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Assessment of Montenegro's
Progress in Meeting Political
Criteria in Negotiations with
the EU.

Electoral reform – meeting the needs of the society or making way for political party trade-offs?

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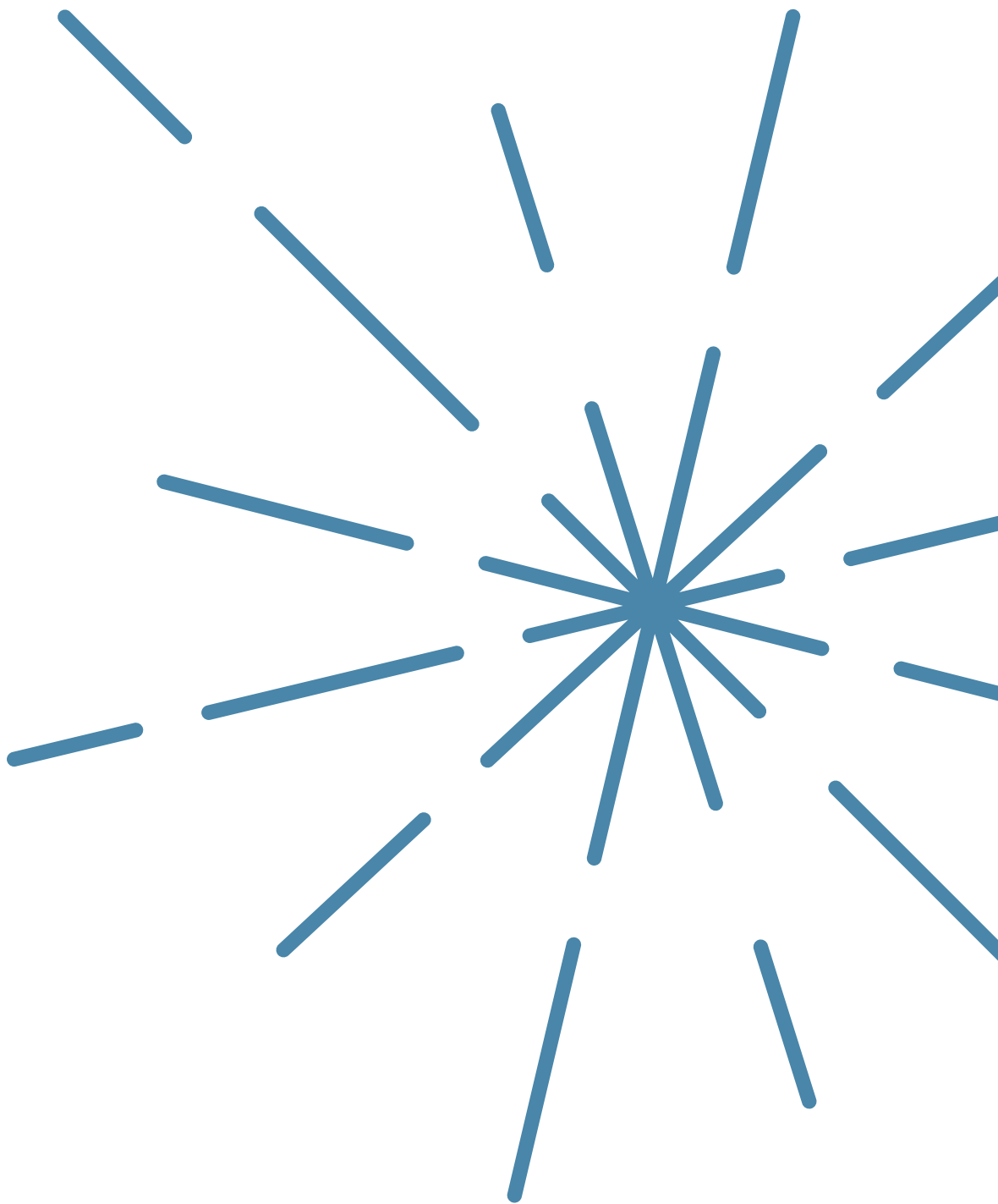


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Introduction

The results of Montenegro parliamentary elections held in 2020 were, for the first time ever, accepted by all election participants. It is commendable that the process of handover of power was a peaceful one, which is indeed a step ahead in the functioning of democracy in Montenegro and its electoral integrity.

However, election process was characterized by both old and new shortcomings, with similar institutions and laws that have been rightfully criticized by different instances, which indicates that the election outcome took place despite, and not because of, the electoral environment.

A change of government did not necessarily change the conditions for holding elections and the credibility of the process. It did not in itself improve the quality of the electoral register. It did not put an end to election administration where interests of political parties prevail. Citizens were not given the opportunity stand as candidates, nor to vote for MPs instead of closed lists. There has been no increase in women's political representation. Misuse of resources has not been prevented, transparency of political party financing has not been increased and suspicions of illicit financing are more prominent than ever. Employment based on party affiliation has not been done away with. Election-related media reports were not sufficiently objective. Disinformation campaigns have not been prevented. Foreign political and financial interference, as well as interference by third parties that have no place in the election process, have not disappeared. There has been a shift of government, but the problems remain, nevertheless.

However, although reforms do not happen on their own, there is finally room for making real change and for ensuring a much better and more credible electoral process in Montenegro.

At the very beginning of the work of the new convocation of the Parliament, the Speaker clearly stated that electoral reform is among high-priority issues. However, even five months after the new incumbency took seat, the committee on electoral reform has not started its work yet. This begs the question of why the Parliament is stalling and whether the ruling and opposition parties have a genuine political will to implement this reform thoroughly and in a timely manner.

The long-running negative practice of election laws being conditioned by other topics that are not directly or at all related to this reform may additionally burden the process. Again, a logical question arises as to whether something else will be deemed more important than electoral reform, as so many times before, and whether politics could be put to use of preventing such an obstruction. Should we, in a timely manner, consider the option of launching a parliamentary dialog at most senior political level to tackle, in parallel with the committee on electoral reform, the election of the Supreme State Prosecutor (VDT), members of the Judicial Council, judges of the Constitutional Court or other issues that are extremely important for our society and EU membership?

The CDT believes that the Parliament must become the center stage for political events, that it must first and foremost nurture dialog among those holding opposing views and be able to address even the most sensitive issues through democratic procedures.

If this convocation of the Parliament happens to go down the same path as the

previous one, where real dialog and agreement were not possible, important reform processes might come to a halt, resulting in another failure to meet political criteria for EU membership.

All 81 MPs in this convocation will make a direct decision on the matter and will be held politically accountable for it. Let us hope that this time their approach to all the sensitive issues will not boil down to shifting responsibility to “those others”.

Experts who participated in our research rated the area of Elections with an average score of 2.8 on a 1-5 scale. The average rating in last year’s survey was 2.52.

Comprehensive electoral reform on hold

In 2021, Montenegro is yet again facing the same task of implementing an extensive electoral reform, in line with recommendations of both international and domestic organizations. Amendments to the umbrella Law on the Election of Councilors and MPs requires a two-thirds majority, which was unattainable in the previous parliament. Legislative changes by means of amendments to individual laws that require a simple majority did not help resolve the key issues or achieve the desired effects.

Although the said law has not been amended in the parliament, some of its provisions have been repealed by the Constitutional Court.

In November 2020, the Constitutional Court of Montenegro repealed the provisions of the Law on the Election of Councilors and MPs that restrict the right to vote to persons deprived of legal capacity. The court found that the purpose of the voting restriction was not proportionate to the aim pursued, as they entail an absolute ban on voting for any person deprived of legal capacity and placed under a form of guardianship, regardless of their actual capacities¹ This decision of the Constitutional Court is in line with earlier recommendations by CDT², disability organizations, as well as the UN Committee on the Rights of Persons with Disabilities³.

By the same decision⁴ the Constitutional Court repealed the provision of the Law on Election of Councilors and MPs, which required permanent residence in a municipality which is an electoral district for no less than six months prior to election day as a condition for entitlement to vote, in addition to the condition of permanent residence in Montenegro for no less than two years, as foreseen by the Constitution. The Constitutional Court found that by prescribing residence in the municipality (in addition to the residence of two years in Montenegro), the Law stipulated an additional condition for exercising the right to vote, which is contrary to the Constitution. Although the legal reasoning of the

1 Decision of the Constitutional Court of Montenegro, U-I No 23/17 dated on 6 November 2020

2 Dragan Koprivica and Milica Kovačević, Assessment of Montenegro’s Progress in Meeting Political Criteria in Negotiations with the EU, Part One: Legitimacy and integrity of elections – a necessary step towards European values, October 2018, Available at http://www.cdtmn.org/wp-content/uploads/2018/11/policy_legitimitet-izbora-24-10-18.pdf. Accessed on 15.03.2021.

3 Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of Montenegro, 2017. Available at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsrw3j2oJ%2BGlb0yisAHzPax%2FwWwPAjO0B7RMgwj%2BrlDEM-t1e4Ppu5TjBLMMR2qUGd9d2GhNd5CvW3v8dmUrNKyYnmz%2BWYUm%2BePMRrHTMT%2F6l6T>. Accessed on 15.03.2021.

4 Decision of the Constitutional Court of Montenegro, U-I No 23/17 dated on 6 November 2020

Constitutional Court is valid, the repeal of this provision might cause problems and abuses in putting the law into practice.

The COVID-19 pandemic has additionally exposed the shortcomings of the current practice of allowing voting outside the polling station only within the municipality of residence. Montenegro's public health care services are not necessarily provided within municipal level only, which has led to citizens being deprived of their voting right for receiving medical treatment outside their place of residence, despite otherwise meeting all the other conditions prescribed by the Constitution. This raises the issue of allowing hospitalized patients to vote, because one's illness is not a sufficient reason for depriving them of their ballot right.

The necessary professionalization of electoral administration

Montenegrin elections are conducted by a highly politicized election administration. Local-level polling boards and municipal election commissions are composed exclusively of party representatives, nine of the 11 members of the State Election Commission are party representatives, whereas only two members - a civil society representative and the SEC president are appointed following an open competition. The criteria and procedure for the election of the SEC President do not guarantee the expertise and political impartiality of the elected official.

The manner of election, term of office and dismissal do not guarantee the permanence and stability of this institution, and do not protect its members from arbitrary dismissals. The mandate of members who are appointed at the proposal of political parties is limited by the parliamentary mandate, but they can be dismissed sooner. The criteria for dismissal of the SEC president and a civil society representative are not prescribed by law at all, which allows the parliamentary majority to remove them from office before the expiration of the term for which they were elected. In January 2021, the Parliament initiated the procedure for dismissal of the SEC President, elected in March 2020, due to violation of provisions of the Law on the Election of Councilors and MPs⁵. Without going into whether the grounds for dismissal are valid, it is important to note that the procedure and criteria for dismissal are not prescribed by law, which leaves room for political influence.

Such a party-controlled election administration has from the outset been associated with controversial and politically motivated decisions, especially in sensitive political situations that an independent institution could use to build its public credibility. The SEC's refusal to verify the parliamentary mandate of MP Suada Zoronjić's last year sparked not only public criticism but also criminal charges⁶.

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5 Parliament of Montenegro, Administrative Committee, Proposal for the Decision on dismissal of the President of the State Election Commission. 21.01.2021. Available at <https://zakoni.skupstina.me/zakoni/web/dokumenta/zakoni-i-drugi-akti/121/2473-14264-00-74-21-8.pdf>. Accessed on 15.03.2021.

6 MINA, „Criminal charges against Ivanović and SEC members for refusing to verify Sua-
da Zoronjić's mandate, Vijesti online, 31.12.2020 Available at <https://www.vijesti.me/vijesti/politika/499661/krivicna-prijava-protiv-ivanovica-i-clanova-dik-koji-su-odbili-da-verifikuju-mandat-sua-de-zoronjic>. Accessed on 15.03.2021.

Regulating permanent residence as a condition for building trust in the electoral register

Distrust in the electoral register is for the most part fueled by suspicion that a large number of emigrants still hold fictitious residence in Montenegro and therefore claim the right to vote, and this issue has not been addressed in the latest amendments to the Law on Electoral Register, as it would also require amendments to the Law on Registers of Temporary and Permanent Residence, to be followed by comprehensive field checks⁷.

The latest amendments to the law have stripped the State Election Commission's (SEC) of their supervisory powers over the electoral register, and their role was reduced to "cooperation". This can be considered a justified decision given that SEC was not conducting proper supervision over the electoral register in practice. However, what is contestable is that a better control mechanism was not introduced in lieu of the previous one, which can only contribute to further decline of trust.

In 2020, the CDT proposed the introduction of a new mechanism - the establishment of an inter-sectoral team to control the accuracy of voter registration, which would significantly improve the quality and content of control and increase trust in the electoral process.

In January 2021, the Government established the Council for Control of Electoral Register, which is composed of representatives of the Government and line ministries, the State Election Commission, the Union of Municipalities, while representatives of the Parliament of Montenegro, the Agency for Personal Data Protection and Free Access to Information and at least two NGO representatives can also take part in its work. The Council is responsible for analyzing the normative framework, international recommendations, IT solutions and making proposals to the Government to set up working bodies tasked with performing control and improving electoral registration at the operational level.⁸ Also, the Ministry of the Interior (MoI) has set up the MoI Transparency Council, in charge of transparency of electoral register and other pertinent issues.

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. 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.⁹

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7 Milica Kovačević, Assessment of Montenegro's Progress in Meeting Political Criteria in Negotiations with the EU, A road to stabilization or radicalization of politics?, Center for Democratic Transition, 2020. Available at https://www.cdtmn.org/wp-content/uploads/2020/05/01a_politika-CGR_20-5-20-1.pdf. Accessed on 15.03.2021.

8 Decision on the establishment of the Council for Control of Electoral Register ("Official Gazette of Montenegro", No. 10/2021 and 12/2021)

9 Biljana Papović, Dragan Koprivica, Milena Gvozdenović and Milica Kovačević, Electoral Process Integrity Assessment: Parliamentary elections 2020, Center for Democratic Transition, November 2020, Available at <https://www.cdtmn.org/wp-content/uploads/2020/11/Parlamentarni-izbori-2020.pdf>. Accessed on 15.03.2021.

The Law on the Election of Councilors and MPs introduces a mechanism for ensuring gender equality, which requires for political parties to include at least 30% of women in their lists of candidates, and that there be at least one female candidate for every four candidates on the list. However, although the share of women in the parliament increased owing to the gender quota system, it is still not at the desired level. Currently, there are 24.7% female MPs holding seats in the Parliament of Montenegro, which is far below the European standard. During the previous unsuccessful electoral reform, the Women's Political Network was proposing that the mandatory percentage of female candidates be raised to 40% and that at least one in three candidates be a woman. The majority of political entities backed this proposal, but the law was not adopted in the end.¹⁰

The process of verification of the collected signatures of support for candidates is a problem that burdens all elections 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.¹¹

The impact of disinformation on the electoral process

Media laws have not been amended so as to make way for equal access coverage, equality of all participants in the elections and a more balanced and unbiased media reporting. Monitoring of commercial media coverage conducted by the CDT during the 2020 parliamentary elections has shown that very few media outlets provided equal access coverage to election participants in terms of quantity, also noting a lack of balanced media reporting in terms of quality.¹² Media coverage of elections boils down to a biased reporting of information presented by parties themselves, without an effort to present the election offer to voters in an objective way.

The issue that came to the fore amid the COVID-19 pandemic and the move to online election campaigns is the weak or non-existing regulation of newly-emerged media and the lack of mechanisms to prevent disinformation from swaying public opinion and letting fake news permeate election processes. The Center for Monitoring and Research identified a network of coordinated inauthentic behavior that reflected in sharing politically motivated content on Facebook, which in many cases contained inappropriate, defamatory and hate speech, often in coordination with certain media, political parties and politicians.¹³

In an era of media digitalization, online campaigning is slowly gaining importance, and the coronavirus pandemic has accelerated this process and irrever-

10 MINA, "Women's Political Network: At least 40 percent of women on lists of candidates", Vijesti online, 24.07.2020. Available at <https://www.vijesti.me/vijesti/drustvo/454115/zenska-politicka-mreza-na-izbornim-listama-da-bude-najmanje-40-odsto-zena>. Accessed on 15.03.2021.

11 Biljana Papović, Dragan Koprivica, Milena Gvozdenović and Milica Kovačević, Electoral Process Integrity Assessment: Parliamentary elections 2020, Center for Democratic Transition, November 2020, Available at <https://www.cdtmn.org/wp-content/uploads/2020/11/Parlamentarni-izbori-2020.pdf>. Accessed on 15.03.2021.

12 Center for Democratic Transition, "Media and elections: Disinformation present, reporting unbalanced", 15/11/2020. Available at <https://www.cdtmn.org/2020/11/15/mediji-i-izbori-dezinformacija-prisutne-izjestaanje-neizbalansirano/>. Accessed on 15.03.2021

13 Teodora Gilić et al, Reshaping the electoral run through the usage of social media in Montenegro, Center for Monitoring and Research CeMI, October 2020. Available at <https://cemi.org.me/wp-content/uploads/2020/12/finalni-izvijestaj2020CeMI-2.pdf>. Accessed on 15.03.2021.

sibly changed some practices and habits. Montenegro is yet to embark on an effective regulation of disinformation surrounding election processes.

Impunity for illegal financing

Illegal campaign funding remains to be one of the key problems of elections in Montenegro. From one election cycle to another, the ruling parties keep abusing state resources for election campaigning, an issue which remains unaddressed by institutions. The funding of political parties is not transparent, which fuels suspicions into whether campaign funds are collected and spent within legal limits. According to official data, parties are getting most of the funding from state budget, but there are numerous indications that donations coming from private sources remain hidden.

Anti-Corruption Agency (ASK) controls the legality of campaign financing, but these controls are bureaucratic and cursory, and do not address the most important issues that concern the public. The State Audit Institution (DRI) is no longer under obligation to perform regular annual audits of consolidated financial statements of all political entities, which further undermines control into financing of political entities. The prosecution is often perceived as taking a selective approach in addressing these issues. Competent institutions often demonstrate unwillingness to stand up to political power-holders.

A regulatory loophole allows third parties to run and fund election campaigns in favor of their preferred party or candidate. This is especially the case with social media campaigns, as it is difficult to track down information on actual campaign spending and who in fact covers these expenses. Indications that certain campaigns and smear campaigns are run and financially backed by businesses, religious communities, non-governmental organizations and even foreign countries remain beyond the reach of the competent institutions and thus undermine trust in elections.

The changes to the legislative and institutional framework in this area so far had little or no effect. The entire Montenegrin public watched as the DPS eventually went unpunished, despite the video recording of illegal political funding. Impunity only breeds further illegal behavior. The legislative powers are faced with a serious task of implementing a fundamental reform of the control and supervision system, as well as penal provisions in this area.

Clientelism as modus operandi

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. Investigations and proceedings into election crimes are few, and perpetrators are rarely handed punishments, which are mild as it is.

Even though few cases get investigated and there is no institutional reaction, there is hardly anyone in the society that has not witnessed and seen first-hand that clientelistic and nepotistic networks do 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.¹⁴

14 Biljana Papović, Dragan Koprivica, Milena Gvozdenović and Milica Kovačević, Electoral Process Integrity Assessment: Parliamentary elections 2020, Center for Democratic Transition, November 2020, Available at <https://www.cdtmn.org/wp-content/uploads/2020/11/Parlamentarni-izbori-2020.pdf>. Accessed on 15.03.2021.

In such a political culture, problems will not be resolved purely by shift of government, despite naive expectations. The Nikšić local elections, the first after the parliamentary elections, have brought to the surface a wide range of abuses of public resources, funding from dubious sources, examples of election campaigning by public officials and allegations of vote buying.

An incomplete Constitutional Court is a threat to the electoral process

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 cast ballot in the parliamentary elections held on August 30, 2020.

The latest parliamentary elections were also the first elections in independent Montenegro where the losing party accepted election results and admitted defeat.

The Constitutional Court of Montenegro is the final instance for protection of the right to vote. Despite frequent allegations of bias, the Constitutional Court's decisions were respected and served as a guarantee of legal certainty. In early 2021, terms of office have expired for two judges of the Constitutional Court, which significantly reduces the possibility for reaching decisions, as they will have to be backed by four of the five active judges. Election of new constitutional judges requires a qualified majority, which means that the government and the opposition will have to achieve a degree of consensus.

No action on foreign interference in elections

Comparative analyzes describe foreign interference in electoral and democratic processes as a set of different and changing practices, a mixture of disinformation, political funding, strategic advertising, making use of critical infrastructure, cyber-attacks, pressure to shape public opinion, setting up new NGOs, using troll networks to encourage destructive debates instead of solution-oriented ones...¹⁵ Even though foreign interference is difficult to prove, all these instruments and tactics were in fact applied in the last few election cycles in Montenegro.

While interference claims were leading back to Russia during the 2016 parliamentary elections, there were many public signs of interference coming from Serbia and other countries in the region in the course of 2020 elections. Serbian officials were publicly and directly supporting their preferred options in Montenegro by setting in motion a synchronized disinformation campaign and exploiting the passivity of state bodies and social vulnerabilities with the aim of disrupting, harassing and manipulating the election process. The 2020 parliamentary elections and the Nikšić local elections were characterized by clear interference and participation of the Serbian Orthodox Church (SPC).

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¹⁵ European Parliament, Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation, Working document on the state of the foreign interference in the European Union, including disinformation, 17.12.2020. Available at https://www.europarl.europa.eu/doceo/document/INGE-DT-662140_EN.pdf. Accessed on 15.03.2021.

Numerous suspicions and rumors have emerged regarding the illegal financing of election campaigns from abroad, with allegations that structures linked to Serbian President Aleksandar Vučić were putting pressure on media in Montenegro in order to dominate the Montenegrin media space.

Despite the evident foreign interference in the electoral processes in the last few years, the competent institutions have not done anything to prepare a strategic and institutional response to the negative foreign influences. For a long time, Montenegro has been acting as if it had nothing to protect. The Interdepartmental Commission for Counteracting Hybrid Threats was set up in late 2019 and drafted the Strategy for Counteracting Hybrid Threats, which never got adopted. Although many democratic countries go to great lengths to shield electoral processes from foreign negative influences, Montenegrin electoral legislation does not regulate this issue, apart from the ban on donations from foreign interests to political parties, an offense designated a misdemeanor. While the European Parliament has its Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE), the set-up of such a committee has not yet been tabled before the Montenegrin parliament.

About the research

The research on the progress of Montenegro in meeting the political criteria for accession to the European Union (EU) is conducted with financial support from the Balkan Trust for Democracy (BTD) and the Royal Norwegian Embassy in Belgrade. 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 seven areas: elections, judiciary, fight against corruption and organized crime, media, public administration reform and parliament. All the areas are elaborated in a topic per document model. Our analyses contain assessments on 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 electoral process. We have been evaluating this area as based on 69 indicators. 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 electoral reform. We would like to express our appreciation to the Balkan Trust for Democracy and the Embassy of the Kingdom of Norway for their trust and financial support.



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