

INTERIM REPORT
14 September – 27 September 2012

28 September 2012

I. EXECUTIVE SUMMARY

- Following the dissolution of the parliament on 26 July 2012, early parliamentary elections were called by the President for 14 October. These elections will be the third parliamentary elections since Montenegro declared independence on 3 June 2006, and the first since the opening of European Union accession negotiations.
- Parliamentary elections are regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. Amendments to the electoral law in 2011 sought to harmonize it with the Constitution, changing provisions for the representation of minorities and both genders. The newly amended Law on Political Party Financing will also be implemented for the first time in these elections.
- The elections are administered by a three-tiered system. Following the recent amendments to the electoral law, election commissions now enjoy greater political pluralism at all levels. State Election Commission's (SEC) sessions are public and all decisions are published on its website. Two complaints were filed regarding the composition of Municipal Election Commissions (MEC); in both cases, the Administrative Court ruled in favor of the complainant.
- The SEC announced that 512,387 voters are currently registered. In an extraordinary session on 21 September, the parliament agreed to extend the validity of expired identification cards to prevent the potential disenfranchisement of approximately 73,000 voters. Voter list inaccuracies are featured prominently in the media; they are also emerging as a campaign issue.
- The SEC registered 13 candidate lists with a total of 840 candidates. In these elections, the governing coalition is challenged by the largest parliamentary opposition party, the Socialist People's Party, the newly established Democratic Front, which is a coalition of two opposition parties, as well as a new party, Positive Montenegro.
- The official campaign began on 20 September and has been calm but negative in tone. Larger political parties launched their campaigns with rallies. A number of OSCE/ODIHR Limited Election Observation Mission's (LEOM) interlocutors have raised concerns about potential misuse of administrative resources.
- The media landscape is diverse. Public media are obliged to provide both free and paid broadcast time for campaigning on an equal basis. The OSCE/ODIHR LEOM media monitoring of five television channels and four newspapers began on 20 September with the official start of the political campaign.

- The OSCE/ODIHR LEOM opened in Podgorica on 12 September with a core team of 10 experts and 12 long-term observers, deployed on 19 September throughout the country.

II. INTRODUCTION

Following an invitation from the Ministry of Foreign Affairs and European Integration, and based on the findings and conclusions of a Needs Assessment Mission (NAM) conducted from 14 to 16 August 2012, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established a Limited Election Observation Mission (LEOM) to observe the 14 October 2012 early parliamentary elections. The LEOM opened in Podgorica on 14 September 2012. It is led by Ambassador Geert-Hinrich Ahrens and consists of a core team of 10 experts based in Podgorica and 12 long-term observers (LTOs) who were deployed on 19 September throughout the country. The mission members are drawn from 12 OSCE participating States. In line with the OSCE/ODIHR methodology for LEOMs, the mission will not undertake a comprehensive observation of election day proceedings, but will visit a number of polling stations across the country.

III. POLITICAL CONTEXT

The 14 October elections will be held three and a half months after the European Union decided to open accession negotiations with Montenegro. The elections were due to take place in the spring of 2013. The governing coalition, European Montenegro, comprising the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP), has stated that it needed a fresh mandate for a full four-year term to continue the accession negotiations. On 26 July, the motion in favor of early elections was passed with 47 votes from DPS, SDP and the Bošnjak Party (BS) against 27 votes from the opposition. On 31 July, President Filip Vujanović called the elections for 14 October. These will be the third parliamentary elections since independence was declared on 3 June 2006.

There have been major changes in the political landscape since the last elections in March 2009. In 2010, Milo Đukanović, a leading political figure for the last 20 years, relinquished the post of prime minister in favor of Igor Lukšić, the former minister of finance. Mr. Đukanović, however, remains the DPS party leader. The SDP is led, as in 2009, by Ranko Krivokapić, speaker of the parliament. For these elections, the coalition, European Montenegro, led by Milo Đukanović has been joined by the Liberal Party of Montenegro (LPCG), led by Andrija Popović.

The largest opposition party in these elections, with 16 seats in the outgoing parliament, is the Socialist People's Party (SNP), led by Srdan Milić. The SNP runs independently. However, several prominent SNP personalities, including former SNP leader Predrag Bulatović, have joined the Democratic Front (DF), established in July 2012, and led by Miodrag Lekić, a former Montenegrin foreign minister. The DF coalition comprises the New Serbian Democracy party (NOVA, 8 seats) and the Movement for Changes (PzP, 5 seats). A new centre-left opposition party formed in May 2012, Positive Montenegro (PCG), led by Darko Pajović, is running independently.

Two pro-Serb coalitions (Serbian National Alliance and Serbian Unity), both composed of several small non-parliamentary parties, will contest these elections. The Party of Pensioners and Disabled Workers, and the Yugoslav Communist Party of Montenegro, are registered as the coalition Together (*Zajedno*).

According to the electoral law, an electoral contestant (candidate list) is considered a minority contestant if it represents a specific minority or a minority national community that makes up no

more than 15 per cent of the population, according to the last census.¹ Bošnjaks constitute 8.65 per cent of the population and are represented by the Bošnjak Party (BS). The Albanian minority constitutes 4.9 per cent of the population and is represented in four lists: New Democratic Force (Forca), the For Unity Coalition, the Albanian Coalition, the Albanian Youth Alliance (AOA), defined as a citizens' group, and the Democratic Union of Albanians (DUA), an independent party. The only Croatian minority party contesting these elections is the Croatian Civic Initiative (HGI).

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Parliamentary elections are regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. The Constitution and the Law on the Election of Councilors and Representatives (electoral law) are the primary pieces of legislation regulating parliamentary elections. They are supplemented by various laws, including the Law on Political Parties, the Law on Political Party Financing, the Law on the Voter Register, as well as various media and broadcasting legislation, and decisions and regulations of the State Election Commission (SEC).

The electoral law was initially adopted in 1998 and amended several times, most recently in 2011. In June 2011, the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission) concluded in a Joint Opinion that the amendments to the law generally represented a positive development, while some further improvements were recommended.²

The Constitution establishes a unicameral parliament of 81 deputies, who are elected for four-year terms in a single nationwide constituency through a proportional list system.³ Where previously reserved seats were held for a minority constituency encompassing several areas populated primarily by the Albanian minority, following a legal reform process in 2011, these provisions were changed in order ensure greater minority representation and to comply with the constitutional requirement that minorities should receive "authentic representation."⁴ The law has been amended in two areas, reducing signature requirements and seat allocation thresholds for minority lists.

In order to participate in the allocation of seats, a candidate list must receive a minimum of three per cent of the valid votes. If a minority population is not represented by a party that meets the national threshold, it is then reduced to 0.7 per cent of the valid votes. A further exception is provided for the Croatian minority, which constitutes less than 2 per cent of the population, the threshold for which is 0.35 per cent.⁵

The Constitution guarantees equality based on gender to all citizens.⁶ As part of the reforms of the electoral law, a quota for the under-represented gender has been introduced. The quota requires that all lists must have 30 per cent candidates from the under-represented gender to be valid.⁷ However, it remains to be seen how this will impact female representation in the parliament, as the law does

¹ See Article 94(3) of the electoral law.

² The Joint Opinion on the Draft Law on Amendments to the Election Law of Councilors and Members of Parliament of Montenegro (CDL-AD(2011)11, adopted on 17 June 2011. Available at <http://www.osce.org/odihr/elections/93229>.

³ See Article 83 and 84 of the Constitution.

⁴ See Article 79.9 of the Constitution.

⁵ See Article 94 of the electoral law.

⁶ Montenegro ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 2006.

⁷ See Article 39(a) of the electoral law.

not require that women candidates be ranked high enough on the list to have a realistic opportunity of being elected.

V. ELECTION ADMINISTRATION

The early parliamentary elections will be administered by a three-level structure of election commissions: the SEC, 21 Municipal Election Commissions (MECs) and some 1,155 Polling Boards (PBs). The SEC and MECs are full-time bodies appointed for four-year terms by the parliament and local councils respectively, while PBs are formed by MECs for each election.

Amendments to the electoral law ensure representation of opposition at all levels. The parliament is now required to appoint 5 of the 11 permanent SEC members from opposition party nominees.⁸ Local councils are required to appoint 2 nominees from the 2 largest opposition parties in the last election as permanent MEC members. The MEC must also ensure that PBs have a political representation as provided by law. In addition to the permanent composition, all submitters of registered candidate lists can appoint authorized representatives to election commissions.

The SEC holds sessions on a regular basis. The sessions are open for observers and all decisions are published on the SEC website in a timely manner. These include decisions regarding the registration of candidate lists and the preliminary number of registered voters. Following an official complaint by the SNP, the SEC is administering elections in the municipality of Andrijevica, replacing an MEC that was not yet established. In a similar case, a local council resolved the composition of the MEC Kolašin, which was challenged on the ground of lack of balance in political party representation (*see complaints and appeals section*).

VI. VOTER REGISTRATION

The Constitution provides that the right to vote shall be granted to every Montenegrin citizen 18 years or older, resident in the country for at least twenty-four months.⁹ The law also stipulates that voters who are temporarily resident abroad must vote in country at the polling station of their last permanent residence. However, the law requires no proof of residency and does not provide mechanisms for the verification of the duration of residency. The residency requirement has been noted in past OSCE/ODIHR reports as overly restrictive, with a recommendation that it be removed from the Constitution and the electoral law.¹⁰

Montenegro has 21 separate voter registers, which are maintained by the respective municipal authorities. The voter registration process is passive in that voter data is updated automatically based on information provided by local offices of the Ministry of Interior. The registers are linked to a voter database held by the Ministry of Information Technology and Telecommunications. However, this Ministry does not have the authority to amend data provided by the municipalities. Citizens may check their entries at municipal offices, on a website, or by SMS services.¹¹

As of 20 September, the SEC announced that 512,387 voters were registered to vote; an increase of some 2.75 per cent since the early parliamentary elections in 2009. According to the 2011 census, the population of the country is 625,266. Deadlines for delivery of voter registers to the MECs were

⁸ The SEC chairperson and five commissioners represent the ruling party, the secretary and three other members are nominated by the opposition and one member represents an opposition national minority party.

⁹ See Article 45, *Id.*

¹⁰ See past OSCE/ODIHR reports at: <http://www.osce.org/odihr/elections/montenegro/66888>.

¹¹ <http://www.biraci.me/>

generally met, with the exception of three municipalities.¹² Any changes in the voter registry after it is closed (19 September, 25 days before election day) may only be made by the local government Chief Administrator. This decision can be appealed to the Administrative Court no later than 10 days before election day.¹³ The decision of the Court is final.

Opposition parties have raised concerns over the inconsistency between the census and voter register data, duplications in the register and the likelihood of many Montenegrins permanently residing abroad remaining on the register. Issues related to the quality of voter registration data feature prominently in the media and are emerging as a campaign issue.

Citizens are currently required to switch to new biometric identification cards. The validity of previous identification cards expired in July 2012. However, in an extraordinary session of parliament on 21 September, it was decided to extend the validity of expired identification cards issued after 1993 until 31 December 2012 to prevent the disenfranchisement of approximately 73,000 voters. Still, some Montenegrin citizens have identification cards that were issued before 1993, which remain invalid. The SEC has informed the OSCE/ODIHR LEOM that the acceptance of the pre-1993 identifications for voting in these elections is still under consideration.¹⁴

VII. CANDIDATE REGISTRATION

To stand for election, a citizen of Montenegro must be entitled to vote and have permanent residence in Montenegro for a minimum of 24 months prior to elections. Political parties may contest elections separately or form a coalition, submitting one candidate list. Candidate lists can also be submitted by groups of voters.¹⁵

There are three different requirements on the number of candidate list support signatures that need to be submitted by parties, coalitions and groups of voters. A political party or a coalition must submit signatures from one per cent of the total number of voters (4,983 signatures for these elections). Parties and groups of voters representing a specific minority or a national minority community of up to 15 per cent of the total population need to submit 1,000 support signatures. Finally, for those representing a minority constituting up to two per cent of the population, the requirement is 300 signatures. Independent candidacy is not provided for.

The SEC verifies the Unique Identification Number (UIN) associated with the supporting signature to check that the voter has not signed multiple lists. The SEC invalidates all signatures where a UIN has been used more than once. The law, however, does not regulate signature verification procedures. The SEC has decided to verify signatures only until the number of valid signatures reaches the minimum required by the law.

A total of 13 candidate lists were submitted by the 20 September deadline. Following corrections from two parties, the SEC approved all 13 lists.¹⁶ In total, 840 candidates will be competing for 81 parliamentary seats. All registered candidate lists meet the requirement of the 30 per cent gender quota.

¹² MECs in Podgorica, Danilovgrad, and Cetinje had not received the voter register by the 20 September deadline.

¹³ See Article 13 of the Law on the Voter Register.

¹⁴ In the April 2012 local elections, the SEC did not accept these identification cards. The OSCE/ODIHR LEOM interlocutors from the opposition estimate that this had affected 2,000-3,000 citizens.

¹⁵ In these elections AOA is the only group of voters to submit a list.

¹⁶ The AOA and *Serbian Unity* resubmitted their lists within the 48 hours provided for by law and their lists were approved on 22 September.

VIII. THE CAMPAIGN AND CAMPAIGN FINANCE

The electoral campaign began formally on 20 September following the registration of candidate lists. It ends with the start of the campaign silence period, 24 hours before the opening of polls. The electoral law requires participants to respect the Constitution, Laws on Professional Ethics and “good behavior,” and to refrain from offensive and slanderous statements. Nevertheless, the campaign has begun with a negative tone. There have been sharp personal attacks among the contestants. The opposition accuses the ruling coalition of hiring new state employees and uses the prospect of employment with state affiliated industries to gain more votes. The ruling DPS/SDP coalition and the opposition agree, however, on EU membership and the need for reform.

The campaign began with large rallies by the major parties. Milo Đukanovic launched the DPS campaign in Pljevlja on 20 September. He drew attention to the government’s achievement on EU accession negotiations, and launched sharp personal attacks on opposition leaders. The opposition SNP launched their campaign the same day in Mojkovac. The SNP leader, Srđan Milić, emphasized the economic crisis and corruption. DF leader, Miodrag Lekić, launched their coalition campaign with a public meeting in Podgorica on 23 September.

In addition, the larger political parties have begun campaigning through the use of billboards, newspaper and television advertisements, social media and door-to-door efforts.

A newly amended Law on Political Party Financing came into force on 1 January 2012. Political parties are obliged to submit annual reports to the tax authorities, the State Audit Institution, and the SEC. With regard to elections, parties and coalitions are obliged to submit details of the sources, levels and types of donations, including donations in kind, and campaign expenditures within 30 days after the election. The SEC is responsible for publishing reports from political parties on its website within seven days of receipt. Furthermore, during the campaign, political parties must report donations received every fifteen days to the SEC, starting from the date on which their candidate lists were approved. To date, the PCG, whose list was approved on 6 September, and the DF have reported to the SEC, and both reports were published on the SEC website. The DF reported having received no donations so far.

IX. THE MEDIA

The media landscape is diverse and numerous public and private news sources provide a wide range of viewpoints. Television remains the primary source of information in the country, with over 20 national and local television channels. Recent changes in the media landscape included the launch of *Vijesti TV* and the establishment of the newspaper *Dnevne Novine*.¹⁷ According to a report by the OSCE Mission to Montenegro, media freedoms are limited by “political pressures from the authorities and from various parties, low democratic awareness among citizens, but also the poor economic situation of the media companies and low salaries of journalists.”¹⁸

The Constitution guarantees the freedom of expression, ensures the freedom of the press and access to information, and prohibits censorship.¹⁹ The coverage of the election campaign by the media is

¹⁷ First edition published on 10 October 2011.

¹⁸ “The Media, Media Freedoms and Democracy in Montenegro”, October 2011, available at: <http://www.osce.org/montenegro/84761>.

¹⁹ See Articles 47, 49, 50, and 51 of the Constitution.

regulated in the electoral law, the Electronic Media Law and the Law on Public Broadcasting Services. Provisions on defamation were removed from the Criminal Code in 2011.

The electoral law contains new regulations for the media during the electoral campaign, granting both free and paid broadcasting time for campaigning on equal terms to all electoral contestants. The national public service broadcaster, Radio and Television Montenegro (RTCG), is required to guarantee equal conditions for paid broadcasting for all contestants and advertisements are required to have a disclosure “paid electoral advertisement.”²⁰ In addition, the electoral law provides for a clear distinction in the coverage of state authorities and political parties by the electronic media. Coverage of the electoral campaign on public television and radio is further regulated by the RTCG’s internal code, approved by an independent committee that supervises its work. According to these provisions, during the campaign period each registered contestant is entitled to the allocation of an equal amount of time in the news programs, up to 30 minutes of free airtime, three brief three-minute reports from candidate rallies, and 10 minute reports from the contestants’ opening and closing rallies. In addition, the RTCG will televise 10 debates among all the registered contestants.²¹ The allocation of free airtime was agreed upon in a meeting with political parties on 24 September, while the order of appearance in debates will be decided by lottery.

Following recent amendments to the electoral law, a new parliamentary board has been established to observe the application of the electoral legislation related to the media and to consider media-related complaints.²² The parliamentary board does not have the authority to directly sanction media in violation of electoral law provisions. Such cases are referred to the Agency for Electronic Media and other competent media authorities for further action. In addition, the establishment of two media self-regulatory bodies was announced in March 2012. While the body for private and local media outlets is functioning and has approximately 20 members, the body for public and national media is not yet active.

On 20 September, the OSCE/ODIHR commenced its quantitative and qualitative monitoring of primetime campaign coverage. This includes five TV channels for six hours of prime time per day (18:00–00:00hrs)²³ and four newspapers with nationwide coverage.²⁴

X. COMPLAINTS AND APPEALS

The Constitutional Court is mandated to adjudicate complaints challenging the legality and constitutionality of the electoral legal framework. Additionally, the Constitutional Court hears appeals of SEC decisions. While not limited by law, in practice, the Court only hears cases related to election day activities. Complaints regarding the formation of election commissions are heard by the Administrative Court.

The electoral law outlines the procedures for the filing of complaints against decisions, actions and inactions of election commissions. Voters, candidates and submitters of candidate lists have the right to file complaints to higher-level election commissions (SEC or MEC as relevant), with the Constitutional Court acting as a court of last instance.²⁵

²⁰ See Articles 50 and 54 of the electoral law.

²¹ Nine 60-minute debates between 25 September and 10 October 2012 and a final debate scheduled for 11 October 2012 with duration between 90 and 120 minutes.

²² The board is comprised of 10 members equally representing the parliamentary majority and the parliamentary opposition with decisions taken by a majority vote.

²³ State-owned *RTCGI*; privately owned *TV IN*, *PINK M*, *VIJESTI TV*, *ATLAS*.

²⁴ State-owned *Pobjeda*; privately owned *Vijesti*, *Dan* and *Dnevne Novine*.

²⁵ See Articles 106-111 of the electoral law.

Timelines for the submission and consideration of complaints are established in the electoral law and the Law on the Constitutional Court.²⁶ The electoral law stipulates that the relevant election commission has 24 hours from receipt of a complaint or appeal to investigate and consider the matter. The Constitutional Court has 48 hours to consider election-related appeals. It has been noted in previous OSCE/ODIHR reports that these timeframes are short and may not be sufficient to guarantee due process in all cases. Furthermore, although the SEC reports that it applies fundamental principles of due process in handling complaints, these procedures are not set out in the law or the SEC rules.

Two complaints relating to the formation of MECs have been received by the Administrative Court from the SNP. These complaints concerned the appointment of SNP officials to MECs by the local councils of Andrijevica and Kolašin. In both cases, the Court ruled in favor of the complainant, finding that SNP was not correctly represented on the newly formed MEC. In Kolašin, the Administrative Court ordered the local council charged with forming the MEC to revise its previous decision. Following the court order, the secretary post was assigned to the SNP.

Election-related, criminal offences including campaign violations are handled by the Ministry of Interior and the State Prosecutor, and are adjudicated by regular courts. No such cases have been reported to the OSCE/ODIHR LEOM to date.

XI. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the OSCE/ODIHR LEOM met representatives of the Ministry of Foreign Affairs and European Integration, the SEC, the Constitutional Court, political parties, civil society, media, and the international community. Twelve LTOs deployed in teams of two are meeting regional stakeholders and observing electoral campaign events.

The OSCE Parliamentary Assembly and the Parliamentary Assembly of the Council of Europe will deploy observer delegations for election day observation. The OSCE Chairperson-in-Office has appointed Mr. Roberto Battelli as Special Co-ordinator to lead the short-term observer mission.

²⁶ See Articles 107, 109 of the electoral law.