

# 2023 Presidential Election in Montenegro

Preliminary report





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## Key monitoring conclusions

Montenegro conducted yet another electoral process with a deficient legal framework. Since the 2016 parliamentary elections, political actors have lacked the will to reform the electoral legislation.

Election day in both election rounds passed in a peaceful atmosphere and without major voting procedure violations. Procedural irregularities noted by our observers at a representative sample of voting stations could not affect the outcome of the election.

Election day was also marked by information about hearings and searches conducted by the Police Directorate against Democratic Party of Socialists (DPS) activists in certain towns due to suspicion of vote buying. In order to remove all possible doubts about the legality and justification of such actions of the Police, the Police and the competent State Prosecutor's Office must demonstrate maximum transparency and openness in the coming days and inform citizens about the outcomes of their activities.

The State Election Commission (SEC) has increased the overall transparency of its work and properly prepared the technical aspects of the election process. However, in this election cycle, the SEC's work was also marked by adopting selective and, legally speaking, highly questionable decisions, aiming to give certain candidates the advantage. The adoption of these decisions was marked by the outvoting of professional SEC members by those appointed by political parties.

The SEC denied the full right to observe the election to domestic and international observers. In cooperation with the Agency for the Protection of Personal Data and Free Access to Information (APPD&FAI), the right to observe all segments of the election process, including all relevant documents, was denied for the first time.

Similar to 2018, this election cycle was marked by the misuse of citizens' personal data and allegations of forging their signatures to support certain candidates.

Effective legal protection of voting rights and the electoral process was not fully guaranteed during the presidential election due to the inactivity of the Constitutional Court.

The Ministry of Internal Affairs (MIA) demonstrated a lower level of transparency compared to the previous election cycles (2016 and 2020) by not allowing either the representatives of the candidates participating in the election or the national and international institutions that monitor elections to be part of the team that controls the voter list.

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This election process saw the continuation of the well-known practice of mass employment during the election process typical of previous election cycles. According to the Anti-Corruption Agency (ACA) data, from the beginning of the presidential election campaign until the beginning of March, the number of employees in the public administration increased by as many as 5,000. Its reach in the process of controlling the misuse of state resources during the campaign proved to be very limited once again. The candidates' expenditures appear suspicious, with clearly underestimated amounts of certain services they reported.

The formal part of the campaign was relatively correct, as all candidates had adequate access to the media. However, there was also intensive campaigning in the gray zone, which was left to more or less anonymous actors that aimed at discrediting opponents by publishing details from their private lives, insulting the ones holding different views, and stigmatizing individuals or entire groups.

Pronounced political polarization and the increasing radicalization of Montenegrin society led to threats to presidential candidates Milo Djukanovic and Draginja Vuksanovic Stankovic and an attack on presidential candidate Jakov Milatovic ahead of the first round of the election. Also, there was a physical attack on a supporter of one of the candidates after one of the rallies.

The Serbian Orthodox Church (SOC) had its political preferences this time as well and was publicly persuading the citizens which candidate they should vote for. This campaign was also marked by clear political and media influences coming primarily from Serbia but also from other countries in the region.

This campaign was marked by a record volume of disinformation. Regional media reported on the election in Montenegro openly favoring certain candidates, while tabloids and media close to the Serbian authorities pushed the boundaries of their customary interest in events in a neighboring country and went deep into the zone of illegal influence on the electoral process in another country. The reporting of the majority of Montenegrin media was not neutral, although they most often did not generate fake news and disinformation in the narrower sense of the word. However, biased reporting was present in some newspapers to the extent that cannot be justified by editorial freedoms. A large amount of disinformation was recorded on social media daily. In this election cycle, the creators of disinformation created a large number of announcements about the results of non-existent public opinion polls.

## **Institutional and Legal framework**

Montenegro conducted yet another election process under laws that both the domestic and international public consider inadequate and needing significant improvements so that the elections could be assessed as fair and democratic.

There was no will to engage in reform on any side of the political spectrum to regulate the electoral environment and meet this important political criterion for European Union (EU) membership.

Instead of defending democratic principles with the authority of a robust institution and increasing citizens' trust in the electoral process, the electoral administration remained a politicized group that preferred to protect the interests of parties rather than the legality of the electoral process.

The importance and necessity of the depoliticization of the State Election Commission (SEC) are shown by the apparent differences in the manner of decision-making and application of the law between the majority of members who are representatives of political subjects and those who perform their SEC duties as professionals.

A positive aspect of this election process is the openness of SEC sessions to the public. Thanks to this openness, the political activities of the majority of SEC members, which are contrary to election regulations, have been exposed through wider media coverage. However, despite promises that SEC sessions would be broadcast live, only one session was broadcast live.

## **The voter list and its accuracy and transparency**

Regarding the voter list, the Ministry of Internal Affairs (MIA) demonstrated a lower level of transparency compared to the previous election cycles (2016 and 2020). In this election process, MIA showed no initiative to create the necessary preconditions in a timely manner to improve the control and transparency of the voter list. That institution chose to keep the voter list verification process confined to its employees.

The previous good practice of the Ministry of Internal Affairs of forming a team composed of representatives of this institution, representatives of candidates participating in the election, NGOs accredited to monitor the election process and international institutions monitoring the election was absent this time. In earlier election processes, this team had direct insight into the registers that

make up the voter list, ensuring the quick availability of all necessary data. Thanks to that, the team was able to provide answers to questions related to the voter list that the public was interested in. According to the domestic and international public assessments, this model of cooperation in the domain of control and transparency of the voter list had a positive effect and resulted in increasing trust in the voter list and election in general.

With this way of acting in the circumstances deprived of political will to create legal prerequisites for seriously reforming the voter list, the MIA missed the opportunity to, at least slightly, improve the trust in the electoral process by establishing quality and transparent control mechanisms. Instead, we could hear confusing information that further created mistrust and served as the basis for numerous speculations about the accuracy of the voter list.

The process of deduplication of fingerprints, i.e. checking the accuracy of the voter list using the AFIS system, was carried out in a timely manner, but the results of this process were not made public.

Between the two election rounds, the issue of Montenegrin citizens from the diaspora who have the right to vote has been brought up. This issue has burdened our voter list for decades and remains particularly complex, taking into account the weak legislative framework, the absence of the obligation to deregister the residence upon leaving Montenegro, as well as the absence of field controls of the residence.

Of particular concern is the manner of operation of the Diaspora Administration, which, stepping outside of its competences, communicated unverified data on the number of Montenegrin citizens in the diaspora who are on the voter list, ignoring the fact that this falls under the competences of MIA. Also, Diaspora Administration exerted undue and illegal influence on the election process in the way that it communicated estimations about the preferences of voters from the diaspora in the coming election.

Also, remarks could be heard in the public that the Ministry of Foreign Affairs exerted undue influence on diplomatic and consular representative offices to make it difficult for some voters to travel to Montenegro to cast their votes.

## **The candidacy submission process**

The SEC's acting instead of the institution in charge of implementing the Law on the Election of Councilors and Members of Parliament in the process of confirming candidacies, the SEC became a direct participant in the presidential election. The decisions of the majority in the Commission clearly demonstrated that it aimed to influence the election's final outcome.

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The SEC has chosen to obtain data concerning potential candidates from foreign countries in ad hoc procedures designed for one-off political use in such a way that it requested only the data detrimental to one candidate accepting documents published on social networks and/or in the media as a legal fact, without it being previously confirmed in the proceedings before the competent authorities of our country. By doing so, the SEC stepped out of the scope of its legal framework and unambiguously demonstrated bias and selectivity.

The case of rejection of the candidacy of the representative of the “Europe Now” movement, Milojko Spajic, done in such a manner, creates a dangerous precedent, which is not only an issue pertinent to this election process, but a danger for all future situations in which those with different political views may be discriminated against and prevented from participating in elections, contrary to the law.

The joint engagement of the SEC and the Agency for the Protection of Personal Data and Free Access to Information (APPD&FAI) denied domestic and international observers the right to observe the process of verification of signatures of support, under the pretext of protecting personal data. Although the official authorization for election observation issued by the SEC guarantees election observers that they can monitor the course of the election and the work of the election administration authorities, the SEC has purposely reduced this scope of rights to the mere possibility of observing its sessions, leaving room for doubt that numerous irregularities happen in the process of verifying signatures.

Verification of signatures of support and confirmation of candidacies represent an essential segment of the election administration’s work. The SEC prevented observers from performing their work by denying the inspection of signatures.

It is commendable that the SEC has made it possible for citizens to use a web application to check whether someone has misused their data and/or forged a signature to support one of the candidates. Nevertheless, this service was put into operation quite late in the process, when all the candidacies had already been confirmed and there was no room for a more serious reaction by the SEC.

According to the allegations of a large number of citizens, this demeanor of the state authorities encouraged certain candidates to resort to abuses similar to the ones in 2018. Dozens of citizens approached the CDT with allegations that their data had been misused. Such reports were then duly forwarded to the competent State Prosecutor’s Office.

During this process, we were informed that the competent State Prosecutor’s Office dismissed our criminal complaint about abuses related to the 2018 election due to the expiry of the statute of limitations. The explanation for the



dismissal of the criminal complaint reads that the graphologists did determine that the citizens' signatures were not authentic. However, the criminal complaint was dismissed due to the "expiry of the statute of limitations for criminal prosecution". The CDT submitted a complaint to the Higher State Prosecutor's Office in Podgorica, in which we demanded a review of the decision to dismiss the criminal complaint. Furthermore, we addressed the Head of the Basic State Prosecutor's Office in Podgorica and the Prosecutorial Council with a request to review the disciplinary responsibility of the acting prosecutor in this case, considering that the Law on the State Prosecutor's Office perceives prosecutor's unjustifiable failure to act within prescribed deadlines as a serious disciplinary offense, especially if it results in the expiry of the statute of limitations.

## Election campaign financing

This election process saw the continuation of the well-known practice of mass employment during the election process typical of previous election cycles. State authorities continued to abuse the Law on the Financing of Political Entities and Election Campaigns, making the intended employment bans meaningless. According to the Anti-Corruption Agency (ACA) data, from the beginning of the presidential election campaign until the beginning of March, the number of employees in the public administration increased by as many as 5,000.

The data on excessive employment did not alarm the Agency to perform controls in all entities that engaged in mass employment practices. On the contrary, ACA continued with superficial field controls of reporting entities. The Election Campaign Control and Supervision Plan adopted by ACA envisages field control of only ten institutions, although the prohibitions and restrictions provided by law apply to all state authorities, state administration bodies, local self-government authorities, local government bodies, public institutions and state funds.

Given that the 2020 Law on the Financing of Political Entities exempts state-owned enterprises from the ban on employment during the election campaign, they remain outside the scope of ACA's control. Since a large number of persons have also been employed in state-owned enterprises recently, there are real indications that the figure of 5,000 could be much higher.

The shortcomings of the legal framework in the area of control of campaign financing, as well as the limited capacities of ACA to perform financial control, have made it possible for political parties to underreport the actual costs of their political campaigns this time as well.

Judging by the political subjects' preliminary reports on campaign expenses, the practice of incomplete reporting marked by numerous illogicalities persists. The majority of political subjects did not report the costs of engaging fieldwork activists or the costs of engaging associates, covering administrative expenses... In the same way, despite numerous promotional rallies in all Montenegrin municipalities, the candidates' reports did not show the transportation costs proportionally. Some amounts shown in the reports are significantly underestimated compared to the market prices of such services.

Judging by the report published on the Agency's website, presidential candidate Jovan Radulovic did not incur any expenses during the election campaign. The vague legal framework regulating campaign expenses leaves the possibility of interpretation that the candidate can keep the budget funds intended for campaign financing as personal income.

### **The environment in which the presidential election campaign took place**

Although the start of the campaign of all the candidates was late due to political calculations related to the confirmation of the candidacy of the representative of "Europe Now", the campaign was competitive and intense both in the media and in the field.

The formal part of the campaign was relatively correct. The dirty work was left to more or less anonymous actors who ran a parallel campaign, which seemingly had no direct connection with the candidates. However, this hidden part of the campaign was intense and did not stop during the entire process. Its goal was to discredit candidates by publishing details from their private lives, insulting those with different views, and stigmatizing individuals or entire groups.

Pronounced political polarization and the increasing radicalization of Montenegrin society led to threats to presidential candidates Milo Djukanovic and Draganja Vuksanovic Stankovic and an attack on presidential candidate Jakov Milatovic ahead of the first round of the election. Also, there was a physical attack on a supporter of one of the candidates after one of the rallies. Although these were individual incidents, it should be emphasized that such scenes in the election processes in Montenegro have not been seen for more than a decade.

This election process was marked by an aggressive and persistent barrage of textual messages and annoying phone calls. Numerous citizens reported that they perceived these calls as pressure, but the competent state authorities

did nothing to protect them. Agency for the Protection of Personal Data concluded that such actions did not constitute a violation of privacy. The Police Administration initiated a procedure regarding complaints from citizens that their freedom of choice was violated in the way that they were offered privileges in exchange for a vote for a certain candidate.

In addition to candidates and parties, the Serbian Orthodox Church (SOC) was directly involved in the election campaign leading to the election as well. The highest dignitary of the Serbian Orthodox Church in Montenegro, Joanikije Micovic, said at the very beginning of the campaign that it was high time for Djukanovic to leave. Another bishop of the Serbian Orthodox Church in Montenegro, Metodije Ostojic, participated in the promotional activities of presidential candidate Andrija Mandic. Several days before the election's first round, the SOC "blessed" the political forces supporting the church's demands, marking the political forces in power until 2020 as undesirable to vote for. In the run-up to the second round, the SOC's message became even more straightforward – Djukanovic's campaign was labeled as anti-church, his rhetoric as uncivilized, and his politics as confrontational. Citizens were invited to confirm in the election that his politics had been a matter of the past.

It can be seen from publicly available sources that in the last several years, Serbia has provided millions in support to Serbian organizations and church in Montenegro, but also to certain municipalities where political parties connected to the regime in Serbia are in power. This year, Serbia's budget for the region envisages three times more funds than last year. The Government of Serbia's public call for the allocation of funds was announced during the election process in Montenegro. Numerous parapolitical organizations from Montenegro that directly support one of the political options and the media that have been used for years to spread disinformation and propaganda submitted their applications.

In addition to influence from Serbia, influence from the region was also observed concerning presidential candidate Milo Djukanovic in the form of publicly expressed support from many regional politicians and activists.

## **Voter disinformation campaign**

The election process was marked by an intense disinformation campaign and extremely biased reporting by most media. In the first and second rounds of the election, numerous disinformation were recorded during the election day itself. Once again, in practice, it has been shown that Montenegro has neither strategies and laws, nor institutions equipped to defend the electoral process against the negative influence of disinformation.

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The team of Raskrinkavanje, our fact-checking web portal, has directly debunked more than 25 fake news related to this process.

Regional media reported on the election in Montenegro, clearly favoring certain candidates, while tabloids and media close to Serbian authorities pushed the boundaries of customary interest in events in a neighboring country and went deep into the zone of illegal influence on the electoral process in another country. Private television stations that broadcast their program in Montenegro and the Serbian public broadcasting service RTS joined forces with influential tabloids in a campaign favoring Andrija Mandić in the first round of the election, and demonizing Milo Đukanović throughout the entire process. The spread of fake news was left to marginal right-wing web portals, which were also responsible for propagating hatred and dehumanizing Montenegrins. The hatred and disinformation, however, found their way to the influential media. In the words of the carefully chosen interlocutors, the victory over Đukanović was an imperative, a victory over evil spirits, and a vote for Đukanović was a vote for seizing church property and stifling human rights.

The reporting of the majority of Montenegrin media was not neutral, although they most often did not produce fake news and disinformation in the narrower sense of the word. However, biased reporting was present in some newspapers to the extent that cannot be justified by editorial freedoms. Thus entering the zone of voter manipulation and deception. Disinformation that “Europe Now” representative Andrej Milović was armed at the rally in Cetinje, which originated and spread from social networks without verification, ended on certain news portals as well. In the biased reports in the second round of the election, the candidate Milatović was portrayed as a candidate of orthodox priests, a cuckoo’s egg, while those intending to vote for him were labeled as stupid because of being unable to see through the big conspiracy.

Social media has not only been the most powerful channel for spreading propaganda and disinformation, but anonymous fake posts and claims have become a relevant source for the media, further degrading journalism as a profession.

The most prevalent disinformation aimed to discredit certain participants in the election process and influence the voters’ opinions by publishing fake public opinion polls. In addition to the practice of attributing fabricated surveys to well-known agencies and organizations, there was also an instance of complete and utter fiction – a non-existent public poll agency dealing only with elections in Montenegro.

## Protection of voting rights

Effective legal protection of voting rights and the electoral process is not fully guaranteed in Montenegro, and the new composition of the Constitutional Court not only failed to make progress compared to earlier practices, but some aspects of the process even regressed.

The Constitutional Court chose to ignore the short legal deadlines in the process of deciding on the violation of rights during the election, thus leaving the presidential election process deprived of a legal remedy. The Montenegrin public still has no information as to what happened to the 11 election-related appeals submitted to the Constitutional Court before the election's first round. Some of the appeals are related to the confirmation of the candidacy of Milo Djukanovic and the verification of the data related to Spajic and Mandic as presidential candidates.

The process of ruling on election-related appeals is short due to the use of a principle on which well-developed legal systems rest that justice delayed is justice denied. The decision of the Constitutional Court on appeals related to the candidacy process, which would be made once the election is over, makes no sense whatsoever.

The Constitutional Court's acting upon election-related appeals was not transparent during the election process once again. The citizens could not hear whether the appeals were admitted or whether they had factual and legal standing. They did not hear the reasons and explanations why they were not acted upon.

## The quality of the implementation of the procedure during the election day

The days of casting votes, in both the first and second rounds of the election, passed peacefully, and our observers noted minor irregularities.

The State Election Commission organized the technical aspects of the process in an appropriate manner, which resulted in the fact that the procedure at the voting stations was mainly carried out without difficulties.

Regarding the second round of the election, in about 2.4% of the voting stations included in our sample, we noted that not some members of the permanent voting board were absent from voting stations for longer periods. This is better than in the first round when this occurrence was observed at 4% of voting stations. We must remember that the law stipulates that all members

of the voting board or their deputies must be present at the voting station while the polling station is open and voting is in progress.

The most relevant recorded irregularities are related to cases of approval of requests for voting by letter without them being previously signed by voters, which is contrary to the law.

The most frequently recorded irregularities are related to violations of the secrecy of voting, especially by taking photos of ballots – a practice reported to us by our observers in both election rounds and by citizens on social networks. Where such things would happen at the voting stations with our observers present, the voting boards most often reacted appropriately and canceled these ballots in accordance with the law.

## The results

Our organization conducted parallel counting of votes based on a representative sample in both election rounds. Forty minutes after the polls closed, the sample provided a reliable picture of the election results. The final sample result differed only slightly from the official election results.

In this way, we have fulfilled our social role – at the moment when the election administration was not able to quickly count the votes, we did it in record-breaking time, thus preventing the possible premature declaration of victory by certain candidates.

