capacity to impose administrative and supervisory measures on broadcasters, but they are reduced to warning measures that did not produce desired effects thus far, as well as to impose temporary or permanent revocation of broadcasting license, which is the last resort and its excessive use is certainly not desirable. The latest report of the European Commission concludes that Montenegro should empower AEM in the coming year to use a range of measures, including warnings, fines, suspensions and revocation of licenses, ensuring proportionality and effectiveness.<sup>8</sup>

8 | European Commission, Montenegro 2020 Report, [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro\\_report\\_2020.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/montenegro_report_2020.pdf)

9 | Agency for Electronic Media, Report on media coverage during the campaign for parliamentary and local elections - August 2020, 15.09.2020, <https://aemcg.org/wp-content/uploads/2020/09/Izvestaj-o-medijiskom-predstavljanju-tokom-kampanje-za-parlamentarne-i-lokalne-izbore-avgust-2020.-godine.pdf>

10 | Ibid.

11 | Dan, "AEM's silence in the interest of the government", 29.08.2020, <https://www.dan.co.me/?nivo=3&rubrika=Politika&clanak=757115&datum=2020-08-26>

12 | Vijesti online, "Media center: RTCG and AEM should be urgently released from party influence", 01.09.2020, <https://www.vijesti.me/vijesti/drustvo/465479/media-centar-pod-hitno-osloboditi-partijskog-uticaja-rtcg-i-aem>

13 | OSCE/ODIHR and OSCE PA, International Election Observation Mission Montenegro – Parliamentary elections, August 30 2020, Statement of preliminary findings and conclusions, <https://www.osce.org/files/documents/a/3/462283.pdf>

During the 2020 parliamentary elections, AEM was monitoring 17 television programs in the period from August 10 to 28, 2020, between 7:00am and midnight. Radio program monitoring was performed by a sampling method due to the large number of radio broadcasters. For this reason, the report published by AEM refers only to the TV broadcast monitoring and does not include radio stations, as these two monitoring methods are not comparable.<sup>9</sup>

AEM initiated 58 proceedings ex officio, 25 of which were suspended as the detected irregularities were addressed as instructed, 4 warnings were issued and 29 proceedings are underway. The Agency received 17 complaints about the work of broadcasters, one of which was lodged by a political party. Eleven complaints were rejected, two warnings were issued and four proceedings are ongoing. The Agency received no complaints from the submitters of electoral lists or election administration bodies.<sup>10</sup>

So far, AEM has not demonstrated impartiality and consistency in the application of the law. In late 2017, there was a series of politically motivated dismissals of NGO representatives from various management and supervisory bodies, one of them being the dismissal of an AEM Council member based on unconvincing arguments, which seriously called into question AEM's independence.

Media Center NGO criticized AEM's lack of promptness in resolving complaints into election campaign media coverage submitted by NGOs and individuals. This NGO filed seven such complaints against two public and three commercial broadcasters before AEM.<sup>11</sup> They believe that there were no grounds for rejecting some of the complaints, and attribute this to AEM being under party influence.<sup>12</sup>

The preliminary findings of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE / ODIHR) indicate that the lack of independence of RTCG and AEM undermines their responsibility for ensuring balance and comprehensiveness of information provided to the public by media outlets.<sup>13</sup>

### The insufficiently effective protection of electoral rights

The system of complaints and appeals on violation of electoral rights is neither effective nor fully in line with international standards. The law stipulates that any complaint against a decision, act or omission of a polling board shall be submitted to the Municipal Election Commission, whereas a complaint against a decision, act or omission of the Municipal Election Commission is to be lodged before the State Election Commission. However, the problem is that a complaint can be submitted to SEC only if MEC previously rejected or

dismissed it. By the same token, a complaint can be submitted to the Constitutional Court only if SEC previously rejected or dismissed it. This means that a dissatisfied party does not have the possibility to appeal to the Constitutional Court once a complaint has been granted.

The Constitutional Court's electoral dispute sessions were not open to the media or observers, and the public was not even informed as to when they would be held. The Constitutional Court was holding press releases following the sessions in order to inform the public about its decisions in a timely manner, but without publishing full texts of the rendered decisions on electoral complaints on their website, so the interested public often had to speculate on the reasoning and contents of certain decisions.

During the election process, the Montenegrin Constitutional Court received two appeals against SEC decisions on parliamentary election, both of which were rejected. Non-governmental organizations, Center for Democratic Transition<sup>14</sup> and Center for Civic Education<sup>15</sup>, filed two separate initiatives to review the constitutionality of some of the provisions of the Technical Recommendations for the Epidemiological Protection of Voters During Elections and the Rules on Voting by Letter, which restricted the voting right of persons who were undergoing hospital treatment or isolated due to confirmed or suspected coronavirus infection. The Constitutional Court accepted the initiatives, and repealed the provisions that unjustifiably limited the right to vote.

The right to vote and the integrity of elections are protected under criminal law, although the implementation is lacking. Opposition parties' accusations of vote-buying and electoral abuses by ruling party activists and public officials have been piling up for years. Opposition parties, on the other hand, are suspected of receiving illegal funding from abroad. Although the media have been publishing copious information, documents and recordings along those lines in the previous election cycles, investigations get launched rarely and they run slowly, with even rarer instances of cases reaching the court or the final verdict in due course. The verdicts are mild and not dissuasive, with examples of persons continuing to act in political life and hold public office after being convicted of electoral offenses.

In the pre-election period, the State Prosecutor's Office called on the citizens to report any irregularities to the competent basic state prosecutor's offices. Following up on citizens' reports received during the election day, the non-governmental organization MANS submitted 117 criminal complaints to the Special Prosecutor's Office due to suspected election-related criminal offenses. The majority of them cited the purchase of voter ID cards, pressures and pre-election voter bribery. The basic state prosecutor's offices informed the public that criminal charges were filed for voting rights violations in Pljevlja (1), Nikšić (3) and Kotor (1). The Basic State Prosecutor in Ulcinj filed two charges over suspected criminal offenses against the right to vote ex officio, whereas the Basic State Prosecutor in Cetinje filed such charges in one case. There is no information on the outcome of these proceedings as of yet.

14 | Center for Democratic Transition, "Constitutional Court repealed the provisions of the Rules on Voting by Letter", 24.08.2020, <https://www.cdtmn.org/2020/08/24/ustavni-sud-ukinuo-odredbe-pravila-oglasanja-putem-pisma/>

15 | Center for Civic Education, "Constitutional Court confirmed CGO's allegations, SEC must be brought within the framework of legality and constitutionality", 18.08.2020, <http://cgo-cce.org/2020/08/18/ustavni-sud-potvrdio-navode-cgo-a-dik-morada-se-dovede-u-okvire-zakonitosti-i-ustavnosti/>



## III Money and politics

### Legal provisions do not contribute to substantive control

The Law on Financing of Political Entities and Election Campaigns defines the rules for financing of political entities, including the manner of acquiring funds, prohibitions and restrictions. The law also contains provisions on the misuse of public funds during election campaigns and rules for control and supervision of financial operations of political entities.<sup>16</sup> Although recently amended, the law has not substantially improved the area of political entity funding and controls performed by the Agency for the Prevention of Corruption (ASK), areas which remain a challenge for the new parliament.

Political entities raise funds from public and private sources. Contributions are payments voluntarily made to a political entity by natural persons and legal entities, companies and entrepreneurs, and cannot be coming from abroad. Donations cannot be coming from anonymous sources, as all campaign finance transactions must be carried out through a specially designated bank account.

Prohibitions and restrictions concerning the campaign-related use of public funds are defined by law. The following is prohibited during election campaign: excessive spending of public funds, use of premises of state bodies for campaign activities, use of state-owned machinery free of charge, making social welfare payments, hiring without prior approval, use of official vehicles for campaign purposes, the write-off of debts for electricity, water and utility bills.

The existing normative framework does not contribute to substantive control, despite covering a wide range of abuses.

In order to ensure transparency and prevent the misuse of state funds, the entities subject to the law are obliged to post on their websites weekly analytical cards on their spending and submit them to ASK. However, analytical cards are still not uniform, and some institutions publish them cumulatively, instead of disaggregated by budgetary spending units. This complicates the verification process, and it is difficult to say with certainty whether this lack of uniformity stems from different accounting rules or financial fraud. Ministries and municipalities are to publish data on the distribution of all forms of social welfare payouts and data on the use of funds from the current budgetary reserve on a weekly basis. All public institutions and companies founded and/or owned in major part or partly by the state or local self-government units are to publish weekly on their websites all issued travel orders for official vehicles and submit them to ASK.

The previous election cycles haven't proven this legal framework to be counterproductive, as ASK gets overwhelmed by documentation submitted, and to no effect.

CDT's proposal to criminalize illegal party financing has been partially incorporated in the latest amendments to the Criminal Code. New criminal offenses against electoral rights have been introduced - Violation of freedom of persuasion in the financing of political entities and election campaigns, which implies that a contribution to a political entity was obtained through coercion, and Acceptance of funds obtained through criminal activity.<sup>17</sup>

<sup>16</sup> | The Law on Financing of Political Entities and Election Campaigns ("Official Gazette of Montenegro" No 3/2020 and 38/2020)

<sup>17</sup> | Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No. 70/2003, 13/2004 - rev. and 47/2006 and "Official Gazette of Montenegro, No 40/2008, 25/2010, 32/2011, 64/2011 - other law, 40/2013, 56/2013 - rev., 14/2015, 42/2015, 58/2015 - other law, 44/2017, 49/2018 and 3/2020)

### Improved administrative transparency

Pursuant to law, political entities submit campaign finance statements to ASK, which publishes them on their website. With the aim of improving financial transparency, ASK has set up a database of financial statements, easily searchable by political entities and election cycles. Although the ASK methodology for verifying the financial activities of participants of election campaign has been improved, it is still not comprehensive and leaves room for incomplete reporting by political entities.

Financial statements submitted by political entities are insufficiently articulated, at times lacking logic and containing information of different quality, and any analysis thereof requires an advanced knowledge of financial operations. Some of the examples that question the logic and credibility of the statements submitted are that of "For the Future of Montenegro" Coalition and the Social Democratic Party not entering the costs of pre-election rallies in their statements, although it is easy to check when and where the rallies took place. The Democratic Party of Socialists, the "For the Future of Montenegro" Coalition and the "Black on White" Coalition did not report transportation or fuel costs, despite an active field campaign.

In-kind contributions are calculated at market value and reported as income. However, the credibility of statements in this segment is highly questionable. It is difficult to deduce from the statements submitted whether political entities received no in-kind contributions whatsoever during the campaign, or whether they failed to report them. To illustrate the point, transportation and fuel costs were obviously incurred, but some entities did not include them in their statements either as an expense or as an in-kind donation.

Particularly challenging is the tracking of online marketing campaign costs, as ASK does not have complete control over this segment. Thus, the expenses and revenues reported may be well below the actual ones.

### Numerous suspicions into sources of party financing

Montenegro's political parties are customarily financed from state funds primarily, making them overly dependent on state budget. State funds allocated for financing of the regular operation and costs of election campaign of political parties are many times higher than in the region and beyond. In addition, parties report small corporate donation amounts, which inflames suspicions that these funds get past official bank accounts and go into secret funds instead.

Pursuant to the Law on Financing of Political Entities, companies and natural persons that have a state contract or perform activities of public interest cannot give contributions to political entities. During the 2020 parliamentary elections, there were cases of illicit financing of political entities, with financial contributions coming from persons associated with companies that were awarded electricity generation concession contract by the government.<sup>18</sup>

<sup>18</sup> | Igor Mašović, Tamara Kokić and Milić Novović gave financial contributions to the DPS, despite being owners of mini-hydro power plants that were awarded concession contract by the State. ASK initiated misdemeanor proceedings against the DPS, as it was determined that one of the donors, Milić Novović, is not eligible to vote in Montenegro, which is also contrary to the Law.

Persons convicted by a final court decision for a criminal offense with elements of corruption and organized crime and persons ineligible to vote may not finance political entities. ASK should be performing all-round checks into persons making contributions. Election funding from third parties is neither regulated nor adequately controlled.

Despite the ban on financing from abroad, there are numerous suspicions and public accusations of such ongoing practices. Ahead of the 2020 parliamentary elections, the Serbian government financially backed Serb associations in Montenegro, which are inclined to certain political parties<sup>19</sup>. The Serbian Orthodox Church also more or less directly participated in the election campaign by favoring a particular political option.

**19** | Pobjeda, “Serbian government is backing Serb associations in Montenegro with 1.64 million”, 21.05.2020, [https://www.pobjeda.me/clanak/vlada-srbije-sa-164-miliona-pomaze-srpska-udruzenja-u-crnoj-gori?preview\\_mode=true](https://www.pobjeda.me/clanak/vlada-srbije-sa-164-miliona-pomaze-srpska-udruzenja-u-crnoj-gori?preview_mode=true)

### Election campaign - an unfair game

Election participants do not have equal access to state budget funding, as parliamentary parties can now use the funds provided for their regular operation to finance the election campaign, which gives them a significant financial advantage.

The Law sets limits on the amount of donations coming from legal entities and individuals. The new provisions increased the maximum amount of donations - from EUR 2,000 to EUR 5,000 for natural persons, and from 10,000 to 20,000 EUR for legal entities.

However, it cannot be said with certainty whether contributors keep within these thresholds in practice, given that ASK lacks capacities to fully verify the credibility of information submitted by political entities.

Election campaign was carried out under coronavirus pandemic conditions, with numerous restrictions of public gatherings and social contacts. The ruling party turned to “election campaigning by public officials” to make up for the lack of election rallies. ODIHR warned that the ruling party had a major advantage owing to various forms of misuse of funds, which could have swayed election outcome.<sup>20</sup> Especially striking is the fact that, during the election campaign, most senior officials attended ceremonial openings not only for major infrastructure projects, but also for small-scale facilities (supermarkets, sports facilities, hotels).

**20** | OSCE/ODIHR and OSCE PA, International Election Observation Mission Montenegro – Parliamentary elections, August 30 2020, Statement of preliminary findings and conclusions, <https://www.osce.org/files/f/documents/a/3/462283.pdf>

Public officials, except for MPs and councilors, and public administration employees are prohibited from engaging in campaigning activities during working hours. CDT has been pointing to a number of violations of this provision, but ASK did not use its powers to look into such problematic cases.

Due to the epidemic, amendments to the Law on Financing of Political Entities have lifted the restriction on the payment of social welfare from the current budget reserve during an election year. This change is justified given the socio-economic consequences of the coronavirus pandemic, however, adequate control mechanisms have not been established. CDT and some political entities advocated for setting up of parliamentary controls whereby all financial aid payouts would be made under the clearly defined criteria and with full transparency.

## IV Media and elections

### Media environment - old rules and new problems

As 2020 is election year, political parties started to engage by gathering around several key issues for voters even before the official date of the elections was set. After election date was announced, parties intensified their activities, but election campaign was fundamentally altered this time around due to the coronavirus pandemic and the many bans on public gatherings and social contacts. Most parties adjusted their activities to the new circumstances dictated by the pandemic, with a major shift of campaign activities onto the media and Internet. Therefore, media campaigning and advertising on web portals and social media prevailed, as limited number of participants were allowed at traditional pre-election rallies. The distinctive part of this campaign is reflected in the direct involvement of the Serbian Orthodox Church (SPC), which has voiced political support for those advocating the repeal of the Law on Freedom of Religion.

The Law on the Election of Councilors and MPs does not specify an official campaign period. The law only provides for the right to obtain media coverage in the pre-election campaign starting from the day an electoral list is confirmed, and stipulates that election campaigns via the media and public gatherings are to cease 24 hours prior to the election day. The law does not limit the duration of paid political advertising, which puts those election participants with more funds at their disposal in an advantageous position.

Although editorial independence is an indisputable right, the media are expected to show objectivity and impartiality in their coverage of all relevant developments. However, the absence of self-regulation and active implementation of measures by competent authorities leave much room for arbitrary media coverage. Thus, rules against fake news, propaganda and disinformation about elections and election-related topics have not yet been introduced, and the state has so far been addressing these phenomena inadequately and by taking disproportionate measures towards individuals and media workers. Quite notably, the online realm still remains unregulated in the Montenegrin legislation, as even the rules of election silence do not apply there.

There are no obligations for public broadcasters to produce voter education programs and promote democratic values, and the public broadcasters’ programs during the campaign are reduced to airing political slogans of election participants on loop. Moreover, this campaign has demonstrated that the existence of certain legal norms does not prevent public broadcasters from becoming vehicles for the promotion of one or another party.

**21 |** Center for Democratic Transition, “Media and elections: Disinformation present, reporting unbalanced”, 15.11.2020, <https://www.cdtmn.org/2020/11/15/mediji-izbori-dezinformacije-prisutne-izjestavanje-neizbalansirano/>

**22 |** “Decisively for Montenegro! DPS - Milo Đukanović” (DPS), coalition “FOR THE FUTURE OF MONTENEGRO - Democratic Front (New Serb Democracy, Movement for Change, Democratic People’s Party), Socialist People’s Party of Montenegro, True Montenegro, United Montenegro, Workers’ Party, Party of United Pensioners and the Disabled, Yugoslav Communist Party of Montenegro, Serb Radical Party, Party of Pensioners, Persons with Disability and Social Justice” (“For the future of Montenegro”), coalition “ALEKSA BEČIĆ - MIODRAG LEKIĆ - “PEACE IS OUR NATION” - DEMOCRATS - DEMOCRATIC MONTENEGRO - DEMOS - PARTY OF PENSIONERS, DISABLED AND RESTITUTION - CIVIC MOVEMENT THE NEW LEFT” (“Peace is our nation”), “Dr Dritan Abazović - Black on White - Dr Srdan Pavičević - (Civic movement URA, Justice and Reconciliation Party, Civic Association CIVIS and Independent Intellectuals) - Citizens!” (“Black on white”), “SDP - STRONG MONTENEGRO!” (SDP) and “Social-democrats - Ivan Brajović - We decide CONSISTENTLY” (SD).

**23 |** Dragan Koprivica and Milena Gvozdenović, Key features of the election campaign in the media, Center for Democratic Transition, November 2020 <https://www.cdtmn.org/wp-content/uploads/2020/11/Analiza-Kljucna-obiljezja-predizborne-kampanje-u-medijima.pdf>

**24 |** Web portals CdM and Vijesti, daily newspapers Pobjeda and Dan and primetime news program by TV Vijesti.

## Penetration of fake news into the election process

The European Commission’s latest Progress report on Montenegro notes the growing volume of region-wide disinformation that further polarized the society in the aftermath of the adoption of the Law on freedom of religion and during the electoral campaign. CDT’s findings show that a model of deliberate creation and dissemination of disinformation has been utilized in election reporting, as on numerous previous occasions. They are all designed to create instability and tension in society. Tabloids from Serbia were in the lead, although Montenegrin media, and especially social networks, have also been peddling fake news.

Interestingly enough, Serbian tabloids switched targets after the elections. Before the elections, they were mostly coming down on Montenegro’s state authorities and Milo Đukanović as the personification of the then government, whereas after the elections, these tabloids chose the leader of URA, Dritan Abazović, as their prime target, occasionally switching to first candidate on the electoral list “For the future of Montenegro”, Zdravko Krivokapić. This is a very interesting example that helps cast light on the functioning of creators of disinformation that work under the motto “no eternal friends, only eternal interests”.<sup>21</sup>

## Media coverage during election campaign

In order to further delve into how new circumstances affect election campaign, CDT monitored the quantity and quality of media coverage by the most influential media outlets of six electoral lists<sup>22</sup> that received most votes.<sup>23</sup>

Although RTCG formally provided a balanced media coverage of all the confirmed electoral lists in televised campaign advertising, the prime-time news program heavily favored the activities of state officials. This way it enabled the so-called “election campaigning by public officials”, tipping the balance in election campaign news reports.

When it comes to the overall coverage of individual electoral lists by the commercial media<sup>24</sup>, our findings have shown that TV Vijesti came close to striking the right balance in reporting, followed by the Vijesti portal, whereas in the other media we had monitored, the average number of mentions was rather uneven as per individual lists.

In terms of the ratio between positive and negative media reports about individual electoral lists, our conclusion is that none of the analyzed media outlets got the balance right. The commercial media had a preference for certain electoral lists in line with their respective editorial policies.

Analysis of media coverage shows that, in general, the positive and negative campaigning was nearly balanced as per electoral lists. In our sample, media reports with a positive connotation (53.3%) were slightly more frequent than the negative ones (44.4%), while 2.3% were neutral.

The Democratic Party of Socialists (DPS), the Social Democrats (SD) and the Social Democratic Party (SDP) used media space mostly for self-promotion, while the opposition

parties were more focused on negative campaigning and voicing their criticism at their key political opponent - the DPS, which accounts for the share of media reports with a negative connotation.

The negative campaigning was mostly going on between the DPS and the coalition “For the Future of Montenegro”. There were no striking examples of opposition parties criticizing each other.

## V Electoral freedom

### Parties dominate the nomination process

Montenegrin electoral legislation stipulates that candidates for councilors and MPs are to be selected solely from closed electoral lists of parties, coalitions or groups of citizens. Consequently, the elected representatives are accountable to party leaders, not to citizens. Also, the law does not allow an individual to run for election. This is contrary to international standards of democratic elections, and both the Venice Commission and ODIHR have been repeatedly recommending that independent candidates be allowed to run.

In addition to the lack of independent candidates, there is also an insufficient number of women running for election. After the 2020 elections, there are 23.5% female MPs holding seats in the Parliament of Montenegro, which is far below the European standard. In addition, the practice from the previous convocation has shown that the norm according to which in the event of termination of mandate, a parliamentary seat which was held by a woman is to be designated to the next-in-line female candidate on the list is defined in a way that does not fulfill its purpose. It is prescribed that the position of an MP whose mandate has ceased shall be taken over by the candidate who is next in line on the electoral list, and if a candidate is of the underrepresented gender, they are to be replaced by the next-in-line candidate of the less represented gender. In practice, however, the female candidates on electoral lists give up their seats for one reason or another, and therefore do not get formally elected as MPs and are therefore not subsequently replaced by the next-in-line female candidate.

The process of verification of the collected signatures of support for candidates is a problem that burdens all election cycles in Montenegro. The public has on several occasions justifiably suspected that certain lists and candidates were backed by forged signatures, through an unauthorized collection and use of citizens' personal data, with thousands of citizens reporting that their personal data were misused during the 2018 presidential elections.

Furthermore, international recommendations suggest that citizens should be allowed to support more than one list or candidate, and thus freely demonstrate their support for political pluralism and be relieved of potential political coercion by being urged to support one party or one candidate only. This is especially important for the Montenegrin system, as all political parties have access to signatures of citizens, which is why a signature of support is used as a sort of a pre-poll and public vote, contrary to democratic practices.

### Voter pressure and clientelism as features of the electoral process

Recruitment based on party affiliation, the offering of public services and benefits in exchange for votes, abuse of social welfare and other payouts and subsidies and allegations of voter pressure have been burdening the electoral processes in Montenegro for years.

Accusations of pressure and clientelism are among the predominant topics in public discourse both during, but also between elections.

Even though few cases get investigated and there is no institutional reaction, there is hardly anyone that has not been convinced and seen first-hand that clientelistic and nepotistic networks do in fact operate. Clientelism has almost become an institutional form of social relations. The citizen/client shows their loyalty to the party/state, and is in return sponsored and supported by their patron.

In the thus conducted previous election cycles, there has been a major problem with presence of party activists who keep records of voters near polling stations during election day, thus creating the effect of psychological pressure on voters. However, the data collected from a representative sample of polling stations show that this phenomenon was not as prominent in the 2020 parliamentary elections.<sup>25</sup>

The Law on State Administration proclaims the principle of impartiality and political neutrality. Political organizations and their activities are forbidden in state administration bodies.

However, in practice, the state administration is highly politicized and has for years been filled with politically affiliated and incompetent staff from top to bottom. The European Commission has also pointed out that strong political will is needed to effectively depoliticize public administration.

In such an environment, there are frequent allegations of pressure on state administration employees to vote for the ruling parties. On several occasions, information circulated that heads of state and local government bodies were keeping records of their employees' political affiliation.

The secrecy of the ballot is a principle enshrined in the Constitution of Montenegro and the electoral legislation. Polling boards are tasked with arranging polling stations in a way that ensures the secrecy of the ballot. Ballot is cast in person, and assistance of another person in the voting booth is permitted only in very limited cases, so as to preempt "family" voting. The law stipulates that a ballot is to be annulled in the event of disclosure by the voter. In 2016, SEC also issued an opinion that if a voter writes down their name and surname or initials on a ballot paper, the ballot is to be considered invalid.

However, there are still problems with ensuring the secrecy of the ballot in practice. As many as 13% of polling stations in Montenegro have less than 50 registered voters, as easy access to voting needs to be ensured for all, including those living in the widely dispersed and remote villages whose population size shrinks as people move to the cities. There are polling stations where only a handful of people vote, which calls into question the secrecy of their ballot. The instances of voters disclosing how they voted are decreasing with each election cycle, but the problem remains that polling boards do not take a uniform approach in such cases, and sometimes do not annul the publicly disclosed ballots.

In previous election cycles, there were also allegations that voters were pressured to mark their ballots with agreed-upon symbols. During the 2020 parliamentary elections, CDT observers recorded such cases during the vote count in 8% of polling stations, albeit with only a few cases per station.

<sup>25</sup> | During the 2016 elections, party activists were noticed at 4.5%, and in 2020 at 1.5% of polling stations.

The Criminal Code of Montenegro has a separate chapter defining 14 criminal offenses against electoral rights. These offenses include violation of the right to vote and stand for election, freedom of choice in the casting of ballot, ballot secrecy, preventing the taking of the poll and election observation, misuse of electoral registration, state property and falsification of voting results. In late 2019, the Criminal Code was amended with two criminal offenses that sanction illegal financing of the election campaign.

However, despite the sound regulations, official data reveal few investigations and proceedings into election crimes. Institutions are acting passively and refrain from opposing political power-holders, which results in infrequent and mild punishments for perpetrators.<sup>26</sup>

The proceedings into the “Audio recording” scandal from 2013, when the public learned about recruitment abuses where prospective employment was conditioned by voting for the ruling party, has not yet been concluded. The “Envelope” affair, which uncovered the illegal financing of the DPS, was reduced to two misdemeanor warrants and a fine.

Competent authorities are currently investigating the scandal that marked the 2020 parliamentary elections, the video footage of a DPS activist who cites political suitability as a precondition for entering employment in the Army of Montenegro. The Basic State Prosecutor’s Office in Podgorica filed a bill of indictment with the Basic Court in Podgorica, suspecting a criminal offense of violating the freedom of choice in the casting of ballot.

### Disputing the legitimacy of elections

Voter turnout is customarily high, despite the high level of distrust in the fairness of the election process, as continuously reported by citizens in public opinion polls. As many as 76.6% of registered voters exercised their right to vote in the parliamentary elections held on August 30 2020, as compared to 73.4% of voters in the previous parliamentary elections in 2016.

On the other hand, the survey conducted by the Center for Monitoring (CEMI) in 2019 probed the citizens about whether they thought that the 2016 parliamentary elections were fair and free, with 42.9 percent of respondents answering in the affirmative, while 33.5 percent responded that elections were not fair and free. When asked whether the upcoming elections would be fair and free, 42.1 percent of the respondents gave an affirmative answer.<sup>27</sup> According to a pre-election survey conducted by the Center for Democracy and Human Rights (CEDEM) in August 2020, only 22.5% of respondents trust political parties.<sup>28</sup>

Opposition political parties did not trust the outcome of the elections either, and so the losing parties have never acknowledged election results and congratulated the winners since the introduction of the multi-party system. After 2013, delegitimization of the election process and all electoral institutions and processes escalated. After the 2016 elections, a full-scale boycott of parliamentary and institutional activity ensued.

Following the elections held on August 30 2020, the ruling DPS and its partners admitted defeat, and soon announced they will be taking on a constructive opposition approach.

<sup>26</sup> | Dragan Koprivica and Milica Kovačević, Legitimacy and integrity of elections – a necessary step towards European values, Center for Democratic Transition, October 2018, [http://www.cdtmn.org/wp-content/uploads/2018/11/policy\\_legitimitet-izbora-24-10-18.pdf](http://www.cdtmn.org/wp-content/uploads/2018/11/policy_legitimitet-izbora-24-10-18.pdf)

<sup>27</sup> | Dan, “Declining public trust in the electoral process”, 06.07.2019, <https://www.dan.co.me/?nivo=3&rubrika=Politika&clanak=703445&datum=2019-07-06>

<sup>28</sup> | Center for Democracy and Human Rights, Political public opinion of Montenegro, August 2020, <https://www.cedem.me/publikacije/istrazivanja/politicko-javno-mnjenje/send/29-politicko-javno-mnjenje/1975-politicko-javno-mnjenje-avgust-2020>

## VI Conclusions and recommendations

### 1. Depoliticize electoral administration

After the 2016 parliamentary elections, the CDT proposed the depoliticization of the electoral administration as a path to building citizens’ trust in the electoral process and institutions. We have developed a model for a professional election administration, which we have been advocating throughout the previous term. The need for such change has not ceased, and it should serve as one of the pivotal points of the forthcoming electoral reform.

The election administration must be freed from the monopoly of political parties. State Election Commission must finally become an institution made up of professionals, committed to implementing election laws and creating an adequate election environment and acting as an impartial regulator of the election process. SEC must be provided with appropriate mechanisms to control the work of MECs so as to ensure uniform application of the election law throughout the country. Polling board members must be selected based on prior training and testing process, not solely on the basis of party quotas.

### 2. Introduce the possibility for all citizens in hospital treatment to exercise their right to vote

The holding of elections during the pandemic has shown that the current provisions could lead to restrictions on the right to cast ballot. The Constitutional Court repealed the provision of the Rules on voting by letter which denied the right to vote by letter to persons outside their registered place of residence. Even so, there were cases of citizens not being able to exercise their right to vote because polling board members were unable to reach each and every such voter.

For this very reason, we believe that the Montenegrin legislation should introduce the possibility of voting outside the place of residence at national elections, based on a previously issued certificate, following the example of Croatian legislation (the so-called “yellow certificate”). Montenegro is a single constituency, which is why election result is not affected by where the voter exercised their right to cast ballot.

### 3. Personalize the electoral system by introducing preferential voting and allow standing as an individual candidate

The introduction of preferential voting or open lists should be one of the central themes of future electoral reform. Decision makers and experts should scrutinize all existing models, and carefully compare the advantages/disadvantages and effects of each of these models. In any case, Montenegro will have to create the setting for preferential voting ahead of EU accession, since members of the European Parliament are elected under this very system.

Also, it is necessary that independent candidates be allowed to run. The simplest solution is to consider independent candidacies as single-candidate lists. After the announcement of the collective electoral list, an independent candidate would enjoy all the same rights

as candidates of verified and announced electoral lists. In the event that an independent candidate receives more votes, i.e. more than one seat, those mandates will belong to the electoral lists with the second highest resulting quotient. If the mandate of an independent candidate ends, the vacant councilor or MP seat is to be allocated to a candidate from the list with the next highest quotient.

#### 4. Ensure a gender-balanced representation

It is necessary to acknowledge the long-standing demands of civil society and introduce the obligation whereby every third place on the election list would go to a candidate of the underrepresented gender. Also, it is necessary to regulate in more detail the procedures for filling vacant seats in the parliament.

International standards and good practices require a legislated gender quota of 50% for the participation of representatives of the underrepresented gender in election administration bodies at all levels.

#### 5. Change the method of verification of electoral lists

CDT finds it is necessary to consider the introduction of another manner of candidacy verification, acceptable by universal standards and proven in comparative practice as more being effective than verification of signatures collected. We propose to introduce an obligation for electoral lists to make an adequate election deposit, to be refunded only if they win a specified minimum number of votes. The sum and the threshold requested need to be well-thought-out so as not to create an unjustified restriction on candidacy.

Should the model of collecting signatures be retained, it would be necessary to prescribe a detailed procedure for collecting and verifying signatures while protecting the personal data of citizens and the legitimacy of elections, while non-compliance would be countered with sanctions that would extend to criminal liability. In that case, citizens should be allowed to give signature of support to more than one list.

#### 6. Improve control over political entities and election campaigns

It is necessary to improve institutional cooperation and provide expert support to ASK, so it would have at its disposal all the authorities and experts that would actively participate in the process of control and information sharing. In addition to regular controls, more attention must be paid to unannounced controls of both institutions and political entities.

The ASK control reports were generally more lenient toward political entities than those conducted by SAI and typically contain fewer identified irregularities. It is therefore necessary to improve the ASK control methodology into financial statements submitted by political entities.

The ASK control should determine whether financial statements are accurate, prepared in accordance with the applicable financial reporting framework and presented in a fair and objective manner. The inconsistencies in the reports of political parties must be further cross-checked against information from different sources. In addition, the law must provide for sanctions for political entities that submit incomplete or inaccurate statements on campaign spending.

Controls into the misuse of public resources and spending of public funds should also be substantially improved. The provisions that regulate this area need to be amended given that the existing system implies that institutions submit extensive documentation on a weekly basis, so the checks performed by ASK are basically ineffective as the documentation is overwhelming. The control performed by ASK should include elements of auditing the financial performance of institutions in the election campaign and logically examining the adequacy of the evidence obtained during the control.

The obligation of institutions to publish financial data should not be limited to the election campaign period, rather, the transparency of government spending should be a standard part of their regular work.

#### 7. Amend the Law on Registers of Temporary and Permanent Residence and introduce field controls

Revoking the permanent residence requirement would entail a referendum for amending Article 45 of the Constitution of Montenegro, which is one of the articles whose change would have to be supported by 3/5 of all registered voters. At this point in time, it would be unrealistic to expect to get the support of 325,000 Montenegrin citizens for any cause. Until the conditions for constitutional change are met, the permanent residence requirement must be applied consistently in order to dispel any suspicion of abuse. Consistent implementation requires cleaning up the register of permanent residence.

Every modern state needs to have an accurate register of domicile not only for the sake of elections but also for other administrative matters. It is in a country's best interest to know where its citizens "live" because of elections, but also because of tax collection, provision of various services or resolving security issues. Even if the Constitution is to be changed somewhere down the line, the domicile register would still remain a useful tool for the functioning of the state.

Since there are no official and reliable data on the number of Montenegrin citizens who registered residence at an address where they do not actually live, the only possible way to update the register is for the Ministry of Interior officers to visit each and every address in Montenegro, determine who actually lives there and initiate the necessary changes if citizens have been found living at a particular address without registering their residence.

A very important precondition for solving this problem is for the field control to determine how many people are in fact living at a given address and what their status is: whether they are temporarily or permanently residing abroad. After that, it is necessary to establish how many of these people have citizenship and rights associated with it in the countries where they reside, so as not to strip away civil rights from those that have not acquired such status.

Resolving this problem will require a longer period of time and an amendment to the Law on Registers of Temporary and Permanent Residence that would prescribe mechanisms for mandatory verification of residence status of citizens.

### 8. Improve the accuracy and transparency of the electoral register

As was previously noted, the key problem with the electoral register lies not with the register itself, but with the register of permanent residence. However, there are also smaller-scale issues that need to be addressed by means of electoral register cleanup. One of them is having entries of citizens who are registered to vote but cannot do so because they have not replaced the outdated identification documents issued back in the former state union administration. This issue needs to be addressed by introducing law provisions that would allow deleting entries of persons who have not had valid identification documents for over a decade.

Penalties should be applied against citizens who fail to notify institutions of a family member's passing and against institutions that do not keep these records up to date. It is necessary for all state institutions involved to significantly improve communication and be able to perform the removal of deceased voters from the electoral register in a timely manner and on legal grounds.

Although the electoral roll has seen major improvements in recent years by becoming a centralized and automated register, the public still has no confidence in its accuracy. All the interested parties that have the legal right to monitor the accuracy of the electoral register need to be provided with additional information relevant for control through constant and direct communication with the Ministry of Interior. It is necessary to publish and explain the results of all the controls, findings and conclusions to the citizens.

### 9. Implement mechanisms to prevent foreign influence in elections

The state authorities of Montenegro have not adequately countered the long-term exposure of the public and citizens to outside influences such as disinformation or other more or less obvious methods of swaying public opinion and the outcome of elections.

In the scope of the Raskrinkavanje.me project, CDT analyzed comparative experiences of democratic countries and came up with a series of guidelines for improving responses to disinformation, including those coming from abroad with the intention of influencing elections. The guidelines include amending the Criminal Code and media laws to counter disinformation; prohibiting the spread of fake news in the electoral legislation provisions (France); setting up new media institutions or expanding competencies of the existing ones to specialize in the fight against fake news; preparation and signing of a special code that would regulate government-media relations in this subject matter; initiating dialog and building consensus with all relevant actors of society, with a special focus on cooperation with civil society; taking part in international systems for countering disinformation and increasing the level of media literacy of citizens in different ways.<sup>29</sup>

The experiences of France and Sweden are especially valuable in this area. French state authorities responsible for electoral integrity and cyber security have taken a number of actions to prevent foreign interference in elections, such as instructing election candidates and warning the media about fake information. Similarly, a Swedish government agency was tasked with raising awareness among its citizens about threats stemming from disinformation and influence campaigns by foreign countries seeking to undermine democratic processes.<sup>30</sup>

<sup>29</sup> | Dragan Koprivica, Milica Kovačević and Tijana Velimirović, Disinformation network and the inadequate reaction of the state, Center for Democratic Transition, May 2020, <https://www.cdtmn.org/analize/mreza-dezin-formacija-i-neadekvatna-reakcija-drzave/>

<sup>30</sup> | The Law Library of Congress, Global Legal Research Directorate, Regulation of Foreign Involvement in Elections, August 2019, <https://www.loc.gov/law/help/elections/foreign-involvement/index.php>

### 10. Improve the integrity of the election process by defining new rules in media campaigning

It is necessary to clearly define when the official campaign period starts and ends. The Law on the Election of Councilors and MPs does not define the official start of campaign, but only that the public broadcasters provide free of charge media coverage starting from the day of verification of the candidates list. On the other hand, the Law on Financing of Political Entities and Election Campaigns defines the duration of the election campaign in line with its respective scope - from the day of calling of elections until the day of the announcement of the final election results.

This electoral process emphasized the need to develop strategic and legal mechanisms for combating disinformation. It would be of particular importance to incorporate anti-fake news provisions into election legislation. This would produce an effective model for counteracting such phenomena, which would contribute to the integrity of the election process, especially given the examples of inadequate reaction of the state in relation to what is being published in the media or social networks.

It is important to anticipate measures for public broadcasters to air programs aimed at educating citizens on their democratic rights during an election process.

## VII About CDT

CDT is a non-governmental organization which strives to promote democracy in Montenegro through development and fostering of dialog, education of political stakeholders, research, advocacy and monitoring of institutions, processes and policies.

CDT was established in 2000 and started out as an election monitoring organization. In the past 20 years, CDT monitored 12 national elections (federal, parliamentary, presidential elections and the referendum) as well as a series of local elections either in one or more municipalities.

Following the first successes in election monitoring, the CDT went on to expand its programs to the area of good governance - advocacy and monitoring of institutions, processes and policies, seeking greater transparency and accountability of institutions and decision-makers. CDT has amassed extensive experience in analyzing the national legislative and institutional framework regulating the rule of law, transparency, the judiciary, the fight against corruption, political financing, the misuse of state resources etc.

Today, CDT operates in two program areas. Our activities in the **Democratic institutions** program area help build up the rule of law based on integrity. Our goal is to build independent institutions that guarantee democracy, with checks and balances among branches of government and a fair election process. We advocate policies and mechanisms that guarantee democratic control of institutions and accountability of all participants in public life. Our activities in the **Democratic society** program area vouch for our commitment to building and preserving the democratic values of a society based on freedom, justice and equality. Our programs and projects are aimed at counteracting harmful external influences and media manipulations. We stand against influences and activities that aim to undermine the fundamental principles of a civic state and society.

During 20 years of operation, CDT has established cooperation and partnerships with many regional and international organizations and networks. Regional co-operation is one of the CDT's strategic priorities, as we implement numerous projects with partners from similar civil society organizations from the Western Balkans and the EU. CDT is widely recognized for its election-related work and is the founder of [European Network of Election Monitoring Organizations - ENEMO](#) and a member of [Global Network of Domestic Election Monitors - GNDEM](#). CDT is a member of the anti-corruption network [SELDI](#). CDT is the founder of one of the leading organizations in Eastern Europe in the field of transparency - the Accountability, Technology and Institutional Openness Network in South East Europe - [ACTION SEE](#). The CDT's fact-checking platform [Raskrinkavanje.me](#) is a member of [International Fact-Checking Network \(IFCN\)](#) as well as of the regional anti-disinformation network – [SEECheck](#), a network of organizations running similar platforms in the region.





Electoral Process Integrity Assessment  
**Parliamentary elections 2020**

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