



Office for Democratic Institutions and Human Rights

MONTENEGRO

PRESIDENTIAL ELECTION

19 March 2023

ODIHR NEEDS ASSESSMENT MISSION REPORT

24-27 January 2023



Warsaw
3 February 2023

TABLE OF CONTENTS

I. INTRODUCTION.....	1
II. EXECUTIVE SUMMARY.....	1
III. FINDINGS	3
A. BACKGROUND	3
B. ELECTORAL SYSTEM AND LEGAL FRAMEWORK	5
C. ELECTION ADMINISTRATION	5
D. VOTER REGISTRATION.....	6
E. CANDIDATE REGISTRATION	7
F. ELECTORAL CAMPAIGN	8
G. CAMPAIGN FINANCE.....	8
H. MEDIA.....	9
I. COMPLAINTS AND APPEALS	10
J. CITIZEN AND INTERNATIONAL OBSERVERS	11
IV. CONCLUSIONS AND RECOMMENDATIONS.....	11
ANNEX: LIST OF MEETINGS.....	12

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I. INTRODUCTION

In anticipation of an invitation by the authorities of Montenegro to observe the 19 March 2023 presidential election and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 24 to 27 January. The NAM comprised Goran Petrov and Kseniya Dashutsina, ODIHR Election Advisers.

The purpose of the mission was to assess the pre-election environment and the preparations for the presidential election. Based on this assessment, the NAM should recommend whether to deploy an ODIHR election-related activity for the forthcoming election and, if so, what type of activity best meets the identified needs. Meetings were held with officials from the election administration, state institutions, representatives of political parties, media, and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs, the State Election Commission as well as the OSCE Mission to Montenegro for their assistance and cooperation in organising the visit. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the mission and share their views.

II. EXECUTIVE SUMMARY

On 16 January, in line with the constitutionally set timeframes, the Speaker called a presidential election for 19 March. To be elected in the first round, a candidate must receive more than 50 per cent of valid votes. Otherwise, a second round between the two candidates with the highest number of votes will be held on 2 April.

The political situation in Montenegro remains tense and polarized, characterized by a deepened constitutional and institutional crisis, which impacts the functioning of state institutions. As a result of the recent retirements of judges at the constitutional court and the inability of parliament to reach an agreement on new appointments, currently only three of the seven positions are filled, thus the court lacks a quorum and cannot issue rulings. Many national stakeholders and international partners have repeatedly expressed serious concerns about the inability of the Constitutional Court to function and the consequences on the election process as well as the institutional instability this brings. On 2 November 2022, the parliament adopted amendments to the Law on President, allowing it to propose a candidate for prime minister if it considers that the president failed to do so unjustifiably. This exacerbated the political and institutional crisis, and with the Constitutional Court not functioning, the amendments cannot be challenged.

The electoral legal framework has remained largely unchanged since the last elections. Most prior ODIHR recommendations remain unaddressed, including those related to the need for comprehensive review and harmonization of the legislation, restrictions on voter and candidacy rights, measures against misuse of state resources, transparency of campaign finance, media, dispute resolution and measures to enhance participation of women in political and public life. The majority of ODIHR NAM interlocutors, including political parties and state institutions, noted that the electoral legal framework contains gaps and ambiguities and underlined the need for comprehensive reforms.

The presidential election is administered by the SEC, 25 Municipal Election Commissions (MECs) and some 1,200 Polling Boards (PBs). Women remain underrepresented in election administration, with only 2 SEC members and 4 of the 25 MEC chairpersons being women. The SEC plans to invite media to its sessions and stream its session online. Many ODIHR NAM interlocutors raised concerns about the SEC's politicised nature and voting along party lines by most members. Further concerns were raised about the impact of unresolved disputes from the local elections held in October 2022 and the ability of political parties to replace PB members until 12 hours before the opening of the polls.

Citizens over 18 years of age with permanent residence in Montenegro for at least the last 24 months before election day have the right to vote. The variable application of the length of residency requirement remains a contentious issue, and ODIHR has previously recommended removing it for national elections. As of January 2023, out of 639,123 citizens of voting age, 543,175 are included in the voter register. Several ODIHR NAM interlocutors raised issues with the accuracy of permanent residence data and entries of deceased voters.

Prospective candidates must collect support from 1.5 per cent of the registered voters. Voters can sign in support of only one candidate. Several parliamentary parties informed the ODIHR NAM of their intention to nominate candidates, and several candidates have publicly declared their intention to contest the election. All nominations should be submitted to the SEC by 27 February, 20 days before the elections. Most ODIHR NAM interlocutors did not see obstacles with the candidate registration process but noted that the signature collection process could be open to abuse.

The campaign is expected to be centred around the resolution of the political crisis, prevention of corruption, the economy, and foreign policy. While most ODIHR NAM interlocutors did not raise any issues with the freedom to campaign, many expressed concerns about the anticipated highly polarized campaign environment, negative campaigning and inflammatory rhetoric, and the potential misuse of administrative resources. Many interlocutors also raised serious concerns about hateful rhetoric on social networks. Some also mentioned the active role of the Orthodox Church in the election campaign and expressed concern in this regard.

The party and campaign finance framework has remained largely unchanged since the last parliamentary elections. Several ODIHR NAM interlocutors underlined the need for substantial reform of campaign finance legislation, especially in relation to third-party campaigning and highlighted that legislative gaps often lead to the circumvention of campaign finance rules. The Agency for Prevention of Corruption (APC) is mandated with oversight of campaign finance and the use of state resources of public institutions, including their possible misuse for campaign purposes. The APC does not have investigative powers, and its oversight is limited to verifying the legality of the submitted documents. Some ODIHR NAM interlocutors stated that the lack of dissuasive sanctions for campaign finance violations contributes to impunity. The APC informed ODIHR NAM that it plans to ensure the maximum level of transparency of campaign finance during the upcoming election.

Many diverse media outlets operate in a financially limited advertising market. Several ODIHR NAM interlocutors expressed concern over the impact foreign media may have on the electoral process, including through the spread of disinformation. The legal framework has not been modified since 2020, and according to the Agency for Electronic Media (AEM), several inconsistencies and gaps should be addressed. The public broadcaster plans to provide daily coverage of the election campaign and provide free airtime to candidates. Several ODIHR NAM interlocutors noted a more balanced and inclusive reporting of the public broadcaster following the change of management. The AEM plans to monitor election coverage of several media. In case of violations, the AEM has limited sanctioning powers and can only issue warnings.

Complaints may be filed by voters, candidates and submitters of the candidate lists to the responsible election commission, with the Constitutional Court being the final appellate instance. Most ODIHR NAM interlocutors expressed concern that if an appeal is submitted to the Constitutional Court and it remains pending, this may lead to the interruption of the election process or other unforeseen consequences of legal uncertainty.

In line with OSCE commitments, the law provides citizen and international election observation to all stages of the electoral process. Several civil society organisations expressed their intention to observe the presidential election.

Nearly all ODIHR NAM interlocutors believed that a large-scale election observation activity is needed. They underlined that the assessment by the potential ODIHR election observation activity will be of particular value due to high polarisation and would enhance confidence in the electoral process. Based on the findings of this report, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) for the upcoming presidential election. In addition to a core team of analysts, ODIHR would request the secondment by OSCE participating States of 14 long-term observers to follow the process countrywide, as well as 100 short-term observers for the observation of election day procedures. In line with ODIHR's standard methodology, the EOM would include a media monitoring element.

III. FINDINGS

A. BACKGROUND

Montenegro is a parliamentary republic with a mixed parliamentary and presidential political system, and both institutions are elected by popular vote. The president is the head of state with limited powers.¹ On 16 January 2023, the Speaker called the presidential election for 19 March, within the constitutionally set timeframes.²

In the 2020 parliamentary elections, the ruling Democratic Party of Socialists (DPS) won 30 seats out of the total 81 seats, but the majority was formed by several parties that contested in three coalitions: For the Future of Montenegro with 27 seats, Peace is Our Nation with 10 seats, and In Black and White with 4 seats.³ In December 2021, these political forces agreed on a government, replacing the ruling DPS for the first time since 1990. This government was replaced following a vote of no confidence, and the subsequent government also received a vote of no confidence but remains in power pending the appointment of a new cabinet.⁴

The political situation in Montenegro remains tense and polarized, characterised by a deepened constitutional and institutional crisis, which impacts the functioning of state institutions. In September 2022, the conflict reached a height with President Milo Đukanović, the leader of DPS, and the ruling

¹ These include proposing the candidate for prime minister, representing the state, commanding the army based on the decisions of the Defence and Security Council, appointing ambassadors, accrediting diplomats and appointing two judges of the Constitutional Court.

² By law, the Speaker must call the election latest 120 days before the expiry of the president's mandate, or 20 May 2023. The presidential election should be held between 60 and 90 days after the announcement.

³ Other parties that joined the parliament include the Social Democrats and the Bosniak Party with three seats each, the Social Democratic Party and the Albanian List with two seats each, and the Albanian Coalition received one seat.

⁴ In February 2022, the civic movement United Reform Action (URA) initiated a vote of no confidence and, in April 2022, formed a minority government headed by its leader Dritan Abazović. In August 2022, the Abazović government received a vote of no confidence due to lost support in its course.

majority in the Parliament both threatening to dismiss the other by invoking different constitutionally available tools and accusing each other of breaking the law.⁵

Key judicial and prosecutorial positions remained vacant in 2022, which according to many ODIHR NAM interlocutors, diminishes the adherence to the rule of law, including by the state institutions. The Constitutional Court has been operating with an incomplete composition in recent years.⁶ Since 13 September 2022, as a result of recent retirements and the inability of parliament to reach an agreement on new appointments, currently only three of the seven positions on the Constitutional Court are filled, thus the court lacks a quorum and cannot issue rulings.⁷ Most ODIHR NAM interlocutors expressed serious concerns about the paralysis of the Constitutional Court and possible consequences for the election process.

On 2 November 2022, the parliament adopted amendments to the Law on President, allowing it to propose a candidate for prime minister if it considers that the president failed to do so unjustifiably. This was viewed by the opposition and civil society as not in line with the Constitution and exacerbating the political conflict, but with the Constitutional Court not functioning, there is no opportunity to challenge the amendments. The president refused to sign the law and requested the Venice Commission to provide an opinion on the constitutionality of the amendments.⁸ The law was adopted for the second time on 12 December.⁹ However, the parties in the majority have failed to agree on a cabinet, and most political parties feel early parliamentary elections are the way out of the political impasse.

ODIHR has observed eight elections since Montenegro declared independence from the State Union of Serbia and Montenegro in 2006.¹⁰ Most recently, ODIHR deployed a Limited Election Observation Mission for the 30 August 2020 parliamentary elections. The final report issued in December 2020 contains 23 recommendations, including 6 priority ones, for the authorities to improve the electoral process and bring it closer in line with OSCE commitments.¹¹

⁵ On 19 September, the president refused to accept a nomination for a new candidate for prime minister (PM) submitted by the ruling coalition, arguing that the request did not contain clear evidence of support by a parliamentary majority and submitted a request for the parliament to shorten its mandate. On 20 September, the coalition submitted evidence of 41 signatures proving the support and asked the president to award the mandate. On 21 September, the president stated he would decree the parliament's dissolution if it failed to shorten its mandate. On 22 September, the coalition drafted a request for dismissing the president, claiming that the president broke the Constitution by not designating the PM candidate. However, due to the lack of quorum in the Constitutional Court, the request remained without consideration.

⁶ According to the Constitutional Court, the parliament has attempted to appoint new judges on six occasions since 2020 but failed to reach an agreement on the candidates. The Parliament recently attempted to elect new judges on 27 July, 21 October, and 12 December 2022.

⁷ The Constitutional Court has seven judges in full composition. By law, the parliament votes to elect a new judge by a two-thirds majority on a proposal by the parliamentary committee. If it fails to reach an agreement, the vote is repeated in one month, and the judge can be elected by a three-fifths majority.

⁸ In its 9 December 2022 [Urgent Opinion](#), the Venice Commission found 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.”

⁹ The president is obliged to promulgate the law if it is passed for the second time by the parliament.

¹⁰ See previous ODIHR election-related [reports](#) on Montenegro.

¹¹ In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations.”

B. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

The presidential election is primarily regulated by the Constitution, the 2007 Law on Election of the President (LEP), the 1998 Law on Election of Councilors and Representatives (election law), the 2020 Law on Financing of Political Subjects and Election Campaigns (LFPSEC), and instructions of the State Election Commission (SEC).¹² Montenegro is a party to the major international and regional instruments on democratic elections and is a member of the Council of Europe Venice Commission and Group of States against Corruption (GRECO).¹³

The legal framework has remained largely unchanged since the last elections.¹⁴ Most prior ODIHR recommendations remain unaddressed, including those related to the need for comprehensive review and harmonization of the legislation, restrictions on voter and candidacy rights, measures against misuse of state resources, transparency of campaign finance, media, dispute resolution and measures to enhance participation of women in political and public life. The majority of ODIHR NAM interlocutors, including political parties and state institutions, noted that the electoral legal framework contains gaps and ambiguities and underlined the need for its comprehensive review, as previously recommended by ODIHR.

The president is elected by popular vote for a five-year term. The same person may not serve more than two consecutive terms.¹⁵ To be elected in the first round, a candidate must receive more than 50 per cent of valid votes. Otherwise, a second round between the two candidates with the highest number of votes is held two weeks later, and the candidate with the highest number of votes received is elected.

C. ELECTION ADMINISTRATION

The presidential election is administered by the SEC, 25 Municipal Election Commissions (MECs) and some 1,200 Polling Boards (PBs). The SEC and MECs are permanent bodies that serve four-year terms, and the PBs are appointed for each election. Women remain underrepresented in election administration. Only 2 SEC members and 4 of the 25 MEC chairpersons are women.¹⁶

The permanent SEC membership includes the chairperson and ten members appointed by the parliament from representatives of the majority, the opposition, as well as minorities and civil society or academia.¹⁷ MECs comprise a chairperson and four permanent members appointed by the municipal assemblies. Many ODIHR NAM interlocutors noted that the political composition of the SEC and MECs does not

¹² Other applicable legislation includes the Law on Voter Register, the Law on Political Parties, the Law on Public Assemblies and Public Events, laws on media, the Law on Free Access to Information, the Law on the Constitutional Court, the Criminal Code, the Law on General Administrative Procedures, the Law on Administrative Disputes, the Law on Misdemeanours.

¹³ Including the [1966 International Covenant on Civil and Political Rights](#) (ICCPR), [1965 International Convention on the Elimination of All Forms of Racial Discrimination](#), [1979 Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), [2006 UN Convention on the Rights of Persons with Disabilities](#) (CRPD), [2003 Convention against Corruption](#) and [1950 European Convention on Human Rights](#).

¹⁴ An *ad hoc* parliamentary Committee for a Comprehensive Reform of Electoral and Other Legislation, established in 2018, resumed its activities in November 2021 and held only two meetings in 2022. The draft election law elaborated by the committee addressed some prior ODIHR recommendations, but it has not been formally proposed by the committee and put to the vote in parliament.

¹⁵ 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 maximum two mandates.

¹⁶ MEC members comprise 39 per cent of women.

¹⁷ The SEC chairperson is appointed by the parliament based on open competition. Four SEC members are proposed by the parliamentary majority, four by the parliamentary opposition, one from the minority political group that won the most votes in the previous elections, and one from civil society and academia.

ensure decision-making independent of political influence, with members often voting along party lines. Several ODIHR NAM interlocutors expressed a high degree of confidence in the impartiality of the current SEC chairperson.

The PBs are formed ten days before election day at the latest and comprise a chairperson and four members; the majority and opposition parties in the municipal assemblies each appoint two PB members, and the chairperson positions are allocated proportionally to the assembly seats. The law gives the right to political parties to replace PB members until 12 hours before the opening of the polls, which according to several ODIHR NAM interlocutors, may negatively impact the election-day process. Authorised representatives of the presidential candidates can nominate members with full voting rights to the SEC and MECs 20 days and PBs 5 days before elections.

Some election disputes from the local elections that took place in October 2022 remain unresolved, and as a result, the elections in some municipalities are not finalised. ODIHR NAM interlocutors raised concerns about how this contributes to a contentious atmosphere and the possible impact it may have on the forthcoming election.¹⁸

Election preparations are ongoing, and SEC has already held several sessions and taken several decisions relevant to the upcoming election. The SEC plans to invite media to its sessions and stream its session online. By law, MECs are required to provide all relevant election information and decisions on their websites. The SEC is planning to organize training for election officials and plans to conduct a voter education campaign focusing mostly on election-day procedures. Election materials will also be available in the Albanian language in municipalities with more than five per cent of the Albanian minority population.¹⁹

Most ODIHR NAM interlocutors voiced concerns over the inaccessibility of many polling stations for independent voting of persons with disabilities, despite the legal obligation and the SEC instructions to identify suitable premises.²⁰ In 2022, the SEC introduced several measures to facilitate access to persons with disabilities related to voting booth setup and lower positioning of the voting desk and the ballot box, voting stencil for the visually impaired with metal rings to ensure privacy and the list of candidates produced in braille.

D. VOTER REGISTRATION

Citizens over 18 years of age and permanent residence in Montenegro for at least the last 24 months before election day have the right to vote. ODIHR has previously recommended eliminating the residency requirement for national elections, in line with international good practice. According to the Ministry of Interior (MoI), as of January 2023, out of 639,123 citizens of voting age, 543,175 are included in the voter register. In November 2020, the Constitutional Court annulled the provision of the election law that disenfranchised citizens with intellectual and psychosocial disabilities.²¹

¹⁸ Most ODIHR NAM interlocutors, including the SEC chairperson, stressed the critical impact that the lack of a functional Constitutional Court has on the election conduct and protection of electoral rights, as it is the final instance that considers all appeals on SEC decisions. In Podgorica, Plav and Plevlja, the results are not yet confirmed due to a lack of Constitutional Court decisions on submitted appeals. In Šavnik, the election process has not yet finished due to the blocking of the election process in two polling stations.

¹⁹ The website of Tuzi municipality is available in both the Montenegrin and Albanian languages, but the Ulcinj MEC website is available only in the Montenegrin language.

²⁰ Some ODIHR NAM interlocutors assessed that more than 60 per cent are unsuitable for independent access.

²¹ According to the ODIHR NAM interlocutors, the voting rights of the affected citizens who were previously disenfranchised have been reinstated.

The voter register is a permanent database maintained by the MoI, automatically updated with information extracted from the registers of citizenship, residence, births and deaths.²² Several ODIHR NAM interlocutors raised concerns about the accuracy of the voter register, mainly questioning the accuracy of permanent residence data,²³ entries of deceased voters, and the number of voters compared to the census data.²⁴ Further, some ODIHR NAM interlocutors stated that controversies related to allegations of a high number of voters fictitiously changing their permanent residence shortly before the local elections further reduced trust in the accuracy of the voter register.²⁵

Voters can check their data on the dedicated website or at the municipal offices. The MoI informed ODIHR NAM that they check the voter register for duplicates in advance of each election.²⁶

E. CANDIDATE REGISTRATION

The right to stand as a candidate is granted to every citizen with voting rights who has resided permanently in Montenegro for at least 10 of the previous 15 years. ODIHR has previously recommended revising the length of residency requirement, as it is contrary to international standards and OSCE commitments.²⁷

By law, candidates can be nominated by political parties, coalitions or a group of citizens. Prospective candidates must collect support from 1.5 per cent of the voters registered.²⁸ Voters can sign in support of only one candidate. ODIHR has previously recommended reducing the number of required support signatures and permitting voters to sign in support of more than one candidate to increase political pluralism and bring the process closer in line with international good practice.²⁹ Representatives of several parliamentary parties informed the ODIHR NAM of their intention to nominate candidates, and several candidates have publicly declared their intention to contest the election.³⁰

All nominations should be submitted to the SEC by 27 February, 20 days before the elections.³¹ The SEC then checks the voters' data in the voter register; however, according to the SEC, it does not have the resources to verify the authenticity of the signatures and may not refuse a signature solely based on suspicion that it - or a series of signatures - is forged. As in previous elections, the SEC intends to provide access to citizens to check online if they signed in support of a candidate (i.e. if someone signed in their name). Most of the ODIHR NAM interlocutors did not see obstacles with the candidate registration process, however, some stated that requirements for signature collection could be burdensome for independent candidates and noted several allegations of misuse during the last presidential election.

²² Identification and marking of voters on election day is conducted using electronic devices that store voters' data on the device.

²³ In December 2022, parliament adopted amendments to the 2015 Law on Registers of Permanent and Temporary Residence, tightening the evidential requirements for changing residence, requiring either a rental contract or proof of ownership and strengthening the *ex officio* control mechanisms.

²⁴ Citizens residing abroad keep their permanent resident status in the country unless they request to be deregistered.

²⁵ In 2020, the Constitutional Court removed the six-months length of residency requirement for local elections.

²⁶ The MoI representatives explained they encountered a relatively small number of partial duplicates in previous parliamentary elections due to improper maintenance (cleaning) of the electronic fingerprint intake equipment and stated that they invite citizens to repeat the deposition of fingerprint data in case of such errors.

²⁷ Paragraph 15 of the [1996 UN CCPR General Comment No. 25](#) provides 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." Paragraph 24 of the 1990 OSCE Copenhagen Document provides that any restrictions must be "strictly proportionate to the aim of the law".

²⁸ On 19 January, the SEC decided that for the upcoming elections, the required number of signatures equals 8,101.

²⁹ See paragraph I.1.3.ii of the 2002 Venice Commission [Code of Good Practice in Electoral Matters](#).

³⁰ The candidates do not need to declare to the SEC their intention to start collecting support signatures.

³¹ The SEC posted on its website the candidate registration forms and the signature collection sheet templates.

F. ELECTORAL CAMPAIGN

The law contains various legal deadlines pertaining to the campaign, ODIHR has previously noted the lack of harmonization of the deadlines.³² Several ODIHR NAM interlocutors from state institutions responsible for overseeing campaign finance and media noted that varying deadlines pose challenges in proper oversight of the legislation. Campaigning by third parties on social networks and online media is not regulated.

Political parties met by ODIHR NAM stated that they intend to use traditional campaign methods, including meetings with voters and rallies, door-to-door visits, distributing campaign materials, and campaigning in the media and online. The campaign is expected to be centred around the resolution of the political crisis, prevention of corruption, the economy, and foreign policy. While most ODIHR NAM interlocutors did not raise any issues with the possibility to campaign and convey political messages freely, many expressed concerns about the potentially highly charged campaign environment exacerbated by the significant political and institutional crisis, the use of negative campaigning and inflammatory rhetoric, and misuse of administrative resources. Some ODIHR NAM interlocutors also questioned the active role of the Orthodox Church in the election campaign.

Many interlocutors raised serious concerns about the use of hateful rhetoric on social networks. According to some ODIHR NAM interlocutors, the wide use of social networks during the COVID-19 pandemic exacerbated hateful rhetoric and online threats towards women politicians, which has had a detrimental effect on their participation in political and public life.

G. CAMPAIGN FINANCE

The party and campaign finance framework has remained largely unchanged since the last parliamentary elections, and several previous ODIHR recommendations remain unaddressed.³³ Many ODIHR NAM interlocutors underlined the need for substantial reform of campaign finance legislation, especially in relation to third-party campaigning, and highlighted that legislative gaps often lead to the circumvention of campaign finance rules.³⁴

All candidates are entitled to public funding.³⁵ Candidates can receive monetary and in-kind donations from individuals and legal entities.³⁶ Presidential candidates can receive donations from political parties, which are also entitled to public funding.³⁷ Candidates are required to open a dedicated bank account for all campaign-related transactions, and there are limits on campaign donations.³⁸ Donations from foreign, anonymous, state-funded, non-governmental organisations or religious sources are prohibited. The

³² The election law provides that election campaigning is allowed only after individual registration and ends 24 hours before election day. In contrast, the LFPSEC defines the campaign as activities of political subjects from the day of calling elections until the publication of election results.

³³ These include the need to clarify campaign finance rules and address several gaps and ambiguities, including regulating the use of loans and developing a comprehensive methodology for evaluating in-kind donations, and providing adequate capacity and resources to the APC.

³⁴ According to the APC, the Law on Misdemeanors prescribes that the responsible entities that can be held responsible according to this law are 'legal persons', while the LFPSEC prescribes political and campaign finance obligations on 'political subjects. Consequently, the groups of citizens and coalitions are not covered by the former law.

³⁵ Twenty per cent of the budget is allocated to all registered candidates, and the remaining 80 per cent is divided between candidates who obtained more than three per cent of the votes based on the number of votes received. In case of two rounds, the 80 per cent is divided to give 40 per cent to those who receive more than three per cent of the votes, proportional to the votes received, and the remaining 40 to the two top candidates proportional to the votes received.

³⁶ A legal entity that donated to the party or campaign is banned from participating in public tenders for four years.

³⁷ In 2022, the public funding for parliamentary parties [amounted](#) to EUR 7,24 million.

³⁸ Citizen can donate up to EUR 5,000 to each candidate and legal entities up to EUR 20,000.

campaign expenditure ceiling for each candidate is set at EUR 1.7 million. Several ODIHR NAM interlocutors argued that such a high expenditure limit does not foster a level playing field.

The Agency for Prevention of Corruption (APC) is mandated with oversight of campaign finance and the use of state resources of public institutions, including their possible misuse for campaign purposes. Candidates are obliged to disclose their income and property to the APC and report on received donations every 15 days after the start of the campaign.³⁹ There is no obligation for the APC to publish any conclusions on the submitted reports.

The APC does not have investigative powers, and its oversight is limited to verifying the legality of the submitted documents. The APC can review complaints and act *ex officio*. However, it can only initiate misdemeanour proceedings for possible violations. Some ODIHR NAM interlocutors stated that lacking dissuasive sanctions for campaign finance violations fosters impunity. The APC informed ODIHR NAM that it plans to ensure the maximum level of transparency of campaign finance, and it plans to contract a private agency to collect information on campaign expenditures, including monitoring and documenting the print, broadcast and online media and social networks, the use of billboards and rallies. Most ODIHR NAM interlocutors expressed an overall low level of confidence in the transparency of the party and campaign finance and APC's effectiveness in monitoring campaign finance, partly due to legislative shortcomings.

H. MEDIA

Many diverse media outlets operate in a financially limited advertising market.⁴⁰ Several ODIHR NAM interlocutors expressed concern over the impact of some foreign media on the electoral process, including the spread of disinformation. In 2021, the Criminal Code was amended to protect journalists and other media professionals by imposing harsher punishments for attacks and threats against journalists. However, several ODIHR NAM interlocutors stated that a lack of adequate actions from the authorities often contributes to self-censorship among journalists.⁴¹

The legal framework for the media has not been modified since the last parliamentary elections and includes the Constitution, which guarantees freedom of expression and the press, and prohibits censorship, the Media Law, the Electronic Media Law, the Law on Public Broadcasting Services, the Law on Free Access to Information and the election law. According to the representatives of the Agency for Electronic Media (AEM), there are several inconsistencies and gaps in various laws in terms of election coverage in the media that need to be addressed, mainly due to outdated provisions in the election law. The ODIHR NAM was informed that a draft package of legislative changes related to media was prepared by the government in November 2022, but it is yet to be deliberated by the parliament.⁴²

³⁹ The APC should publish these reports on their website within seven days of receipt. In addition, candidates must submit an interim report on donations and expenditures five days before election day. The final campaign finance report is submitted 30 days after the election day.

⁴⁰ The private national broadcasters include *TV Vijesti*, *TV Prva*, *TV Nova M*, and *Adria TV*, and there are ten more TV stations with regional coverage and 37 radio stations. Print media include private *Vijesti*, *Pobjeda*, *Dan* and *Monitor*, which also have online editions.

⁴¹ According to the ODIHR NAM interlocutors, in 2021 and 2022, there were 50 threats against journalists, mostly posted on social media but also in person, when journalists were covering events, such as citizens' protests.

⁴² The package includes Draft Law on Media, Draft Law on Audiovisual Media Services, and Draft Law on Public Broadcaster and will also regulate online media. According to the 2022 Montenegro Report of the European Commission on Communication on EU Enlargement policy, "In March 2022, the Ministry of Public Administration, Digital Society and Media organised public consultations on the draft media strategy for 2022-2026 and the action plan for 2022-2023. So far, legislative and policy reform processes have been managed through an inclusive approach, with the active involvement of stakeholders from the public sector, civil society and the media."

The election law and the Law on Electronic Media contain general provisions on campaign coverage by broadcasters. The public broadcasters, Radio and Television Montenegro (RTCG, informed the ODIHR NAM that it plans extensive daily coverage of the election campaign, including candidates' rallies and press conferences and providing them with 200 seconds of free advertisements per day, equally distributed among the candidates.⁴³ In addition, RTCG will have two debates with all candidates and separate one-hour interviews with all candidates. Contestants representing national minorities have the possibility to campaign in native languages on the public broadcaster, which provides subtitles. Several ODIHR NAM interlocutors noted a positive change to the more balanced and inclusive reporting of RTCG following the appointment of the new RTCG Council and director in June 2021.⁴⁴

The AEM is mandated to monitor all broadcast media. As required by law, the AEM adopted a rulebook that prescribes equal conditions for contestants and for "truthful, timely and impartial" information to voters. In addition to its regular monitoring, the AEM plans to monitor election coverage of several media during the election period. In case of violations, the AEM has limited sanctioning powers and can only issue warnings.⁴⁵

I. COMPLAINTS AND APPEALS

Complaints may be filed by voters, candidates and submitters of the candidate lists to the responsible election commission, with the Constitutional Court being the final appellate instance. According to the Constitutional Court, it considers appeals of SEC decisions only if the SEC rejects or dismisses the complaints.⁴⁶

By law, complainants have 72 hours to submit complaints to the MEC, which has 24 hours to decide. According to the SEC, this deadline is short and poses challenges when there is a high caseload and several complaints need to be considered concurrently, including on election results. The Constitutional Court has 48 hours to consider appeals. Despite previous ODIHR recommendations, the law has not been amended to further regulate the complaints and appeals procedure.

All ODIHR NAM interlocutors expressed a grave concern about the Constitutional Court lacking a quorum, as only three of the seven posts are currently filled. A minimum of four judges are required for the court to conduct its sessions, but also to reach any decisions. Most ODIHR NAM interlocutors fear that if an appeal is submitted to the Constitutional Court and remains pending due to the court not functioning, this presents a significant legal gap that could lead to the interruption of the election process or other unforeseen consequences of legal uncertainty.⁴⁷

⁴³ Political advertising, both in public and commercial media, should be separated into programme blocks and labelled as such. The same rules apply to the coverage of contestants' campaigns in the news.

⁴⁴ The rating of independent media, according to Freedom House's Nations in Transit, has increased from 2.00 in 2018 to 4.00 in 2022 as "the country's public broadcaster operates with more independence under the new government and self-censorship has eased".

⁴⁵ The AEM can also withdraw the broadcasting license, but the AEM considers such measure excessive compared to the types of violations that typically occur.

⁴⁶ See the March 2018 Constitutional Court [announcement](#).

⁴⁷ The October 2022 local assembly elections were held without having a functional constitutional court, and the MECs, in which disputes on their decision reached the Constitutional Court and were not resolved, mostly ceased election activities and did not confirm election results. As an exception, the MEC in Plav, where an appeal related to registration on one candidate list was left unresolved, decided to continue the election process based on its original decision not to register the list confirmed by the SEC decision on a complaint.

J. CITIZEN AND INTERNATIONAL OBSERVERS

In line with OSCE commitments, the law provides citizen and international election observation to all stages of the electoral process. Several civil society organisations expressed their intention to observe the presidential election, including the work of the SEC and MECs, the campaign environment, campaign finance, and media coverage of the election. At least two citizen observer groups plan to accredit and deploy several hundred observers on election day.

IV. CONCLUSIONS AND RECOMMENDATIONS

Nearly all ODIHR NAM interlocutors believed that a large-scale election observation activity is needed. They underlined that the assessment by the potential ODIHR election observation activity will be of particular value due to high polarization and would enhance public confidence in the electoral process. In discussions with stakeholders, the ODIHR NAM noted particular concerns were raised with respect to the appeals process in case the work of the Constitutional Court remains without a quorum, the conduct of the campaign, including in the media, campaign finance, the impact of foreign media and disinformation on the election process, and the impartiality of election administration, including at the local level.

Based on the findings of this report, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) for the upcoming presidential election. In addition to a core team of analysts, ODIHR would request the secondment by OSCE participating States of 14 long-term observers to follow the process countrywide, as well as 100 short-term observers for the observation of election day procedures. In line with ODIHR's standard methodology, the EOM would include a media monitoring element.

ANNEX: LIST OF MEETINGS

President of Montenegro

Milo Đukanović, President
Tamara Brajović, Adviser for Foreign Politics

President of the Parliament of Montenegro

Danijela Đurović, President of the Parliament
Milisav Ćorić, Adviser to the President of the Parliament

Ministry of Foreign Affairs

Radovan Bogojević, Director General for Multilateral Affairs
Miloš Nikolić, Head, Directorate for OSCE and Council of Europe
Mladen Ilinčić, Directorate for OSCE and Council of Europe

Constitutional Court

Budimir Šćepanović, President
Biljana Damjanović, General Secretary

State Election Commission

Nikola Mugoša, President

Ministry of Interior

Mersudin Gredić, State Secretary
Radovan Popović, Acting Director General of the Directorate for Administrative Affairs, Citizenship and Foreigners
Aleksandra Džankić, Coordinator of the Section for Residence and Travel Documents
Daro Bečanović, Head of Information Technology Service
Zora Čizmović, Head of the Department for Personal Data Protection and Free Access to Information
Dragiša Mugoša, Chief Police Inspector in the Department for Public Peace and Order
Larisa Dervišević, Advisor in the Section for International Cooperation

Agency for Prevention of Corruption

Jelena Perović, Director
Boris Vukašinović, Deputy Director
Marija Madžgalj, Councillor, Party Financing Department

Agency for Electronic Media

Sunčica Bakić, Director
Jadranka Vojvodić, Deputy Director and Head of the Legal and Economic Affairs department
Đorđe Vujnović, Adviser to the Director
Elvira Ceković, Head of the Public Relations and General Affairs Service

Municipal Election Commission Tuzi

Beqir Gjokaj, member
Drita Ruka, MEC Technical staff
Nikolina Lekočaj, MEC Technical staff

Political Party Representatives

Slaven Radunović, MP, Democratic Front - NSD, DNP, RP
Tamara Vujović, MP, Democrats – Demos – Peace is our Nation
Brranka Bošnjak, MP, Democratic Front – PZP
Dragan Vukić, MP, Socialists People's Party
Srđan Pavićević, MP, In Black and White
Daliborka Pejović, MP, Democratic Party of Socialists – DPS
Ivan Brajović, MP, Socialdemocrats of Montenegro
Draginja Vuksinović Stanković, MP, Social Democratic Party SDP – Liberal Party LP
Suljo Mustafić, MP, Bosniac Party
Genci Nimanbegu, MP, Albanian List

Media

Radio Television Montenegro (RTCG)

Ljiljana Savić, editor, Parliamentary channel and Head of the Election Programs
Bojan Terzić, Head of the Information Desk
Boško Rašović, Head of the Department for International Cooperation

Civil Society

Milica Kovačević, Program Director, Center for Democratic Transition
Lazar Grdinić, Investigator, Network for Affirmation of the NGO Sector - MANS
Damir Suljević, programme associate, Centre for Civic Education
Marina Vujačić, Executive Director, Association of Youth with Disabilities of Montenegro
Katarina Bigović Kulić, Deputy director, Union of the Blind of Montenegro
Zlatko Vujović, Director, Centre for Monitoring and Research
Ranko Vujović, Executive Director, Media Self-Regulation Council
Radomir Kračković, President, Media Trade Union

International Community⁴⁸

Representatives of diplomatic missions of Austria, Bosnia and Herzegovina, Denmark, European Union Delegation, Greece, Italy, The Netherlands, Norway, Portugal, the Russian Federation, the Slovak Republic, Switzerland and the United States.

⁴⁸ The ODIHR NAM extended an invitation to representations of all OSCE participating States resident in Montenegro.