



## INTERNATIONAL ELECTION OBSERVATION MISSION Montenegro – Presidential Election, 19 March 2023

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### STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

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#### PRELIMINARY CONCLUSIONS

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The election was competitive and adequately managed, and fundamental freedoms were respected in the campaign. The legal framework has numerous gaps and ambiguities that undermine its effectiveness. The election administration worked transparently; however, politicisation and the lack of inclusiveness in the candidate registration process reduced public trust. Registered candidates enjoyed equal opportunities in the campaign. The election was held against the backdrop of an institutional crisis and political impasse, while the lack of a functioning Constitutional Court for most of the process left key aspects of the election without judicial review. Concerns about the potential impact of foreign television programming on the election campaign remained. Campaign finance regulations allow for circumvention, limiting accountability. The media environment is free and well-regulated, and the public broadcaster met legal requirements and offered balanced campaign coverage; however, the limited visibility of its programming and the bias displayed in private media detracted from voters' ability to make an informed choice. Election day was calm, and the voting process was assessed positively in the overwhelming majority of polling stations observed, although the secrecy of the vote was not always protected. The counting process was assessed less positively, mainly due to omitting important reconciliation procedures, but the tabulation process was assessed positively.

The election took place during an ongoing institutional and constitutional crisis and amidst a political impasse. After the 2020 parliamentary elections, two successive governments had to resign following no-confidence votes, although the second remained in office due to the inability to get a new government appointed. In September 2022, the President and the parliamentary majority both accused one another of breaching the Constitution. The parliament threatened to dismiss the President and the President in turn threatened to dissolve parliament. The Constitutional Court lacked quorum from September until 27 February, leaving several important cases and constitutional matters pending review. Throughout the campaign, calls for early parliamentary elections, as the way out of the political crisis, continued. On 16 March, the president dissolved parliament and on the next day called early elections for 11 June.

The legal framework provides an adequate basis for the conduct of democratic elections but contains numerous gaps and lacks clarity on a number of issues that can undermine its effectiveness. The parliament has not amended the election law since 2014. Long-standing ODIHR and the Council of Europe Venice Commission's recommendations to bring legislation further in line with international standards and OSCE commitments for democratic elections remain unaddressed. These include those related to the need for comprehensive reform and harmonization of election legislation, voting and candidacy rights restrictions, transparency and mechanisms of dispute resolution, and oversight of the campaign finance and media. The legal framework lacks sufficient regulation, *inter alia*, of the grounds for the annulment of election results by the court, the procedures for the tabulation of results and the second round of the election.

The election administration managed the electoral preparations efficiently and met most legal deadlines. The State Election Commission (SEC) functioned collegially when discussing technical issues, but most members voted along political lines on key decisions, including candidate eligibility, undermining stakeholder confidence in the election administration. Overall, the SEC ensured transparency, but it did not permit observers to observe the verification of support signatures. The Municipal Election Commissions (MECs) did not fully ensure transparency of their work, as required by law. The law aims

to provide some political balance to the election commission, but it does not prevent the majority membership of one party or coalition in lower-level commissions. Observed training sessions were neither comprehensive nor interactive.

Voting rights are granted to all citizens 18 or older, provided they have a permanent residence in Montenegro for at least 24 months preceding election day. The lengthy residence requirement is contrary to international standards. The law lacks clear and objective criteria for acquiring and losing permanent residence, and recent legal amendments grant wide discretionary power to the Ministry of Interior (MoI) to deregister a citizen's permanent residence, potentially disenfranchising eligible voters. Candidates, parliamentary parties and accredited observers have the right to inspect the voter register and voters can check their data and request corrections. The MoI made some efforts to clean the register, including the erroneously collected fingerprint data, but concerns by election stakeholders about the accuracy of the voter register remain, including possible duplicates and entries of deceased persons. The final voter register included 542,154 voters.

To stand as presidential candidates, voters must have permanent residence in Montenegro for at least 10 of the last 15 years, which is an undue restriction on the right to stand contrary to international standards. Candidates were required to submit 8,101 voters' signatures. The signature verification procedure lacked proper regulation and implementation. Overall, candidate registration was not inclusive. The SEC denied registration to Mr. Spajić, citing contradictory information pertaining to his citizenship and permanent residence, despite the submitted documentation required by law. This decision was inconsistent with national legislation, and the manner in which his application was handled is at odds with international standards. The SEC received nine applications and ultimately registered seven candidates, including one woman.

Contestants were able to campaign freely, albeit in a short campaign period and fundamental freedoms were respected. The campaign was competitive and the voters were offered a variety of choices. The tone was mostly neutral and focused on personalities and corruption, and all but one candidate declared their support for the Euro-Atlantic integration of the country. Comprehensive regulations aim to prevent the abuse of state resources, including by means of introducing new public employment and excessive public spending but allow for circumvention. Some International Election Observation Mission (IEOM) interlocutors raised concerns about the misuse of state resources by parties controlling state institutions. Several cases related to unlawful employment were referred to the court and remain pending.

The campaign finance legal framework has remained unchanged since 2020. Most previous ODIHR recommendations remain unaddressed, including the verification of the legality of donations, the use of loans, effective sanctions and oversight, underlining the need for comprehensive legislation reform. All candidates submitted their donation and expenditure reports in a timely manner. The distribution of advance public funding only a week before election day and the expenditure ceiling set at EUR 1.7 million did not foster a level playing field. Further, the reporting requirements do not fully ensure transparency of donations before election day. The Agency for Prevention of Corruption (APC) is mandated with oversight, but it does not have investigative powers, while the law does not impose sanctions on inaccurate reporting. Overall, the deficiencies of the regulatory framework had a negative impact on the transparency and accountability of campaign financing.

The media environment is diverse. However, political polarization and limited financial viability makes media outlets highly vulnerable to internal and external influence from corporate and political interests. The media legal framework is comprehensive and provides solid guarantees for freedom of expression. The election law regulates the campaign media coverage, but the electronic media regulatory body lacks the mandate and effective sanctioning powers to enforce it. As required by the law, the public broadcaster offered candidates free airtime and equal access to campaign coverage, but it aired it on the *RTCG*

*Parliamentary Channel*, which has low viewership. Further, the public broadcaster provided almost no news coverage on the main channel, which reduced the opportunity for voters to make an informed choice. Private TV channels contributed to informing the voters in various formats, including newscasts, talk shows, interviews, and election debates. However, three out of the four monitored private TV channels displayed clear bias in their coverage, favouring two candidates. IEOM interlocutors raised concerns over the potential impact of foreign TV programming on the electoral campaign.

Several key aspects of the legal framework for dispute resolution and its current implementation are not in line with international standards and good practice, including restrictions on legal standing and limitations on the possibilities for appealing decisions on candidate registration and election results. These limitations on the right to appeal do not ensure access to an effective remedy. Several IEOM interlocutors noted that the institutions mandated to adjudicate disputes are susceptible to political influence due to the lack of security of tenure or the appointment mechanism. The SEC received five complaints, considered them in open sessions, dismissing four as not being under its competence and rejecting one. The Constitutional Court lacked quorum until 27 February, while afterwards, it prioritised the disputes pending from the municipal elections, thus leaving the complaints related to the presidential election process without a judicial review before election day. The APC has wide discretionary powers whether to refer complaints on abuse of state resources to the court. It received 55 complaints of which it dismissed 28 and considered and rejected 10 on merits, while 17 cases are still pending. The APC referred *ex officio* 31 cases to the court and one to the prosecutor.

Minority parties did not nominate candidates, some decided to endorse a candidate. Ballot papers and other election materials were made available in Montenegrin and Albanian in polling stations in municipalities with over five per cent of the population from among the Albanian minority.

Women remain generally underrepresented in elected and appointed offices holding only 18 out of 81 seats in parliament and four of the 20 ministerial posts. Women were also underrepresented in the election administration, especially in management positions, as only three of the 11 permanent SEC members and five of the 25 MEC chairpersons are women. Further, women were less present as speakers and in the audience in campaign events observed by international observers, and campaign messages did not address issues of particular importance to women.

The law provides for citizen and international election observation. The SEC accredited six citizen observer groups and nine international organisations. By law, observers should have access to all stages of the electoral process, but the SEC did not grant the opportunity to observe the verification process of voters' support signatures, impacting the transparency of the process.

Election day was calm, and the voting process was assessed positively in the overwhelming majority of polling stations visited. The process was well-organized and procedures were largely followed. However, the secrecy of the vote was not always ensured as a result of the layout of the polling stations and positioning of voting screens and in some polling stations voters did not mark their ballots in secret or showed them to those present. More than half of the polling stations observed were not accessible for independent access by persons with disabilities. The large presence of authorized candidate representatives and observers contributed to the overall transparency. Some 36 per cent of the PB members were women, including 27 per cent of the PB chairpersons. The vote counting was assessed negatively in one-third of the observations, mainly due to omitting important reconciliation procedures. While the tabulation was assessed positively in most MECs, the SEC did not publish partial results on election night, limiting transparency.

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## PRELIMINARY FINDINGS

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### Background

Montenegro is a parliamentary republic with a mixed parliamentary and presidential political system, both elected by popular vote. On 16 January 2023, the Speaker of the Parliament called a presidential election for 19 March.<sup>1</sup> The elections took place amidst an ongoing institutional and constitutional crisis, a political impasse and calls for early parliamentary elections as the way out of crisis.

In the 2020 parliamentary elections, the Democratic Party of Socialists (DPS) won the most seats, but the three coalitions which stood against it formed a government, replacing the ruling DPS for the first time since 1990.<sup>2</sup> This government had to resign following a vote of no confidence as did the last government in August 2022 but the latter remained in office to date due to the lack of a newly appointed government.<sup>3</sup> Women remain underrepresented in political life. In spite of gender quotas for party lists, only 18 out of the 81 members of the current parliament and 4 of the government's 20 ministers are women.

In September 2022, the president refused to accept the nomination a new candidate for prime minister and requested that the parliament shorten its mandate and allow for early elections. In response, the parliamentary majority requested the Constitutional Court to assess whether the president violated the Constitution with the view of initiating the dismissal of the president. Further, the parliament adopted amendments to the Law on the President, allowing the parliament to nominate a prime minister that is supported by the majority of MPs if the president declined to do so.<sup>4</sup> The amendments were adopted despite the urgent opinion of the Venice Commission advising against the adoption of the amendments.<sup>5</sup>

In September 2022, the Constitutional Court lost the quorum necessary to make decisions, as the parliament was repeatedly unable to elect new judges.<sup>6</sup> As a result, several important cases remained pending, including those related to the October 2022 municipal elections (resolved on 16 March) and the constitutionality of the president's decisions and new legislation.<sup>7</sup> Following a political agreement, on

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<sup>1</sup> The timing of the call was in accordance with the law that provides, the Speaker has to call a presidential election no more than 120 days before the expiry of the incumbent's mandate, which ends on 20 May 2023, and the election then has to be scheduled between 60 and 90 days of the announcement.

<sup>2</sup> DPS won 30 of the 81 seats; The government was formed by For the Future of Montenegro, with 27 seats; Peace is Our Nation, 10 and In Black and White, 4. The Social-Democratic Party (SDP), 2; Social Democrats (SD), 3; Bosniak Party (BS), 3; the Albanian coalition "Unanimously" and the Albanian List of Genci Nimanbegu won one seat each.

<sup>3</sup> The vote of no confidence was brought about due to the dissatisfaction of several parties with Prime Minister Abazović's signing of a government agreement with the Serbian Orthodox Church on the special rights of the church related to its status, property and other rights.

<sup>4</sup> The new article 7.f.1. of the Law on the President stipulates: "If the President does not perform his duties with regard to the procedure of determining the Prime Minister-designate pursuant to the present Law, for the sake of protecting the public interest, the candidate who has received support by the majority of the total number of MPs, as established by a petition with signatures, shall be considered a Prime Minister-designate."

<sup>5</sup> On 9 December 2022, the Venice Commission issued an [Urgent Opinion](#) that stated, *inter alia*, that "While the Commission acknowledges that the Constitution would benefit from additional regulation on the formation of the government, in particular, to prevent deadlocks, and understands that the law under consideration represents a pragmatic attempt to solve the institutional impasse, it reiterates that any complementary provisions which affect the system of checks and balances foreseen by the Constitution should be added by means of constitutional revision, following the procedure described in Art. 156, which requires a qualified majority."

<sup>6</sup> The Constitutional Court has seven judges in full composition. Due to retirements, the court was left with only three judges since September 2022. Prior to the 27 February session, the Parliament made six unsuccessful attempts to elect new judges, most recently on 27 July, 21 October, and 12 December 2022.

<sup>7</sup> The Constitutional Court dismissed 25 appeals requesting invalidation of results of municipal elections, either as inadmissible on merits, and 2 cases are pending.

27 February, the parliament voted to fill three out of four vacancies, providing the Court with a quorum. All three newly appointed judges are women.

During the campaign, the negotiations over forming a new government continued. At the same time, the current prime minister was seeking to secure parliamentary support to restore his government. On 16 March the president dissolved parliament and on the next day called early elections for 11 June.<sup>8</sup>

## Electoral System and Legal Framework

The president is directly elected in a single nationwide constituency for a five-year term. A president may not serve more than two terms.<sup>9</sup> To be elected, a candidate must receive over 50 per cent of the valid votes cast. Otherwise, the two frontrunners compete in the run-off held 14 days later.

The legislation for the presidential election primarily consists of the 2007 Constitution, the Laws on the Election of the President (LEP, 2007), on the Election of Councilors and Representatives (election law, 1998), and on Financing of Political Subjects and Election Campaigns (LFPSEC, 2020). The process is further regulated by the SEC instructions. The parliament has not amended the election law since 2014 and it requires comprehensive reform to fully meet international standards and OSCE commitments for democratic elections.<sup>10</sup> Most previous ODIHR and Venice Commission recommendations remain unaddressed, including those related to harmonization of the election legislation, restrictions on voting and candidacy rights, transparency and procedures for dispute resolution, and media and campaign finance oversight.

The electoral legal framework overall constitutes an adequate basis for the conduct of democratic elections, but at the same time contains several gaps and lacks clarity on a number of issues that undermine its effectiveness. The election law does not contain, *inter alia*, sufficient regulation of the second round of the election, grounds for annulment of election results by the court, procedures for the tabulation of results and election dispute resolution, the liability of election commission members for violations of the law and of candidacy applicants for falsifying supporting signatures. In addition, the law lists grounds for the optional invalidation of results at the polling station level allowing for arbitrary and inconsistent decisions of municipal election commissions.<sup>11</sup>

## Election Administration

The presidential election was managed by a three-tiered election administration comprising of the SEC, 25 Municipal Election Commissions (MECs) and 1,162 Polling Boards (PBs). Women remain underrepresented in the election administration, especially in management positions, as only 3 of the 11 permanent SEC members and five of the 25 MEC chairpersons are women.

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<sup>8</sup> Article 92.1 of the Constitution stipulates that the president dissolves parliament if it fails to form a government within 90 days from the date the president proposes the candidate for prime minister. The newly-amended Law on the President stipulates that the parliament has ninety days to appoint a government starting from the date the legal amendments entered into force, i.e., 16 December 2022. On 17 March, a group of 41 MPs submitted a complaint to the Constitutional Court challenging the 16 March presidential decree to dissolve the parliament.

<sup>9</sup> In 2013, the Constitutional Court issued an opinion that the declaration of independence in 2006 and the adoption of a new Constitution created a discontinuity in the legal status of Montenegro as a country and, therefore, presidential terms served before 2006 do not count towards the limit of two mandates.

<sup>10</sup> A two-thirds majority in parliament is required for adopting amendments pertaining to the electoral system. Efforts to engage in electoral reform through a parliamentary committee were boycotted to a varying extent by the DF-led opposition before the August 2020 parliamentary elections and by the DPS-led opposition afterwards.

<sup>11</sup> The law lists thirteen grounds for the optional invalidation of results and seven for mandatory.

The SEC is a permanent body with a four-year mandate and has a chairperson elected by the parliament following an open competition and ten members, including four nominated by the parliamentary majority and four by the minority.<sup>12</sup> The SEC sessions were open to observers and media, although at times, with space limitations, agendas were posted in advance, and minutes of the sessions were published, contributing to the transparency of the process.

For this election, the SEC adopted some new regulations including on the independent voting of people with physical disabilities and on the work of PBs. However, the SEC did not sufficiently regulate other aspects necessary for the proper implementation of the law and failed to provide comprehensive guidance to the lower-level election commissions, despite several requests from MECs.<sup>13</sup> While the SEC functioned collegially when considering technical issues, most members voted along political lines on key decisions, including on the denial of registration to a prospective candidate, which undermined stakeholder confidence in the election administration (see *Candidate Registration*).

The MECs are composed of a chairperson and four permanent members appointed by the municipal councils, reflecting the results of the municipal elections.<sup>14</sup> As a result of the October 2022 municipal elections not being finalized in four municipalities, including Podgorica, the affected MECs retained their previous compositions, which distorted the balance of political representation in the MECs.<sup>15</sup> Further, some MECs did not fully ensure the transparency of their work. While the law requires MEC sessions to be open to observers and media, MECs often did not announce their sessions, and some MECs did not post all election-related information and decisions on their websites, as required by law.<sup>16</sup>

The PBs consist of a chairperson and four members appointed by the MECs, in proportion to the representation of parties in the municipal councils.<sup>17</sup> The formula for the MECs and PBs compositions aims to provide some political balance to the election commission, but it does not prevent the majority membership of one party or coalition in lower-level commissions. In practice, nationwide, DPS has far greater representation on the election commissions than any other party or coalition.<sup>18</sup> Due to a reduction of the overall number of polling stations, several polling stations across a number of municipalities were

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<sup>12</sup> In addition, one member is nominated by civil society and academia and one by the national minority party that won the most votes in the last parliamentary elections, currently the Bosniak Party (BS).

<sup>13</sup> For example, the SEC failed to clarify the distribution of MEC and PB membership positions in case coalitions represented in the municipal councils cannot agree on the distribution of positions within the coalition and the measures that the MECs must take to ensure the transparency of their work.

<sup>14</sup> The MEC chairpersons are nominated by the party that won the most seats in the municipal elections in the respective municipality; two members appointed by the majority in the municipal council and two members are appointed from among the two biggest opposition parties in the municipal council, upon the proposals by the parliamentary opposition.

<sup>15</sup> At the time new MECs were supposed to be appointed, the October 2022 municipal elections were pending finalization in Podgorica, Plav, Pljevlja and Šavnik. The Constitutional Court rejected complaints for Plav on 9 March, and Pljevlja and Podgorica on 16 March, thus finalizing the results. However, the municipal councils were not inaugurated in time to form new MECs. On 7 March, a new MEC was formed in Tuzi, following municipal elections on 5 March.

<sup>16</sup> While some MECs, including Podgorica, Pljevlja, Šavnik and Žabljak, updated their websites regularly, others, including Kolašin, Mojkovac, Andrijevića and Gusinje, informed the ODIHR EOM that they do not consider it mandatory.

<sup>17</sup> The PB chairperson nominations are allocated to political parties represented in the municipal council, in proportion to their representation. Of the four other PB members, two are nominated by the majority in the council and two by the opposition.

<sup>18</sup> Notably, DPS nominated 15 of the 25 MEC Chairpersons and thirty per cent of all MEC members countrywide. DP, DF and SNP nominated two MEC Chairpersons each and the Albanian Alternative, BS, DNP and SD-one each. Of 125 MEC members, 44 were nominated by DPS, 18 by DF, 10 by DCG, 7 each – by SD and SNP, 6 – by BS, 5 – by SDP, 4 each – by DP and URA, 2 each – by Europe Now, Evropski Tim u Crnoj Gori and Narod Pobjeđuje, and one each by 8 other parties and coalitions.

relocated or merged, which could negatively affect voter participation.<sup>19</sup> MoI informed ODIR EOM that they mailed voter invitation cards to all registered voters.

The election administration managed the electoral preparations efficiently and met most legal deadlines.<sup>20</sup> As provided by law, all registered candidates nominated authorized representatives with full voting rights to the SEC and most candidates to the majority of the MECs, and some candidates nominated PB members. The SEC conducted a training for the MEC representatives, which then trained the PB members.<sup>21</sup> The training sessions for PBs observed by ODIHR Long-term Observers (LTOs) were neither comprehensive nor interactive. Some MEC did not conduct training but only distributed the training manuals to PB members. The law allows political parties and coalition to change their PB members up until 12 hours before voting starts and prescribes no sanctions for no-shows on election day. The SEC voter education campaign was limited to video spots explaining voting procedures.

## Voter Registration

Voter registration is passive. The right to vote is granted to all citizens at least 18 years of age, with permanent residence in the country for at least 24 months preceding the election day. The lengthy residence requirement is contrary to international standards and a prior ODIHR and Venice Commission recommendation to lift the requirement remains unaddressed.<sup>22</sup> Moreover, the law does not prescribe clear and objective criteria to determine how a citizen acquires or loses permanent residence.<sup>23</sup> This allows for arbitrary determinations and may result in the disenfranchisement of eligible voters, contrary to international standards.<sup>24</sup> Addressing a prior ODIHR recommendation, in November 2020, the Constitutional Court abolished the provision that disenfranchised the persons with intellectual and psychological disabilities.

The voter register (VR) is a permanent database maintained by the Ministry of Interior (MoI) and based on the residence, citizenship, births and deaths registers. By law, MECs, accredited observers, parliamentary parties and candidate representatives have the right to inspect the VR online.<sup>25</sup> Voters had the opportunity to verify their personal data in the VR through a dedicated website or in person at local MoI offices and, until ten days before an election, could request corrections or amendments.<sup>26</sup>

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<sup>19</sup> The total number of polling stations was reduced by 55. Some voters were assigned to other polling stations due to relocation of their polling station, or due to exceeding the permissible number of voters registered per polling station.

<sup>20</sup> The SEC missed the deadline for announcing the final list of candidates for the determination of the order of the candidates on the ballot.

<sup>21</sup> As most election day procedures remained unchanged, the training focused on the novelties, troubleshooting and consulting the MECs on challenges and their own concerns raised during the training.

<sup>22</sup> Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits the participating States to “guarantee universal and equal suffrage to adult citizens”. Paragraph I.1.1.c.iii of the 2002 [Council of Europe’s Venice Commission Code of Good Practice in Electoral Matters](#) states that “a length of residence requirement may be imposed on nationals solely for local or regional elections”.

<sup>23</sup> In January 2023, the amendments to the Law on Permanent and Temporary Residence granted the Ministry of Interior (MoI) discretionary powers to deregister a citizens’ permanent residence: in case of doubt, the police may conduct field visits to verify whether citizens *de facto* permanently reside where registered. The MoI explained that this doubt may be based on any information that they receive. Some IEOM interlocutors noted that these amendments were adopted without a public debate.

<sup>24</sup> Paragraph 11 of the 1996 UN Human Rights Committee (UNHRC) [General Comment No. 25 to the International Covenant on Civil and Political Rights \(ICCPR\)](#) provides that “if residence requirements apply to registration, they must be reasonable”. It further states that “any abusive interference with registration...should be prohibited by penal laws and those laws should be strictly enforced”.

<sup>25</sup> They are granted full access to the VR data, including filtering it by any parameter. It is, however, forbidden to make copies of any data. The parliamentary parties are granted this access also outside of the election period.

<sup>26</sup> Since the call of the election, over 32,000 voters verified their entries.



On 9 March, the SEC informed that the VR for this election includes 542,154 voters. Several IEOM interlocutors raised concerns about the accuracy of the voter register, questioning the accuracy of permanent residence records and procedures for changing residence, possible duplicated entries and entries of deceased persons. While the MoI made some efforts to improve the VR, including eliminating some duplications in biometric data, it did not effectively address the longstanding concerns of the VR accuracy.<sup>27</sup>

## Registration of Candidates

The right to stand as a presidential candidate is granted to any voter, provided that they have permanent residence in Montenegro for at least 10 of the last 15 years. This residence requirement is an undue restriction on the right to stand, contrary to international standards.<sup>28</sup> A presidential candidate may be nominated by one or more political parties or a group of at least two voters. Nominations must be supported by signatures of at least 8,101 voters (1.5 per cent of the voters registered for the last parliamentary elections), which can be seen as an excessive requirement according to international standards.<sup>29</sup> Unduly restricting freedoms of association and expression and despite a prior ODIHR and Venice Commission recommendation, voters may sign in support of only one candidate.<sup>30</sup>

The law does not prescribe detailed rules on signature verification, which is at odds with international good practice.<sup>31</sup> On 10 February, three weeks after the start of the nomination period and after the registration of one candidate, the SEC adopted an instruction on signature verification, partly regulating the process. The SEC verified whether the data of voters who provided signatures corresponded to their data in the voter register.<sup>32</sup> As in previous elections, voters could check online if their names have been registered in the SEC database as supporting one of the registered candidates, but only after candidate registration was finalized. As of 13 March, the SEC had received 86 reports and numerous phone calls from citizens alleging their names were included in the database even though they did not sign in support of a candidate or signed in support of a different candidate. The prosecutor in Podgorica is investigating 30 such cases. As of election day, these cases were pending. The lack of an expedited mechanism to

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<sup>27</sup> The MoI informed the IEOM that, since 2020, it has conducted a comprehensive test of the fingerprint data in the citizens' register and identified several duplicate entries, but explained that they were due to errors at the time of collecting the fingerprints and has invited the affected citizens to rescan their fingerprints.

<sup>28</sup> Paragraph 15 of [General Comment No. 25 to the ICCPR](#) states that “any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” See also paragraph 24 of the [1990 OSCE Copenhagen Document](#), and section I.1.1.c.iii. of the CoE’s Venice Commission [Code of Good Practice in Electoral Matters](#).

<sup>29</sup> See paragraph I.1.3.ii of the CoE’s Venice Commission [Code of Good Practice in Electoral Matters](#) which states that “The law should not require collection of the signatures of more than 1 per cent of voters in the constituency concerned.”

<sup>30</sup> Paragraph 3 of the [1990 OSCE Copenhagen Documents](#) states that the OSCE participating States “recognize the importance of pluralism with regard to political organizations.” See also paragraph 196 of the 2020 [ODIHR and Venice Commission Guidelines on Political Party Regulation, second edition](#), which states that “a requirement that a citizen be allowed to sign in support of only one party should be avoided, as such a regulation would affect his/her right to freedom of association.”

<sup>31</sup> Paragraph 96 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that: “While lists of signatures can be checked for verification purposes, experience has shown that this practice can also be abused. These types of processes should thus be carefully regulated, should foresee the publication of lists and specify who has the standing to challenge them and on what grounds.”

<sup>32</sup> The SEC verified the signatures until it reached the legally required number of valid signatures; the remaining signatures were not checked. If the SEC identified that a voter had already given support to a previously registered candidate, only the signature for the first verified candidate was deemed valid.



address such violations, limited the effectiveness of this remedy, and if violations are left unsanctioned, it can have a detrimental impact on election stakeholders' trust in the integrity of the process.<sup>33</sup>

The law requires nominees to submit certificates of citizenship and permanent residence issued by the MoI. On 3 February, prior to the submission of applications for registration, the SEC decided to gather information about the permanent residence and voter registration status abroad of two prospective candidates based on their public statements that they intend to contest elections.<sup>34</sup> The law does not provide the SEC with the competency to make such inquiries and only prescribes the SEC verification based solely on the MoI issued documents.<sup>35</sup> On 18 February, the SEC denied registration to Mr. Spajić, citing contradictory information pertaining to his citizenship and permanent residence, despite the submitted documentation required by law.<sup>36</sup> The SEC decision to deny Mr. Spajić's registration is inconsistent with the national legislation;<sup>37</sup> and the manner in which his application was managed is at odds with international standards.<sup>38</sup> The SEC did not offer Mr. Spajić 48 hours to correct the shortcomings in his application, as prescribed by law, while it did so for four nominees with deficiencies in their nomination documents.<sup>39</sup>

Overall, the SEC's denial of registration to Mr. Spajić, the inconsistency in decision-making and the lack of transparency in verifying support signatures and other nomination documents significantly undermined the inclusiveness of the candidate registration process and impacted confidence in the election administration. In total, nine prospective candidates submitted candidacies.<sup>40</sup> The SEC registered seven candidates unanimously, including one woman, and two were denied registration.<sup>41</sup>

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<sup>33</sup> The prosecutor's office publicly stated that it will investigate these complaints. However, the election law does not foresee liability for the falsification of supporting signatures. Similar investigations initiated following the 2018 presidential election were closed four years later due to the expiration of deadlines.

<sup>34</sup> The SEC, by a majority of six votes, adopted a decision to request information from the Republican Election Commission (REC) of Serbia whether Mr. Andrija Mandić and Mr. Milojko Spajić have permanent residence and are registered voters in Serbia. On 14 February, the REC of Serbia responded that Mr. Mandić was not found in their records while Mr. Spajić had a declared permanent residence in Serbia. According to the Serbian authorities, on 15 February, Mr. Spajić applied to renounce his Serbian citizenship and residence.

<sup>35</sup> In other instances, including when considering the MECs requests for instructions on the implementation of the law, the SEC's position was not to undertake an action that is not envisaged by the law.

<sup>36</sup> The SEC decision denying the registration stated that Mr. Spajić formally meets the prerequisites for the candidacy and submitted all legally required documents, including the required number of valid signatures, certificates of citizenship and permanent residence, but noted that the evidence was contradictory as Serbian authorities informed the SEC that he also holds permanent residence in Serbia.

<sup>37</sup> Article 2 of the Law on Citizenship stipulates that "a Montenegrin citizen who has citizenship status also in another state shall be considered Montenegrin citizen in a procedure before Montenegrin bodies, unless otherwise provided by international treaties". The Constitution, election law and the LEP do not stipulate any limitations related to suffrage rights for holders of any citizenship in addition to Montenegrin citizenship.

<sup>38</sup> Paragraph 15 of the 1996 UN Human Rights Committee (UNHRC) [General Comment No. 25 to the ICCPR](#) states that "persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". Article 14 of the [ECHR](#) states that "the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

<sup>39</sup> Mr. Mandić was offered an opportunity to add his name missing from the supporting signatures lists. Mr. Danilović and Mr. Radulović were given the opportunity to collect the missing number of valid support signatures and the latter also the missing certificate of the nominating group of voters. Mr. Danilović alleged that signatures disappeared or were erased from the signature sheets he submitted to the SEC and the issue was referred by the SEC to the prosecutor.

<sup>40</sup> Six were nominated by political parties, one by a coalition and two by groups of voters.

<sup>41</sup> Aleksa Becić (Democratic Montenegro), Goran Danilović (United Montenegro), Milo Djukanović (DPS), Andrija Mandić (Coalition "For the Future of Montenegro"), Jakov Milatović (Europe Now), Jovan Radulović (group of voters), Draginja Vuksanović Stanković (SDP). Despite being offered the 48 hours opportunity, Mr. Matijašević did not submit the required documents and was subsequently denied registration.

## Campaign Environment

Fundamental freedoms were respected, and candidates were able to reach out to the electorate. By law, prospective candidates could begin campaigning after the call of elections, but they could campaign on media only after they were registered by the SEC. Campaign regulations prohibit religious organizations among others from campaigning on behalf or for the needs of political parties or candidates.<sup>42</sup> Certain campaign regulation provisions are also applicable to campaigning on social networks, including the prohibition of the use of intolerant language by candidates. Candidates were entitled to equal access to public premises for organizing campaign events and designated locations for placing campaign materials and no impediments were reported or observed. The law does not require print campaign materials to identify their sponsor, which allows limits accountability for negative campaigning or disinformation.<sup>43</sup>

The campaign was competitive, with four candidates campaigning more actively, including the incumbent president who like some other candidates toured the country holding open rallies or closed meetings with their supporters.<sup>44</sup> Other candidates were less visible while one, namely Mr Radulović, was visible only on social media, raising concerns among ODIHR EOM interlocutors about his genuine intention to contest the election. Due to his registration already on 7 February, Mr. Mandić started campaigning in media more than three weeks earlier than the others. Several IEOM interlocutors also alleged that some candidates participated in the presidential election with the primary aim of gaining visibility for the upcoming early parliamentary elections. Some political parties which did not field candidates publicly endorsed contestants. On 17 March, the Serbian Orthodox Church in Montenegro took an active role in the campaign, by issuing a public statement calling voters not to support “the political forces which have led the country until 2020”.

Campaign methods included door-to-door visits, posters and billboards and online advertising. Contestants also used social networks as a campaign platform.<sup>45</sup> Some campaigns also operated call centres making phone calls and sending messages to voters, which were perceived by some voters as harassment.

Campaign topics included foreign policy and the fight against corruption, but the campaign discourse focused on personalities over policies. All but one candidate declared their support for the Euro-Atlantic integration of the country. The incumbent stressed the need for continuity, while opposition candidates mainly addressed issues concerning corruption and the economy. The tone of online discourse was generally neutral, while some instances of inflammatory speech were noted. Whereas the campaign was overall calm, some isolated incidents of violence and harassment occurred.<sup>46</sup> In the campaign events observed by ODIHR LTOs, women were under-represented among the audience and, with the exception

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<sup>42</sup> By law, organizations and entities that prohibitions apply to also include foreign companies and legal entities, anonymous donors, public institutions, companies with a share of state-owned capital, trade unions, NGOs, casinos betting shops and other providers of games of chance.

<sup>43</sup> On 20 February, at which point only a single candidate had been registered by the SEC, numerous unlabeled billboards featuring anti-election content appeared in Bar, Budva, Kotor, and Podgorica. They feature the slogan “I swear on my honour” (*Časti mi*) e.g. “I will get crazy if I hear more about elections, I swear on my honour”; similar ads appeared online and on a [Facebook page](#). After registration, Mr. Bečić subsequently adopted the same slogan for his campaign.

<sup>44</sup> For instance, Mr. Đukanović held rallies in Andrijevića, Berane, Danilovgrad, Herceg Novi, Kolašin, Kotor, Mojkovac, Plav, Podgorica and Ulcinj; Mr. Mandić in Berane, Budva, Danilovgrad and Pljevlja; Mr. Bečić in Berane, Budva, Cetinje, Herceg Novi, Kolašin, Kotor, Nikšić, Podgorica and Pljevlja; Mr. Milatović in Berane, Cetinje, Gusinje, Herceg Novi, Kolašin, Mojkovac, Rožaje, etc.

<sup>45</sup> The mission also monitored the campaign on the social networks of a number of actors, including all seven presidential candidates, across Facebook, Twitter, and Instagram.

<sup>46</sup> On 1 March, the Democrats’ campaign office in Nikšić was vandalized. On 10 March, Mr. Milatović was verbally and physically assaulted (but not injured), before his campaign event in Cetinje. Regarding the latter case, the prosecutor’s office informed the IEOM it initiated an investigation against eight individuals.

of one woman candidate, as speakers.<sup>47</sup> The only woman candidate, who is under police protection, received threats over social networks, which are currently being investigated by the prosecutor.

Campaign regulations aim to prevent the abuse of state resources for campaign purposes, including by introducing new public employment and abuse of office or budgetary resources but allow for circumvention.<sup>48</sup> The Agency for Prevention of Corruption (APC), mandated with oversight of campaign regulations, published information on public employment introduced after the call of the election but did not publish any conclusions.<sup>49</sup> Some IEOM interlocutors raised concerns about the misuse of state resources by political parties in control of public-funded institutions.<sup>50</sup> As of 14 March, the APC received 55 complaints, mostly submitted by the citizen observer organization MANS, alleging that state bodies did not publish in a timely manner the required weekly statements on expenditures. The APC did not refer any of these cases to the court but it decided *ex officio* to refer to court 31 cases of unreported or unlawful employment after the call of election, which remain pending, and referred one alleged case of collecting supporting signatures in a public company to the prosecutor, which was dismissed.<sup>51</sup>

## Campaign Finance

The campaign finance legal framework has remained unchanged since the LFPSEC was adopted in 2020. Most previous ODIHR recommendations remain unaddressed, including on the process for verifying the legality of donations, the use of loans, effective sanctions for campaign finance violations, and effective oversight, underlining the need for comprehensive legislative reform. Overall, the deficiencies of the regulatory framework had a negative impact on the transparency and accountability of campaign financing.

Registered presidential candidates are entitled to public funding.<sup>52</sup> However, in line with the law, the first allotment was distributed a week before election day, which does not contribute to balancing the financial opportunities each candidate has in the campaign.<sup>53</sup> Each candidate may spend up to EUR 1,7 million, which is a very high expenditure limit which also does not foster a level playing field.<sup>54</sup> Candidates may receive monetary and in-kind donations, while donations from various sources, including anonymous

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<sup>47</sup> The ODIHR EOM observed 33 campaign events organized in 17 municipalities by 5 candidates.

<sup>48</sup> For instance, there is a ban on new hires after the call of elections but this does not include new temporary service contracts with any public institution and according to the APC's information there are a number of new temporary service contracts. New hires by public companies are not prohibited and are not reported to the APC. Increased spending compared to average spending in the past six months by public institutions is prohibited but the regulations do not fully prevent spending which indirectly favours a candidate, including through charity events.

<sup>49</sup> From the call of elections until 16 March, the Agency reported that state institutions made 5,464 new hires including 217 permanent contracts, 2,788 of definite term and 2,440 temporary service contracts.

<sup>50</sup> On 23 February the government announced that the state electricity company, EPCG, was reopening Željezara Nikšić, and was planning to hire some 500 workers.

<sup>51</sup> The impetus for the case was a screenshot published by the newspaper *Pobjeda*, that led to allegations that employees of the company Solar, an affiliate of the state electricity company, collected supporting signatures for a prospective candidate.

<sup>52</sup> For this election, EUR 884,549 was allocated to all candidates collectively; 20 per cent (EUR 176,909) is distributed equally to all contestants within ten days of the adoption of the final candidate list, while 80 per cent is distributed after the election to candidates who obtained more than three per cent of the votes, proportionally to the votes obtained.

<sup>53</sup> Paragraph 239 of the 2020 [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that "allocation should occur early enough in the electoral process to ensure an equal opportunity throughout the period of campaigning".

<sup>54</sup> Paragraph 19 of the 1996 [General Comment No. 25 to the ICCPR](#) states that "Reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party." Article 9 of the [Council of Europe Recommendation 2003\(4\)](#) stipulates that states should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns.

and foreign sources, are prohibited.<sup>55</sup> At odds with international standards and good practice, the law lacks regulation on third-party campaigning, candidates' use of their own funds, the process of taking loans and reporting on them, and a comprehensive methodology for evaluating in-kind donations.<sup>56</sup>

The APC is mandated with the oversight of campaign finance. In accordance with the law, all candidates opened dedicated bank accounts and submitted their bi-weekly donation reports, most very close to election day, due to their later registration as candidates.<sup>57</sup> The APC published the six received donation reports prior to election day and ahead of the legal deadline, contributing to the transparency of donations. Within the 14 March deadline, all candidates submitted their expenditure reports which were published by the APC within 24 hours, as the law requires.<sup>58</sup> Candidates are required to report on their expenditures on social networks.<sup>59</sup> Bank statements of the campaign funds are required only, with the final reports due 30 days after the election.

The APC does not have investigative powers; it can only request relevant ministries to verify whether donors are registered voters and not convicted of organized crime or corruption, but it lacks the means to effectively verify whether any donors are beneficiaries of public procurement contracts.<sup>60</sup> In an established practice, the APC contracted a private agency to collect information on expenditures on media, social networks and billboards, but the APC does not intend to publish their findings before election day. The APC is only required to publish its conclusions on campaign finance sixty days after the elections results are published, which is not fully in line with international good practice.<sup>61</sup> The APC can impose sanctions on candidates, initiate misdemeanor proceedings against political entities and responsible persons of state institutions, but not against groups of citizens who may nominate candidates. However, the APC cannot impose sanctions for inaccurate reports, which along with the lack of investigating powers, undermines the mechanisms for holding political entities accountable for campaign finance violations.

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<sup>55</sup> An individual may donate up to EUR 5,000 while legal entities including political parties, up to EUR 20,000. Anonymous, religious, foreign, state-funded, and non-governmental sources, companies with public procurement contracts may not donate directly or through third-party intermediaries nor campaign on behalf of a candidate.

<sup>56</sup> See paragraph 8(f) of the [2001 Council of Europe Recommendation](#), paragraph 3a and 6 of the [Council of Europe Recommendation 2003\(4\)](#) and paragraphs 210, 216, 226-227, 255-256 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#). See also paragraph 8(f) of the [Recommendation 1516 \(2001\)](#) of the Parliamentary Assembly of the Council of Europe.

<sup>57</sup> Andrija Mandić on 8 February; Draginja Vuksanović Stanković on 16 February; Milo Đukanović, on 27 February; Aleksa Bečić, 28 February; Goran Danilović and Jakov Milatović on 1 March, and Jovan Radulović on 4 March. In their first published donation reports, Mr. Mandić reported donations totaling EUR 15,000, Mr. Đukanović reported EUR 14,300, Mr. Milatović EUR 9,260, Ms. Vuksanović Stanković EUR 5,000, Mr. Bečić and Mr. Radulović reported no donations.

<sup>58</sup> Aleksa Bečić reported expenditures totalling EUR 151,818; Goran Danilović EUR 880; Milo Djukanović EUR 203,770; Andrija Mandić EUR 182,074; Jakov Milatović EUR 144,980, Jovan Radulović reported no expenditure and Draginja Vuksanović Stanković EUR 18,065.

<sup>59</sup> According to the information available on Meta Ad Libraries, some candidates' Facebook advertisements were paid for by their nominating political parties, including prior to their registration.

<sup>60</sup> Including the Ministries of Interior, Justice and Finance. The APC informed the ODIHR EOM that the Ministry of Finance does not maintain a database of public procurement contracts and may only cross-check the names of donors against the names of the Directors of companies with public contracts but not the names of owners and shareholders.

<sup>61</sup> Paragraph 194 and 206 of the [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that "transparency is important because the public has the right to be informed. Voters must have access to the relevant information as to the financial support given to political parties in order to hold them accountable. It requires the timely publication of financial reports in a format understandable for the general public".

## Media

The media environment is diverse. Media outlets operate in a limited advertising market, which affects their financial viability and makes them vulnerable to internal and external influence from corporate and political interests. The media landscape is polarized along political lines. Television remains the main source of information followed by online media. All four private TV Channels with a national broadcast licenses have foreign companies as majority shareholders.<sup>62</sup>

The freedom of expression and media freedom are well protected by the legislation. The 2021 legal amendments to the Criminal Code prescribed harsher penalties for attacks and threats against journalists and media professionals. However, cases of threats and intimidation towards journalists still occur and concerns remain over the protracted prosecution of relevant cases. Some IEOM interlocutors voiced concerns over the working conditions and professionalism of journalists, which affect the overall quality of information presented to the public.

The legal framework for the media is comprehensive. It was last amended in 2020, and a new set of draft media laws is currently under review to bring it further in line with EU regulations. Broadcast media are primarily regulated by the Law on Electronic Media (LEM), while print and online media rely upon self-regulation. Election campaign coverage by public and private broadcasters is regulated by the election law, the LEM and relevant regulations issued by the Agency for Electronic Media (AEM). By law, voters have the right to be informed about the political platforms of all candidates and public and private media are required to cover them in a balanced manner. The campaign coverage should be presented in election news blocks clearly separated from other news programmes. Paid advertisement is allowed under equal conditions and without time limitations, provided that it is labelled as paid.<sup>63</sup> The Public Service Broadcaster *Radio and Television of Montenegro* (RTCG) is required to offer free airtime and equal election coverage as well as to organise election debates.<sup>64</sup>

Instead of an independent media regulatory body, the election law stipulates an *ad hoc* parliamentary committee to oversee the coverage of the campaign by all media, this committee has not been established for the current or the past three elections. The AEM, the broadcast media regulatory body, is mandated with elaborating election-related media regulations and adjudicating complaints. However, the AEM has no mandate to oversee broadcasters' compliance with the election law. As a result, media related provisions of the election law are not enforced.<sup>65</sup> Further, the AEM sanctioning powers are limited either to issuing warnings to broadcast media or to revoking their broadcasting license.<sup>66</sup> Positively, the AEM for the first time published a preliminary media monitoring report ahead of the election day, on 13 March.<sup>67</sup>

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<sup>62</sup> *Vijesti TV* and *Nova TV* are owned respectively at 51 and 100 per cent by the United Media owned by the United Group registered in the Netherlands and headed by the Serbian media mogul Dragan Šolak. *Prva TV* is fully owned by Kopernikus Montenegro B.V. registered in the Netherlands and it is the sister TV channel of *Prva Srpska TV* operating in Serbia. *Adria TV* is owned by two Serbian citizens.

<sup>63</sup> In total, 60 entities, including broadcast, print and online media, submitted their pricelists to the APC for this election campaign.

<sup>64</sup> The law foresees a minimum of 200 seconds of free airtime daily and three minutes of election campaign coverage twice a day for each candidate.

<sup>65</sup> The AEM monitors compliance of the broadcast media with the LEM, AEM's regulations and other relevant bylaws, but not with the election law.

<sup>66</sup> As required by law, 34 broadcasters informed the AEM about their intention to cover the election campaign. The AEM conducted a comprehensive media monitoring of 17 TV channels and a random sample monitoring of all broadcasters covering elections.

<sup>67</sup> By 13 March, the AEM initiated 19 *ex officio* procedures for identified violations, received 6 complaints, and indicated that the *Srpska TV* and *Jadran TV* covered the campaign without submitting their coverage plan to AEM as required by the election law.



ODIHR media monitoring showed that the public broadcaster complied with the legal requirement to offer candidates free airtime and equal access to election coverage.<sup>68</sup> However, it did not positively contribute to enabling voters to make an informed choice due to its decision to air most of its election coverage, including interviews of candidates, on the *RTCG Parliamentary* TV channel, which has low viewership. Moreover, it provided almost no news or editorial coverage of the election campaign on its main TV channel, *RTCG1*, besides holding one election debate.<sup>69</sup> Despite a legal prohibition, some local public broadcasters aired political paid advertisement taking advantage of the absence of any institutional body empowered to sanction them.

Private TV channels contributed to informing the voters in various formats, including newscasts, talk shows, interviews, and election debates. *Vijesti TV* offered a rather balanced news coverage and organised interviews with candidates as well as an election debate. *Prva TV* and *Adria TV* displayed a clear bias in favour of Andrija Mandić, giving the contestant from 54 and 46 per cent, respectively, of their news coverage. Milo Đukanović received the most news coverage from *E TV*, with 48 per cent. Andrija Mandić, whose registration was finalized some three weeks before other candidates and thus could start campaigning on media, purchased 56 per cent of the paid advertisement on the monitored private TV. The news website *Borba*, monitored by the ODIHR EOM, published and re-published three opinion polls from unverifiable sources which presented two particular candidates, Mr. Đukanović and Mr. Mandić, as frontrunners.

Foreign TV channels from the region, broadcasting in languages similar to the national language, are widely available to the public on cable TV, as allowed by law.<sup>70</sup> This raised concerns of some IEOM interlocutors over foreign interference and the potential impact of their programming on the electoral campaign. On 27 January, a foreign TV channel informed the AEM that it planned to offer paid airtime to candidates in the Montenegrin presidential election.<sup>71</sup> The AEM informed the IEOM that, based on its monitoring, foreign TV channels from the region offered rather limited coverage of this election to date.<sup>72</sup>

## Election Dispute Resolution

The SEC and MECs, the Constitutional Court and the APC are the main institutions mandated with election dispute resolution. Several key aspects of the dispute resolution mechanisms are not in line with international standards and good practice, including restrictions on legal standing and limitations on the possibilities for appealing decisions on candidate registration and election results. Several IEOM

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<sup>68</sup> ODIHR EOM monitored a sample of seven TV channels: *RTCG 1*, *Vijesti TV*, *Prva TV*, *Adria TV* and *E TV* monitored from 18:00 to 24:00, as well as the election-related coverage of *RTCG2* and *RTCG Parliament*. The ODIHR EOM also followed election-related content in three online media outlets: *Vijesti*, *CDM*, and *Borba*.

<sup>69</sup> For this campaign, RTCG was required to hold two election debates. All candidates, with the exception of Mr. Radulović participated in the first debate. The RTCG cancelled the second scheduled debate, after Mr. Đukanović and Mr. Mandić decided not to participate. According to the RTCG, other candidates declined to participate in the alternative format offered by RTCG. Mr. Đukanović and Mr. Mandić cancelled participation because they decided to pre-record a one-to-one debate which was aired on two private TV channels at the same time as the debate on RTCG would have been held.

<sup>70</sup> Based on the 2007 [Stabilization and Association Agreement between Montenegro and the EU](#), Montenegro harmonized its legislation with the 2010/13/EU Directive by adopting the Law on the Electronic Media (LEM), which states “Montenegro ensures freedom of reception and does not restrict the retransmission of audiovisual media services from the Member States of the European Union and other European countries on its territory.”

<sup>71</sup> Namely, TV channel *Pink M*, registered in Serbia. Mr. Mandić and Mr. Bečić purchased paid advertising on this TV channel.

<sup>72</sup> The AEM informed the IEOM it is monitoring *Pink M TV* and *Happy TV*, both registered in Serbia.



interlocutors alleged that the institutions mandated to adjudicate disputes are susceptible to political influence, due to the lack of security of tenure or the appointment mechanism.<sup>73</sup>

The Constitutional Court is mandated to review some SEC decisions, but the law does not provide for judicial review of most types of election commission decisions, including those upholding complaints and registering a candidate.<sup>74</sup> This could leave election stakeholders without a possibility for legal redress, contrary to paragraph 5.10 of the OSCE 1990 Copenhagen document.<sup>75</sup> By law, in case of irregularities affecting the election results, the Constitutional Court may annul the results entirely or partially. However, according to the SEC and the court, the MEC and SEC decisions on the election results constitute only arithmetical tabulations and may not be appealed.<sup>76</sup> While voters and candidates may file complaints to the SEC or MECs, contrary to a prior ODIHR recommendation, complaints to the Constitutional Court may be submitted by voters only on violations of their individual voting rights.

The SEC reviews complaints in public sessions while the Constitutional Court deliberates on election appeals in closed sessions and neither provides the parties to a dispute an opportunity to be heard, contrary to international standards and a previous ODIHR recommendation.<sup>77</sup> The SEC published decisions on complaints on its website, enhancing transparency.

Before election day, the SEC received five complaints and dismissed four as not being under its competence and rejected one.<sup>78</sup> The observed considerations of complaints were in open SEC sessions and members were given the opportunity to familiarize themselves with the issues presented. The Constitutional Court lacked the necessary quorum until 27 February, which effectively deprived stakeholders, including a candidate denied registration, of a legal remedy.<sup>79</sup> After gaining quorum, the Court received 11 appeals, including against the SEC decision to verify the citizenship of some

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<sup>73</sup> The [European Commission 2022 Report on Montenegro](#) states that “a firmer commitment is needed to ensure the full and effective independence, integrity and impartiality of Montenegro’s justice system.”

<sup>74</sup> The law states that MEC actions, inactions and MEC and SEC decisions dismissing or rejecting complaints may be appealed. According to the interpretation of the SEC and the Constitutional Court, other types of decisions, including MEC and SEC decisions upholding complaints as well as SEC inactions, may not be challenged. Paragraph II 3.3.a of the CoE’s Venice Commission [Code of Good Practice in Electoral Matters](#) emphasizes that “In any case, final appeal to a court must be possible”. Paragraph B.2.a of the CoE Recommendation (2004)20 states

<sup>75</sup> Paragraph 5.10 of the OSCE 1990 Copenhagen Document stipulates the right of everyone to “effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.” Paragraph B.2.a of the Council of Europe [Recommendation \(2004\)20](#) states that a “[j]udicial review should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests. Member states are encouraged to examine whether access to judicial review should not also be opened to associations or other persons and bodies empowered to protect collective or community interests.”

<sup>76</sup> Paragraph II.3. 3.f of the CoE’s Venice Commission [Code of Good Practice in Electoral Matters](#) provides that “all candidates and all voters registered in the constituency concerned must be entitled to appeal; A reasonable quorum may be imposed for appeals by voters on the results of elections.”

<sup>77</sup> The Constitutional Court holds oral hearings and public sessions “if it deems it necessary for the public interest”. Paragraph 12 of the [1990 OSCE Copenhagen Document](#) provides that “proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments.” Paragraph II.3.3.h of the CoE’s Venice Commission [Code of Good Practice in Electoral Matters](#) states that “The applicant’s right to a hearing involving both parties must be protected.”

<sup>78</sup> Two complaints against the candidate registration of the incumbent president, one alleging late publishing of the SEC decision registering a candidate, one against the lengthy residence requirement for standing as a candidate and one against the composition of PBs in Kolašin.

<sup>79</sup> The PES informed the ODIHR EOM that it did not challenge the SEC decision denying the registration of Mr. Spajić due to the lack of quorum of the Constitutional Court.

candidates and the denial of registration of a candidate.<sup>80</sup> Two complaints to the SEC and five appeals to the Constitutional Court were filed against the incumbent's eligibility for a third term. However, the court prioritized the pending cases from the municipal elections, leaving the presidential election process without judicial review.<sup>81</sup> Further, the law does not ensure an expedited judicial review, as the court may prolong the process indefinitely.<sup>82</sup>

The APC receives complaints about the abuse of state resources, including the unlawful use of the state budget and the introduction of new public employment during the election period. Pursuant to complaints as well as *ex officio*, the APC has wide discretionary power to decide whether to refer a case to the Misdemeanour Court. Although not prohibited by law, the APC considers these cases in camera and did not publish any information about the cases it referred to the court, limiting transparency. The law lacks clarity on who may appeal the APC decisions to the Administrative Court.<sup>83</sup> Some IEOM interlocutors alleged that the APC has a selective approach when deciding which cases to investigate, considering more minor and less political cases over more serious allegations of wrongdoing. The Misdemeanour Court does not have expedited deadlines at odds with international standards.<sup>84</sup>

### Participation of National Minorities

The Constitution guarantees the equality of all citizens and provides for full political, civil, and social rights for “persons belonging to minority nations and other minority national communities”. The Albanians, Bosniaks and Croats are well-represented in national minority political parties and also well-integrated in major parties. The Roma, who amount to one per cent of the population, are not explicitly listed among the national minorities in the Constitution, have no representation in the parliament, and limited access to voter education. On 27 February, the parliament could not reach an agreement on the election of the judge to the last empty seat on the Constitutional Court, which should, by agreement, be a judge belonging to one of the national minorities.<sup>85</sup>

Minority parties did not nominate any candidates, but some publicly endorsed one or another candidate.<sup>86</sup> Some candidates held rallies in places with concentrated national minority populations. Some ODIHR interlocutors assessed that existing ethnic tensions were exacerbated by political actors before the election and expected they would subside afterwards.

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<sup>80</sup> Five against the eligibility of the incumbent to run for a third term, two against the SEC’s inquiries about the citizenship of two prospective candidates, two against the SEC’s actions regarding the candidacy applications of Mr. Mandić and Mr. Danilović, one on the SEC’s denial of registration of Mr. Matijašević, and one on the SEC’s decision rejecting an appeal on the composition of all PBs in Kolašin.

<sup>81</sup> The court rulebook stipulates that the cases are considered by order of submission but it allows the court to prioritize cases with short legal deadlines or pertaining to human rights. Some 2,795 cases, including 27 related to 2022 municipal elections are pending before the Court.

<sup>82</sup> The court has 48 hours to decide, after receiving information on the case from the SEC, which has 24 hours to respond. However, there is no legal deadline for the court to request information from the SEC, after it receives an appeal.

<sup>83</sup> In 2020, the Supreme court ruled that the civil society organisation MANS which had filed an appeal against an APC decision does not have legal standing since it lacks a legal interest in administrative disputes, reasoning that a complainant has legal interest when an administrative act leads to a change in their position.

<sup>84</sup> The APC has 15 days to decide whether to initiate proceedings and an additional 15 days to refer a case to the court, if it identifies irregularities. Paragraph II.3.3.g of recommends a time limit of three to five days both for lodging appeals and making rulings.

<sup>85</sup> The Constitution provides for proportional representation of the national minorities in courts, the State Prosecutor’s office and the Constitutional Court.

<sup>86</sup> For instance, the Bosniak Party (BS), the Croatian Civic Initiative (HGI), the Democratic Roma Party (DPR) and the Democratic Union of Albanians (DUA) endorsed Mr. Đukanović. The Justice and Reconciliation Party (Muslim minority) supported Mr. Milatović.

Election materials, including the signature collection forms, PB poll books and bilingual ballot papers (Montenegrin and Albanian), were made available in all polling stations in two municipalities (Tuzi and Ulcinj) and in some polling stations in three municipalities (Bar, Gusinje, Rožaje), where Albanians exceed five per cent of the population.

### Citizen and International Observers

The law provides for citizen and international election observation. For this election, accredited civil society organizations monitored various aspects of the electoral process, including the campaign environment, campaign finance, and media coverage of the election.<sup>87</sup> The SEC accredited six citizen observer groups with 1,758 observers and nine international organizations with 247 observers. By law, representatives of non-governmental and international organizations have the right to observe all stages of the electoral process and have unobstructed access to all levels of the election administration. However, in this election, civil society and international observers were not granted an opportunity to observe the process of verification of voters' support signatures at the SEC. Upon the request by the SEC to provide an opinion, the Agency on Personal Data Protection and Free Access to Information justified the denial by a need for personal data protection.<sup>88</sup> This approach is not in line with international good practice and undermines transparency as one of the key principles for organization of elections.<sup>89</sup>

### Election Day

Election day was calm, with a few isolated incidents in and around polling stations.<sup>90</sup> The campaign silence period was generally respected by all candidates on election day, although campaign advertisements were prevalent on social networks, which are not subject to campaign regulations. The election-day process was transparent and well organized, but observers noted that the secrecy of the vote was not always respected by voters. Further, in some polling stations or at their entrance, there were instances of candidate representatives were observed to be taking note of who was voting, raising concerns about the voters' ability to vote free from pressure. In total, 36 per cent of the PB members of the polling stations observed by the IEOM were women, including 27 per cent of the PB chairpersons.

The opening of polling stations was assessed positively in 66 of 68 observations. Fourteen of the observed polling stations did not open on time, but only with minor delays. Some procedural omissions were noted during preparations for voting, including not drawing lotteries to assign roles to PB members (37 cases), and ballot boxes not being sealed in the presence of the first voter (7 cases), and the PB not properly preparing its stamp (11 cases).

The voting process was evaluated positively by the IEOM observers in 98 per cent of observations, indicating that most voting procedures were largely respected. The layout of polling stations was assessed as adequate to conduct polling in 97 per cent of observations. However, the IEOM observers noted that, in over half of their observations, polling stations were not accessible for independent access by persons

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<sup>87</sup> These include, among others, observers from the Centre for Democratic Transition (CDT), the Centre for Monitoring and Research (CeMI).

<sup>88</sup> The CDT requested to review the signatures sheets for Mr. Mandić. ODIHR and CeMI requested to observe the signature verification process. The SEC referred all requests to the Agency of Personal Data Protection, that provided negative opinion. The SEC failed to adopt any decision on these requests by election day.

<sup>89</sup> See paragraph 68 of the Explanatory Report of the Venice Commission [Code of Good Practice in Electoral Matters](#) that states "only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results".

<sup>90</sup> The media reported some isolated incidents of physical attacks and disturbances of the peace inside and outside of two polling stations in Bijelo Polje and Šavnik. Voting was suspended in the PB 6 in Šavnik, after a voter who was reportedly registered was not allowed to vote. The Šavnik MEC informed the media that, by that time, 35 of the 45 registered voters had voted. The prosecutor in Šavnik informed the IEOM that an investigation was opened against the PB member who stopped the voting for disrupting the process.

with disabilities, and the polling station layout was not suitable for voters with physical disabilities in 29 per cent of observations.

The polling process was assessed as well-managed in almost all polling stations observed. Authorized representatives of candidates were present in 83 per cent of the observed polling stations and citizen observers were present in almost half of the observed polling stations contributing to the transparency of the process. In 5 per cent of observations, unauthorized persons were present in the polling stations.

Procedural deficiencies noted by observers included PBs not circling the ordinal number of voters in the voter list (in 14 per cent), the EVID confirmation slips not being signed (12 per cent) and slips and control coupons not placed in the designated box (in 3 per cent). In 12 per cent of observations, the IEOM observers noted that several voters were redirected to other polling stations, potentially related to the relocation and merging of polling stations ahead of this election. While the electronic voter identification devices (EVID) generally functioned well, IEOM observers noted problems with EVIDs in 7 per cent of polling stations observed.

The IEOM observers noted that the secrecy of the vote was not respected in a number of cases. The secrecy of the vote was not ensured as a result of the layout of the polling stations (8 per cent), including due to the positioning of voting screens and in 2 per cent of observations, the secrecy of the vote was compromised by voters not marking their ballots in secret, or not folding the ballots or showing them to those present, or stating loudly how they voted. Further, in 3 per cent, indications that voters were taking photos of their marked ballots were observed by the IEOM. In some cases in which voters compromised the secrecy of their vote, the PBs invalidated these ballots, as required by law. In some of the observed polling stations, PBs were loudly announcing the name of voters who voted, which is prohibited by law.

After closing, the SEC announced the preliminary voter turnout at 64 per cent. The SEC announced that they would not publish partial preliminary results, limiting transparency.

The IEOM assessed the counting negatively in 9 of the 52 observed polling stations, mostly due to PBs not following procedural safeguards, which indicates an insufficient understanding of the procedures by PB members and a need for additional training. In half of the polling stations observed, the EVID turnout data was not used by the PBs to cross-check the number of voters who voted.

In over one-third of observations, the PBs omitted important reconciliation procedures before opening the ballot box, including counting the unused ballots, the control coupons, the signed printed slips, and the number of signatures on the voter list, a set of safeguards important for ensuring the integrity of the process. In 14 cases, PBs did not pack and seal the unused ballot papers before opening the ballot box. In over half of the cases, the PBs did not enter these figures into the PB record of work before the opening of the ballot box. In 16 cases, the PBs did not cross-check the sum of valid and invalid ballots against the number of signatures in the VL. In five polling stations observed, more ballots were found in the ballot box than the number of signatures on the voter list and PBs had difficulties completing the PB protocols in seven observed polling stations.

The tabulation was observed in 22 MECs and assessed positively in all but 3 of them. Candidates' authorized representatives were generally present, while citizen observers were only in one. Overcrowding was reported by the IEOM observers in four MECs, and a poor organisation of the process in two. They also reported two instances of tension in or around MECs. While the tabulation process was assessed as well organized in almost all observations, procedural omissions were reported in some case, including not always checking if the PB result protocols were completed in full and, in some instances, the PB protocols did not fully reconcile.

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## MISSION INFORMATION & ACKNOWLEDGEMENTS

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Podgorica, 20 March 2023 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP). The assessment was made to determine whether the elections complied with OSCE commitments and other international obligations and standards for democratic elections and with national legislation.

Mr. Tamás Meszerics is the Head of the ODIHR EOM, deployed from 8 February. Mr. Joe O'Reilly headed the PACE delegation, and Mr. Tonino Picula headed the EP delegation.

Each institution involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered before the completion of the electoral process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the electoral process, including the tabulation and announcement of results and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some two months after the completion of the electoral process. The PACE will present its report at the April 2023 Part Session in Strasbourg. The EP will present the report at the upcoming meeting of the Committee for Foreign Affairs and the Delegation EU-Montenegro of the European Parliament.

The ODIHR EOM includes 13 experts in the capital and 14 long-term observers deployed throughout the country. On election day, 185 observers from 41 countries were deployed, including 14 long-term and 118 short-term observers deployed by ODIHR, as well as a 23-member delegation from the PACE and a 13-member delegation from the European Parliament. The opening was observed in 70 polling stations, and in 676 observations for voting in polling stations across the country. Counting was observed in 50 polling stations and the tabulation in 22 MECs.

The observers wish to thank the authorities for their invitation to observe the elections and the State Election Commission and the Ministry of Foreign Affairs of Montenegro for their assistance. They also express their appreciation to other state institutions, candidates, political parties and civil society organizations and international community representatives for their cooperation.

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*The English version of this report is the only official document.*

*An unofficial translation is available in Montenegrin.*