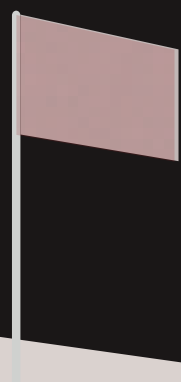




FOREIGN INFLUENCES ON THE ELECTORAL PROCESS IN MONTENEGRO 2016–2023

PART II



PODGORICA MAY 2024.

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INTRODUCTION

Foreign interference in electoral and democratic processes is defined as a set of various and ever-evolving practices, including a mix of disinformation, political financing, strategic advertising, the acquisition of critical infrastructure, cyber-attacks, pressure on researchers, the establishment of new NGOs, and the use of troll networks to instigate disruptive discussions where solutions-oriented discourse should exist.

As observed in the first part of this analysis, a significant number of said instruments and tactics have been used in the last few electoral cycles in Montenegro. While traces of interference in the 2016 parliamentary elections pointed to Russia, in the 2020, 2021, 2022, and 2023 elections, there were numerous evident signs of interference from neighboring countries, notably Serbia.

Montenegro's legal and institutional framework currently lacks mechanisms to prevent or combat malicious foreign influences. Unlike many democratic countries with robust structures to counter foreign interference, Montenegro remains vulnerable to manipulation and illicit influence of external actors.

Effective protective measures are crucial to safeguarding the sovereignty and autonomy of democratic processes in Montenegro. Without such measures, there is an increased risk that external actors will exploit vulnerabilities within the political, economic, and social structure of the country, undermining the trust and legitimacy of democratic institutions. To uphold democratic principles and ensure transparent governance, Montenegro must devise and implement comprehensive strategies to detect, deter, and counteract ill-intentioned foreign influences. This requires legal reforms and the establishment of institutional capacities tailored to confront the evolving challenges posed by foreign interference in democratic processes.

The European Parliament, for instance, has a Special Committee on Foreign Interference in all Democratic Processes in the European Union, including Disinformation (INGE). However, our proposal to establish a similar committee in the Montenegrin Parliament has yet to be placed on the parliamentary agenda. The INGE Committee's mandate includes assessing foreign threats across various domains and formulating solutions to thwart attempts at undermining democratic processes.

The Center for Democratic Transition (CDT) advocates for the introduction of mandatory mechanisms for controlling foreign investments (investment screening), where they would be evaluated against national priorities and the national security of the country, including the protection of democratic institutions. This issue is also related to electoral processes because unreported and undocumented revenues of political parties in election campaigns can lead not only to foreign states or criminal organizations but also to business entities that may pay for the costs of corruption to gain privileged status and bypass national regulations through illegal and secret donations to political entities. It is necessary to adopt a new policy for attracting foreign investments and introduce a set of mechanisms to stop the dominance of corrosive capital, which could potentially negatively impact the foreign policy orientation and overall functioning of the state.

Furthermore, to mitigate negative foreign influences, there's a need to review legislation pertaining to security, information protection, anti-corruption measures (with a focus on lobbying regulations), media laws, and various other sectors, considering the specific nature of these threats.

In this publication, we outline directions for possible interventions in this area within the comprehensive electoral law reform framework.

Key directions for implementing future electoral law reforms regarding unauthorized foreign influences



Addressing the issue of foreign interference in electoral processes through electoral reform

The long-awaited electoral reform in Montenegro is a reform process that, on the one hand, all actors publicly advocate for, while on the other hand, few are willing to demonstrate in practical work and political action what they advocate. In other words, there has been no political will for electoral reform thus far.

Since 2014, when significant changes were last made to electoral regulations, all reform efforts have faltered, underscoring a deficiency in political determination to align electoral laws with democratic norms.

The scope of the previous committee included the implementation of recommendations from the European Commission's reports, the application of all recommendations from the OSCE/ODIHR reports, the definition of draft laws on the election of councilors and members of parliament, the voter list, the financing of political entities and election campaigns, registers of residence, and the analysis of the application of laws on personal identification cards and Montenegrin citizenship.

Although the committee's scope was broadly set, CDT believes that it should also include the defense of the electoral process from foreign disinformation influences and the establishment of a comprehensive punitive policy system. Montenegro must come up with a response to modern challenges to meet international standards for democratic elections, which stipulate that voters must have the freedom to vote without undue influence and form opinions without manipulative interference of any kind.

Strengthening institutions is crucial for building resilience against foreign interference in elections and democratic processes. Strong institutions with transparent and accountable mechanisms defend against manipulation and infiltration by external actors who aim to undermine democratic processes.

One of the key tasks of electoral reform is the depoliticization and professionalization of the electoral administration, primarily the State Election Commission (SEC). CDT has already underscored in publications how important this is for ensuring electoral enforcement bodies' political impartiality, legal work, and efficiency.

In almost all election cycles, the work of the electoral administration has been marked by selective and legally questionable decisions which were aimed at giving advantages to certain candidates. SEC's mandates have been predominantly marked by controversial and politically motivated decisions, some of which have not only received public criticism but also criminal charges, while others have been overturned by the Constitutional Court. Our decades-long experience in monitoring electoral administration reveals this pattern, consistently manifesting when certain political entities, enjoying majority control within the electoral administration are involved.

However, it is important to highlight that this reform is also crucial in protecting the electoral processes from foreign influences. Besides the usual problems, during the 2023 presidential elections, for the first time, we saw how political representatives of SEC enabled foreign interference in the electoral process through their decisions.

Party representatives in the State Election Commission, in collaboration with politically controlled institutions from a foreign state (the Republic of Serbia), disqualified a presidential candidate who was leading in public opinion polls, favoring two other candidates.

Therefore, the SEC should be composed of members who meet strictly set criteria of expertise, political impartiality, and personal and professional integrity.

A transparent selection process, based on merit and clear criteria such as expertise in electoral law, experience in election management, and consistent, impartial, and credible conduct, can help prevent the appointment of individuals with ties to foreign interests.

Conflict of interest rules must require SEC members to disclose any potential conflicts of interest, including financial ties or other connections with foreign entities. Mechanisms for transparent disclosure should be established to identify and immediately address any conflict.

Members of the electoral administration need to receive mandatory, regular, and comprehensive ethics training to raise awareness about the importance of impartiality and independence in managing elections. An ethical code for the electoral administration should be developed and enforced, prohibiting members of election enforcement bodies from engaging in activities that could compromise their neutrality or integrity.



Building better barriers to exclude foreign funds from financing election campaigns

For years, it has been evident to even casual observers of the electoral process that more money is being spent in campaigns than is reported in official statements. As we have seen, publicly available data indicates that one source of this unreported money is of foreign origin.

Election-related financing by third parties, i.e., entities that do not directly participate in the elections, is neither regulated nor controlled in Montenegro. The first step in amending the legislation on the financing of political entities should be to define third parties, relying on comparative and international definitions where third parties are considered organizations or individuals whose actions can influence the chances of success for political options or individual political parties or candidates, even though these entities themselves do not participate in the elections. They may campaign for or against certain parties or candidates, or on specific issues that determine the outcome of elections.

Special care must be taken not to introduce unjustified restrictions and to guarantee the protection of “public watchdogs,” such as journalists, civil activists, public policy researchers, etc., in accordance with the practice and standards of the European Court of Human Rights (ECHR).

A complete ban on participation in campaigns for those who are not directly participating actors may be considered an unjustified restriction on freedom of expression according to ECHR rulings, which is why comparative solutions and ECHR’s practices in this area should be carefully analyzed. Solutions should be sought to increase transparency, mandatory registration and reporting, introduce limits on amounts and sources of funding, and implement effective oversight and sanctions for those violating rules in this area. This way, third parties are not restricted from participating in political processes but are forced to adhere to the rules that already apply to registered participants in the election.

Third parties can be entities from both domestic and foreign origins, and to limit foreign interference in elections, it is necessary to legally increase transparency and control over who participates in financing election campaigns, whether they use illegal sources of funding, including those from abroad, and whether they respect prescribed limits for donation amounts.

Clear prohibitions must be stipulated for financing not only parties but also individual candidates on lists, as well as financing any election campaign activities, such as advertising or organizing election events and activities, by individuals and legal entities who are not Montenegrin citizens and residents. For individuals and legal entities who are citizens or residents of Montenegro, it is necessary to prohibit the use of foreign-sourced funds to finance election campaigns and related activities.

This would prevent the evasion of regulations and the influx of foreign capital into electoral processes through entities connected to or favored by political entities participating in the elections. It is crucial to ensure that limitations on external funding only affect electoral campaigns, without hindering the advocacy work of nonprofit organizations that depend on foreign contributions to drive meaningful societal progress.

Sanctions for financing political entities, as set out in current legislation, are designed in a way that does not deter but rather encourages illegal behavior.

Our organization's proposal to criminalize illegal party financing was partially adopted through changes and amendments to the Criminal Code.

However, due to a lack of political will, the most dangerous forms of illegal financing were avoided, reducing criminal protection to a generalized criminalization of the use of state property for election purposes, sanctioning violations of the freedom of choice in financing political entities and election campaigns, and criminalizing the acceptance of contributions obtained through criminal activities.

Revising these provisions with input from the expert community to ensure they are clear, enforceable, and encompass all forms of illegal financing and acceptance of contributions is necessary. Criminal legal protection should not be limited to contributions derived from criminal activities, and consideration should be given to extending criminalization to include contributions originating from abroad.¹

¹For more detailed recommendations, see CDT's publication "Krivičnopravna zaštita izbornih prava" (*Criminal Legal Protection of Electoral Rights*).



Increasing transparency and restrictions on foreign financing of political advertising

In past election cycles, a significant challenge for Montenegro's relevant institutions has been the direct payment for media advertising by foreign individuals and legal entities. This primarily concerns financing political advertisements on global online platforms, which are used to circumvent national legislation and are difficult to track and record due to the lack of transparency on said platforms.

However, the influx of foreign money for campaigns has also affected traditional media. There have been instances where election campaigns were moved to neighboring countries, primarily Serbia, to circumvent domestic regulatory restrictions and evade the jurisdiction of Montenegro's regulatory body, the Agency for Electronic Media (AEM). Additionally, previous elections have seen cases where foreign agencies purchased advertising space in Montenegrin media, significantly reducing campaign financing transparency.

In the upcoming electoral reform, it is essential to consider implementing an explicit ban on foreign entities participating in digital election advertising, ensuring that illegal foreign donations do not influence the electoral process. Ensuring that global digital platforms comply with these restrictions is particularly challenging for any individual country, necessitating alignment with European practices and policies.

Furthermore, it is crucial to consider restricting or prohibiting expenditures on paid political advertising on any media services not under the jurisdiction of Montenegro's regulator, where national legislation compliance cannot be effectively enforced. Legislative reform should include a ban on the sale of media advertising space to foreign individuals and entities for election campaigns.

In all this, it must be kept in mind that third parties, regardless of origin, have the right to freedom of expression, which can only be restricted by law in accordance with international standards. Also, according to international standards on fair elections, the public should enjoy the freedom to receive and disseminate information and ideas, including through foreign publications and programs, and the media should have unimpeded access to foreign news and information services.

Therefore, restrictions related to foreign participation in election campaigns must be clearly and precisely defined by law, necessary, and proportionate, aiming to protect democratic elections from foreign threats. These restrictions must be limited to the campaign period and to topics that can influence the elections.

Furthermore, it is essential to expand the Agency for Electronic Media (AEM) competencies to better regulate the electoral process, particularly in preventing malicious foreign media influences. Under current law, the AEM has the authority to impose administrative and supervisory measures on broadcasters, but these measures are limited to warnings, which have not been effective, and temporary or permanent revocation of broadcasting licenses, which is an extreme measure and not desirable for frequent use.

Besides the authority to impose fines, the agency lacks the power to conduct inspections.



Addressing the most flagrant and dangerous disinformation in electoral political discourse

Disinformation campaigns have accompanied electoral processes and other significant social events in Montenegro in recent years. They have a long-term impact on devaluing fact-based political debate, reducing trust in the electoral administration and elections as a fundamental democratic institution, with many of them being coordinated from abroad. Entire networks of connected traditional and online media and social media accounts have the important goal of undermining democratic processes in Montenegro.

Numerous universally accepted standards for democratic elections also apply to disinformation, through the protection of the right to informed choice, equality of election participants, and the protection of freedom of expression and the press. UN standards stipulate that voters must have the freedom to vote without undue influence and form opinions without manipulative interference of any kind, emphasizing the crucial role of free media in conveying information and ideas between citizens and election candidates, without censorship or restrictions. These standards are not fully implemented in Montenegro.

Deciding whether and how to restrict and sanction disinformation in electoral processes is a key modern dilemma for electoral systems facing the deliberate spread of disinformation. The main challenge lies in establishing clear criteria for identifying what constitutes “lies” in the realm of political speech, which is characterized by strong rhetoric, opinions, and exaggerations that enjoy additional protection.

Montenegro must take initial steps to embed these standards into its electoral and media legislation, ensuring that any future restrictions and bans comply with international standards protecting freedom of expression. In this regard, several comparative models applied in democratic states could be considered. However, given the significance and complexity of this topic, CDT will address it in a separate analysis.



Educating citizens about negative foreign influences on elections

Election processes in the partisan environment of Montenegro are entirely subordinated to political parties, often forgetting that elections do not belong to parties but to citizens. They are the centerpiece of democracy. Political power stems from elections where citizens decide based on a complex set of beliefs, values, and motives. Therefore, citizens are a key element in the integrity of the electoral process, and influencing their choices and attitudes is the target of malicious actors.

Democratic civic education, of course, cannot be achieved solely through electoral legislation; a comprehensive approach to improving media literacy is needed. However, some steps can be taken through electoral laws.

In the upcoming electoral reform, special attention should be paid to prescribing an obligation for the State Election Commission to conduct continuous campaigns to educate citizens about democratic and electoral processes. Additionally, consideration should be given to imposing an obligation on public media services to ensure that a portion of special programs dedicated to election campaigns is educational instead of being bombarded with party propaganda.

One of the most common targets of foreign influences is political parties and leaders, who can be both tools and victims of influence, as well as mechanisms of resilience. Therefore, educational campaigns on the dangers of foreign influences should be specifically targeted at this group.

Furthermore, through electoral reform, it could be possible to initiate the signing of voluntary codes of conduct, under the leadership of the State Election Commission and in cooperation with civil society, through which election participants would publicly commit, among other things, to renouncing and resisting foreign influences.

RECOMMENDATIONS

- 1**

Expand the scope of the Committee for Electoral Reform in addressing issues of foreign interference in electoral processes;
- 2**

Depoliticize and professionalize the electoral administration to prevent illegalities, political manipulations in electoral processes, as well as foreign influences;
- 3**

Enhance rules on conflicts of interest and ethical standards for members of the electoral administration;
- 4**

Introduce a definition and regulate the registration and transparency of “third parties” through the Law on Financing Political Entities and Election Campaigns;
- 5**

Prescribe a ban on financing not only parties and candidates, but any activities of electoral campaigns, such as funding advertising or organizing election events and activities, by individuals and legal entities who are not Montenegrin citizens and residents;
- 6**

Establish a prohibition on using funds from abroad to finance election campaigns and activities by third parties (individuals and legal entities) who are citizens or residents of Montenegro;
- 7**

Prescribe adequate deterrent sanctions for political entities that use undeclared funds in campaigns, often of illegal and foreign origin;
- 8**

Consider introducing an explicit ban on digital election advertising by foreign entities to prevent unauthorized foreign donations from influencing the electoral process;
- 9**

Consider limiting or banning spending on paid political advertising on media services that are not domestic and therefore cannot effectively comply with Montenegrin legislation;

RECOMMENDATIONS

10

Consider banning the sale of media advertising space to foreign individuals and entities for election campaigns;

11

Expand the competencies of the Agency for Electronic Media (AEM) towards better regulating the electoral process and preventing malicious foreign media influences;

12

Consider applying proven comparative solutions to limit the negative impact of disinformation on elections;

13

Introduce an obligation for the electoral administration to conduct continuous citizen education campaigns on democratic and electoral processes;

14

Consider introducing an obligation for public broadcasting services to make sure that part of special dedicated programs related to election campaigns features educational content;

15

Consider introducing education on the dangers of foreign influences for political representatives and organizations;

16

Encourage election participants to sign voluntary codes of ethical behavior.

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