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Observation of the early parliamentary elections in Montenegro (11 June 2023)

Election observation report
Ad hoc Committee of the Bureau
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1. Introduction

1. On 28 April 2023, the Speaker of the Parliament of Montenegro, Ms Danijela Đurović, invited the Parliamentary Assembly to observe the early parliamentary elections in Montenegro on 11 June.

2. The Bureau of the Parliamentary Assembly, at its meeting on 24 April 2023, decided to observe these elections (as the country is under the post-monitoring dialogue procedure with the Assembly) and to set up an ad hoc committee composed of 20 members as well as the two co-rapporteurs of the monitoring committee. At its meeting on 28 April, the Bureau approved the composition of the ad hoc committee (see Appendix 1) and appointed Mr Aleksander Pociej (Poland, EPP/CD) as its Chairperson. He was subsequently replaced by Mr Reinhold Lopatka (Austria, EPP/CD).

3. In line with the co-operation agreement signed between the Assembly and the European Commission for Democracy through Law (Venice Commission) on 4 October 2004, a representative of the Venice Commission was invited to join the ad hoc committee as legal adviser.

4. The Assembly ad hoc committee (PACE delegation) worked from 9 to 12 June 2023. It operated as part of an International Election Observation Mission (IEOM) together with a delegation from the European Parliament (EP) and the electoral observation mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR EOM). The programme of the delegation's meetings is set out in Appendix 2.

5. The IEOM concluded that the early parliamentary elections were competitive and voters were offered a wide range of choices, but the process was weakened by legislative shortcomings as well as divisive campaign rhetoric and a polarised media environment. The joint press release is set out in Appendix 3.

2. Political context

6. The 11 June 2023 early parliamentary elections took place against the backdrop of a protracted institutional and constitutional crisis. The government led by the Prime Minister Dritan Abazović lost a confidence vote on 20 August 2022, but was not replaced as the former President, Milo Đukanović, refused the prime ministerial nomination of Miodrag Lekić from the Democratic Alliance (DEMOS) and the government of Mr Abazović remained in office. Amendments to allow nomination of a prime minister supported by a majority of MPs if the president declines to do so were adopted by the parliament on 12 December 2022 but not applied. On 16 March 2023, President Đukanović dissolved the parliament and called for early elections to take place on 11 June, notwithstanding that questions regarding the constitutionality of the provisions that underpinned the call for early parliamentary elections remained. There was an appeal (at the initiative of the

parliamentary majority) but the Constitutional Court rejected it (3 judges considered that the President's decision presented an individual legal act, while the other 3 were against it. The 7th judge of the Constitutional Court has still not been elected).

7. The early parliamentary elections followed the presidential election held on 19 March 2023 with a second round on 2 April.[1] Since then, three of the key opposition parties in the outgoing parliament – the Democratic Party of Socialists (DPS), the Social Democratic Party (SDP), and the Social Democrats (SD) – changed their leaders.[2] The Democratic Front (DF), a three-party opposition bloc established in 2012 and comprising the Democratic People's Party (DNP), the New Serb Democracy (NOVA), and the Movement for Changes (PZP), announced its dissolution. United Reform Action (URA), the party led by the Prime Minister Dritan Abazović, created a centrist block with Democratic Montenegro (DCG). A number of smaller parties changed their alliances.

8. The inclusion of women in political life remains low and is undermined by insufficient state and public efforts to overcome gender stereotypes. Women hold some prominent positions, such as the Speaker of the Parliament, the Mayor of Podgorica, the Head of the Podgorica Municipal Council, and the acting President of the Supreme Court, however they remain under-represented in the overall political life. There were 23 women (28.4%) in the outgoing parliament, in which for the first time a Women's Club, focusing on gender issues in the legislative process, was established. Out of the current 17 members of the government, 3 are women. Three out of the six sitting judges of the Constitutional Court are women.

3. Electoral system and legal framework

9. The 81-member unicameral parliament (*Skupština)* is elected for a four-year term from closed candidate lists under a proportional representation system in a single nationwide constituency. Candidate lists are eligible for seats if they obtain at least 3% of the valid votes cast. Preferential rules apply for lists representing national minorities not exceeding 15% of the total population.

10. Parliamentary elections are primarily regulated by the 2007 Constitution, the 1998 Law on Elections of Councilors and Members of Parliament (election law), the 2020 Law on Financing of Political Subjects and Election Campaigns (political finance law) and State Election Commission (SEC) instructions. While a new political finance law was adopted in 2020, the parliament has not amended the election law since 2014. The Constitution requires a two-thirds majority in parliament for amendments to laws regulating the electoral system, but opposition parties largely abstained from parliamentary committee on electoral reform, diminishing the possibility for changes.

11. The electoral legal framework provides a basis for the conduct of democratic elections. However, it contains gaps, inconsistencies and ambiguities undermining its effectiveness. Most prior ODIHR recommendations remain unaddressed, including on residence requirements for voting and candidacy rights, registration of candidate lists representing national minorities, campaign finance oversight and sanctions, invalidation of results, media oversight and election dispute resolution.

12. The law provides for citizen and international election observers. The SEC accredits both domestic and international organisations; though, international observers apply for accreditation in the first instance through the Ministry of Foreign Affairs. By law, observers have the right to observe all stages of the electoral process. Twenty citizen organizations have been accredited by SEC in an inclusive manner.

4. Election administration, voters lists and registration of candidates

13. The election administration structure comprises three levels, headed by the SEC. There are 25 Municipal Election Commissions (MECs). Both the SEC and MECs are permanent bodies with four-year terms. For these elections, 1 154 Polling Boards (PBs) were formed to administer the polling stations. The SEC has 11 members, MECs and PBs 5. The SEC and MECs are appointed by the parliament and municipal

1. In the second round, the incumbent President Milo Đukanović lost to Jakov Milatović, the Minister of Economic Development in the government of Zdravko Krivokapić and one of the leaders of Europe Now! (ES), a political movement established in 2022. The Parliamentary Assembly observed these elections (see Doc. 15744).
2. In the last parliamentary elections, held in 2020, DPS, which had ruled the country since 1991, moved to the opposition despite having won the largest number of seats. A slim parliamentary majority of 41 members of parliament was formed by a broad coalition of political parties united in three different political blocks.

councils respectively, based on their political composition. PB members are appointed by the respective MEC for each election on the same basis. The majority of the IEOM interlocutors noted the politicised character of the SEC and the MECs but did not raise major concerns with their work and overall trust.

14. By law, election commissions are accountable to the bodies appointing them. However, there is a lack of clear criteria for dismissing members, which potentially could impact on their independence.[3] The legislative requirement for all commission members, and at all levels, to be graduate lawyers, limits participation in the election administration. Positively, the SEC has adopted a code of conduct prescribing the principles, rules and obligations to which election management bodies should adhere.

15. For a limited time during the electoral period, permanent members of the SEC and MECs are joined by members representing registered candidates lists, and these extended members are to enjoy full voting rights. However, candidate lists do not always nominate them, or do so late in the process as there is no deadline for their appointment, resulting in lower-level commissions varying in size. Due to the appointing mechanism of both permanent and extended members the composition of the SEC and MECs showed a predominance of members nominated by the contestants forming the Together! candidates list.

16. Women are under-represented in the election administration; only 3 out of the 11 permanent SEC commissioners and 37% of MEC members are women. Local authorities do not collect data about the gender composition of the PBs.

17. The SEC conducted the technical preparation of the election efficiently and according to established deadlines. Decisions were taken collegially and based on genuine discussions. SEC sessions were open to observers and media, agendas were posted in advance, and decisions were published, enhancing the transparency of the process.

18. Overall, MECs carried out their duties efficiently. However, the transparency of the process at the municipal level was sometimes lacking, with an inconsistent approach to the publication of agendas and minutes of MEC sessions. In some instances MEC sessions were often held ad hoc and at short notice, making it challenging for some stakeholders to attend them.

19. The SEC has made significant efforts and issued detailed criteria for organising polling stations in an accessible manner for people with disabilities, in consultations with local stakeholders, and trained the MECs on such provisions. Despite these efforts, in several cases, there was a lack of practical implementation of these criteria during election day by lower-level election commissions. Local organisations reported low participation of persons with disabilities within the electoral administration. Mobile voting provisions are in place for voters with health-related issues and assisted voting by a person of choice is possible for people with disabilities and illiterate voters. Special polling stations are set up in prisons and detainee facilities.

20. The SEC conducted capacity-building training on election day procedures for all MECs and produced comprehensive manuals and a video, including in sign language, on election day procedures for MECs and PBs. MECs were responsible for training their respective PBs but lacked a uniform approach. Additionally, the possibility for registered lists to change nominated PB members up to a day before the vote discourages MECs from organising the training until close to election day. Voter education was insufficient and limited to a video prepared by the SEC on election day procedures aired on TV channels and online close to election day. Voters also received an invitation to go to vote from the Ministry of Interior (MoI).

21. All citizens aged 18 or over, who have permanent residence in the country for at least two years prior to election day, have the right to vote. The length of this residency requirement is at odds with international standards.[4]

22. Voter registration is passive. The MoI manages and compiles the voter register, aggregating data from the registers of residence, citizenship, births, and deaths. Voters can verify their data in person, online or via a call centre and may request clarification and corrections to the MoI no later than 15 days before election day. By law, the SEC, MECs, accredited observers, parliamentary parties, and candidates list representatives have the right to inspect the voters list and notify the MoI of deficiencies.

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3. See section II.3.1ᵎ of the Council of Europe's Venice Commission Code of Good Practice in Electoral Matters states. According to Paragraph 77 of the Explanatory Report "… bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible – provided that the grounds for this are clearly and restrictively specified in law".
4. Section I.1.1.c of the 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".

23. Overall, the voter registration process was transparent. Nevertheless, the trust in the voter registration framework is diminished by long-standing concerns about the accuracy of the voters list, notably regarding the number of voters living abroad and deceased persons included in the register. Moreover, the alleged practice of voters changing their residence before elections to vote in a different district further impacts on trust in the register. While these concerns are founded, it should be noted that they are mainly due to the legislative framework in place and possible omissions in reporting deaths to the local authorities. The legislation requires biometric identification of voters on election day, which provides for additional safeguards against misuse of the register.

24. Voter education and information campaigns to provide voters and stakeholders with information about the opportunities for corrections and updates were lacking. The MoI closed the voters register on 31 May and informed that it did not receive any requests for corrections from voters or reports from stakeholders that have access to the voters register. On 1 June 2023, the SEC announced that 542 468 voters were registered.

25. All eligible voters are allowed to stand as candidates. The residency requirement for the right to stand is at odds with the Venice Commission Code of Good Practice in Electoral Matters. Political parties, coalitions, and groups of voters may nominate candidates, and the election law does not prescribe any incompatibilities. Lists must comprise a number of candidates equal to at least two-thirds and, at most, equal to the maximum number of seats available. One in four candidates in a list must be of the under-represented gender, and, overall, the under-represented gender must comprise at least 30% of the total number of candidates on each list. Despite the quota, there is a lack of interest among most parties to promote the participation of women beyond the legal minimum. Of the 1 113 candidates registered by the SEC for these elections, 397 (35.67%) were women.

26. Candidate lists must be supported by a minimum of 4 338 voter signatures. Preferential criteria apply to lists representing national minorities. Candidacy in more than one list is prohibited, and, contrary to international good practices, voters may sign in support of only one list. Some IEOM interlocutors alleged that some parties unduly use voter data from the voters list and forge signatures. Voters can check online if their names have been included in the SEC database as supporting one of the candidate lists, but only once the lists have been confirmed by the SEC, which does not provide an effective or timely remedy. A voter who identifies that their name and signature were used to support a nomination without their approval may report this to the prosecutor, but the law does not prescribe liability for such a forgery. Overall, the process of signature collection is prone to abuse and does not adequately ensure integrity.

27. Out of a total of 17 lists submitted to the SEC, 15 were registered. The SEC initially returned 8 lists for corrections due to incorrect documents and/or an insufficient number of valid signatures. On 26 May, the SEC published the general candidates list, compiling all those registered for the upcoming elections. The process of candidate registration was overall inclusive and professionally administered by the SEC as per established deadlines. Nonetheless, the SEC did not specify which signatures were declared invalid, delaying the ability of the lists to submit corrections. The SEC raised concerns about time constraints and logistical challenges while conducting the verification process, which was exacerbated by the last-minute submission of the majority of lists.

5. Election campaign and its financing

28. Fundamental freedoms were respected during the campaign. The political finance law allows contestants to start campaigning after the call for elections, provided they have opened a designated bank account. After registration of a candidates list, campaigning can also start in electronic media. The campaign was initially subdued, partly due to legal and political uncertainty regarding the date of the elections and the last-minute registration of contestants but became more active in the two-week period leading up to the elections. The official inauguration of President Jakov Milatović on 20 May and the celebrations of Montenegro's independence in the following days, were the first occasions contestants organised larger campaign events. Generally, contestants conducted small-scale events, such as meetings with voters and door-to-door campaigning, and used social media, billboards and free airtime on public broadcasters. The 24-hour campaign silence does not include social media.

29. The majority of contestants expressed general satisfaction with the campaign environment and the level playing field. On 25 May 2023, representatives of 14 of the 15 registered candidate lists signed a Code for a Fair and Democratic Electoral Process, which was developed by the local NGO Centre for Democratic Transition (CDT). On 29 May, President Milatović, who is also the vice-president of the Europe Now! political party, met with representatives of candidate lists, in a high-profile event, to underline the importance of a fair campaign and to improve the political environment and strengthen public trust in electoral process.

30. The campaign was competitive and voters could make a well-informed choice. The economy was the key issue raised in the campaign, but some contestants resorted to populist and divisive rhetoric, including on national and religious grounds. A number of political parties included in their campaigns the topic of the European Union (EU) membership highlighting the country's long-standing commitment to EU integration:[5] the DPS-led coalition Together! as well as the SDP and the coalition of the Socialist People's Party (SNP) and DEMOS highlighted the importance of the European Union (EU) integration, while DCG and URA, running on the joint list Courage Counts, as well as the PZP, emphasised combating corruption and organised crime.

31. On 26 May 2023, Milan Knežević, leader of DNP, attended the "Serbia of Hope" rally in Belgrade, organised by the Serbian Progressive Party addressed by its outcoming leader and President of Serbia Aleksandar Vučić. Mr Knežević also addressed the gathering, praising Serbian fraternity and alleging excessive influence of foreign diplomatic representatives in Montenegrin politics. Following violence in Kosovo*[6] on 29 May, some electoral contestants took an active part in demonstrations in support of Serbs in Kosovo, resorting to divisive and populist rhetoric of choice between the protection of traditional and religious values and exposure to international influence.

32. On 6 June 2023, the Minister of Interior stated that an investigation has been initiated into an allegation that the leader of the ES received funding from an indicted crypto-currency businessman and the Prime Minister convened a National Security Council on the issue. This issue became part of the discourse in the final days of the campaign. The ES filed a criminal complaint against the Prime Minister and the Minister of Interior for their role in this matter.

33. Campaigning on social networks was largely in line with other forms of campaign activity. Some contestants started campaigning on social networks before opening the dedicated bank accounts. Instances of negative or aggressive tone or rhetoric were noted. There was not always a clear distinction in the online posts by some political parties regarding the role of their respective leaders in the campaign as opposed to their role in a senior State position.

34. Both the election law and political finance law provide for measures with the aim to prevent misuse of administrative resources. They regulate, *inter alia*, how public employment, use of official cars, and the introduction of new public subsidies during the electoral period should be managed. However, in practice, the provisions can be easily circumvented, which undermines their purpose of eliminating the use of administrative resources to a political advantage. Significant numbers of public service and employment contracts were issued during the campaign. Civil society organisations called on the government and public officials to refrain from misuse of administrative resources in the campaign. Legislation also prohibits public officials from campaigning during working hours but the observance of this provision is difficult to monitor and enforce.

35. Only a limited number of candidate lists promoted women's political participation and included gender-specific issues in their programs. No women candidates took part in 43% of campaign events observed. Some women politicians, as well as civil society representatives, informed about the problem of violence against women in politics, which is especially acute online and which deters some women from taking an active part in political life.

36. Representatives of Courage Counts!, HGI (Croatian Civic Initiative), Together!, and Yes We Can! informed of having persons with disabilities on their lists, yet almost none of those were placed in a winnable position. Issues related to people with disabilities were largely absent from the electoral programs and campaign events. Of the observed campaign events, 50% were held in venues which allowed for an independent access for persons with disabilities.

37. Campaign finance is regulated by the political finance law, adopted in 2020, which, *inter alia,* increased the limits for donations. However, most previous ODIHR recommendations remained unaddressed, including on effective verification of the legality of donations, including from public contractors, an explicit obligation of the Agency for the Prevention of Corruption (APC) to identify and publish information on unreported finances, introduction of proportionate sanctions and the use of loans.

38. Registered candidate lists are entitled to public funding for the campaign, which collectively amounts to EUR 3.2 million. Each candidates list received EUR 42 121 by 1 June 2023 while EUR 2.5 million will be allocated to the lists proportionally to the seats obtained in parliament. Contestants may also obtain private

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5. Montenegro was granted European Union candidate status in 2010 with membership negotiations starting in 2012.
6. * All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

donations. An individual may donate up to EUR 5 000 while a legal entity up to EUR 20 000. However, most contestants informed the IEOM that they conduct limited fundraising and they rely on public funding for the campaign and the annual public funds of their nominating parties, which may donate to the campaign without a limit. Each candidates list may spend up to EUR 3.2 million, which, according to several IEOM interlocutors, is unreasonably high, not conducive to ensuring a level-playing field and potentially exerting an undue influence on voters.

39. Each prospective candidates list is required to open a dedicated bank account before beginning campaigning and at the latest one day after their registration by the SEC. All did open campaign accounts after their registration by the SEC while one list nominated by a group of voters opened an account before its registration. All contestants submitted their bi-weekly donation reports and their expenditure reports within the legal deadlines. Most contestants reported they get limited funding from donations and defer payments for expenses until after the elections.Final reports are due within 30 days of the election.

40. The APC, mandated with oversight of campaign finance, published the submitted campaign finance reports of the contestants on its website in a timely but not always accessible manner.[7] The APC informed that it verifies whether reported donations are made by registered voters, and also verifies that a donation is not from a person convicted for corruption. It can verify whether donors are directors of public contractors but not owners of or shareholders in public contractors. Donations do not need to be wire-transferred but may be deposited, which is not conducive to transparency regarding funding.[8] The APC informed that it did not identify any donation from prohibited sources. It contracted the same private agency as in the past elections, to collect information and report on campaign expenditure. The contracted company informed that it has tools to collect information on the estimated costs of campaign expenditure for all media, billboards and some social networks, but not on Google Ads and in-person campaign events. The company starts monitoring only after candidate registration, leaving the campaign before that unmonitored. Several billboards featuring the name, logo and colours of the candidates list “Yes We Can” appeared as early as mid-April. The list informed that it opened a campaign account on 26 May 2023, while these billboards were paid for by an affiliated NGO. The law prohibits third-party campaigning but does not provide for any sanctions. Overall, the regulatory framework, as currently implemented, does not ensure the transparency, integrity and accountability of campaign finances.

6. Media environment

41. The media environment is diverse but polarised along political lines. Media outlets operate in a limited advertising market, which affects their financial viability and makes them vulnerable to influence from corporate and political interests. Television channels remain the main source of news, followed by social networks and online media, with print media playing a relatively marginal role. Most of the private media outlets across broadcast, print and online media are partially or fully owned by foreign companies, including all four private television channels with a national license. National and local television channels, as well as several channels from the region are accessible via the main cable operators.

42. According to the IEOM interlocutors and recent surveys, following the appointment of a new Council in 2021, the public broadcaster Radio and Television of Montenegro (RTCG) has regained public trust and increased its viewership. It runs three national television channels and two radio stations. In addition to the national public broadcaster, there are 16 local public broadcasters funded by municipalities. According to several IEOM interlocutors, local public broadcasters are prone to political influence by the ruling municipality majority.

43. Freedom of media is protected by the legislation. In 2021, the Criminal Code was amended to enhance protection of journalists and other media professionals by imposing harsher punishments for attacks and threats against them. According to the Media Trade Union of Montenegro, in the last two years fewer physical attacks were recorded though there have been more threats, including by email and on social networks. Crimes against media professionals have been dealt with in an expedited manner.

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7. Paragraph 258 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation states that “digitalizing information and submitting it to the regulatory body in its digitalized, easily searchable and reusable form can facilitate oversight and therefore minimize the need for paper-based procedures”.
8. Paragraph 212 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation states that “another means to avoid undue influence from unknown sources is to state in relevant legislation that donations above a certain (low) amount shall be made through bank transfer, bank check or bank credit card, to ensure their traceability in terms of amount and sources”.

44. The legal framework for media is comprehensive. 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 political programmes of all electoral lists and public and private media are required to cover them in a balanced manner. Campaign coverage should be presented in election news segments clearly separated from other news programmes. Paid advertisement is allowed under equal conditions and without time limitations, provided that it is labelled as paid. The public broadcaster RTCG is required to offer free airtime and equal election coverage as well as to organise election debates.

45. The effectiveness of the oversight of the election campaign is weakened by the absence of a regulatory body, as the election law does not mandate the AEM to oversee broadcast media compliance with the election law. The AEM's mandate is limited to elaborating and overseeing election-related media by-laws and adjudicating complaints. Further, the AEM's sanctioning powers are limited either to issuing warnings to broadcast media or the extreme measure of revoking their broadcasting license, with no possibility for fines. Print and online media rely upon self-regulation also for provisions contained in the election law, such as respect of the campaign silence period. As a result, at times, media related provisions of the election law are not enforced. The AEM published a preliminary media monitoring report ahead of the election day, on 7 June 2023.

46. The public broadcaster complied with the legal requirement to offer contestants free airtime and equal access to election coverage. However, the election debates which had to include all 15 lists meant there was not sufficient time for discussion. Moreover, all interviews with contestants and free airtime provided were aired on the less popular Parliamentary television channel. The public broadcaster of the Municipality of Podgorica Gradska TV, in line with the law, granted access to free airtime to all contestants. However, this local public TV channel offered more news coverage to the list Together both in terms of total time and direct speech, with 33% and 43%, respectively. Gradska TV provided negative news coverage of Prime Minister Abazović.

47. Private television channels offered election-related newscasts, interviews, talk shows, debates and paid advertising. Overall, voters benefited from pluralistic media coverage and candidates were offered access to private broadcasters. Vijesti TV, the most popular private television channel, positively contributed to enabling voters to make an informed choice by organising four election debates with representatives of what they considered to be the main lists and provided fairly balanced news coverage. Prva TV and Adria TV displayed a bias in favour of the electoral list For the Future of Montenegro which benefited from 33 and 40% of their news coverage, respectively and with considerably more direct speech granted to representatives of this list. The lists Aleksa and Dritan – Courage Counts and For the future of Montenegro invested heavily in paid ads on monitored TV channels, representing 25% each of the total paid coverage, followed by Europe Now! with 20%.

7. Complaints and appeals

48. Complaints on breaches of voting rights may be filed to MECs and the SEC. The election law stipulates that SEC decisions dismissing or rejecting complaints may be appealed to the Constitutional Court. The SEC and the Constitutional Court consider that SEC decisions upholding complaints, as well as its actions and inactions, are exempt from judicial review, contrary to international good practice.[9] Candidates may challenge PB results but not MEC and SEC tabulated results, at odds with previous Council of Europe Venice Commission recommendations.[10] The law contains ambiguous provisions and grants wide discretionary powers to the MECs and the Constitutional Court to invalidate results.

49. Electoral contestants, citizen observers and voters may file complaints to election commissions while voters and citizen observers may file complaints to the Constitutional Court only for violations of their individual voting rights, at odds with the Venice Commission Code of Good Practice in Electoral Matters.[11] An expedited process is applicable to the MECs and the SEC; short deadlines are applicable to the Constitutional

9. The election law states that MEC actions, inactions and MEC and SEC decisions dismissing complaints on merits or on technical grounds may be appealed. Paragraph II 3.3.d of the Venice Commission Code of Good Practice in Electoral Matters states that "The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections".

10. Paragraph 92 of the Code of Good Practice (Explanatory Report) states "…failure to comply with the electoral law must be open to challenge before an appeal body. This applies in particular to the election results..."

Court but may be extended. SEC reviews complaints in public sessions but without the presence of parties to the dispute. SEC does not maintain a public complaints database but publishes minutes of sessions and decisions on complaints. The Constitutional Court deliberates in closed sessions, without the presence of the parties and it is not required to publish all its decisions but publishes only some information on the outcome, failing to ensure due process and transparency.[12]

50. The Constitution falls short of sufficiently regulating issues pertaining to the call of early parliamentary elections. The Constitutional Court received one complaint challenging the Presidential Decree dissolving parliament and triggering early elections. It reviewed the complaint on 7 April 2023 but failed to reach a decision due to a tied vote, which was attributed by many to its politicisation. Three judges denied the review of the Decree on the grounds that it is an individual administrative act, which is a narrow interpretation of the law. The court also received two appeals against SEC decisions denying registration to two candidate lists, reviewed them in a closed session, rejected both as unfounded but did not publish any decision nor did it communicate the outcome to the applicants.

51. Individuals and legal entities may file complaints to the APC on campaign finances and breaches of the rules on public employment and expenditure by public institutions after the call of elections. The APC can also review such cases *ex officio*. Pursuant to complaints, the APC has 15 days to decide whether to refer cases to the Misdemeanour Court, which may impose sanctions on public institutions and public officials. APC decisions may be appealed to the Administrative Court. The two courts have no deadline to decide on such cases. The APC reviews cases *in camera* while courts do so in public sessions. At odds with international standards, the courts are not required to publish their decisions, while the APC publishes some information on complaints on its own initiative. While this mechanism does not fully ensure an expedient dispute resolution and due process, it may provide some transparency and accountability on the use of State resources – if implemented properly. The APC informed that 13 complaints were filed on public employment and public spending. None were referred to the court. The dispute resolution mechanisms, as currently implemented, do not ensure due process, transparency and a timely and effective remedy.

8. Election Day

52. Election day was calm and transparently and professionally managed by the election commissions throughout the country, in a generally relaxed and collegial atmosphere.

53. The PACE delegation split into 10 teams and observed in Podgorica and its surroundings, as well as in the regions of Virpazar, Petrovac, Budva, Ulcin, Bar, Kotor, Cetinje and Niksic.

54. In almost all of the IEOM observations, the opening of the polling stations (PS) as well as the voting and tabulation were assessed positively. The counting process was assessed negatively in 7 PS (out of 55 observed). The law does not explicitly prohibit campaigning on social networks during the campaign silence period, and it was noted that ES, Courage Counts, For the Future of Montenegro and Together! were particularly active online on the day before and on election day.

55. IEOM observed the opening proceedings in 59 PS, with all but one observations assessed as good or very good. Election materials were present in all PS and voting commenced on time in 52 PS observed. Some procedural issues were noted during the opening, such as the ballot box not being checked and sealed in the presence of first voters in 5 observed instances, and the tasks of individual PB members not being determined by drawing lots in 24 observations.

56. Observers positively assessed the voting process in 98% of the 615 observations. Voting procedures were consistently followed in 92% of the observations. In 27% of PS visited the chairperson was a woman, and, overall, 33% of PB members were women. The layout of the PS was adequate to conduct voting in 96% of the observations but in 6% the layout did not adequately ensure the secrecy of the vote. In all PS visited, the PB co-operated fully with the IEOM observers. PB members were checking voters identification documents by Electronic Voter Identification Devices (EVID) in almost all of the PS observed. There were several cases when the EVID showed dysfunctionalities. The transparency of the voting process was rated as

11. Paragraph 99 of the Code of Good Practice (Explanatory Report) states “Standing in such appeals must be granted as widely as possible. It must be open to every elector in the constituency and to every candidate standing for election there to lodge an appeal. A reasonable quorum may, however, be imposed for appeals by voters on the results of elections.”

12. Paragraph 100 of the Code of Good Practice (Explanatory Report) states “The appeal procedure should be of a judicial nature, in the sense that the right of the appellants to proceedings in which both parties are heard should be safeguarded”.

good or very good everywhere and citizen observers were present in 60% of the PS visited. However, IEOM observers reported a lack of awareness regarding the role of extended PB members. Extended PB members from Europe Now!, Together!, Courage Counts, For the Future of Montenegro and Justice for All were most frequently present at PS observed.

57. One PACE team reported that it observed nearby a PS a group of persons with lists, checking who was voting.

58. Some procedural shortcomings were observed during voting; in 5% of the observations the ballot box was not properly sealed; in 16% the ordinal number of the voter was not circled in the register; in 9% the confirmation slip was not signed by the PB chairperson and member of the opposition; and in 6% the ballot control coupons and EVID slips were either never or only sometimes placed in the designated box. In 3% unauthorised persons were present at the polling stations.

59. The majority of the PS visited were not conducive for voting of persons with disabilities. IEOM observers reported that 63% of the PS visited did not provide for independent access for persons with a disability. 28% of the PS layout was not suitable for persons with disabilities and in 15% of observations, the PS did not have the ballot sleeves for visually impaired voters.

60. IEOM observed the counting in 55 PS, assessing it as good or very good in 48 cases. The process was assessed as transparent in 51 of the observed counts and citizen observers were present in 37 cases. In seven cases the count was negatively assessed, with IEOM observers reporting that the procedures were not always followed. For instance, the number of unused ballots, as well as the number of control coupons and slips was not counted prior to opening the ballot box in 18 and 17 observations respectively. In 5 of the 42 PS, the PB had difficulties completing the protocol.

61. IEOM teams observed the tabulation at all 25 MECs. The process was assessed as overall good and transparent in all of the observed locations. Citizen observers were present in five of the observed MECs. In four MECs there was insufficient space or inadequate conditions and in 11 observed MECs there were some reconciliation problems. The preliminary voter turnout was announced as 55.31% by the SEC. The SEC did not announce preliminary results, as the law requires only publication of complete preliminary results within 30 hours from closing of the voting.

62. The SEC announced the final results on 14 July 2023:

– Europe Now! – 25,53% – 24 seats
– the DPS – 23,22% – 21 seats
– the NOVA-DNP coalition – 14,74% – 13 seats
– the Democrats-URA coalition – 12,48% – 11 seats
– the Bosniak Party – 7,9% – 6 seats
– the coalition SNP and DEMOS – 3,13% – 2 seats
– the Albanian Forum – 1,91% – 2 seats
– the Albanian Alliance and HGI (Croatian Civic Initiative) – 1 seat each.

The turnout was of 56,4%.

9. Conclusions and recommendations

63. With 15 candidate lists, the 11 June 2023 early parliamentary elections were competitive and well-run, despite taking place in a context of a protracted institutional and constitutional crisis. The elections were efficiently managed by the election administration, the campaign was free, all candidates enjoyed equal opportunities in the campaign and voters were offered a wide choice. Election day was calm and professionally managed at all stages of the voting process. The process was transparent, and procedures were followed in the vast majority of polling stations, with some procedural omissions, in particular during the counting.

64. The electoral legal framework provides a basis for the conduct of democratic elections; however, it contains gaps, inconsistencies and ambiguities. The election law has not been amended since 2014. Most prior Venice Commission and ODIHR recommendations remain unaddressed, including on residency

requirements for voting and candidacy rights, registration of candidate lists representing national minorities, campaign finance oversight and sanctions, invalidation of results, media oversight and election dispute resolution.

65. The Constitution falls short of sufficiently regulating issues pertaining to the call of early parliamentary elections. The Court failed to review the constitutionality of the presidential decree dissolving parliament due to a tied vote, attributed by some to its politicisation. SEC reviews complaints in public sessions but without the presence of the parties to the dispute and does not maintain a public complaints database. At odds with international good practice, the Constitutional Court deliberates in closed sessions, without the presence of the parties, and does not publish its decisions. The Court is not required by law to publish all its decisions but publishes some information on the outcomes. The dispute resolution mechanisms, as currently implemented, do not ensure due process, transparency or an effective and timely remedy.

66. The media environment is free and diverse but polarised along political lines. Freedom of media is well protected by legislation. The legal framework provides a basis for the democratic conduct of elections, but it should be comprehensively revised to address a number of gaps and inconsistencies: the effectiveness of the oversight of media-related campaign regulations is weakened by the lack of a regulatory body mandated to oversee the conduct of broadcast media. The public broadcaster met the legal requirements by offering free airtime, providing balanced election coverage and organising inclusive election debates but aired most of this coverage on the less popular RTCG Parliamentary television channel. Paid political advertisement is allowed on private media under equal conditions. overall, the media environment is polarised and some private media reported along party lines.

67. The inclusion of women in political life remains low and is undermined by insufficient state and public efforts to overcome gender stereotypes and the failure of most political parties to promote their participation. Despite a number of legal affirmative measures to enhance gender equality, women remain under-represented, largely because political parties fail to promote their participation beyond the legal minimum. Some IEOM interlocutors raised concerns that violence against women can be a deterrent to women to participate in political life and stand as candidates. The PACE delegation felt indeed that the culture of gender equality is still low in Montenegro and noticed that violence against women who enter politics is not uncommon – particularly on social media.

68. Technical preparations for the elections were conducted efficiently and according to established deadlines. Sessions of the SEC were open to observers and media, and the decisions were published, all of which enhanced transparency at the national level. MECs generally carried out their duties efficiently, but transparency at the municipal level was sometimes lacking. Voter education activities conducted by the SEC were limited. The SEC provided lower-level commissions with criteria to make polling stations accessible for persons with disabilities, but on election day it was observed that these were largely not followed.

69. The voter register included 542 468 voters. Voters could verify their data and request clarifications with the Ministry of Interior. A broad range of stakeholders have the right to inspect the voter lists but the MoI did not receive any notifications. The length of residency requirement to be eligible as a voter is contrary to international standards. Long-standing concerns regarding the accuracy of the voters list persist, notably regarding persons living abroad and deceased persons included in the list, which diminishes public trust in the voter registration framework.

70. In an inclusive manner, the SEC registered a total of 1 113 candidates on 15 lists. Despite previous recommendations, voters may sign in support of only one list. The process of signature collection is prone to abuse and does not ensure integrity. There were concerns regarding the practice of political parties using voter data and forging signatures in support of their candidates list were present during the elections. Voters could check online if they had been included in the SEC database as supporting a candidates list, but only after the lists had been confirmed by the SEC. This does not provide a timely and effective legal remedy. SEC also raised concerns about time constraints and logistical challenges while conducting the signature verification process, which was exacerbated by the last-minute submission of the majority of lists.

71. Minority candidates were well represented on mainstream candidate lists. Preferential rules apply for registering candidates lists representing national minorities, but the lack of clarity regarding the criteria for granting the national minority status for a list creates uncertainty. Further, while the preferential rules aim to protect national minorities, the provisions are open to abuse by contestants aiming to gain easier representation in parliament and access to public funding.

72. Most previous recommendations related to campaign finance remain unaddressed and as such there are inadequate mechanisms for the effective verification of donations or checks on expenditure. The APC, which is responsible for oversight of campaign finance, published campaign finance reports of the contestants

in a timely manner. However, expenditure incurred prior to candidate registration, on in-person campaign events and on Google Ads is not monitored. Third-party campaigning is prohibited but the law does not provide for sanctions. Overall, the regulatory framework does not ensure the transparency, integrity, and accountability of campaign finances.

73. The use of administrative resources in the campaign is prohibited by law but can be easily circumvented. Numerous public employment contracts were issued in the election period. There was a lack of clear distinction in the campaign between the role of some candidates also serving as senior officials, including in their activities on social networks.

74. The Parliamentary Assembly recommends to the authorities of Montenegro to address all shortcomings and issues noticed during this election observation and highlighted throughout this report and particularly in its conclusions, in the spirit of the Reykjavík Summit of Heads of State and Government where Heads of States and Government adopted the Reykjavík Principles of Democracy to secure and strengthen democracy and good governance and "encourage democratic participation at national, regional and local levels through free and fair elections".

75. The Assembly is willing to contribute to the accomplishment of this process within the framework of the Assembly's post-monitoring procedure and in close co-operation with the Venice Commission.

Appendix 1 – Composition of the ad hoc committee

Based on the proposals by the political groups of the Assembly, the ad hoc committee was composed as follows

Chairperson, Mr Reinhold LOPATKA, Austria

Socialists, Democrats and Greens Group (SOC)

– Mr Adnan DIBRANI, Sweden
– Mr Constantinos EFSTATHIOU, Cyprus
– Ms Edite ESTRELA, Portugal
– Mr Domagoj HAJDUKOVIĆ, Croatia
– Ms Cécile HEMMEN, Luxembourg
– Mr Stefan SCHENNACH, Austria

Group of the European People's Party (EPP/CD)

– Mr Corneliu-Mugurel COZMANCIUC, Romania
– Mr Reinhold LOPATKA, Austria
– Ms Jorida TABAKU, Albania

Alliance of Liberals and Democrats for Europe (ALDE)

– Mr Jacques LE NAY, France
– Mr Andrii LOPUSHANSKYI, Ukraine
– Ms Fiona O'LOUGHLIN, Ireland
– Ms Liliana TANGUY, France

European Conservatives Group and Democratic Alliance (EC/DA)

– Mr José Maria SANCHEZ GARCIA, Spain
– Mr Harald WEYEL, Germany

Venice Commission

– Ms Renata TARDIOLI, Member, Venice Commission
– Mr Michael JANSSEN, Administrator, Venice Commission

Secretariat

– Mr Bogdan TORCĂTORIU, Senior Elections Officer, Election Observation and Support Division
– Ms Carine ROLLER-KAUFMAN, Assistant, Election Observation and Support Division

Appendix 2 – Programme of the electoral delegation of the Parliamentary Assembly

Friday 9 June 2023

09:00-09:45 Delegation meeting
- Welcome by the Head of the delegation, Mr Reinhold Lopatka
- Interventions of Ms Renata Tardioli, Member of the Venice Commission
- Practical information from the secretariat

10:00-10:15 Welcoming remarks by the Heads of Parliamentary Delegations
- Mr Reinhold Lopatka, PACE
- Mr Nikos Papandreou, EP

10:15-12:30 Briefing by the OSCE/ODIHR EOM Core Team (Part 1)
- Ms Nina Suomalainen, Head of Mission – Welcome and overview of the EOM's work
- Ms Elissavet Karagiannidou, Legal Analyst – Legal Framework, Campaign Finance and Election Dispute Resolution
- Mr Rocco Giovanni Dibiase, Election Analyst – Election Administration, Voter Registration and Candidate Registration
- Ms Daria Paprocka, Political Analyst – Political Landscape, Candidates, Campaign, Participation of Women and National Minorities
- Mr Pietro Tesfamariam, Media Analyst – Media landscape and election campaign coverage

14:00-15:30 Campaign freedoms and analysis panel
- Mr Dejan Milovac, Deputy executive director and director of Investigative center – MANS (Network for the affirmation of non-governmental sector)
- Ms Ivana Đođić, Legal Advisor – Civic Alliance
- Ms Milena Bešić, Executive Director – CEDEM (Centre for Democracy and Human rights)
- Ms Milica Kovačević, Programme Director – CDT (Centre for Democratic Transition)
- Ms Milena Muk, Public policy researcher – Institute Alternative

15:30-17:00 Panel discussion with representatives of the media
- Mr Boris Raonić, Managing Director – RTCG Radio Television of Montenegro
- Mr Srdan Kosović, Editor in Chief – Vijesti
- Mr Mladen Milutinović, Executive Director – Dan
- Mr Draško Đuranović, Editor in Chief – Pobjeda
- Ms Bojana Dabović, Journalist – Gradska RTV
- Mr Darko Šuković, Executive director and editor in chief – Antena M

17:15 Meeting with drivers and interpreters

Saturday 10 June 2023

9:00-10:15 Meetings with leaders and representatives of the main candidates lists:
- Together – For the Future that Belongs to You (Zajedno – za budućnost koja ti pripada)
- Democratic Party of Socialists (DPS), Social Democrats (SD), Liberal Party (LPCG) and Democratic Union of Albanians (DUA) – Mr Nikola Rakočević, party Presidency member (DPS)
- Europe now! Movement, United Montenegro (UCG), Justice and Reconciliation Party (SPP), CIVIS, Alternativa Montenegro, Novska List, Durmitor Initiative – Mr Vasilije Čarapić, party Presidency member (Europe now! Movement)
- Courage Counts (Hrabro se broji)
- Democrats (DCG) and United Reform Action (URA) – Mr Aleksandar Klarić, Chief of Cabinet of the President of Democrats

– For the Future of Montenegro (Za budućnost Crne Gore)
– New Serb Democracy (NOVA), Democratic People's Party (DNP), Workers' Party (RP) – Ms Jovana Todorović, spokeswoman of DNP

10:15-11:30 Meetings with leaders and representatives of candidates lists of the political parties and national minorities

– For Our House (Za našu kuću) Social Democratic Party (SDP) – Ms Amina Cikotić, party Presidency member (SDP)
– Montenegro First – Reforms for the Salvation of the Country (Prvo Crna Gora – Reforme za spas zemlje) – Movement for Changes (PzP) – Ms Branka Bošnjak, vice president of the party (PzP)

The national minorities candidates lists:

– Albanian Alliance – (Albanska alijansa – Aleanca shqiptar)
– New Democratic Force (FORCA), Democratic Party (PD), Democratic League in Montenegro (LDMZ), Movement for Tuzi (LpT) – Mr Besmir Murati, member of the Main committee (FORCA)
– It is Clear (Jasno je) – Bosniak Party (BS) – Mr Admir Adrović, party Presidency member (BS)
– On the Right Side of the World (Na pravoj strani svijeta) – Croatian Civic Initiative (HGI) – Ms Blanka Radošević – Marović, party Presidency member (HGI)

11:30-12:30 Election administration

Meeting with the President and members of the State Election Commission

– Ms Nataša Pešić, member
– Ms Vera Mijatović, member
– Mr Haris Mekić, member
– Ms Jadranka Milošević, member

12:30-13:30 Briefing by the OSCE/ODIHR EOM Core Team (Part 2)

– Mr Rocco Giovanni Dibiase, Election Analyst – Election Day procedures
– Mr Robert Bystricky, Statistical Analyst – Short term observers reporting
– Ms Katarzyna Witt, Security briefing

13:30-14:00 Area specific briefing by long term observers (LTO 1), Podgorica

Sunday 11 June 2023: Election Day

06:30-20:00 Observation of the voting

Monday 12 June 2023

08:00-09:00 Internal PACE delegation meeting

14:30 Joint press conference

Appendix 3 – Press release

Montenegro's parliamentary elections pluralistic and well-run but legal reform still needed, international observers say

PODGORICA, 12 June 2023 – Montenegro's early parliamentary elections were competitive and voters were offered a wide range of choices, but the process was weakened by legislative shortcomings as well as divisive campaign rhetoric and a polarised media environment, international observers said in a statement today.

The joint observation mission from the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament (EP) found that the elections were well managed and the legal framework provides a basis for holding democratic elections, despite a number of gaps and inconsistencies, leaving most previous recommendations unaddressed.

"Voters had an array of choices to make in yesterday's elections, and fundamental freedoms were respected throughout the campaign," said Nina Suomalainen, head of the ODIHR election observation mission. "But looking ahead, there is a clear need for election reform to close the remaining gaps and ambiguities and strengthen the system for future elections."

The elections took place against the backdrop of a lengthy institutional and constitutional crisis. The legal and political uncertainty over the date of the elections contributed to the low-key start to the campaign, which only picked up in the two weeks before voting day. During the campaign, some candidates resorted to populist and divisive rhetoric, often on national and religious grounds. While the use of public resources is banned by law during the campaign, numerous public employment contracts were issued in the election period. There was also a lack of clear distinction between the role of some candidates who are also senior officials, including in their activities on social media.

Women remain under-represented in political life, mostly because the parties fail to promote their participation beyond the legal minimum. Gender stereotypes are widespread, and observers also noted concerns that violence against women deters many from becoming involved in political life and standing as candidates, with online attacks posing a particularly acute problem.

"With 15 candidate lists, the elections were competitive and all candidates enjoyed equal opportunities in the campaign," said Reinhold Lopatka, head of the PACE delegation. "However, women remained under-represented; the culture of gender equality is still low and violence against women who enter politics is not uncommon – particularly on social media."

Long-standing concerns over voter list accuracy continued to weaken public trust in voter registration. At the same time, the candidate signature collection process needs additional safeguards to avoid abuse. Election day itself was calm and professionally managed, although some procedural safeguards were not always followed during the counting.

"The elections were well run, and we hope the new parliament will provide the support to the government necessary to make the long-awaited and much-needed reforms," said Nikos Papandreou, head of the EP delegation. "These will only be possible when there is a stable and consensual political environment, a political space where partisan differences will not be an obstacle to an inclusive and equitable growth."

The media environment is free and diverse, but it is polarised along political lines. The public broadcaster met the legal requirements for offering free airtime and organising election debates, but most of the election coverage was broadcast on its less popular channel.

The international election observation mission to the early Montenegrin parliamentary elections totalled 147 observers from 27 countries, consisting of 122 ODIHR-deployed experts and long-term and short-term observers, 19 parliamentarians from PACE and 6 from the EP.

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