

**How to End the Decline  
of Democracy:**

# **35 Recommendations for Electoral Reform**

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### Abbreviations:

<b>AEM</b>	Agency for Electronic Media
<b>APC</b>	Agency for the Prevention of Corruption
<b>APDPFAI</b>	Agency for Personal Data Protection and Free Access to Information
<b>AYWDM</b>	Association of Youth with Disabilities of Montenegro
<b>CCE</b>	Center for Civic Education
<b>CDT</b>	Center for Democratic Transition
<b>CEDEM</b>	Center for Democracy and Human Rights
<b>EC</b>	European Commission
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>INGE</b>	Special Committee on Foreign Interference in all Democratic Processes in the European Union
<b>LECMP</b>	Law on the Election of Councilors and Members of Parliament
<b>LEPM</b>	Law on the Election of the President of Montenegro
<b>MANS</b>	Network for the Affirmation of the Non-Governmental Sector
<b>MEC</b>	Municipal Election Commission
<b>MIA</b>	Ministry of Internal Affairs
<b>ODHIR</b>	Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PwD</b>	Persons with Disabilities
<b>SAI</b>	State Audit Institution
<b>SEC</b>	State Election Commission
<b>SPEKTRA</b>	Association Spektra
<b>VC</b>	Voting Committee
<b>WRC</b>	Women’s Rights Center

### 35 Recommendations for Electoral Reform

Presented before you is the set of recommendations that the Center for Democratic Transition (CDT) intends to propose to the members of the new convocation of the Parliament of Montenegro, and which are considered indispensable to achieve an electoral process that aligns completely with international electoral standards.

The solutions presented in this document attempt to address the problems that we, as authorized observers of the electoral process, have noted during the monitoring of parliamentary elections in 2016, 2020, and 2023, presidential elections in 2018 and 2023, as well as several cycles of local elections.

Furthermore, these recommendations to decision-makers stem from our prolonged advocacy for a better electoral process and our experience in working on electoral reform committees established in 2013, 2018, and 2021, when we were members without voting rights, as the only organization that was consistently involved in that process.

With these recommendations, we want to demonstrate once again that civil society is a constructive partner in reform processes, offering concrete solutions for virtually every segment of the electoral process.

Due to the volume of material and our desire to be accessible to all target groups, especially citizens, we provide only the most significant recommendations and basic directions or ideas for necessary changes to relevant legislation. These directions will be further elaborated and submitted to the Electoral Reform Committee, which we expect will be formed immediately after the new parliamentary convocation is established.

We have addressed the need to depoliticize and professionalize the electoral administration, proposals to enhance the transparency, accuracy, and timeliness of the voter register and the registers from which it originates, introducing open lists and individual candidates, the election of local community bodies in elections, the need to improve the protection of electoral rights, better guarantees for affirmative action for minority communities and women, accessibility of the electoral process for persons with disabilities, media coverage of elections and supervision over it, tackling issues with campaign financing control and misuse of public resources, as well as the need to foster the democratic culture through codes for fair elections.

The new negotiation framework for Albania and North Macedonia highlights fundamental reforms, including the functioning of democratic institutions. Special attention is given to the integrity of elections, their financing, media coverage, and disinformation in electoral processes. These are the steps that Montenegro has skipped and ones it will have to return to, sooner or later, in order to meet the political criteria of the European Union (EU).

Taking this into account, for the first time, we have defined recommendations that have not been part of the scope of work of electoral reform committees so far, which relate to the protection of the electoral process from disinformation and unwarranted foreign influence.

### 35 Recommendations for Electoral Reform

The long-awaited electoral reform in Montenegro is a reform process that all stakeholders publicly advocate for, but few are truly prepared to demonstrate what they advocate in practice and political action. Party interests have once again proven dominant over the needs of societal development and our reform path.

Party interests have once again proven dominant in this segment, overshadowing the needs of societal development and our reform path. Instead of being the source of democratic institutions, elections have become, for almost a decade, a source of tensions and conflicts, and a synonym for an unlevelled playing field. The existing electoral legislation creates an initial advantage for those in power, and because of this, despite several attempts, political entities have not established rules that fully guarantee the integrity of the electoral process.

This lack of political determination poses a serious hindrance to our democratic development and obstructs Montenegro's fulfillment of international obligations on the path to EU membership. This long-established pattern of behavior among political actors represents an additional constraining factor, given that the reform we advocate for is of demanding and complicated nature. We remind that it is necessary to analyze, amend, and work on at least 15 pieces of legislation: the Law on the Election of Councilors and Members of Parliament (LECMP), the Law on the Election of the President of Montenegro (LEPM), the Law on the Financing of Political Entities and Election Campaigns, the Law on the Prevention of Corruption, the Law on the Voter Register, the Law on Registers of Residence and Stay, the Law on Montenegrin Citizenship, the Law on Identity Card, the Law on Media, the Law on Electronic Media, the Law on the National Public Broadcaster Radio and Television of Montenegro, the Law on Political Parties, the Law on Local Self-Government, the Law on the Constitutional Court, the Law on Personal Data Protection, and the Law on Free Access to Information. It is also possible that changes to the Constitution of Montenegro, the Law on Political Parties, the Law on the State Audit Institution, and other legislative texts will be necessary. Moreover, these changes and amendments need to be harmonized with numerous subordinate regulations.

This complex reform endeavor evidently demands hard work and additional time. We believe that working on these laws and adopting amendments should be completed no later than the end of 2024 to allow enough time for implementing all new solutions in practice, conducting necessary training, establishing new institutions, and adapting to new working conditions before the upcoming regular elections in the following year.

Furthermore, we consider that if a comprehensive electoral reform takes place, all electoral legislation should be amalgamated into a single unified electoral law, which would require adoption by a qualified two-thirds majority to prevent any ruling party from unilaterally and selectively changing electoral legislation.

In the end, such an important and complicated reform depends on the contribution of all progressive segments of our society. However, the ultimate responsibility lies with political parties. It remains to be seen whether they will finally prioritize the long-term benefits and democratic progress of our nation and society or remain entrenched in their past ways of thinking and behavior. We hold the hope and belief that the new parliamentary convocation will

have a clearer vision for the development of democracy and a greater sense of responsibility and courage compared to its predecessors.

We welcome any well-intentioned criticism and suggestions regarding this document, as well as engaging in public discussions with all stakeholders on electoral reform.

CDT team

## Recommendations:

### **1. Promptly establish an Electoral Legislation Reform Committee.**

Over the past decade, electoral reform in Montenegro has been doomed to failure. The unsuccessful conclusion of the work of three working groups after 2014, when the Law on the Election of Councilors and Members of Parliament (LECMP) was amended with the votes of part of the ruling coalition and part of the opposition, is a clear indicator of the lack of political will to finally align electoral and related laws with democratic standards.

The Parliament passed a Decision on the Establishment of the Committee for Comprehensive Electoral Reform in late December 2020. Although the then-Speaker of the Parliament and the Prime Minister-designate, as well as all parliamentary clubs, viewed electoral reform as a priority, the Committee started working seven months after the Parliament was constituted, on April 14, 2021. It held only six sessions.

The scope of the work of the previous committee implied the implementation of recommendations from the European Commission (EC) report, the application of all recommendations from the OSCE/ODIHR report, defining draft laws on the election of councilors and members of parliament, the voter register, financing of political entities and election campaigns, registers of residence and stay, and the analysis of the implementation of the laws on identity card and Montenegrin citizenship. The committee was also supposed to address the issue of strengthening the overall capacity, professionalism, and transparency of institutions relevant to electoral processes, including the State Election Commission (SEC) and the Agency for the Prevention of Corruption (APC).

Although the committee's scope was broad, the Center for Democratic Transition (CDT) believes that it should also include safeguarding the electoral process from the influence of disinformation and foreign interference. Montenegro must find answers to contemporary challenges to meet international standards for democratic elections, which prescribe that voters must have the freedom to vote without undue influence and form opinions free from manipulative interference of any kind.

The decision allowed representatives of non-governmental organizations

(NGOs) and the academic community – the University – to participate as associate members in the committee’s work without decision-making rights. Up to three NGO representatives and up to two representatives from the academic community can attain associate member status, provided they have been actively involved in the committee’s work in the previous three years, contributed to electoral reforms, and gained public recognition in the committee’s areas of focus.

This part of the decision, which enabled transparency and the involvement of civil society, should also be amended to allow representatives from other NGOs with expertise in specific areas to have the right to attend plenary sessions and sessions of the work bodies of the Committee.

Furthermore, during the selection of associate members from civil society and the academic community, there were cases where candidates with weaker credentials were given priority based on political decisions. The new decision should include provisions that encourage members of Parliament to respect the expertise of candidates for this part of the Committee.

Finally, we believe that the Committee’s work should be structured to avoid unilaterally passing laws that do not require a qualified majority but significantly impact the electoral process. Instead, the new legislation should be adopted as a package to ensure the long-term stability of our electoral process.

## **2. observation.** **Protect the right to non-partisan election**

In the previous decade, there were sporadic attempts by the electoral administration to prevent election observers from monitoring certain parts of the electoral process, but these attempts were successfully thwarted following public reactions from almost all segments of society.

However, during the presidential and parliamentary election campaigns, contrary to previous practices, domestic and international observers were denied the right to observe the verification process of support signatures by the State Election Commission (SEC) and the Agency for Personal Data Protection and Free Access to Information (APDPFAI), under the pretext of safeguarding personal data. Although SEC’s official authorization for election observation guarantees observers the right to monitor the election process and the work of electoral bodies, this right was specifically limited only to observing sessions, leaving room for suspicion that numerous irregularities occurred during the support signatures verification process.

In addition to national legislation, Montenegro failed to uphold its obligations as a member of international organizations to respect ratified international agreements and standards set forth by these organizations. The right to



election observation is guaranteed by the Copenhagen Document and elaborated in numerous OSCE and Council of Europe documents.

Considering this, it is clear that electoral bodies should not be allowed to interpret legal provisions based on their own discretion because, in several election cycles, the same legal matter has been decided differently. The content of the right to election observation must be precisely defined by the provisions of the new LECMP, and it must be clearly and unambiguously protected.

### **3. Depoliticize and Professionalize the Electoral Administration**

Throughout almost all electoral cycles, the work of the electoral administration has been marked by making selective and legally questionable decisions whose aim was favoring certain candidates. The mandates of the State Election Commission (SEC) have mostly been associated with controversial and politically motivated decisions that have not only drawn public criticism but also led to criminal charges and rulings overturned by the Constitutional Court.

Based on our monitoring experience of the past ten years, it is clear that this behavior of the majority of its members is not an exception but a rule, and that it has been repeated whenever the interests of certain political structures with a majority in the SEC or municipal election commissions (MEC) were at stake. The adoption of these decisions in the last two electoral cycles was marked by outvoting the professional members of the SEC by those appointed by political parties.

The SEC should consist of members who meet strict expertise and political impartiality requirements. The number of members should be significantly reduced – we believe that five permanent members (including the president) are sufficient, along with an appropriate technical service, which should be organized based on the institution’s actual needs. A smaller number of members will lead to more efficient discussions and decision-making. An odd number of members guarantees that decisions can be made by a simple majority, thus eliminating the need to assign a “golden vote” to the president.

Broad representation should be provided during the election campaign through an expanded composition of the SEC, including representatives of parties and NGOs accredited for election observation. While they would participate in discussions and work, they would not have voting rights. The same approach should be applied in forming the MEC, where three to five members are sufficient.

Centralization of the electoral administration is particularly important to enable the SEC to ensure lawful election conduct and uniform application of

the law. Currently, MECs are accountable to local assemblies that appointed them, and the SEC has no means to prevent them from acting unlawfully or improperly.

Depoliticization of voting committees (VC) should be implemented with caution, especially in the first elections following the adoption of reformed laws and changes in the functioning of the electoral administration. VC members should be selected from candidates who have previously received appropriate training and certification from the SEC.

### **4. Continue increasing the transparency of the electoral administration**

In contrast to the elections held in 2016, 2018, and 2020, the last two electoral cycles witnessed progress and increased transparency in the State Election Commission's (SEC) work. Most relevant information was available to all interested parties, and the Commission's sessions were open to the media and the public. However, we attribute this positive change to the efforts of non-partisan members of the commission, and the majority of political parties can potentially change this situation at their discretion.

Therefore, the new Law on the Election of Councilors and Members of Parliament (LECMP) must set high standards of transparency and openness for the SEC, MEC, and VCs. The second part of transparency rules should be specified in the bylaws. Implementing these provisions should include monitoring and appropriate sanctioning systems.

Additionally, as previously announced, direct live streaming of SEC sessions should be enabled.

The SEC must undergo a significant transformation in its approach to using technology and start dealing with election statistics and data representation. This applies to all segments of the electoral process, starting with the development of a new, technically, substantively, and visually improved website.

Models of cooperation and communication with all stakeholders in the electoral process – political parties, media, NGOs, academic and international communities – need to be developed.

## **5. Ensure the financial autonomy of the SEC and strengthen other instruments of its independence**

In addition to the appointment and dismissal of SEC members, changes to legal provisions regulating the duration, method, and extent of financing this institution are necessary to establish a stable, independent, and strong institution.

To guarantee its independence, the mandate of the SEC extends beyond the mandate of the Parliament, so that its members are not under pressure for reappointment in case of a change of government. A longer mandate also ensures institutional memory and stability.

The mandate of the SEC should be six years.<sup>1</sup> The president of the SEC should be elected from among its members by a majority of all Commission members for a two-year term, with the possibility of two reappointments. Members of the SEC should be permanent employees, with a ban on holding other public positions and restrictions on engaging in other activities.

SEC needs to benefit from ensured financial autonomy. This can be achieved by following the funding model of the Agency for Prevention of Corruption (APC) or the State Audit Institution (SAI). Under this model, SEC would propose a budget draft and submit it to the competent working body of the Parliament responsible for finance matters, which would then determine the budget draft and submit it to the Government.

Additionally, it is necessary to specify in the new Law on the Election of Councilors and Members of Parliament (LECMP) that a member's mandate would terminate if they no longer meet the requirements for appointment. Moreover, the Parliament should have the authority to dismiss a member of the SEC in cases of conviction for a crime that renders them unfit for office, permanent loss of capacity to perform their duties, or public demonstration of political beliefs.<sup>2</sup>

## **6. Impose a Requirement for the Electoral Administration to Continuously Develop the Electoral Process**

Establishing a professional and expert SEC should be accompanied by introducing new responsibilities and obligations which this institution would carry out continuously, even between elections.

<sup>1</sup> In Croatia, the mandate of the State Electoral Commission is eight years, so is the mandate of the Permanent Electoral Authority in Romania. Poland does not limit the duration of the mandate. In Bulgaria and Macedonia, the mandate is five years. In Latvia, Lithuania, Estonia, Slovenia – the mandate is four years.

<sup>2</sup> Following the solutions from the Law on the Constitutional Court

SEC should be obliged to develop strategic and annual work plans and submit annual and mandate reports for discussion and approval to the Parliament of Montenegro. Some of the obligations for SEC should include: conducting public and real-time tabulation of votes, educating members of lower-level election bodies and issuing appropriate certificates enabling participation in the electoral process, selecting and appointing members of MEC, initiating proposals for amendments and improvements to electoral legislation, educating and informing citizens about elections and voting rights, enhancing the capacity of the institution and its employees, producing expert publications, preparing statistical overviews of election results and making comparisons, and improving technical aspects of elections by introducing new technologies.

### **7. SEC to Enable Swift and Transparent Collection of Election Results**

For years, SEC has been unable to organize public tabulation of election results from voting stations, that is, their quick collection. Specifically, real-time processing of election results on the SEC website is not available, which puts Montenegro not only behind developed democracies but also behind the region. This is concerning, especially considering that Montenegro has significantly fewer voting stations compared to these countries. The absence of timely announcements of results further undermines the credibility of this institution, as citizens rightfully question how NGOs can achieve this, but the state cannot.

This issue is not related to capabilities but rather the lack of political will to improve this aspect of the electoral process. The parties blocking the change argue that electronic devices are not allowed at voting stations, making it impossible to report election results quickly.

To address these excuses and enable the development of the electoral process, the new LECMP should specify this legal provision to allow the use of electronic devices for this purpose. Subsequently, the organizational and technical preparation of this process should be initiated so that SEC can perform this essential task in future elections.

### **8. Increase Transparency of the Voter Register**

The limitations related to transparent monitoring of the voter register and the source registers from which it is compiled necessitate the establishment of an inclusive working body within the Ministry of Internal Affairs (MIA) which

is responsible for monitoring the register and providing the public with all relevant information and details about it. Past good practices of forming special teams for elections in 2016 and 2020 can serve as guidance for increasing transparency. Similarly, the lack of transparency from MIA during the 2023 presidential and parliamentary elections indicates the need for improvement.

The establishment, functioning, and competencies of such teams should be regulated by law in order to introduce a regular new level of control over the voter register, allowing all stakeholders with legal rights to monitor the register and access all relevant information, including source registers. This team should consist of representatives from MIA, political entities participating in the elections, and NGOs accredited for election monitoring. It should be involved in analyzing source registers that constitute the voter register, controlling the voter register through AFIS, “burning” the voter register to electronic identification stations, and other activities related to increasing the accuracy and timeliness of the voter register.

## 9. Ensure Accuracy and Currency of the Register of Residents

One of the primary reasons for mistrust in the voter register is the presence of citizens registered in the voter register who no longer reside in Montenegro, rendering the Register of Residents of Montenegrin citizens inaccurate. Some citizens have fictitious residency in Montenegro, allowing them to be registered and vote. The Constitution stipulates a residency requirement of 24 months to exercise voting rights in our country, aiming to enable only those citizens who genuinely live in and are committed to Montenegro to decide on its affairs. However, this constitutional intention has not been adequately translated into the legal framework, leaving it to citizens to decide whether to deregister their residency. Contrary to the intention of the Constitution, this approach subtly opens the door to allow the diaspora to vote in Montenegro. Thus, the Constitution rightly denies voting rights to citizens with established status in other countries, including voting rights. The Constitution was adopted by a two-thirds majority, and if the intention was for the diaspora to vote, it would not have included a residency requirement.

This issue can be resolved through two approaches: **A) After legislative corrections, conduct field verification of the residency register and update it** – Since there are no official and reliable data on how many Montenegrin citizens have registered residency at an address where they do not reside, the only possible way to update it is for MIA officials to visit every address in Montenegro, ascertain who actually lives there, and initiate necessary changes if citizens do not live at their registered addresses. During this process, numerous technical and substantive issues may arise, so changes to the residence law must be prepared very diligently, with anticipated

scenarios that may occur in this process (especially regarding citizens who temporarily or permanently reside in other countries and those with unclear status in the countries where they actually live and work). It is necessary to provide a monitoring body consisting of representatives from MIA, all parties, and the NGO sector, which will have insight into individual cases' conduct. It is essential to dispel any suspicion that the purpose behind this process is political or ethnic manipulation of voters. After conducting the first field verification of all citizens, the law should also provide a permanent model of residency control by MIA and introduce appropriate sanctions for violators; **B) Eliminate the residency requirement for state-level elections** – By abolishing the requirement for voters to have residency in Montenegro in addition to Montenegrin citizenship, part of the problem with citizens living outside Montenegro would be resolved. This solution is in line with the recommendations of the Venice Commission and the OSCE. In the previous stages of amending the law, these recommendations did not receive the support of the legislator because they required a change to the Constitution of Montenegro and significant political consensus (the support of at least three-fifths of voters in a referendum). However, as noted in the OSCE/ODIHR reports, LECMP deviates from the Constitution regarding the residency requirement, as it sets a 24-month residency requirement before elections, while the Constitution establishes a two-year residence condition without specifying the period of residency. The worst situation is the current one – the norm is selectively applied to some but not others, which raises doubts about the regularity of elections.

## 10. Initiate a dialogue on citizenship policies and regulate the Registry of citizens

Politika državljanstva je osjetljivo pitanje koje, pored ostalih, značajno utiče i Citizenship policy is a sensitive issue that significantly affects the voter register, as voting rights are granted to citizens of Montenegro who meet additional requirements. Hence, it is necessary to launch an inclusive dialogue to create citizenship policies that ensure the realization of all citizens' rights while also taking into account state interests.

While the citizenship policy pursued in the previous long-term period was well-conceived, it is essential to reassess whether all the effects of this policy were equitable to everyone, whether anyone was discriminated against during its implementation, and whether any negative phenomena existed. If such phenomena existed, they must be corrected rather than used as an excuse to change the structure of citizens, which could become a long-term instrument for influencing future electoral processes by neighboring countries. In this sense, the activities aimed at liberalizing citizenship policies during the government led by Zdravko Krivokapic represent a poor example and approach to dealing with this significant national issue.

Furthermore, a control system for citizenships must be established, wherein the procedure is legally clarified, with a particular focus on the possibility of revoking Montenegrin citizenship when it is unambiguously determined that citizens have acquired citizenship of foreign countries, especially those in the region.

### **11. Improve penal policies regarding reporting and recording deceased individuals**

In the process of controlling and verifying the voter register, a certain number of deceased individuals were identified who could not be removed due to a lack of appropriate legal grounds.

Part of the problem lies in the lack of administrative culture or ill intentions of citizens who do not report deceased individuals for manipulative reasons. The law on healthcare prescribes that the time and cause of death of each deceased individual must be determined by a medical professional. However, there are no sanctions for citizens who fail to inform medical institutions about the death. This negatively impacts not only the accuracy of the voter register but also the timeliness of other administrative data.

To address this issue, a system of penal policies for citizens who fail to report deceased family members and for institutions that maintain inaccurate records must be created. Improved communication between relevant authorities, particularly healthcare and other institutions, is crucial to establishing the legal basis for the timely removal of deceased citizens from the voter register. Furthermore, greater control over the actions of the Ministry of Internal Affairs based on documents regularly provided by healthcare institutions is necessary.

### **12. Introduce an open list system**

The term “open list” is often discussed in public discourse in Montenegro, but it is unclear what those who criticize or advocate for it mean by it. The phrase describes a broad range of options within proportional electoral systems that give voters a certain influence over the selection of party candidates and the ability to choose individuals rather than just parties. Different models provide varying degrees of voter influence, from a single preferential vote for a candidate on one list to multiple votes for different candidates on various lists.

Open lists can strengthen the principle of direct elections, enhance the representation of citizens, increase the accountability of elected officials, influence the internal democratization of parties, and improve communication

with the voting base. Implementing measures of affirmative action for underrepresented groups and addressing risks related to clientelism require protective and corrective mechanisms.

The Parliament of Montenegro is facing the task of preparing a concrete model of open lists through an inclusive approach and consultation with experts for the upcoming electoral reform to be used in this country.

Most political parties have publicly expressed support for introducing open lists. However, none have taken steps to propose a model, making it seem like an empty promise that can be postponed indefinitely.

In addition to the fact that we believe that this is an extremely important issue for the democratic development of our society, we should keep in mind that in the near or distant future we are facing elections for the European Parliament, for which it would be important to have some of the modalities of preferential voting in place.

### **13. Create a new system for verifying election candidacies**

The process of collecting and verifying signatures for candidacies remains a problem that burdens all electoral processes in Montenegro. There have been legitimate suspicions from the public that certain lists and candidacies were approved based on forged signatures, involving unauthorized collection and use of citizens' personal data. During the 2023 presidential elections, a large number of citizens reported abuse of personal data. The Center for Civic Education (CCE) submitted multiple initiatives to the Agency for Prevention of Corruption related to the verification of signatures for presidential candidates. The Agency claimed to have conducted oversight, but the public is yet to be informed of the final outcome.

International recommendations suggest allowing citizens to support more than one list or candidate with their signature. The requirement to collect 1.5% of registered voters' signatures for presidential candidacies is excessive and goes against the standard of a maximum of 1%.

In addition to the signature collection, there is a system in comparative practice that involves depositing an election guarantee. It should not be too excessive as to hinder the candidacy process but it should serve as a selection mechanism. This guarantee or money would be returned if the candidates achieved a certain percentage of votes in the elections. In some countries, this approach has proven more effective than signature collection, but it is essential to ensure that the required amount and number of votes for its return are reasonable.

If the current signature collection system remains in place, clear rules must



be established for their verification in line with international standards. To address the issues of mass abuse, consideration should be given to a model of notarized signature endorsement.

In any case, allowing each voter to support multiple lists with their signature is necessary, preventing the candidacy procedure from becoming a voting process.

### **14. Enable individual candidates to submit their candidacies**

Currently, the legal solution in Montenegro prevents individuals from running directly for office. This is contrary to the recommendations of the Venice Commission and ODIHR, as well as the fundamental document for democratic elections – the 1990 Copenhagen Document, which contains undisputed and widely accepted electoral standards. Signatory states of this document, including Montenegro, have committed to respecting “the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

It is a misconception that independent candidates cannot participate in proportional electoral systems. This is, of course, just one of the “arguments” we keep hearing from a significant portion of political entities, aiming to deny citizens this important right and preserve their party monopoly.

In the EU, in countries with pure proportional systems, the candidacy of independent candidates is explicitly allowed.<sup>3</sup> In several other countries<sup>4</sup>, it is not specifically regulated, and independent candidates would be treated as a party/list with one candidate, who would be elected if they receive enough votes. In some countries, the conditions for independent candidate candidacy are more favorable than those for political parties.

The introduction of individual candidacies is directly related to the introduction of preferential voting, and these two important issues should not be considered separately. To introduce preferential voting and open lists, it is essential to permit the participation of lists that include at least one candidate running as an individual candidate in elections. The law needs to be amended to specify the minimum number of candidates on the list.

### **15. Prescribe that all local elections be held on the same day**

One of the priority topics on the agenda of previous electoral reform committees was an agreement to hold local elections on the same day, with

3 U Estoniji, Danskoj, Kipru i Rumuniji.

4 Austrija, Finska, Luksemburg, Holandija, Poljska.

sustainable legal solutions that would enable regular election cycles for local elections. This demand has been consistently emphasized by the EU as well.

Putting an end to the state of perpetual election campaigning is crucial to normalize political processes in Montenegro, since pre-election tensions never subside, and decision-makers constantly make calculated moves in anticipation of better election results. This issue is crucial to prevent voter migration from one municipality to another for election purposes, which has caused serious problems and the inability to complete the electoral process in certain places.

The electoral reform should result in a stipulation that all local elections should be held on the same day, with the elected councilors serving a four-year term. In the event of dissolution or shortened term of local assemblies during the four-year mandate, elections should be called to elect councilors for a shortened term until the date of the regular local elections. If a shortening of the mandate occurs in the last year, a solution should be considered where the existing assemblies continue to operate in a technical mandate until the regular elections.

In this way, abuse and deliberate fragmentation of local elections by political entities that do not favor a stable state could be prevented, while also promoting dialogue and agreement between political entities at the local level.

## **16. Elect local community councils through elections**

Instead of being a key instrument for citizens' participation in decision-making and a driver of citizen self-organization, local community councils have long become party centers whose task is precisely the opposite – to stifle civic initiatives and to serve as a means to seize absolute partisan control at all levels.

The current two models for electing local community councils do not represent anything more than a simulation of democracy to further develop party monopolies and stifle civic initiatives and self-organization.

The citizen assembly as a form of election, announced on the notice board of the local community, where the electoral process lasts for seven days, does not allow for genuine citizen participation in any way. Examples from practice show that these assemblies often have a small number of citizens compared to the total population, there were doubts about whether everyone even has a residence in that local community, and the whole activity often comes down to the ability of parties to organize a larger number of their supporters. As the issue of residence and stay has long been raised as a problem of the election process, it is clear that this form of election is nothing more than a simulated process.

The second model – the system of appointing local community councils based on the Decision on Local Communities, which exists in the Capital City, negates even these simulated elections. The system was designed so that the Capital City and political parties control the majority in the Council, as the executive body of the local community, leaving no space for citizen self-organization.

Using these two models has resulted in the absence of more serious civic initiatives, and genuine citizen participation, while local communities no longer serve their original purpose.

Local community councils must be elected through democratic elections, directly and secretly, in accordance with international standards, i.e., the European Charter of Local Self-Government. This change must be included in the new Electoral Law. After that, it is necessary to engage in harmonization of the Law on Local Self-Government with the new electoral model.

This method of electing local community councils would yield numerous benefits and would not significantly affect the costs of the election procedure since local community elections would take place simultaneously with local elections.

## **17. Reform the voting rights protection system to meet international standards**

The voting rights protection system is not entirely aligned with international standards or effective.

The law prescribes that an objection against a decision, action, or omission of a voting committee is submitted to the Municipal Election Commission (MEC), and an objection against the decision, action, or omission of the MEC is submitted to the State Election Commission (SEC). Also, decisions of the SEC, dismissing or rejecting an objection against a decision, action, or omission of the voting committee or the MEC, can be appealed to the Constitutional Court. However, objections and appeals can only be filed against decisions rejecting or dismissing objections. This means that the party that is dissatisfied with a decision upholding an objection loses the possibility to object to the SEC or appeal to the Constitutional Court. Due to this, the review of confirmed candidacies is hindered.

Voters have the right to object or appeal due to a violation of their personal voting rights, but not against other decisions such as the confirmation of candidacies or election results. Violations of rules related to the electoral roll and campaign financing are resolved in separate proceedings and before different bodies. Due to unclear procedures and overlapping jurisdictions, effective legal protection is often lacking, which is contrary to international obligations and standards.

The SEC considers objections at public sessions, but the Constitutional Court considers appeals without public presence and does not allow the participation of the parties in the dispute. Additionally, the Constitutional Court does not publish timely comprehensive decisions on appeals. Although the procedure for election appeals is urgent, by virtue of its nature, the Constitutional Court, in practice, uses a legal vacuum and prolongs the duration of the procedure by delaying the submission of appeals and requesting responses from the relevant election commission.

When it comes to upcoming reform, it is necessary to thoroughly analyze the existing voting rights protection system and improve it by expanding the right to object and appeal to cover all aspects of the electoral process and reduce restrictions related to proving legal interest in proceedings.

It is necessary to increase the transparency of making decisions-on objections and appeals, with a particular emphasis on opening sessions of the Constitutional Court in line with past OSCE/ODIHR recommendations.

### **18. Correct unclear and contradictory provisions in the Law on Election of Councilors and MPs**

The current Law on the Election of Councilors and MPs was adopted in 1998. Since then, it has been amended several times through amendments and decisions of the Constitutional Court that invalidated certain provisions. These amendments were often made by lawmakers without thorough legal-technical analysis. Consequently, the law now contains many disputable and outdated provisions, as well as legal gaps, which hinder its implementation, even in part related to technical matters.

Moreover, during its application, numerous legal shortcomings have been identified concerning election procedures, leading to legal and practical issues. To address these problems, it is essential to identify them through consultations with the State Election Commission, relevant experts, and the public. Subsequently, the norms should be corrected and specified to ensure clarity in the legal text's language.

In the upcoming election reform, it is essential to resolve all nomotechnical deficiencies in our electoral law and fill in the legal gaps. Instead of introducing amendments and additions, we propose creating a new text of the Law on Election of Councilors and MPs.

## 19. Enable affirmative action for Roma

The Law on Election of Councilors and MPs provides for affirmative action measures to improve the representation of minority nations. It allows electoral lists representing minority nations or national communities to participate in seat distribution even if they receive less than 3% of the valid votes. The threshold for minority lists is 0.7%, while for representatives of the Croatian people, the most successful list with at least 0.35% of the valid votes is entitled to one seat.

In this way, the representatives of the Croatian people could be elected to the parliament under privileged conditions, and with a special electoral threshold that was estimated to be achievable in relation to the size of the population.

However, the issue with this provision arises because, according to the results of the latest census, there is another nation in Montenegro with approximately the same proportion of the total population that does not enjoy the same privilege – the Roma, who constitute 1.01% of the population (while the Croats make up 0.97%). The Center for Democracy and Human Rights (CDT) has been advocating for more than a decade to extend this provision to electoral lists for the election of representatives of the Roma national minority.

The NGO Roma Youth Organization “Walk with us – Phiren amenca” submitted an initiative to the Parliament of Montenegro at the end of 2021, proposing amendments to the Law on the Election of Councilors and MPs to ensure the participation in the allocation of mandates for electoral lists for the election of Roma minority representatives. They requested that the legal rules applicable to Croats be extended to the Roma national minority as well.

During the last parliamentary election cycle, controversies emerged regarding the interpreting of affirmative action norms for lists representing the Croatian people. According to the linguistic interpretation of the norm and its logical correctness, the only conclusion is that an electoral list representing the Croatian people is guaranteed one seat only if it obtains between 0.35% and 0.7% of the valid votes. If the list receives more than 0.7% of the votes, it gains the right to participate in seat distribution based on the number of votes obtained, but it does not guarantee a seat.

The State Election Commission (SEC) adopted a rather liberal interpretation, circumventing what is explicitly written, and took a position that, in the spirit of the law, if the most successful list of Croatian people obtains at least 0.35% of the valid votes – it secures the right to one parliamentary seat in any case. SEC justified this approach by claiming that it was a purposive interpretation of the norm.

The SEC correctly concluded that the principle of affirmative action aims to ensure the representation of minority groups, but it is questionable whether

that alone is sufficient to determine the actual purpose and goal of the norm, especially when considering the lack of appropriate sources for historical interpretation of the norm and the analysis of the impact of different circumstances surrounding its adoption, as well as the reasons why the legislator recorded it in this way. Support for this argument is found in the fact that since the law's adoption, this norm has been a subject of concern and scrutiny among experts and interested parties in informal communications, pointing out potential problems that its implementation may cause in practice.

In the public discourse, comments have been made that the norm is “wrong” and “unfortunately worded,” but this cannot be a sufficient reason for its flexible interpretation. The CDT advocates for the application of affirmative action for minority groups, but we believe that preserving this principle should not be guaranteed by masking problems. In the upcoming election reform, it is necessary to specify this article of the law so that another State Election Commission does not adopt a completely different stance. The rights of minority nations are protected not by “gifting” mandates but by providing robust and clear legal protection of their rights.

## **20. Improve the quota system for women in representative bodies**

Rodne kvote su u crnogorsko zakonodavstvo uvedene prije više od decenije, Gender quotas were introduced in Montenegrin legislation over a decade ago to address women's underrepresentation in politics and decision-making positions. The idea behind introducing gender quotas lies in the fact that women in patriarchal societies face barriers that do not exist for men thus giving them an advantage. The practice has shown that, although slow and symbolic, quotas have a positive effect, and the percentage of women in representative bodies has generally increased since their introduction, although it remains unsatisfactory.

Women's Rights Center (WRC) and SPEKTRA's analysis of 2023 parliamentary election preliminary results showed that in the future Montenegrin Parliament, there would be only 17 women, or 21%, the lowest percentage since the introduction of the quota system, which prescribes that one out of four candidates on an electoral list must be from the less represented gender.

Additionally, while waiting for the electoral reform, it is crucial that the existing legal framework is consistently adhered to, and violations of provisions concerning guaranteed quotas and positions for women on electoral lists are prevented. There have been instances of law violations by political entities without facing legal consequences, so it is crucial to incorporate sanctions for those acting unlawfully and establish accountability for any breaches by the election administration.

In the context of introducing open lists and preferential voting, it is particularly important to prepare a protective mechanism for women's representation, ensuring that regardless of individual candidates' results, at least 40% of the elected candidates are women. This affirms a more balanced representation of the underrepresented gender in elected assemblies, which is one of the essential milestones in modern democracies.

## 21. Enhance the financial support of gender policies and women's rights development

The participation of women in politics is encouraged through special financial incentives for women's organizations within political parties and their programmatic empowerment. The 2020 Law on Financing Political Entities and Election Campaigns stipulates specific financial resources for their regular financing at both the central and local levels.

However, the intention of the legislator to improve and programmatically empower women members of political entities is often misused in practice. Political parties fail to report<sup>5</sup> on the expenditure of funds deposited into the accounts of women's organizations. Some of them openly acknowledge that the money intended for the work of women's organizations is used contrary to the law, such as for the organization of party congresses, representation, or election campaigns.

To prevent the misuse of financial resources intended for women's organizations, it is necessary to ensure that the funds are used strictly as prescribed in the statute of women's organizations, aimed at strengthening women's positions in political life and society as a whole. Additionally, to further enhance women's participation in politics, gender budgeting should be introduced, allocating more funds to support women's entrepreneurship and ensuring gender mainstreaming at all levels of decision-making, in line with the European Commission's recommendations.

## 22. Ensure Accessibility of Elections for People with Disabilities

Reports from the Association of Youth with Disabilities of Montenegro (AYWDM) have shown that previous electoral processes were marked by inaccessibility for persons with disabilities (PWDs). Obstacles exist in almost every segment of the election procedure, from physical access barriers at voting stations to difficulties in accessing the voting booth and ballot box, ensuring independence and secrecy in voting, to procedures and materials that are not accessible to persons with visual impairments.

<sup>5</sup> In accordance with the statute of women's organizations, political subjects are obliged to report on the intended use of these funds as part of the annual consolidated financial report.

Furthermore, the election campaign itself is not sufficiently accessible to all categories of PWDs, both in the media and on the ground.

Consequently, these challenges hinder active voting rights and contribute to the underrepresentation of persons with disabilities on electoral lists and in local and state parliaments.

Addressing this issue requires electoral reforms to establish appropriate provisions for the accessibility of voting stations, the electoral process, and materials, as well as passive voting rights. Moreover, election administration bodies must undergo mandatory training to ensure compliance with accessibility requirements. Electoral commissions and voting committees, as the main entities responsible for ensuring a fair election day, must be held accountable for any discrimination on the ground, which undermines the independence and confidentiality of voting. Introducing suitable sanctions for violations will ensure that these provisions are not just symbolic on paper.

### **23. Eliminate the Committee Controlling Media Work from the Election Law**

LECMP includes a provision for the establishment of a Parliamentary Committee to monitor the implementation of the election law in relation to the media. This solution has been criticized by the European Commission due to overlapping competencies with the Agency for Electronic Media (AEM), which should be the sole body responsible for overseeing broadcasters during elections. Additionally, the highly divided media community has united in its criticism of provisions that allow politicians to control the media.

This Committee was formed and held several sessions during the 2016 parliamentary elections. However, in 2020, the committee was established before the elections but failed to hold a session due to a lack of quorum. During the 2023 parliamentary elections, there was no attempt to form the Committee, nor was anyone advocating for or addressing the issue, indicating that these provisions have become outdated.

The specific article in the LECMP that mandates the formation of the committee and its jurisdiction should be deleted because it is entirely unacceptable for a parliamentary body to oversee the work of the media in any capacity.

### **24. Reevaluate the ban on the publication of opinion polls**

The latest amendments to the Law on the Election of Councilors and Members of Parliament extended the period of the ban on the publication of public opinion polls from 10 to 15 days before the elections. Such provisions are



not uncommon in comparative practice and generally do not contradict the European Convention on Human Rights and other relevant standards.

However, after nearly 10 years of implementing this norm, during a time when new media have experienced an expansion, it is necessary to reassess the justification for such a lengthy ban and its potential negative impact on the right of voters to be informed.

In recent election cycles, reputable public opinion research agencies have been unable to conduct surveys before the start of the ban because political parties and candidates waited until the last moment to submit their election lists. This applies not only to surveys commissioned by political parties but also to public opinion polls, such as those conducted by CEDEM in Montenegro for decades to increase citizens' understanding of political processes.

As a result, instead of having research with known sponsors and precise methodologies presented in the media, adhering to journalistic standards, the public has been flooded with a multitude of fabricated surveys falsely attributed to credible organizations through social media and marginal portals. This is a proven method of manipulating and influencing public opinion through disinformation, which can be best countered by making credible information readily available.

CDT proposes that within the framework of electoral reforms, the ban on the publication of opinion polls be shortened to several days before the election. Simultaneously, protective mechanisms should be introduced to prevent manipulation and attempts to exert undue influence on public opinion by defining high transparency standards for sponsors, authors, and research methodology.

## **25. Clarify the provisions of LECMP regarding the electoral silence**

The practice of electoral silence, which involves the suspension of campaigning in the short period before the elections, is common in contemporary democracies. The purpose behind it is to allow voters to reflect and make their final decision without the influence of election campaigning. In many Western democracies, this is considered a limitation of freedom of expression and deemed unconstitutional, but it is frequently used in young and transitioning democracies. However, in the modern context where election campaigns increasingly take place on social media and online platforms, there are growing concerns about whether this practice still serves its intended purpose or has become outdated.

The existing provisions in the law that define electoral silence are not sufficiently precise, especially when dealing with new technologies. Article 6 of LECMP states that election propaganda through media and public

gatherings should cease 24 hours before election day, and financial penalties are imposed on legal entities that violate this provision. However, the law uses the terms “election propaganda” and “election campaign” interchangeably without offering a clear definition for either.

The practical applicability of such ambiguous norms is questionable, and proving whether someone engaged in election propaganda without a clear definition is complicated. The provision is open to various interpretations in a highly polarized social context, leading to some entities and media reporting on elections being perceived as propaganda, thus facing potential sanctions. Credible media often point out that the provision is unfair because it only targets media registered in Montenegro, while unregistered websites and foreign electronic media can violate Montenegrin laws without consequences.

As part of the reform, it is necessary to clarify this provision, defining precisely what is prohibited and making the ban equally applicable to all covered entities. Other countries have regulations specifically targeting public gatherings and various forms of party promotion, including open or concealed advertising in the media. The ban should never affect professional reporting by the media and non-governmental organizations on the electoral process, as these activities contribute to better public awareness of electoral options.

## **26. Legally clarify uncertainties related to the second round of the presidential election**

In Montenegro, the 2023 presidential election was decided in the second round for the first time since regaining independence and only the third time since the introduction of multipartisan elections. The Law on the Election of the President of Montenegro, adopted in 2007, was applied for the first time in the second round of elections, and certain deficiencies in regulating the second round were identified, since the provisions related to the second round were treated in just three brief articles of the law.

During the electoral process, numerous practical and legal uncertainties arose, concerning deadlines for electoral actions, the impact of objections and complaints on declaring the results of the first round and conducting the second round, the composition of election administration bodies, and the rights of authorized representatives in the second round, as well as the accreditation of observers, and more.

The State Election Commission (SEC) successfully resolved these ambiguities through conclusions and instructions, thus establishing legal practices. These solutions should be incorporated into the upcoming electoral reform to solidify the legal framework for the second round of elections.

# 27. Expand AEM's competencies for more robust regulation of the electoral process

According to the law, AEM is an independent regulatory body that oversees compliance with laws and program standards by electronic media and decides on complaints.

Under the law, AEM has the authority to impose administrative measures on broadcasters, which mainly involve issuing warnings. However, the effectiveness of these warnings has been limited, and the temporary or permanent revocation of broadcasting licenses, which is the ultimate measure, is not desirable to be excessively used.

Furthermore, AEM lacks the authority to conduct inspection oversight. The recent annual report by the European Commission concluded that AEM still lacks the necessary powers and measures to effectively monitor legal provisions and penalize broadcasters. Its operational capacity needs to be strengthened.

AEM is mandated to elaborate provisions of the Law on Electronic Media related to elections and decisions on complaints, and it also monitors national media during elections. However, AEM is not mandated to oversee the application of electoral laws by broadcasters. Consequently, provisions of media-related electoral laws are not fully implemented, as noted by ODIHR.

To improve the implementation of media laws and prevent the increased spread of disinformation and electoral propaganda through foreign media broadcasting in Montenegro, it is essential to consider models that grant AEM the ability to ensure compliance with Montenegrin national regulations and safeguard the integrity of the electoral process while fully respecting the principles of freedom of expression. Relevant studies suggest that this issue should be addressed not only from the perspective of media law but also from the perspective of electoral law, with amendments to electoral laws that restrict or prohibit spending on paid political advertising on any media services that are not domestic.

The electoral reform should regulate campaigns through all channels of political communication, including new media, and define a supervisory mechanism, rules, and the responsibility of political entities for potential violations. The law should precisely define political advertising and the rules under which it takes place, especially concerning paid advertising by third parties not directly involved in the elections but supporting a particular campaign. It should clarify whether political advertising is allowed outside the electoral process and whether it counts towards the maximum allowed quota. The role of public broadcasters, including local ones in electoral processes outside their founding municipality, also need to be precisely defined. Finally, the law should more accurately regulate whether commercial broadcasters

have the right to provide free advertising and discounts and explicitly stipulate that such acts constitute donations to a party and must not exceed a specified value.

## **28. Legally regulate the issue of disinformation in the electoral process**

In recent years, disinformation campaigns have become a significant feature of electoral processes in Montenegro. These campaigns have been used to smear the reputations of political opponents, deepen social divisions, raise tensions, marginalize women, and discriminate against minority groups. Disinformation has long-term effects on devaluing fact-based political debate, undermining trust in the election administration and elections as the fundamental institute of democracy.

Many universally accepted democratic election standards also address disinformation by protecting the right to an informed choice, equal participation of election participants, freedom of expression, and press freedom. UN standards<sup>6</sup> emphasize that voters must have the freedom to vote without unnecessary influence and form opinions without manipulative interference of any kind. They also highlight the crucial role of free media in transmitting information and ideas between citizens and electoral candidates without censorship or restrictions.

Montenegro must take the first steps in incorporating these standards into its electoral and media legislation, with particular consideration for ensuring that any future restrictions or bans on disinformation pass a strict test of Article 19 of the International Covenant on Civil and Political Rights – that they are prescribed by law and are necessary and proportionate measures consistent with international standards.

The reform should also include positive measures, such as mandatory educational campaigns during the electoral process and support for journalism in the public interest, as well as independent fact-checking mechanisms. It would be essential to introduce an obligation for public broadcasters to air content aimed at educating citizens about their democratic rights during the electoral process.

## **29. Implement safeguards to protect elections from undue foreign influence**

Comparative analyses describe foreign interference in electoral and democratic processes as a set of different and variable practices, a mix of misinformation, political financing, strategic advertising, acquisition of critical

infrastructure, cyber-attacks, pressuring researchers, the establishment of new NGOs, and the use of troll networks to incite destructive discussions instead of solution-oriented ones. Despite the difficulty in proving foreign interference in Montenegro, the utilization of all these instruments and tactics has been evident during the past several election cycles.

While traces of interference coming from Russia were evident during the parliamentary elections in 2016, in the elections of 2020, 2021, and 2022, there were numerous public signs of involvement from Serbia and other countries in the region. In the public sphere, this entailed direct support from Serbian officials to preferred options in Montenegro through synchronized disinformation campaigns and exploiting the inaction of state institutions and societal vulnerabilities to disrupt, disturb, and manipulate the electoral process. There were various suspicions and rumors regarding unauthorized campaign funding from abroad. The European Commission also noted the significant participation of foreign media from the region, particularly noticeable during election periods.

As part of the electoral legislation reform, this matter needs to be addressed primarily through regulations concerning campaign financing and media representation. It is necessary to regulate funding from third parties, defining campaign financing from abroad as a criminal offense. Moreover, there is a need to increase transparency requirements regarding campaign financing, both for political parties and media outlets, and empower AEM to monitor and issue warnings in cases of evident information manipulation. Political entities should be explicitly prohibited from advertising in foreign media during the campaign period. Particular attention should be given to protecting critical infrastructure and the electoral process from hybrid threats.

In this area, experiences from France and Sweden are particularly valuable. In France, government agencies responsible for electoral integrity and cyber security have undertaken various activities to prevent foreign interference in elections, including working with election candidates and alerting the media to false information. Similarly, in Sweden, a government agency was tasked with raising awareness among Swedish citizens about threats related to disinformation and influence campaigns by foreign states seeking to undermine democratic processes.

### **30. Create the conditions for the Agency for the Prevention of Corruption (APC) to become a professional and independent institution**

APC, which is responsible for overseeing the financing of political subjects and electoral campaigns, has been slow in building institutional integrity. In previous electoral cycles, it has been evident that the existing legal framework requires numerous amendments to ensure effective control. The bans and

limitations defined by law often result in overwhelming APC with excessive documentation, while the control effects remain absent.

The control of abuse and misuse of public funds requires significant improvements. While certain parties, media, and non-governmental organizations often present specific examples of abuse<sup>7</sup>, APC reports year after year claim that there is no abuse. However, such conclusions by APC are not supported by evidence, and the manner and extent of control carried out by the institution are not sufficiently detailed or based on in-depth verification, which would be an adequate basis for forming and expressing such views.

The control of the reports of political subjects also exhibits serious deficiencies. During the control process, ASK should determine whether financial reports are accurate, prepared in accordance with the valid financial reporting framework, and presented fairly and objectively. Inconsistencies in the reports need to be thoroughly verified through a cross-checking system of information from different sources. Additionally, the law should stipulate sanctions for political subjects submitting incomplete or inaccurate campaign expenditure reports.

The control process lacks transparency and comprehensiveness, and the outcomes of individual controls are mostly unknown, and individual decisions, explanations, or records of the conducted controls of those required to fulfill the law's obligations are not publicly accessible. Furthermore, the public does not have sufficient information about the outcomes of procedures initiated by ASK.

The electoral reform should not only focus on procedural improvements. So far, experiences have shown that law deficiencies are often used as an excuse for a lack of political will or professional courage to confront powerful political actors. Therefore, new legislative solutions should primarily aim at liberating ASK from political influence and providing institutional guarantees that this institution ceases to engage in superficial administrative checks and instead focuses on protecting the integrity of the electoral process.

## **31. Criminalize illegal electoral financing**

The rules of financing political entities, including the methods of obtaining funds and the bans and limitations defined by the Law on the Financing of Political Entities and Election Campaigns, need to be addressed.

Political subjects' funding sources include both public and private funds.

<sup>7</sup> Mass employment before elections, awarding of various financial benefits in the election campaign, involvement of public officials in pre-election activities, putting pressure on employees in public administration and influence on freedom of choice, etc.

Contributions can be made by both individuals and legal entities, business companies, and entrepreneurs, on a voluntary basis, while contributions from abroad are prohibited. All subjects are obligated to deposit contributions exclusively into the appropriate bank account, and anonymous donations are excluded. The use of public resources during election campaigns is restricted. However, the penalties for violating these restrictions are not proportionate or effective enough to deter potential breaches, considering the potential gains from such violations.

CDT's proposal to criminalize unlawful party financing was partially adopted through amendments to the Criminal Code. However, not all of the most dangerous forms of illegal financing were criminalized due to a lack of political will. Thus, criminal and legal protection is limited to a generalized offense of using state property for election purposes, sanctioning violations of freedom during financing political subjects and election campaigns, and criminalizing the acceptance of contributions acquired through criminal activities.

These provisions need to be thoroughly revised, in consultation with the professional community, to ensure clarity, applicability, and coverage of illegal financing and acceptance of contributions. Criminal and legal protection should not be limited solely to contributions from criminal activities, and it is particularly important to define financing from abroad as a criminal offense.

## 32. Prevent the misuse of state resources

The misuse of state resources for electoral purposes has been a burning issue in Montenegro for decades. Besides the inadequate control and supervision system over compliance with legal prohibitions, new models of misuse not regulated by the law also emerge and persist without adequate sanctions.

The law prohibits excessive use of public funds, the use of public premises for campaign activities, the use of public machinery without compensation, the payment of social benefits, employment without prior approval, the use of official vehicles for campaign purposes, and the cancellation of debts for electricity, water, and utilities during the election campaign. In practice, the misuse of resources through campaign activities and party employment remains the most widespread model of abuse.

APC has practically established a practice of interpreting the Law on the Prevention of Corruption in a manner that ignores and approves the practice of party employment that fundamentally undermines the integrity of the electoral process. APC declares itself as having no jurisdiction over mass employment for an indefinite period, and it, in fact, approves this negative phenomenon, treating it as a legitimate and legal activity. This institution, from one campaign to another, demonstrates a lack of professional courage and

responsibility to confront political abuses in the electoral process, indicating the necessity to strengthen the integrity of this institution primarily through changes in the conditions and methods of electing the APC Council. Moreover, it is essential that APC participates in discussions on the improvement of the Law on the Financing of Political Entities and Election Campaigns to eliminate any opportunities to circumvent legal norms or engage in arbitrary interpretations that are not in line with the spirit of the law.

Regarding the misuse of resources and the state apparatus for the purpose of gaining advantages and better positions before elections, it is necessary to precisely regulate the engagement of politically elected public officials during the election campaign.

### **33. Legally regulate the financing of political entities by third parties**

The financing of election participation by third parties, i.e., entities not directly participating in the elections, is not regulated or controlled. This significantly impairs the transparency of the electoral process and can be used to undermine legal prohibitions.

There are suspicions that financing from third parties is used to circumvent the ban on foreign funding. For instance, the Government of Serbia supports Serbian associations in Montenegro through grants to diaspora organizations, some of which are closely associated with the former Democratic Front and participated in their campaigns. During recent election campaigns, the Serbian Orthodox Church has also been directly or indirectly involved in campaigning in favor of specific political options.

Moreover, political parties in Montenegro rarely report corporate donations, raising concerns that support from businesses during election campaigns is channeled through direct financing of campaign activities.

The lack of regulation in this area was evident during the second round of the presidential elections when some candidates from the first round supported Jakov Milatovic and used resources to campaign in his favor.

OSCE/ODIHR and the Venice Commission's joint guidelines on regulating political parties directly address the abuse of party financing from third parties. To limit these abuses, they recommend the establishment of robust systems of financial reporting for political parties outside of elections. The legislation should provide clear guidelines on prohibited activities during the pre-election campaign period, and the incomes and expenditures used for such activities during that period should be subject to appropriate audits and sanctions. The legislation should clearly indicate to whom political party funds can be provided during the pre-election period and impose limitations on their use by third parties not directly associated with the party.



However, a complete ban on participation in campaigns for those who are not direct competitors may, according to the judgments of the European Court of Human Rights (ECHR), be considered an unjustifiable restriction on freedom of speech. Therefore, it is necessary to carefully analyze comparable solutions and the practice of the ECHR in this area. Solutions should be sought to increase transparency, requiring registration and reporting, introducing limitations on funding amounts, and implementing effective oversight in this area.

### **34. Increase transparency of revenues and expenditures in campaigns**

Electoral participants do not have equal access to budget funds, as parliamentary parties can use funds designated for regular operations for campaign financing, giving them an immense advantage in the electoral race.

The law does not define premature campaigning, making it challenging to control, as parliamentary parties that receive funds from the budget can carry out a continuous campaign.

The law limits the amount of donations from individuals and legal entities. The maximum amount of donations was increased by new legal provisions from 2,000 to 5,000 euros for individuals and from 10,000 to 20,000 euros for legal entities. However, in practice, it is uncertain to what extent these limitations are followed, due to APC's inability to fully verify the authenticity of information from political subjects' reports. The ODIHR report on the 2020 parliamentary elections expressed concerns that the total amounts of campaign expenses are too high, allowing excessive spending.

Although non-monetary contributions should be calculated based on market value and reported as revenue according to the law, the credibility of reports in this area is highly questionable.

The issue of political subjects' debts has not been adequately resolved, and in each election, there are examples of huge campaign debts that are then repaid over the years from funds for regular operations. After the 2023 presidential elections, MANS found that four presidential candidates were still owing suppliers around one million euros for unpaid invoices related to their campaign expenses. Their earlier analysis revealed that certain political subjects never paid significant campaign expenses from 2020, and no competent institutions monitored this. In this way, suppliers became campaign donors, and unpaid amounts were effectively concealed donations, substantially exceeding the legally attributed limit.

The Law on the Financing of Political Entities and Election Campaigns needs a detailed revision to improve the transparency of campaign revenues and expenditures. It is necessary to precisely regulate the prohibition of premature campaigns, regulate loans and non-monetary contributions, and reflect these changes in an improved party financial reporting system.

## **35. Enforce the obligation to sign the Code for a Fair and Democratic Electoral Process**

It is not uncommon to sign a kind of code during different political moments related to elections to regulate the behavior of political subjects and various legal situations that may arise during the electoral process, which cannot be or are not regulated by legal solutions.

The Code is expected to compensate for deficiencies in the electoral process and current legislation by emphasizing the importance of respecting universal democratic principles and international standards for conducting a fair and competitive electoral process.

Signing such a code was one of the previous OSCE/ODIHR missions' recommendations, and CDT has signed it with political subjects in multiple projects of civic election monitoring that we have carried out for two decades.

If the SEC becomes a non-partisan and independent institution during the electoral reform, it should be responsible for preparing and monitoring the implementation of the code. The code should be prepared through an inclusive process, with professional cooperation with domestic and international election observers, the academic community, and political subjects. Additionally, all state institutions with electoral competencies should be involved in its preparation and monitoring of implementation.

Signing the code should be specified as an essential obligation of the SEC in the new LECMP with the precise definition of obligations for other state institutions with electoral competencies, timely provision of various data and information, giving opinions, etc. If necessary, certain provisions from the code that can be precisely regulated should be incorporated into relevant laws, particularly the obligations of state institutions. Establishing a special mixed body responsible for overseeing the Code's compliance is necessary, where election observers participate as associate members without voting rights.

The code should also outline the manner of sanctioning its violation in accordance with our legal system. The code should be signed with confirmed electoral lists and institutions with electoral competencies during each electoral process, with continuous improvement of its text and adaptation to pressing issues in individual elections.

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