



RECOMMENDATIONS FOR IMPROVING THE CRIMINAL LAW FRAMEWORK

Introductory note

The Center for Democratic Transition (CDT) submits to the Committee on Comprehensive Electoral Reform (the Committee) a set of recommendations aimed at improving the Criminal Code of Montenegro (CCM), to strengthen the protection of electoral rights and enhance the prevention of political corruption and abuses in the financing of political entities and election campaigns.

Criminal sanctions play a vital role in safeguarding electoral and political rights, which are foundational to the integrity of democratic societies. These rights underpin fair and representative governance by ensuring every individual's voice is heard and their choices respected. By penalizing conduct that undermines these rights, such as coercion, obstruction of voting, intimidation, financial misconduct, and other forms of fraud, societies can deter such behavior and reinforce the democratic process. Criminal sanctions serve as a powerful deterrent, underscoring the seriousness of these violations and reaffirming that free and fair elections are inviolable. Without such protection, the very fabric of democracy is at risk, leading to diminished public trust in institutions and depriving the citizens of their right to vote, ultimately eroding the foundations of a just and equal society.

The proposals presented to the Committee reflect our long-standing commitment – spanning over two decades – to promoting fair and democratic electoral processes. They are directed at addressing and penalizing actions that have repeatedly undermined the integrity of elections in Montenegro.

In formulating these recommendations, we also considered the European Union's recent "non-paper," which rightly highlights the inadequacy of the current legal framework in sanctioning unlawful political financing: "It is noted that the legal framework is not aligned with GRECO and ODIHR recommendations to substantially increase transparency, control of the spending of political parties and prevent abuse of state resources, including dissuasive sanctions. As such, the existing legal framework still lacks robust safeguards and penalties for circumventing the rules."

In other words, it is essential to establish a legal environment in which breaking the law is no longer a profitable strategy. This requires enhancing the quality of the Criminal Code by clarifying existing provisions and introducing new ones, thereby enabling competent authorities to respond effectively to legal violations.

Our proposal includes mechanisms designed to prevent various forms of misconduct that have severely compromised electoral processes in Montenegro.

While preparing these recommendations, we paid close attention to the rationale behind the proposed interventions and ensuring that the suggested penalties are proportionate. Excluding the most serious offences, the prevailing maximum sentence for electoral offences under the CCM is up to one year of imprisonment. This raises a valid question: can such a low maximum penalty achieve the intended purpose of punishment (Article 32 CCM), and within the broader objectives of criminal sanctions (Article 4, paragraph 2 CCM), can it serve to suppress conduct that undermines values protected by criminal law?¹

We believe that a shift in sentencing policy would mark a significant step forward – not only in improving the quality of our electoral processes but also in meeting the standards set by GRECO, the European Union, and the Venice Commission.

To that end, we are submitting to the Committee clearly articulated and well-reasoned proposals to establish several new criminal offences and to revise or strengthen several existing provisions of the CCM.

These include, in particular, the introduction of criminal offences for giving and receiving bribes related to voting, bribing members of parliament or local councilors, forging signatures for the purpose of certifying electoral lists, and concealing donations and benefits. We also propose amending the offence related to receiving contributions from prohibited sources. We are confident that political actors who genuinely support meaningful and comprehensive reform of our electoral processes and are committed to meeting the criteria for Montenegro's accession to the EU will unequivocally endorse these recommendations.

Those who truly want a fair electoral contest, a reduction in the undue advantages enjoyed by certain actors even before the race begins, and the continued development of our democracy, should have no doubts about the direction to take.

Our proposals are not aimed at any specific political party, whether in power or in opposition. They are directed at those who break the law – those who believe elections in Montenegro can still be won through unlawful, unethical, and corrupt practices. We believe the time has come to put a definitive stop to such actions.

We remain open to all well-intentioned comments and suggestions regarding our proposal and look forward to a substantive and constructive public discussion on this important topic.

The CDT Team

¹Center for Democratic Transition (CDT): Legal Protection of Electoral Rights within the Criminal Justice System, May 2024. <https://en.cdtn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf>

Proposal No. 1:

Giving and receiving bribes related to voting

In the past 25 years of CDT's election monitoring, not a single electoral cycle has gone by without allegations of "vote buying and selling."

The current legislation recognizes passive electoral bribery under paragraph 2 of Article 186 of the Criminal Code, while active bribery is only implied – indirectly mentioned in the second part of paragraph 1 through the phrase "or otherwise unlawfully influences them to exercise or not exercise their right to vote in an election or referendum, or to vote for or against a particular candidate, electoral list or proposal." For this reason, we believe it is both justified and important to explicitly criminalize active electoral bribery through amendments to the Criminal Code.²

We therefore propose introducing a new provision into the Criminal Code, worded as follows:

Giving and receiving bribes

1. Any person who offers, gives, or promises a reward, gift, or any other benefit to another with the intent to induce that person to vote or refrain from voting in an election or referendum, or to vote in favor of or against a particular candidate or proposal, shall be punished by imprisonment for a term not exceeding three years.
2. The same penalty shall apply to any person who solicits or accepts a gift or any other benefit in return for voting or refraining from voting in an election or referendum, or for voting in favor of or against a particular candidate or proposal.
3. Where the offence referred to in paragraph 1 is committed by a member of a voting committee or any other person engaged in duties connected with the conduct of the vote, such person shall be punished by imprisonment for a term of not less than six months and not more than five years.
4. Any gift or benefit referred to in this Article shall be subject to confiscation.

²Center for Democratic Transition (CDT): Legal Protection of Electoral Rights within the Criminal Justice System, May 2024. <https://en.cdtmn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf>

Proposal No. 2:

Bribery of MPs or councilors

We have often witnessed abrupt and inexplicable shifts in political allegiance, resulting in changes that ultimately alter the will expressed by voters during elections.

In such cases, the public frequently suspects “mandate buying” – believing that party defections by elected representatives are not motivated by ideological or political conviction, but rather by political corruption.

Given these deviations and the high level of legal protection afforded to elected officials, we believe the introduction of a specific criminal offence in this area would empower state authorities to conduct more effective investigations into the real motives behind such political turnarounds.

The Croatian Criminal Code includes “Bribery of representatives” under electoral offences, covering both active and passive bribery of MPs or councilors to influence how they vote in Parliament or local assemblies. A similar provision is found in Article 108e of the German Criminal Code.

As an illustration of how public interest and the protection of electoral will are interpreted, we cite the opinion of the Supreme Court of the Republic of Croatia, dated 21 January 2014, regarding this offence:

“Thus, bearing in mind that citizens in the Republic of Croatia participate in the exercise of power through their elected representatives, namely those whose programs, ideas and goals of the political parties of which they are members reflect their will as voters to the greatest extent, the defendant’s effort to ‘buy’ the council seat of a member of another political party to change the original will of citizens G. V. represents a distinct threat to democracy. Therefore, it is rightly pointed out in USKOK’s file that the circumstances of the specific case, especially bearing in mind the interest of the entire Croatian society and prevention of the so-called ‘trade in seats’, justify that the conduct of the defendant is considered a serious criminal offence where the interest of criminal prosecution and punishment of the perpetrator prevails over the violation of his rights from Article 10, Paragraph 2, Point 1 of the Criminal Procedure Code/08, and the fact that the conversation was recorded without the order of the judicial authority, i.e. without the defendant’s knowledge and consent to such recording.”³

³ Center for Democratic Transition (CDT): Legal Protection of Electoral Rights within the Criminal Justice System, May 2024. <https://en.cdtmn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf>

We therefore propose the following new provision be added to the Criminal Code:

Bribery of MPs or councilors

1. Any Member of Parliament or councilor in the assembly of the Capital City, the Old Royal Capital, a city, or a municipality who solicits or receives a bribe, or accepts an offer or promise of a bribe, or any other benefit, for themselves or for another legal or natural person, with the intent to vote in a particular manner in Parliament or a local assembly, shall be punished by imprisonment for a term of one to eight years.
2. The same penalty shall apply to any person who offers, gives, or promises a bribe or other benefit to a Member of Parliament or councilor, for the benefit of that person or another legal or natural person, with the intent to influence their vote in Parliament or a local assembly, as well as to any person who facilitates such bribery.
3. Any bribe or benefit received in connection with the offence shall be subject to confiscation.

Proposal No. 3:

Forging voter signatures to certify an electoral list

The forging of voter signatures is a recurring issue in Montenegro's electoral cycles. On several occasions, CDT has attempted to curb this practice by forwarding hundreds of citizen reports to the competent prosecutor's offices.

Paradoxically, our organization received a formal notice from the prosecution stating that our report had been dismissed, even though the same notice acknowledged that the reported forgery had occurred.⁴

Specifically, the prosecutor's office informed CDT of the dismissal nearly five years after the complaint had been submitted, at a time when citizens were once again contacting us about the very same issue. The rationale for dismissal explicitly stated that handwriting experts had confirmed the signatures submitted by the citizens through CDT were not authentic. Nevertheless, the complaint was dismissed on the grounds that the "statute of limitations had expired".

This issue goes far beyond the misuse of personal data or the forgery of signatures. It enables political parties and candidates to illegally secure the status of electoral participants, gaining access to public campaign financing and other benefits, most notably, the right to participate in extended electoral bodies.

It is clear that securing a relevant number of verified voter signatures is a prerequisite for certifying an electoral list, thereby granting a political entity the right to contest parliamentary seats. Given the critical importance of this step in the electoral process, we believe it is more than justified to criminalize actions aimed at forging voter signatures for the purpose of electoral list certification. Such acts should fall within the category of offences against electoral rights, with legal liability established for anyone who commits forgery with the intent to secure electoral list certification. A more serious form of the offence should be defined for cases where the forged list is actually certified.⁵

⁴ Decision on the Dismissal of the Criminal Complaint, Basic State Prosecutor's Office Podgorica, March 2, 2023, <https://www.cdtmn.org/analize/rjesenje-odt-podgorica/>

⁵ Center for Democratic Transition (CDT): Legal Protection of Electoral Rights within the Criminal Justice System, May 2024. [https:// https://en.cdtmn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf](https://en.cdtmn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf)

We therefore propose the following new provision in the Criminal Code:

Forging voter signatures to certify an electoral list

1. Any person who forges the signatures of voters intending to secure the certification of an electoral list for parliamentary or local elections shall be punished by imprisonment for a term of six months to three years.
2. Where, under the circumstances referred to in paragraph 1, the electoral list is certified, the offender shall be punished by imprisonment for a term of one to five years.
3. An attempt to commit the offence referred to in paragraph 1 shall also be punishable.

Proposal No. 4:

Accepting contributions from prohibited sources

Allegations of political entities receiving funding from prohibited sources have accompanied every election cycle in Montenegro. Even members of the parliamentary committee are likely aware of persistent reports of campaign financing by organized criminal groups, various associations, and foreign states, particularly from neighboring countries.

Article 193v of the Criminal Code of Montenegro criminalizes the acceptance of contributions from prohibited sources. According to paragraph 1 of that article, the offence is committed by a responsible person within a political entity who accepts money, donations, or any other benefit originating from a source not permitted by law. Paragraph 2 holds responsible persons liable if they could have known and were obliged to know that the funds or benefits originated from criminal activity. Paragraph 3 imposes a mandatory security measure requiring that such funds or benefits be confiscated.

It is legitimate to ask why paragraph 2 of this Article focuses exclusively on “income obtained through criminal activity.” It is evident that the legislator considered this form of “income generation” to constitute an exceptionally serious threat to the electoral process itself, given that it deemed it sufficient for the responsible person to have a mere duty to know. Such a position is entirely legitimate. Moreover, situations of this nature are much easier to prove than would be the case if actual knowledge of the responsible person within the political entity were required to establish that the income was obtained through criminal activity. However, we believe that the drafter of the law, following the logic of paragraph 2 of this Article, should also have prescribed criminal liability in cases where the responsible person could have known and had a duty to know that the income originated from abroad.

Just as income derived from criminal activity, financial contributions from abroad represent a serious and substantial blow to democratic elections, primarily due to the intentions underlying such financing and the resulting (often significant) influence of those financiers (whether legal or natural persons) on political developments within the state itself.

Furthermore, it is equally reasonable to question why only the acceptance of contributions from prohibited sources is criminalized, and not also their provision. In this context, it appears that the level of culpability on the part of the donor is arguably even greater, precisely because the donor is aware that they are not permitted to financially support a political entity, and yet proceeds to engage in such conduct. For that reason, it seems justified that this form of conduct should likewise entail criminal liability.⁶

⁶Center for Democratic Transition (CDT): Legal Protection of Electoral Rights within the Criminal Justice System, May 2024. <https://en.cdtmn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf>

Therefore, we propose amending Article 193v of the (with changes highlighted in bold below), to read as follows:

Article 193v – Acceptance of contributions from prohibited sources

1. A responsible person within a political entity who accepts funds, a donation, or any other benefit from a source prohibited under political financing regulations shall be punished by imprisonment for a term of six months to two years.
2. **Any person who, knowing that the source is prohibited, provides funds, a donation, or any other benefit to a political entity shall be punished by imprisonment for a term not exceeding one year.**
3. **Any person who provides funds, a donation, or any other benefit to a political entity, although they could and should have known that the source is prohibited, shall be punished by imprisonment for a term not exceeding six months.**
4. (4) A responsible person within a political entity who could and should have known that the funds, donation, or other benefit constitute proceeds of criminal activity **or originate from a foreign source** shall be punished by imprisonment for a term not exceeding one year.
5. Any funds, donations, or other benefits accepted in contravention of this Article shall be subject to confiscation.
6. An attempt to commit the offence referred to in paragraph 1 shall be punishable.

Given the above, and in light of the fact that, under Article 66(2) of the Law on the Financing of Political Entities, a responsible person may be held liable for a misdemeanor for accepting contributions from prohibited sources – despite that action being identical to the criminal offence under Article 193v – it is necessary to remove the misdemeanor liability from the Law on Financing and retain only the criminal law provision. Otherwise, this legal overlap may allow individuals to avoid criminal liability by being held accountable only for a misdemeanor.⁷

⁷ Center for Democratic Transition (CDT): Legal Protection of Electoral Rights within the Criminal Justice System, May 2024. <https://en.cdtmn.org/wp-content/uploads/2024/05/CRIMINAL-PROTECTION-OF-ELECTORAL-RIGHTS.pdf>

Proposal No. 5:

Concealment of donations and benefits

Finally, it is essential to address what is potentially a highly dangerous practice – one that has generated much public speculation and has been supported by clear evidence: the non-disclosure of donations to political entities.

The restrictions introduced by the Law on the Financing of Political Entities and Election Campaigns provide a solid basis for addressing this issue. However, if violations are sanctioned only as misdemeanors, the deterrent effect is significantly weakened, and it effectively encourages further breaches.

A well-known case is the undeclared donation at the heart of the “Envelope” scandal. Even assuming that the funds involved were legal, the fact that they were not reported resulted in only mild sanctions, failing to reflect the gravity of the violation. This illustrates one of the core issues underlying the criticism that the legal framework for sanctioning party financing violations remains inadequate.

Criminal law intervention is essential to protect the integrity of the electoral process, uphold the principle of equal treatment of political entities under the law, and maintain public trust in the electoral system – one of the pillars of democratic governance.

We therefore propose the introduction of a new provision in the Criminal Code, which would criminalize a political entity’s failure to report a donation from a legal or natural person that exceeds the legally prescribed limit by more than 10%. The proposed article would read as follows:

Concealment of donations and benefits

1. A responsible person within a political entity who fails to report to the competent authority a donation or other contribution from a natural or legal person that exceeds the legally prescribed contribution limit by more than 10% shall be punished by imprisonment for a term of six months to two years.
2. The donated funds or other benefits shall be subject to confiscation.

