

ANALYSIS OF KEY ISSUES IN ELECTORAL PROCESSES:

MAPPING THE PATH TO IMPROVEMENTS

PODGORICA JANUARY 2024.

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1 Editor's note

The current, 28th convocation of the parliament, has the opportunity to finally implement a comprehensive reform of the electoral legislation and demonstrate it has a different understanding of the importance of the most significant process in a democratic society.

Although this problem remains neglected, members of parliament must seize the opportunity to finally correct serious deficiencies that exist at the source of our democracy, namely in our electoral process.

In addition to the fact that the political elites have not contributed to the improvement of our electoral environment for a decade and thus keep the democratic processes captive, by their (in)action in this area, they have also slowed down the achievement of our strategic goal - Montenegro's accession to the European Union (EU). The European Commission and the OSCE/ODIHR have been warning us in their reports for years about greater or lesser anomalies in our electoral process.

In the publication before you, we have summarized only some of our key recommendations for improving the electoral process in Montenegro. In this way, we aim to contribute to the discussion on the scope and directions for comprehensive reform, and highlight the role of civil society as a constructive partner in these or similar opportunities.

The two-decade experience that the Center for Democratic Transition (CDT) has in observing elections, and whose representatives have been part of electoral reform processes so far, gives us the right to suggest key directions for its implementation at the very beginning. These are, undoubtedly, the depoliticization of the electoral administration and achieving a high level of accuracy and timeliness of the electoral roll. In addition, the attention of parliamentarians should be focused on ensuring that our voters have the right to independent candidacies and the ability to vote for individuals from party lists, that disinformation is an integral part of every electoral campaign, and that party financing is a source of political corruption and distrust in the process.

CDT's goal is to support the work of the Committee for Comprehensive Electoral Reform. Therefore, in the coming period, in cooperation with experts in various fields, we will prepare special publications with detailed proposals for the improvement of electoral laws, through the analysis of all their important segments.

We hope that our work in this area, at least in a small segment, will contribute to the final implementation of the electoral reform and to Montenegro's getting electoral rules that belong to democratically mature societies.

This publication was created as part of the project "Electoral Reform in Focus: It's Time!" which the Center for Democratic Transition (CDT) is implementing in cooperation with the Association for Responsible and Sustainable Development (UZOR) and the Association of Youth with Disabilities of Montenegro (UMHCG), with the support of the European Union, through the EU Delegation in Montenegro. Its content is the sole responsibility of CDT and does not necessarily reflect the views of the European Union.

We remain open to all well-intentioned criticisms and suggestions regarding this document, as well as to support and public discussion on electoral reform with all stakeholders.

CDT team

2 Who needs political electoral administration?

Amendments to the Law on the Election of Councilors and Members of Parliament

It is necessary for electoral reform to provide a solution for better organization and operation, as well as the election of members of bodies responsible for conducting elections. The priority must be depoliticization, professionalization, and centralization of the electoral administration, as recommended by experts, the international community, and some political parties for years. First and foremost, the doors of the State Election Commission (SEC) and municipal election commissions (MECs) should be opened to independent professionals selected through public competitions, while mandatory training on the application of the electoral process should be prescribed for members of polling boards. Equally important is the centralization of the electoral administration, so that the SEC has appropriate authority and jurisdiction over the actions of MECs.

Montenegro, at least in theory, has opted for an independent model of electoral administration, which fundamentally means that the electoral administration operates autonomously and independently of the executive branch. This is based on the idea that the electoral administration, comprised of representatives of different political parties, could make impartial decisions. In other words, its composition should prevent bias in favor of any political option.¹ However, in the Montenegrin context, it does not work that way, and through several cases, we have seen that the authorities that conduct elections take into account the party's interest, rather than the public interest.

In the previous election cycle, we had the opportunity to witness one in a series of cases when the SEC made political decisions, went beyond its jurisdiction, acted in the interests of some political parties, and created chaos in the election process. The rejection of Milojko Spajic's candidacy for president is a drastic example of how the political majority in the SEC selectively gathers information about two presidential candidates and involves the authorities of a foreign country in that process, instead of being guided by official documents and procedures based on which domestic competent authorities function. In this case, the SEC has set a number of precedents in the election process that can be the basis for disqualifying any candidate the political majority determines to be ineligible for some reason.² Yesterday, it was detrimental to Spajić, and tomorrow it could be detrimental to any candidate who opposes the political majority in the SEC. Interestingly, after Spajic's disqualification as a presidential candidate, the SEC had no problem when he ran for parliamentary elections as the leader of the Europe Now Movement. It is clear that, in that case, it was not politically opportune to further prevent Spajic from exercising his right to run for office and be elected, so there were no more discussions and dilemmas about his citizenship and residence at SEC meetings.

This is just one of the situations that showed how the party SEC negatively affects the credibility of the election process, which argues for the necessity of professionalization and depoliticization of the electoral administration. The European Commission also emphasized in its latest report on Montenegro that politicization prevents the SEC from functioning as an independent election management body.³

¹Dragan Koprivica, Milica Kovačević, *Depolitizovana i efikasna izborna administracija – preduslov povjerenja u izbore (Depoliticized and efficient electoral administration – a prerequisite for trust in elections)*, Center for Democratic Transition, Podgorica, 2017

²"DIK je postala aktivna učesnica u izbornom procesu" (*SEC has become an active participant in the election process*), Center for Democratic Transition, February 19, 2023

³European Commission, Montenegro 2023 Report

As part of electoral legislation reform, it is necessary to prescribe high standards of expertise for SEC members with special guarantees of their political impartiality. The number of SEC members, the duration of their mandates, and the conditions for dismissal should also be reconsidered to contribute to the independence and efficiency of this body. It is equally important to reconsider these issues at the MEC level, which is also comprised of representatives of political parties. It is worth reminding that the Venice Commission, in the Code of Good Practice in Electoral Matters, states that “Where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level”.⁴ The OSCE/ODHIR report on the 2023 parliamentary elections states that the independence of election commissions should be strengthened by ensuring the security of tenure, with the establishment of clear and objective criteria for the grounds for dismissal of election commissioners.⁵

As part of electoral reform, the issue of centralization of the electoral administration must also be addressed as very important. By law, the SEC is responsible for the uniform application of the law, but it is not specified what exactly that entails. Additionally, the SEC does not have authority and jurisdiction over local elections and the work of MECs. The magnitude of this problem is evident in the example of the still unresolved elections in Šavnik, where a group of individuals, motivated by previous irregularities in the electoral roll, physically influenced the process, and then, thanks to the parties in the MEC and legal loopholes, completely halted the electoral process.

Local elections at two polling stations in Šavnik have been unsuccessfully repeated nine times since October 23, 2022, the last time on December 18, 2023. Since then, there has been no majority in the MEC Šavnik, composed of party representatives, to adopt an SEC decision ordering a repeat of the elections. The competent prosecutor’s office has filed 24 indictments against 33 individuals for criminal offenses against electoral rights, and some of the cases have been finalized at the first instance with conditional guilty verdicts. However, the criminal treatment of these cases still does not solve the underlying problem – the citizens of Savnik are prevented from choosing their government through elections. This case also sets a dangerous precedent, as all parties dissatisfied with the electoral process or outcome can adopt this obstruction model for any reason.

⁴Venice Commission, *Code of Good Governance in Electoral Matters. Guidelines and explanation adopted at its 52nd session*

⁵ODHIR Election Observation Mission Final Report. *Early parliamentary elections, June 11, 2023*

3 Is it possible to improve the quality of the voter register?

Changes and amendments to the Law on Voter Register and related laws - Law on Residence and Domicile Registers, Law on Montenegrin Citizenship, and Law on Health Care

The Parliament of Montenegro, in coordination with the Ministry of Internal Affairs (MIA) and experts in electoral rights, needs to provide an efficient and legally flawless solution for organizing the voter register. In the direction of ensuring long-term accuracy and timeliness of the voter register, several pressing issues need to be addressed, which result in the inclusion of individuals in the Montenegrin voter register who should not be there. This primarily concerns Montenegrin citizens who have a fictitious residence in our country.

The question of the voter list's quality and accuracy has been a key reason for mistrust in elections and election results for many years. The main flaw of our voter register lies in the outdated registries and records from which it is derived, providing an opportunity for initiating reform and organizing the voter register.

A number of persons are registered in the voter register, even though they do not meet the constitutionally prescribed residence requirement of 24 months for exercising the right to vote. The lack of adequate regulations has allowed citizens to choose whether to deregister their residence when leaving the country permanently. As a result, some Montenegrin citizens have not deregistered their residence upon permanently leaving the country. They still remain in the residence and domicile register, and, consequently, the voter register.⁶ In this sense, one should, of course, make a distinction between Montenegrin citizens who temporarily stay abroad on different grounds such as work, education, treatment, etc., from those who have settled status in other countries, i.e. have all political and other rights in that country. Such individuals unjustifiably appear in the voter register and thus have the opportunity to decide and participate in the political life of Montenegro, a country with which they predominantly do not have a strong connection.⁷

The fact that the registry of Montenegrin citizens regarding deregistration of residence is inaccurate is no longer disputed. However, political opportunism and the struggle for diaspora votes, which are of interest to a larger number of political entities, prevent legislative intervention that would lead to improving the accuracy of this database. We learned about the potential "reservoir of votes" prior to the second round of presidential elections, when the Directorate for Cooperation with the Diaspora estimated that there are about 150,000 citizens with the right to vote in Montenegro residing in the diaspora, of which one-third is in regional countries, and the rest in the European Union and America.⁸ It is also important to emphasize that the Montenegrin Constitution, by stipulating the residency requirement, clearly defines that the diaspora does not have the right to vote, and the residency requirement itself has been assessed several times by the relevant international institutions as contrary to standards. However, the procedure for amending this constitutional provision is very complicated and requires additional approval by three-fifths of citizens in a referendum, making it seem like an impossible undertaking at this moment. Another option that our organization has advocated for years involves conducting field controls of all addresses in our country. Within the work of the Committee for Comprehensive Electoral Reform, established in 2021, a draft amendment to the law was developed, which envisages field control as the basis for updating the residence and stay register, which could be a solid starting point for the work of the new parliamentary committee.

⁶Dragan Koprivica, Milena Gvozdenovic, Milica Kovacevic, *How to End the Decline of Democracy: 35 Recommendations for Electoral Reform*, Center for Democratic Transition, Podgorica, 2023

⁷Ibid.

⁸Ljubica Milićević, "Jakupi: Poziv dijaspori da glasa u drugom krugu je zloupotreba, iseljenici se u velikoj većini neće odazvati" (*Jakupi: The invitation to the diaspora to vote in the second round is an abuse, the vast majority of emigrants will not respond*), Vijesti online, March 22, 2023

The key will be to carefully prepare this process to prevent the possibility of an unjustified and unfounded denial of voting rights to any Montenegrin citizen. Given that this is a very complex process, it would be necessary to foresee independent monitoring and thorough analysis of each individual case. In addition to the method for updating the register, the law would also need to provide a special model for controlling the registration and deregistration of residence.⁹ In addition to field controls, there are also ideas to start from the analysis of available records on the basis of which it would be possible to determine who actually resides in Montenegro for a certain period of time, based on crossing the border, paying taxes, using health insurance, etc.¹⁰

This topic is also related to the issue of abuse of the Law on Montenegrin Citizenship, which prohibits dual citizenship except in specific cases. Acquiring citizenship of another country after 2006 may result in the loss of Montenegrin citizenship and voting rights. There have been reports that even some current or former public officials in Montenegro unlawfully hold dual citizenship.^{11 12} This phenomenon potentially represents a worrying source of electoral abuse, disloyal political relations among states, and a constant source of distrust in the electoral process. The fact that a voter has the right to vote in two states, especially neighboring ones, represents a very dangerous situation that must be addressed in the electoral reform.

Another issue that will need to be part of the voter register reform is the issue of deceased individuals, which becomes relevant before elections, especially in situations when citizens receive notifications from the MIA about the polling place of their deceased family members. Here we encounter a problem of the lack of a suitable basis for removing a deceased person from the voter register. The causes are twofold: a lack of administrative culture or manipulative reasons of citizens who do not report the deaths of family members, and inadequate communication between relevant services, resulting in errors in registering deaths. This issue also arises in cases when citizens die abroad, and the state does not receive official confirmation.¹³ In this case, the reform should go in the direction of amending the Law on Health Care as well as prescribing effective penalties for citizens who do not report deceased family members and for institutions that do not keep these records up-to-date.¹⁴

⁹Dragan Koprivica, Milena Gvozdencovic, Milica Kovacevic, *How to End the Decline of Democracy: 35 Recommendations for Electoral Reform*, Center for Democratic Transition, Podgorica, 2023

¹⁰"Velika debata" ("The Great Debate" TV show), *TV e*, February 22, 2023

¹¹"Perić: Spajić i Leposavić imaju dvojno prebivalište, Vlada da prvo raščisti svoje" (*Peric: Spajic and Leposavic have dual citizenship, the Government should clear up its own ranks first*), *Vijesti online*, August 4, 2021

¹³Nenad Zečević, Jovana Đurišić, "Mandić nezakonito posjeduje državljanstvo Srbije, da li su MUP-u Crne Gore „svezane ruke“?!" (*Mandić unlawfully holds Serbian citizenship, are the MIA of Montenegro's hands tied?*), *Pobjeda*, November 1, 2023

¹⁴Dragan Koprivica, Milena Gvozdencovic, Milica Kovacevic, *How to End the Decline of Democracy: 35 Recommendations for Electoral Reform*, Center for Democratic Transition, Podgorica, 2023

4 Will citizens finally get a chance to participate in elections?

Amendments to the Law on the Election of Councilors and Members of Parliament

As part of the electoral reform, it is necessary to find and introduce a suitable model of preferential voting, i.e. open lists, which would strengthen the representation of citizens. It is equally important that the Law enables individual candidacies, in accordance with the international recommendations of ODHIR, the Venice Commission and the Copenhagen document.

Political parties have established strong control over our political and electoral system. Public evaluations and reports of relevant institutions are not rare. They often label the situation in Montenegro as *partitocracy*.

Political parties are the most important factors of representative democracy. This fact does not conflict with allowing individuals to run independently in elections, which represents an important standard of democratic elections and can improve the quality of democracy.¹⁵

Currently, the law does not allow individuals to run independently, depriving them of the opportunity for independent “competition” with political parties. To participate in elections, individuals can only do so as part of a larger group – within a party list or a group of citizens. However, the Copenhagen Document clearly prescribes states’ obligation to respect citizens’ right to stand for political or public office, individually or as representatives of political parties or organizations, without discrimination. In this regard, it is necessary to amend the law to introduce individual candidacies into our system, thereby facilitating the participation of individuals or smaller groups in elections, in line with international standards and recommendations. This issue needs to be considered together with the issue of introducing open lists.

This issue should be considered together with the issue of introducing open lists. Politicians mostly, even declaratively, support the introduction of open lists or preferential voting into our electoral system. This implies that voters, in addition to voting for a party list, can also vote for a specific candidate on that list. However, it is necessary to consider a model that could be applied in Montenegro, which may include options such as voting for a party list and a candidate from that list, voting for candidates from different lists, voting for candidates based on priority order. That is why we believe that one of the most important tasks of our electoral reform and placing it on the agenda is the issue of introducing preferential voting, because this is the practice of democratic societies, and elections for the European Parliament are held using this mechanism. Whichever direction the discussion on the introduction of open lists takes, it is essential to provide an effective mechanism that ensures the representation of underrepresented genders and minorities.

The use of open lists would allow the election of candidates based on the trust of voters, giving preference and a chance to those who enjoy the highest level of support from voters. It is believed that candidates with such legitimacy would also have greater autonomy, independence, and responsibility in their actions and decision-making. Of course, there are also certain flaws and shortcomings of open lists that need to be discussed in the framework of electoral reform, but, in general, open lists produce more positive effects.

¹⁵Podkast “Trebaju li nam otvorene liste i individualne kandidature?” (“Do we need open lists and individual candidacies?” podcast), CDT Montenegro YouTube channel, October 10, 2022

5 Why is nobody bothered by the illegal financing of parties?

Changes and amendments to the Law on the Election of Councilors and Members of Parliament, the Law on the Financing of Political Entities and Election Campaigns, the Law on Prevention of Corruption and the Criminal Code

The Law on the Financing of Political Entities and Election Campaigns is one of the key regulations that should be amended as part of the electoral reform. Although this law was innovated relatively recently, it did not respond to key challenges in the field of financing political parties and campaigns. That is, it has not improved the efficiency of the system of control and supervision over the work of parties, nor has it led to greater accountability of parties. This also indicates the need to improve the law and create legal conditions for the independent and efficient functioning of the Agency for Prevention of Corruption (APC), which should answer the question – how and from where do all the parties in Montenegro receive their funding?

The amount of funds that political parties receive from the state budget exceeds the European average. In addition, in 2020, the upper limit for private donations was increased to five thousand euros for individuals and up to 20 thousand euros for legal entities. Instead of norms that expand the scope of funds for political parties being accompanied by increased transparency and stronger control of their operations, the control we have in our system does not answer the key question - how party funds are actually spent and how much of that money is in illegal channels. The lack of sanctions for irregularities in operations motivates parties to engage in illegal behavior, and low penalties make it more profitable for parties to accept unauthorized donations or engage in any other abuses.¹⁶

Most of the ODIHR's recommendations in the field of party financing, i.e. election campaigns, have not been respected to date, including effective verification of the legality of donations, the obligation of the Agency for Prevention of Corruption (APC) to identify and publish information on unreported finances, the introduction of proportional sanctions, and the use of loan.¹⁷

Parliamentary parties are in a privileged position compared to other election participants because the funds they receive for regular operations are used contrary to their purpose - for financing campaigns or for subsequent loans taken out for campaigns.

Furthermore, a particularly prominent problem is managing money that does not go through official financial channels, with suspicions that some political parties are funded by third parties, which is neither controlled nor adequately regulated by laws. An analysis by MANS on campaign financing for parliamentary elections notes worrying donations from a private company established by another state.¹⁸ Among other things, changes and amendments to the Criminal Code should define foreign financing of political parties as a criminal offense. In the reports of political entities on the campaign, a series of inconsistencies can be noticed, primarily due to the bureaucratic and passive approach demonstrated by APC during the control of party work. This includes failure to report costs such as hiring activists, administrative expenses, in-kind donations, transportation costs, and services whose prices have been significantly reduced compared to their market value, etc.¹⁹

¹⁶Biljana Papovic, Dragan Koprivica, Milena Gvozdenovic, Milica Kovacevic, *The first 10 years of EU-Montenegro negotiations*, Center for Democratic Transition, Podgorica, 2022

¹⁷OSCE/ODHIR, International Election Observation Mission, Montenegro – Early Parliamentary Elections, 11 June 2023. Statement of Preliminary Findings and Conclusions.

¹⁸Vanja Čalović Marković, Dejan Milovac, Lazar Grdinić, Marijana Subotić, *Izveštaj o finansiranju izbornih kampanja. Parlamentarni izbori 2023 (Report on the financing of election campaigns. Parliamentary elections 2023)*, Network for Affirmation of the Non-Governmental Sector (MANS), Podgorica, 2023

¹⁹"Zloupotrebama do boljeg izbornog rezultata" (*Abuses lead to a better election result*), Center for Democratic Transition, May 14, 2023

APC's work in this area has not resulted in improving financial control over party operations as party management of public funds remains without reliable assessment and control of legality, accuracy, and credibility of the information reported by parties. As part of the electoral reform, consideration should be given to improving this segment of APC's work, including conditions for the selection of the APC Council to ensure additional guarantees of their political impartiality.

The integrity of the electoral process and citizens' trust in elections have been further undermined due to suspicions and proven cases of abuse.

The most obvious example of illegal party financing certainly concerns the "Envelope" affair. Businessman Dusko Knezevic published a video recording in 2019 in which he allegedly handed over about 100 thousand euros to the then Mayor of Podgorica and high-ranking DPS official Slavoljub Stijepovic as financial support for the DPS campaign for the parliamentary elections held in 2016. APC then imposed on DPS the maximum sanction provided by law, up to 20 thousand euros, and requested the return of funds to the budget of Montenegro, in the amount of 47.5 thousand euros. The Special State Prosecutor's Office brought an indictment²⁰ against Stijepovic for money laundering, which was finally confirmed by the High Court after several returns only in September 2021²¹.

The aforementioned case indicates that it is necessary to criminalize the illegal financing of parties, so that such cases are not treated through the, mostly difficult to prove, the criminal offense of money laundering. This has been warned about before, yet not all the most serious and dangerous forms of illegal acquisition of funds have been criminalized. Criminal protection has been reduced to the general incrimination of using state property for electoral purposes, sanctions for violating freedom of choice in financing political entities and election campaigns, and the criminalization of accepting contributions acquired through criminal activities.²²

In addition to the "Envelope," the "Recording" affair will remain remembered, which came to light in 2013 and revealed that the then-ruling DPS actively used employment opportunities in exchange for votes, which will be remembered through the slogan "one employed, four votes." The actors of this affair were not punished but instead progressed in their careers.²³

²⁰MINA news, "ASK: DPS prekršio zakon, da vrati u budžet 47,5 hiljada eura" (APC: DPS broke the law, obliged to return 47.5 thousand euros to the budget", *Vijesti online*, February 11, 2019

²¹Svetlana Đokić, "Potvrđena optužnica protiv Stijepovića" (*Indictment against Stijepović confirmed*), *Vijesti online*, September 24, 2021

²²Dragan Koprivica, Milena Gvozdenovic, Milica Kovacevic, *How to End the Decline of Democracy: 35 Recommendations for Electoral Reform*, Center for Democratic Transition, Podgorica, 2023

²³Željka Vučinić, "Aferama krče put do pobjede" (*Affairs pave the way to victory*), *Vijesti online*, August 23, 2020

The mechanisms patented through the “Recording” affair continue to be applied even after a change in government. The media reported that from the announcement of the presidential elections until the first week of March 2023, a total of 5,267 decisions on employment in public administration were made. To this day, it has not been clarified whether this was justified and necessary, or whether it was a way to ensure a safe vote. According to the Agency for Prevention of Corruption (APC), these decisions were made in accordance with the law²⁴, clearly indicating that political corruption is covered by the existing legislative framework.

Shortly before the 2023 parliamentary elections, then-Prime Minister Dritan Abazovic and Minister of Internal Affairs Filip Adzic expressed suspicions that the crypto community financed the campaigns of certain political entities²⁵, and alleged the connection between the holder of the Europe Now Movement (ENM) list Milojko Spajic and the “crypto king” Do Kwon rise to the level of national security issues. Do Kwon denied before the prosecutor that he had any financial transactions with Spajic or participated in any way in the illegal financing of his political campaign.²⁶ After the end of the election process, the story lost its significance, and the prevailing opinion among the public is that the goal of marketing this affair was to influence the election result of ENM and that influence and positions of power were abused for that purpose. However, this situation is a convenient reminder that new risks in campaign financing with cryptocurrencies are beyond existing legislation’s reach.

In addition to partisan employment, the most widespread form of abuse of state resources for electoral purposes is involvement of public officials in campaigning. Laws prohibit public officials and civil servants from this type of abuse of public resources only during working hours, while police officers and members of the National Security Agency are not allowed to participate in election campaigns in any way.²⁷ Officials are prohibited from abusing and using their media appearances in the role of a state or other public official for party advertising during the election campaign.²⁸ However, an analysis by the Center for Democratic Transition (CDT) before the 2023 parliamentary elections showed that in just 14 days, over 40 cases of official abuse of resources and state apparatus were recorded. The main actors in these activities are representatives of the Government, but cases of official campaigning at the local level and the involvement of officials from companies in majority state ownership were also recorded.²⁹ This kind of involvement of public officials speaks volumes about the necessity to limit and regulate official campaigns by law.

²⁴Željka Zvicer, “Od raspisivanja izbora sklopljeno preko pet hiljada ugovora o zapošljavanju” (*Over five thousand employment contracts concluded since the announcement of the election*), Pobjeda, March 15, 2023

²⁵“Sednica Vijeća za bezbjednost Crne Gore o vezama Do Kvona i Spajića” (*Session of the Security Council of Montenegro on the links between Do Kwon and Spajic*), Radio Free Europe, July 6, 2023

²⁶BETA, “Milatović: Do Kwon nije donirao novac za predsjedničku kampanju” (Milatovic: Do Kwon did not donate to my presidential campaign), Vijesti online, June 21, 2023

²⁷Law on the Election of Councilors and Members of Parliament, *Official Gazette of the Republic of Montenegro*, No. 004/98, 005/98, 017/98, 014/00, 018/00, Official Gazette of the Federal Republic of Yugoslavia, No. 073/00, 009/01, 041/02, 046/02, 045/04, 048/06, 056/06, *Official Gazette of Montenegro*, No. 046/11, 014/14, 047/14, 012/16, 060/17, 010/18, 109/20,, Article 50a

²⁸Ibid. Article 51a

²⁹“Preko 40 primjera zloupotreba resursa i državnog aparata” (Over 40 examples of misuse of resources and state apparatus), *Center for Democratic Transition*, September 6, 2023

6 Why doesn't Montenegro use democratic mechanisms to combat disinformation?

Changes and amendments to the Law on the Election of Councilors and Members of Parliament, the Law on Media and the Law on Electronic Media

As part of the electoral reform, it is necessary to consider amending the Law on Media and the Law on Electronic Media in the direction of expanding the competences, powers and control model of the Agency for Electronic Media (AEM) over media reporting in the election campaign, primarily portals and activities on social networks. It is also important to initiate a debate on the best solutions to regulate the spread of disinformation about electoral processes, which must not infringe on the right to freedom of expression and freedom of the press.

Voters have the right to be informed through the media about the election programs and activities of the electoral list candidates, and the media are obliged to consistently apply the principles of equality for all candidates.³⁰ However, disinformation has become an inevitable part of all electoral processes, influencing committed voters and undermining public trust in elections, institutions and the entire political system. The problem of the impact of misinformation on the election process should be discussed in cooperation with the media community and with adherence to international standards and solutions, because it is a very sensitive issue and solutions must not lead to unjustified restrictions on freedom of expression³¹. Besides, there is currently no adequate model in Montenegro for preventing and combating the negative effects of disinformation, and not enough effort is being made on preventive measures that should include the state's efforts to warn voters and react promptly and contribute to accurate information about events related to the electoral process. Between election processes, continuous work is needed to raise the level of media literacy and citizens' skills to recognize methods and techniques for spreading disinformation.

A large number of manipulative and false claims about election processes are served by media from the region, especially tabloids and some marginal, right-wing portals, to which the Montenegrin legislation has almost no answer. The Law on Media does not specify who oversees compliance with legal norms by internet portals. Even the registration of portals in the Media Register maintained by the Ministry of Public Administration is not mandatory but rather a voluntary activity. For example, two portals, IN4S and Aktuelno, are not even registered in this register.³² The Montenegrin public remembers the ad hoc portal Udar that appeared during the campaign for the 2020 parliamentary elections, where journalists, politicians and citizens were labeled as collaborators of foreign services and enemies of the state³³, but that was apparently not enough reason to think about a systemic solution in the case sharing such and similar content through the portal. Not even the frequently mentioned "battle for Nikšić," the dissemination of data based on false public opinion polls, and numerous examples of intolerance, discrediting political opponents, spreading tensions in society, and sowing fear were enough for the Montenegrin legislator to attempt to regulate the issue of disinformation, fake news, and manipulations. On the contrary, while we wait for the state to produce some solutions, disinformers advance in finding new techniques, which predominantly no longer consist of publishing fake news but also photos and videos using artificial intelligence.

³⁰Law on the Election of Councilors and Members of Parliament, Official Gazette of the Republic of Montenegro, No. 004/98, 005/98, 017/98, 014/00, 018/00, Official Gazette of the Federal Republic of Yugoslavia, No. 073/00, 009/01, 041/02, 046/02, 045/04, 048/06, 056/06, Official Gazette of Montenegro, No. 046/11, 014/14, 047/14, 012/16, 060/17, 010/18, 109/20, Article 6

³¹International Covenant on Civil and Political Rights, Article 19

³²Media Strategy of Montenegro 2023–2027 with the 2023–2024 Action Plan

³³Dušan Cicmil, "Vlada sutra o vezama bivšeg rukovodstva ANB i portala Udar" (*Government to discuss the connections between the former National Security Agency leadership and the 'Udar' online portal*), *Vijesti online*, February 5, 2021

In addition to portals, a model for overseeing compliance with legal provisions by print media is not defined either. The Media Strategy 2023–2027 also states that in terms of the concept of self-regulation, the main drawback is the lack of a unified body responsible for all print and online publications.³⁴ In other words, it implies that nobody can provide an effective legal response in situations where law violations are established.

The law enables AEM to issue a warning measure to electronic media, which in itself does not produce the desired effects, or a measure of temporary or permanent revocation of approval for broadcasting or providing audio-visual media services, which, on the other hand, is a radical measure. However, the AEM is not authorized to conduct inspection supervision and impose fines in case of irregularities.³⁵

According to the Law on Electronic Media, AEM has powers in relation to political advertising and election campaigns and to decide on objections related to the work of broadcasters. However, the AEM does not have the authority to monitor the implementation of provisions from the Law on the Election of Councilors and Members of Parliament by the broadcasters, which actually makes the citizens' right to accurate information meaningless.

These are also key shortcomings that should be addressed as part of electoral reform because solutions should not only be implemented in media but also in electoral laws.

The Law on the Election of Councilors and Members of Parliament defines that the Parliament, by a special decision, establishes a Committee to monitor the implementation of the Law on the Election of Councilors and Members of Parliament in part related to the media. The provisions on this Committee should be removed from the law with the amendments to the Law on the Election of Councilors and Members of Parliament, because it is unacceptable to allow politicians to influence media reporting in this way, instead of it being the job of independent regulatory bodies.

It should also be emphasized that, according to the law, the right to media coverage in the pre-election campaign begins on the day of confirming the electoral list of campaign participants and ends 24 hours before the day of the election. In reality, the campaign starts much earlier. It practically does not end until the closing of the polling stations, so the provisions on electoral silence are practically rendered meaningless by the use of social media and modern communication tools. This testifies to two needs – first, the need for a precise definition of the official start of the election campaign and regulation of the use of social media, and second, the need either to abolish the provisions on election silence or to specify them to be applicable in practice.

³⁴Media strategy of Montenegro 2023-2027 with the 2023-2024 Action Plan.

³⁵Dragan Koprivica, Milena Gvozdenovic, Milica Kovacevic, *How to End the Decline of Democracy: 35 Recommendations for Electoral Reform*, Center for Democratic Transition, Podgorica, 2023



Master kvart, lamela F2/11 81000 Podgorica, Montenegro
cdt@cdtmn.org | www.cdtmn.org