



Office for Democratic Institutions and Human Rights

MONTENEGRO

PRESIDENTIAL ELECTION

7 April 2013

OSCE/ODIHR Limited Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the parliament of Montenegro, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) to observe the 7 April 2013 presidential election. The OSCE/ODIHR LEOM assessed compliance of the electoral process with OSCE commitments and other international standards for democratic elections, as well as with national legislation.

The presidential election was professionally and efficiently administered. Candidates campaigned freely and fundamental freedoms of expression, movement, and association were mostly respected. However, the blurring of the line between state and party was at odds with paragraph 5.4 of the 1990 OSCE Copenhagen Document. Allegations of the misuse of state resources and mistrust in public institutions and the judiciary diminished public confidence in the electoral process and should be addressed.

The legal framework regulating the presidential election generally provides an adequate basis for the conduct of democratic elections. However, harmonization of applicable legislation is necessary to eliminate gaps and provide further clarity on the application of key provisions, particularly in regard to the composition of election commissions at the municipal and polling station level, campaign finance regulations, and media coverage of elections.

The election was administered by a three-level election administration, comprised of the State Election Commission (SEC), 21 Municipal Election Commissions, and 1,168 Polling Boards. Participation of opposition political parties is ensured at all levels. Women are under-represented in election administration, with only some 21 per cent of election officials at all levels being women. The training of election officials lacked uniformity impacting the consistent application of the law.

The SEC operated professionally and despite limited resources met legal deadlines. During its sessions, the SEC generally passed decisions by consensus, although a few decisions were made by a split vote, with members voting along party lines regardless of the legal merits. The transparency and accountability of election commissions at all levels was limited with only minimal information on activities being available to the public.

Authorities made significant efforts to implement necessary changes to the voter registers, however this did not sufficiently address continued concern with regard to their accuracy. The authorities acknowledged that a limited number of discrepancies and duplications remain and allegations of widespread inaccuracies in the voter registers were largely unsubstantiated. The 24-month residency requirement to be eligible to vote is excessive and contrary to international good practice.

For the first time, in line with a previous OSCE/ODIHR recommendation, non-citizens were removed from the voter registers. In addition, new biometric identification documents were required in order to vote. While OSCE/ODIHR LEOM interlocutors raised concerns that voters were not properly informed about their removal from the registers and that procedures were not followed in the issuing of biometric

¹ The English version of this report is the only official document. An unofficial translation is available in Montenegrin.

identification cards, only six voters appealed on this basis. The distribution of voter register information, including personal data that easily became available to the general public, is at odds with the Law on Protection of Private Information.

Candidates were required to submit signatures in support of their candidacy from 1.5 per cent of registered voters, contrary to previous OSCE/ODIHR recommendations and international good practice. The requirement that citizens can sign in support of only one candidate and in front of politically-appointed election officials was questioned by a number of OSCE/ODIHR LEOM interlocutors as potentially influencing voters' decisions to support a candidate. The lengthy residency requirement to stand as a candidate is excessive and disproportionate to the principle of equality, challenging international obligations and OSCE commitments.

Two candidates, incumbent president Filip Vujanović, and opposition leader Miodrag Lekić, contested this election. A constitutional challenge to the incumbent's eligibility, having served presidential terms prior to and after independence, was dismissed by the Constitutional Court on the grounds that there was a discontinuity in the legal status of the country after the declaration of independence.

Overall, the campaign took place in a competitive environment, with respect for fundamental human rights and freedoms. In general, the campaign largely focused on mutual personal accusations rather than on programmatic issues. Allegations of the misuse of state resources and vote buying persisted throughout the campaign, diminishing confidence in the electoral process. The continued blurring of the line between State and party challenges paragraph 5.4 of the 1990 OSCE Copenhagen Document.

In addition to public funding, campaigns were financed by individual contributions and political party resources. Candidates were required to submit one report in the pre-election period followed by a final report 45 days after the election. Legislation on campaign finance requires reform in order to address gaps and ambiguities, provide greater proportionality in public financing, and strengthen the institutional oversight of campaign finance regulations.

The media monitored by the OSCE/ODIHR LEOM provided voters with a range of information and opinions. The public broadcaster met legal obligations to provide free airtime to candidates on equal terms. However, unbalanced reporting on government activities in news programmes with no clear distinction between state activities and party campaigning was observed. For this election, there was no effective, independent body with the authority to monitor media's coverage of the campaign and its compliance with legislation. Although the electoral campaign silence period was not respected by major print media, no actions were taken against media that breached the law.

The limited number of election-related complaints during the campaign was attributed by most OSCE/ODIHR LEOM interlocutors to the general lack of public confidence in the judiciary system and investigatory bodies. Short deadlines for certain complaints do not fully guarantee effective redress as provided for by paragraph 5.10 of the 1990 OSCE Copenhagen Document. However, voter registration cases reviewed by the Administrative Court were heard expeditiously, ensuring due process. The lack of guaranteed public hearings in Constitutional Court appeals is not fully in line with OSCE commitments and other international standards. Additionally, there are no formal procedures for submitting complaints to all level election commissions and no procedural guidelines for the processing of complaints.

Election commissions in the limited number of polling stations visited by the OSCE/ODIHR LEOM were well-prepared and the voting process was administered efficiently. New polling station complaint forms

developed by the SEC were used by voters, and complaints were promptly reviewed on election day. Counting and tabulation appeared to have been conducted in a transparent and efficient manner, although further regulation of the tabulation process is needed to ensure consistency, accountability and transparency.

Preliminary election results were not announced until 18:30 on the day after the election. With relatively close results and both candidates declaring victory on election night, the decision not to release preliminary results earlier caused public uncertainty and raised doubts about the integrity of the process among many OSCE/ODIHR LEOM interlocutors.

Following election day, both candidates requested physical inspections of the election materials. Mr. Lekić initially submitted 16 complaints, which were rejected. On appeal, the SEC and subsequently the Constitutional Court upheld all rejections. On 21 April, the SEC announced the final results confirming the victory of incumbent president Vujanović.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the parliament of Montenegro to observe the 7 April 2013 presidential election, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) on 8 March. The OSCE/ODIHR LEOM was headed by Ambassador Boris Frlec and consisted of a 10-member core team based in Podgorica and 12 long-term observers deployed throughout the country. The mission members were drawn from 15 OSCE participating States.

In line with standard OSCE/ODIHR methodology for LEOMs, the mission did not include short-term observers and did not undertake a comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations and followed the tabulation of results in some municipalities. The mission followed electoral proceedings on 7 April jointly with a delegation from the Parliamentary Assembly of the Council of Europe (PACE), headed by Christopher Chope. The OSCE/ODIHR LEOM remained in Montenegro until 13 April and followed post-election developments.

The OSCE/ODIHR LEOM assessed compliance of the electoral process with OSCE commitments and other international standards for democratic elections, as well as domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions released on 8 April 2013.

The OSCE/ODIHR LEOM wishes to thank the authorities of Montenegro for the invitation to observe the elections, the State Election Commission, the Ministry of Foreign Affairs and European Integration, the parliament, the Constitutional and Administrative Courts, other state and local authorities, as well as political parties and civil society for their assistance and co-operation. The mission also wishes to express appreciation to the OSCE Mission to Montenegro and to diplomatic representations of OSCE participating States and international organizations for their co-operation throughout the course of the mission.

III. POLITICAL BACKGROUND

On 18 January 2013, the speaker of parliament called the presidential election for 7 April, in accordance with legal and constitutional provisions. This was the second presidential election since Montenegro

proclaimed independence on 3 June 2006. The first presidential election in 2008 was won by Filip Vujanović of the Democratic Party of Socialists (DPS) with 51.9 per cent of the vote.

This election took place almost six months after the 14 October 2012 early parliamentary elections, in which the Coalition for European Montenegro won 39 of the 81 seats. Although the ruling coalition saw an overall decrease in mandates from the 2009 elections, it maintained control of the parliament through the formation of a coalition government with the Bosniak Party (BS) and the Croatian Civic Initiative (HGI).² A newly established coalition, the Democratic Front (DF), led by Miodrag Lekić with 20 seats, became the main opposition faction in the parliament.³ The largest single opposition party Socialist People's Party (SNP) remained outside of either coalition.

The pre-election environment was polarized. The ruling coalition emphasized the advantages of stability in government, while the opposition called for reforms and raised allegations of corruption. With European Union (EU) accession negotiations being a priority that enjoys wide public support, attention turned toward necessary reform particularly in the areas of rule of law and anti-corruption.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The presidential election is regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. The 2007 Constitution, the Law on Election of the President (presidential electoral law), and the Law on Election of Councillors and Representatives (electoral law), are the primary pieces of legislation governing the conduct of presidential elections. They are supplemented by various laws and regulations, including the Law on the Voter Register, the Law on Political Parties, the Law on Financing the Election Campaign for the President, the Law on Political Party Financing, the Criminal Code, as well as court procedure laws, media-related legislation, and the instructions and decisions of the State Election Commission (SEC).

The presidential electoral law, adopted in 2007, includes only specific provisions related to the presidential election, regulating the candidate nomination process, the format of ballot papers and the eligibility for being elected. The electoral law, on the other hand, adopted in 1998 and last amended in 2011, regulates all other aspects of the process common to presidential, parliamentary and local elections.⁴ It is, however, unclear how some of the provisions of the electoral law apply in the context of a presidential election, namely those related to the composition of election commissions at the municipal and polling station level, and the monitoring of media coverage of the campaign.

Consideration should be given to eliminating ambiguities in the electoral law in order to avoid differing interpretations and to clearly specify how the law applies in the context of a presidential election.

² The Coalition for European Montenegro comprised the Democratic Party of Socialists (DPS), Social Democratic Party (SDP), and the Liberal Party (LP) and was led by Prime Minister Milo Đukanović, leader of DPS. DPS has been in power since 1990 and its candidates have been elected as president in the last eight elections.

³ The Democratic Front consisted of the New Serbian Democracy (NOVA), the Movement for Changes (PzP), and the Party of Serbian Unity (SSJ).

⁴ The OSCE/ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission) 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 concluded that the amendments to the law generally represented a positive development, while some further improvements were recommended. See: <http://www.osce.org/odihr/elections/93229>.

The Constitution guarantees fundamental political, civil and human rights and freedoms. Direct and indirect discrimination on any grounds is prohibited and gender equality is enhanced by providing that the state shall develop a policy of equal opportunity.

All citizens who are 18 years or older on election day, have permanent residence in Montenegro for at least 24 months prior to election day, and who have not been declared mentally incapacitated by a court, have the right to vote. The residency requirement is overly restrictive, as noted previously in OSCE/ODIHR reports and joint opinions of the OSCE/ODIHR and the Venice Commission.⁵ It also continues to be at odds with international good practice, which recommends the use of residency requirements only in the context of local elections.⁶

In line with previous OSCE/ODIHR recommendations and international good practice, consideration could be given to eliminating the 24-month residency requirement to be eligible to vote.

The president is elected by popular vote for a five-year term. To be elected in the first round, a candidate must receive more than 50 per cent of the valid votes cast. Otherwise, a second round is held within two weeks between the two candidates who received the highest number of votes. The candidate who receives the highest number of votes in the second round is elected.

The right to stand as a candidate is granted to every citizen with voting rights, who resided permanently in Montenegro for at least 10 of the previous 15 years. Although a reasonable residency requirement to be eligible to stand is acceptable, the duration of 10 years is excessive and disproportionate with the principle of equality, challenging international obligations and OSCE commitments.⁷

Consideration should be given to significantly reducing the length of residency requirement to be eligible to stand as a candidate.

The Constitution states that a person cannot be president more than twice. The candidacy of the incumbent president was challenged by a group of citizens before the Constitutional Court on the grounds that he had already been president twice: elected once prior to independence in 2006 and then re-elected in 2008. On 15 February, the Constitutional Court dismissed the appeal on the grounds that the declaration of independence in 2006 and the establishment of a Constitutional Assembly for the adoption of a new Constitution created a discontinuity in the legal status of Montenegro as a country.⁸

⁵ All previous OSCE/ODIHR reports on Montenegro are available at:
<http://www.osce.org/odihr/elections/montenegro/66888>.

⁶ See Article 1.1(c) of the Venice Commission Code of Good Practice in Electoral Matters, available at:
[http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev-e.aspx).

⁷ Paragraph 15 of the 1996 United Nations Human Rights Committee (UNHCR) 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 restrictions on rights and freedoms must be “strictly proportionate to the aim of the law.”

⁸ Constitutional Court Decision U-VI no.2/13.

V. ELECTION ADMINISTRATION

The election was administered by a three-level election administration that included the SEC, 21 Municipal Election Commissions (MECs) and 1,168 polling boards (PBs). The 11-member SEC and the 7-member MECs are permanent bodies, appointed by the parliament and municipal councils, respectively, upon nominations of political parties.⁹ The electoral law guarantees the participation of opposition parties as well as the representatives of electoral candidates.¹⁰ In addition to permanent members, each presidential candidate had the right to appoint an authorized representative with full voting rights to sit on election commissions at all levels, and this right was exercised by both candidates. Collectively, this increased the transparency and accountability of the work of the election administration.

The SEC conducted its work professionally and met all deadlines prescribed in the electoral law. It held regular public sessions and generally passed decisions by consensus, although a few decisions and opinions were made by a split vote. During the review of complaints and appeals however, most SEC members voted strictly along party lines regardless of the legal merits of the case. The election calendar created by the SEC was only used for internal purposes and while the SEC posted its decisions on its website, the minutes of sessions were not published.¹¹

In order to further increase the transparency and accountability of the election administration, the SEC could consider officially adopting and publishing the election calendar and publishing the minutes of the SEC sessions.

In addition, the electoral law requires the timely publication of all MEC decisions on dedicated MEC websites. This requirement was rarely complied with and four MECs did not have a website, which limited the transparency of their work.¹²

To comply with the electoral law, and with the aim of increasing transparency, the MECs should publish all their decisions without delay. In this respect, relevant authorities, including the SEC, MECs, and the municipal administrations should ensure that all MECs have their own websites.

The SEC continued to operate with limited financial and human resources and without a permanent secretariat as foreseen by law. While the electoral law gives the SEC a supervisory role and monitoring authority over the implementation of the law, the SEC, due to stated lack of resources, repeatedly took a narrow interpretation of this authority rather than assuming a proactive approach.

In accordance with the electoral law, the authorities should comply with the obligation to provide resources for a permanent secretariat to support the SEC. To this end, consideration could be given to allocating additional funds to the SEC to allow it to fully function in its supervisory and monitoring role.

⁹ The ruling coalition had 6 out of 11 members appointed in the SEC and majority membership in 17 out of 21 MECs.

¹⁰ At least 3 members of the 11-member SEC are from political parties in opposition at the national level and one from a national minority political party, while in the 7-member MECs, at least two members are from political parties in opposition in the respective municipal council.

¹¹ The electoral law does not stipulate whether the minutes of SEC sessions are public and whether they should be published.

¹² These include MECs in Berane, Plužine, Šavnik, and Ulcinj.

Following the 2012 early parliamentary elections, new MECs were established in Budva, Kotor, and Nikšić to reflect the changed composition of recently elected municipal councils. On 9 March, local elections were also held in Andrijevica and Nikšić. Subsequently, a new MEC was established in Andrijevica to reflect the change in the municipal council while in Nikšić the election was conducted by the old MEC.¹³ The electoral law is not clear on which political party or group of citizens has a right to appoint the MEC secretary. As a result, disputes arose in Kolašin and Pljevlja, which were subsequently resolved by the SEC.¹⁴

Each polling station is operated by a PB, which are appointed by MECs on an *ad hoc* basis for each election. For the presidential election, the PBs were generally formed in accordance with the law. PBs were comprised of a chairperson and four members, based on the political composition of the municipal council and with at least two members nominated by the opposition. The PB chairpersons were determined by drawing lots, as prescribed by the law, except in Ulcinj where the MEC decided to use the same distribution as in the 2012 early parliamentary elections.

Training of MECs and PBs is provided by law, however it is not obligatory. In a positive step, following previous OSCE/ODIHR recommendations, the SEC instructed the MECs to invite the authorized representatives to PB trainings and to instruct all PB members that the authorized representatives have full voting rights on the boards. However, the MEC trainings of PB members observed by the OSCE/ODIHR LEOM were not uniform in content and approach. Some MECs invited only the PB chairpersons while others invited all permanent members. Separately, some political parties conducted their own trainings of the members they nominated, often using a handbook prepared by the SEC.

To ensure consistent application of the electoral law, consideration could be given to ensuring a uniform training program for all PB members including authorized representatives.

Approximately 21 per cent of election officials at all levels were women. However, in the municipalities of Plav, Rožaje and Ulcinj, the percentage of women membership was significantly less, at below six per cent each. The absence of women in senior positions within the election administration is at odds with obligations outlined in the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁵

Consideration could be given to introducing mechanisms that would ensure greater participation of women in senior decision-making roles within the election administration.

Although not required by law, the SEC did not provide voter education on procedural aspects of the election.

¹³ Municipal councils have 60 days after local elections to appoint the new composition of MECs.

¹⁴ In Kolašin, SNP complained that they should have the right to nominate the MEC secretary and not a group of citizens represented in the municipal council. In Pljevlja, DPS complained that they should have the right to nominate the secretary instead of New Serb Democracy (NSD).

¹⁵ Article 7(b) of CEDAW. Paragraph 26 of General Recommendation 23 on CEDAW by the UN Committee on the Elimination of Discrimination Against Women provides that “states parties have a responsibility, where it is within their control [...] to appoint women to senior decision-making roles”.

VI. VOTER REGISTRATION

A total of 511,405 voters were registered for this election.¹⁶ The registration of voters is passive with 21 separate voter registers (VRs) maintained by municipalities based on citizen registers held by the Ministry of Interior (MoI). The MoI provides regular updates with changes to the municipalities, but the lack of reconciliation of the citizen and VRs has resulted in the persistence of some discrepancies.

The authorities could consider conducting an audit of the voter registers, including a detailed comparison of entries in the voter registers and the source information held in the MoI registers. In order to ensure trust in the outcome of such an audit, the relevant authorities could invite election stakeholders to monitor the process, while ensuring that the security of personal data is maintained.

The municipal VRs are compiled into a Central Voter Register (CVR), located at the Ministry of Information Society and Telecommunications (MIST). Any changes to the VRs at the municipal level are instantly reflected in the CVR. The authorities made a serious effort to update the VRs within the legal deadlines. However, even though significant changes were made, the authorities did not conduct a thorough information campaign to dispel concerns on the accuracy of the VRs. The MoI and the MIST created a video on how VRs are maintained, but this was not made available to the wider public through the media.

The MoI, MIST, and other relevant authorities could conduct a thorough information campaign before each election to inform political parties and citizens about the measures taken to ensure the accuracy of the voter registers.

The 2011 amendments to the electoral law required that all non-citizens be removed from the voter registers by 31 December 2012.¹⁷ As a result, 12,964 entries of non-citizens were deleted since the last elections.¹⁸ The Law on the Voter Register does not provide detailed procedures for the addition or deletion of entries in the VRs and, in general, there was no uniformity in how this administrative process was managed at the municipal level. While some civil society organizations and opposition parties claimed that those removed were not duly informed, the MIST reported that notices were sent, in due time, to allow the affected person to seek legal redress. In addition, some opposition parties criticized the processing of citizenship applications by the MoI, claiming it has a negative impact voter registration.¹⁹

To provide a genuine opportunity for seeking legal redress and to ensure consistent application, the Law on the Voter Register should be amended to include procedures for the addition or removal of entries from voter registers, including the means of notifying the affected persons.

¹⁶ As published on 27 March 2013. After this date no further changes were permitted.

¹⁷ The removal of non-citizens from the voter registers was triggered by the passage of the 2007 Constitution, but had previously been delayed on several occasions.

¹⁸ Less than 200 entries for non-citizens were unresolved by the closure of the voter register on 28 March and were not included on the voter lists.

¹⁹ In Herceg Novi, the OSCE/ODIHR LEOM received credible information that the MoI breached the one-year legal deadline to process citizenship applications for several applicants.

For the first time, biometric identification documents (national identity card or passport) were required to vote.²⁰ Regardless of various efforts made by the MoI to assist citizens in obtaining documents, including the deployment of MoI mobile units, some 30,000 citizens were without a biometric document on election day and were not able to vote. The DF alleged that the MoI used a selective approach in processing the new documents. On 3 April, the SNP requested a legal opinion from the SEC on the possibility to vote with expired documents, claiming that the right to vote should not be denied due to not having a valid identification document and that there is no legal obstacle to allow voters to vote with old documents. The SEC issued an opinion that such request is not in accordance with electoral legislation. This response was appealed to the Constitutional Court, which was rejected on 5 April.²¹

It is recommended that the authorities continue their efforts in assisting eligible citizens to obtain the necessary identification documents required to be able to vote.

Voters had the possibility to check their status in the VRs, including through a website and SMS, both of which were actively used. By law, the parliamentary political parties are given electronic copies of the VRs and could request access to relevant data from the MoI. Allegations of deliberate inaccuracies in the VRs continued to persist from some opposition political parties and civil society. Most of the allegations received by the OSCE/ODIHR LEOM were unsubstantiated or related to a few individual cases. The LEOM did, however, receive credible information that the MoI did not comply with the legal obligation to respond in a timely manner to political party requests for information on the VR.

On 27 March, the civil society organization Network for Affirmation of the Non-governmental Sector (MANS) published a list of some 600 suspected duplicates in the VRs based on partial matches.²² On 1 April, the MoI invited the OSCE/ODIHR LEOM to show that the alleged duplicates are actually entries of two different people.²³ However, the MoI did not explain the procedures to the general public, therefore not alleviating concerns raised in the media. According to the Agency for Protection of Personal Data, the distribution of complete voter registers, including sensitive personal data, that easily becomes available in the general public, is at odds with the Law on Protection of Private Information.²⁴

The authorities could consider enhancing the Law on the Voter Register, by harmonizing it with the Law on Protection of Private Information. While political subjects should retain the possibility to conduct detailed inquiries in the voter registers, the current practice of mass copying and disseminating private information contained in voter registers should be addressed.

On 3 April, both presidential candidates submitted documents containing some 7,000 entries of suspected inaccuracies in the VRs and asked the MoI to inspect the data for each entry, but the MoI did not respond

²⁰ The validity of old identification documents expired on 31 December 2012 after being extended three times, last time in July 2012, so that they could be used in the 2012 early parliamentary elections. Biometric identification documents were introduced in 2008.

²¹ This complaint was filed on 4 April 2013 by SNP, a group of citizens and Mr. Goran Danilović (on behalf of Mr. Lekić campaign headquarters). The Constitutional Court provided the written decision, including the Court's rationale seven days later, on 12 April.

²² These were published in a daily newspaper *Dan* and included, for instance, pairs of entries with the same name, surname, address, and year of birth, but with different personal number (JMBG) and date and month of birth.

²³ The MoI was able to demonstrate this through personal data not included in the voter register, such as their photographs, names of parents, etc.

²⁴ For example, Article 2.1 states that the personal information should not be used outside of the legal scope, scale and purpose, and Article 18.2 states that the user of a database of personal data should delete the information after the intended usage.

within the 48-hour legal deadline.²⁵ By 9 April, the MoI had only some 400 cases inspected. However, Mr. Lekić's representatives were dissatisfied with the quality and the level of detail in the inspection reports and requested repeated inspections for 195 of the responses. The MoI reported that they would continue with the inspections.

VI. CANDIDATE REGISTRATION

Presidential candidates can be nominated by political parties or a group of citizens. All candidates are required to support their candidature with signatures of at least 1.5 per cent of the total registered electorate.²⁶ According to international good practice, and as previously recommended by the OSCE/ODIHR, the number of required signatures should not exceed one per cent of the electorate.²⁷

The presidential electoral law could be amended to limit the total number of support signatures required to stand for office to no more than one per cent of the total electorate.

Prospective candidates could collect signatures from the day the election was called until 18 March, 20 days before the election. Citizens could sign in support of only one candidate by going to the respective MEC offices and signing in front of two MEC members, one from the ruling coalition and one from the opposition. Limiting citizens to sign in support of only one candidate and the requirement of signing in front of politically-appointed MEC members has been raised as a concern in previous OSCE/ODIHR reports and was also questioned by a number of OSCE/ODIHR LEOM interlocutors. In addition, the electoral legislation does not prescribe how the signature books are secured and kept by the MECs and, according to the SEC, all MEC members and political parties have access to them. Collectively, this may have led to voters being reluctant to associate politically with a prospective candidate.

Authorities should consider introducing measures to ensure greater confidentiality in the signature collection process and consider taking steps to safeguard the privacy of citizens' data when giving support to prospective candidates. In addition, consideration could be given to allow a voter to sign for more than one candidate.

Two candidates, incumbent Filip Vujanović, nominated by DPS, and Miodrag Lekić, nominated by a group of citizens, successfully collected the required number of signatures and were registered by the SEC on 13 and 22 February respectively. Rade Bojović, who was a potential independent candidate, failed to collect sufficient number of signatures. On 7 February and 7 March, Mr. Bojović voiced concerns in letters to the SEC that the MECs did not have uniform working hours and that they were not open on weekends for signature collection. While the SEC discussed the matter, no official reply was given.

²⁵ The entries included voters added in the voter registers for the first time but older than 60 years, entries of those removed but younger than 40 years, and various categories of suspected duplicates.

²⁶ For this election each potential candidate needed to collect 7,710 signatures, based on the 514,055 voters registered in the last election.

²⁷ See, paragraph I.1.3.ii of the Venice Commission Code of Good Practice in Electoral Matters.

VII. ELECTION CAMPAIGN

The election campaign officially commenced from the day each individual candidate was registered and ended at midnight on 5 April.²⁸ The legal framework prescribes equal opportunities for all candidates, including access to state premises for campaign events and space for displaying campaign materials.

The DPS nominee Mr. Vujanović and the independent candidate Mr. Lekić started their campaign activities with rallies in Bar (1 March) and Nikšić (26 February), respectively. Both contestants campaigned actively throughout the country and in many cases were accompanied by the leaders of parties who supported their campaign. Prime Minister Milo Đukanović and a few members of his cabinet actively supported Mr. Vujanović by speaking at campaign rallies and appearing in the media. Political parties that did not put forward a candidate declared their support for one of the two candidates. The Liberal Party, Albanian Coalition, BS and HGI expressed their support for the DPS candidate while DF, the Socialist People's Party (SNP), Positive Montenegro and Democratic Serbian Party aligned with Mr. Lekić. Although the SDP is part of the ruling coalition, some of its members challenged the legitimacy of the incumbent president's candidacy and the party decided not to support either candidate.

Overall, the campaign was moderate but visible throughout the country. Both candidates were able to campaign freely and without undue restriction. Freedom of speech, movement, and association were respected, and rallies were well attended, although predominantly by men. In addition to traditional means of campaigning like billboards, posters, and television advertisements, the candidates utilized the internet and social networks to reach out to voters. The debate between the two candidates, which was broadcast on national television, was widely watched and played a role in giving voters the opportunity to have an informed choice.

Mr. Vujanović's campaign message focused on the need for continuity in government in order to ensure economic development and EU integration. He also promised further efforts to create jobs and attract investments and raised doubts about the commitment of his opponent to Montenegrin independence. Mr. Lekić called for a change in government and an end of the DPS monopoly of power, underlining the lack of progress by the government in confronting corruption and organized crime. Nonetheless, the campaign observed by the OSCE/ODIHR LEOM lacked debates on programmatic issues and rather focused on mutual personal accusations.

The campaign environment was highly polarized and allegations of widespread favoritism of ruling party members by the state, which is the predominant employer, as well as the misuse of state resources and vote buying persisted throughout the campaign. Although a few political parties complained to the OSCE/ODIHR LEOM about such practices, they did not submit formal complaints or present any official evidence to the relevant authorities in support of these allegations prior to election day. Regardless of the veracity of such accusations, their pervasiveness diminished confidence in the fairness of the electoral

²⁸ The campaign started from 13 February for Mr. Vujanović and 22 February for Mr. Lekić.

process.²⁹ The possible blurring of the line between the state and party challenges paragraph 5.4 of the 1990 OSCE Copenhagen Document.³⁰

In order to further enhance public confidence in the electoral process and to ensure an open campaign environment, relevant authorities should undertake greater initiatives to properly investigate allegations of the misuse of state resources, intimidation of employees, and vote buying, and to take appropriate actions should any violations be proven.

The recent leak of tape recordings from DPS meetings, held in preparation for the 2012 early parliamentary elections, in which party members allude to the possible abuse of state resources in efforts to get more voter support, was extensively covered in the media during the campaign. The case was referred to the prosecutor, who concluded that there were no legal grounds to initiate criminal proceedings. In the pre-election period, parliament also considered forming an investigation committee to look into the matter. The parliamentary inquiry committee was created after the elections.

VIII. CAMPAIGN FINANCE

The 2009 Law on Financing the Election Campaign for the President is the primary law regulating the financing of the presidential election campaign, as well as some provisions of the 2012 Law on Financing of Political Parties. Only the latter was amended since its adoption, and both laws contain gaps and inconsistencies, as recently identified by the Council of Europe's Group of States against Corruption (GRECO).³¹ The OSCE/ODIHR LEOM was informed that a working group is currently reviewing the legal framework for the financing of the presidential campaign.

The working group tasked with reviewing the regulatory framework for campaign finance should consider addressing the gaps and ambiguities identified in this report, as well as by the Council of Europe's Group of States against Corruption (GRECO).

The Ministry of Finance has the responsibility to supervise the implementation of the law, as well as auditing of post-election reports.³² All OSCE/ODIHR LEOM interlocutors suggested that the State Auditor, which audits reports on the use of public funds during parliamentary elections, should also oversee the financing of the presidential campaign, to enhance consistency in oversight.

²⁹ DF made public allegations of DPS buying more than 600 IDs from voters who were potential Lekić supporters in order to prevent them from casting ballots, but no official complaints on this matter were filed. This case was reported by the media and became the subject of a police investigation. Many voters complained that they had received Vujanović leaflets together with official voting invitations delivered by the Post Office. In addition, many interlocutors met with by the OSCE/ODIHR LEOM claimed that employment is linked with party affiliation.

³⁰ Paragraph 5.4 of the 1990 OSCE Copenhagen Document provides for "a clear separation between the State and political parties; in particular, political parties will not be merged with the State."

³¹ The Council of Europe's GRECO Compliance Report on Montenegro, 2012: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)17_Montenegro_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)17_Montenegro_EN.pdf). In addition, the Council of Europe Committee of Ministers Recommendation 2003(4) provides: "States should provide for independent monitoring in respect of the funding of political parties and electoral campaigns", and that "the independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication."

³² Reports on private contributions should be audited by private auditors if exceeds EUR 50,000.

Consideration could be given to designate one independent authority with sufficient resources necessary for an effective oversight of campaign finance regulations.

Presidential candidates were eligible to receive public funds that totaled EUR 406,000. Ten per cent of this amount was equally distributed between the candidates once registered and the remaining 90 per cent was distributed after the election, according to a formula that greatly favours the elected candidate.³³

It is recommended the current system of public funding be revised to provide for greater proportionality and promote a level playing field for all contestants.

In addition to public funding, presidential campaigns relied on private contributions and political party resources. The limit on campaign contributions is EUR 2,000 per person and EUR 10,000 per legal entity. Additionally, in total, private contributions collected by a candidate and expenses incurred cannot exceed the total amount of public campaign funds. There were no concerns expressed on these requirements and both candidates respected these ceilings.

Presidential candidates are required to submit to the SEC one report on the source and amount of campaign contributions in the pre-election period from 7 to 10 days before election day.³⁴ Following the election, candidates must submit a comprehensive final report of all campaign contributions and expenditures to the SEC, no later than 45 days after the election. According to the interpretation given by the SEC, the reporting period starts from the moment a candidate is registered and not from the time the election is called, leaving room for candidates to collect contributions and incur expenses that do not need to be reported.

It is recommended that the reporting period for campaign finance be clarified in the law.

IX. MEDIA

A. MEDIA ENVIRONMENT

The media landscape is diverse with a high number of media outlets operating in a small market, including over 20 television channels, 55 radio stations, as well as 5 daily and 3 weekly newspapers.³⁵ Despite the wide range of information and opinions, a number of OSCE/ODIHR LEOM interlocutors stated that electronic and print media are divided along political lines and that content is significantly influenced by the political and business interests of media owners.

Television is the most popular medium in the country. The public broadcaster Radio and Television Montenegro (RTCG) operates three channels. In addition, there are four major private television stations: *TV Vijesti*, *Prva*, *Pink* and *Atlas*.³⁶ Print media offers a wide range of views, including the daily state-owned

³³ According to Article 6 of the Law on Financing the Election Campaign for the President, 40 per cent of the funds are divided between candidates who have obtained at least 10 per cent of the votes and the elected candidate receives the remaining 50 per cent.

³⁴ These reports were submitted to the SEC on 29 March 2013. Private funds collected by the candidates totaled EUR 43,500 for Mr. Lekić and EUR 42,540 for Mr. Vujanović. The latter also reported a loan of EUR 100,000.

³⁵ According to the Agency for Electronic Media, available at: www.ardcg.org.

³⁶ Report of the Centre of Democracy and Human Rights (CEDEM) is available at <http://www.cedem.me/sr/programi/istraivanja-javnog-mnjenja/politiko-javno-mnjenje/finish/36-politiko-javno-mnjenje/170-politiko-javno-mnjenje-crne-gore-decembar-2011.html>.

Pobjeda and the privately-owned *Vijesti*, *Dan*, *Dnevne Novine* and *Blic Crna Gora*. *Pobjeda* continues to be owned by the state in contravention of media legislation that required the privatization of all print media by 2003. The internet is becoming an alternative source of information with 50.9 per cent of the population having access in 2012.³⁷ The main newspapers have online editions and *Vijesti*, *Portal Analitika* and *Café del Montenegro* are the three most popular news portals.

While journalists and media representatives did not report any direct pressure or intimidation during the election campaign, many OSCE/ODIHR LEOM interlocutors alleged inadequate protection of journalists from intimidation by politicians and business leaders. Cases of attacks on journalists over the last five years continue to go unresolved and perpetrators unpunished.³⁸ Additionally, many local and national private electronic media reported significant financial struggles due to high broadcasting and transmission fees and the discontinuation of state funds for programmes of public interest.

B. LEGAL FRAMEWORK FOR THE MEDIA

The Constitution guarantees freedom of expression and prohibits censorship. It also ensures rights of national minorities to preserve their identities, including the right to establish media in their own languages. The regulatory framework for the media coverage of elections is mainly based on the presidential electoral law, the electoral law, the Electronic Media Law, the Law on Media, and the Law on Public Broadcasting Services.

The electoral law contains general provisions regarding media conduct during the campaign and requires the public broadcaster to grant free airtime on equal terms to all electoral contestants during primetime hours. The coverage of the electoral campaign on public television and radio is further regulated by RTCG's internal regulations, issued for this election on 1 March. The internal regulations covered rules on equitable conditions for all candidates, including the allocation of free air time to candidates and rules for a live television debate between the two candidates broadcast on 5 April. Provisions in the electoral law regarding the establishment of a parliamentary board for monitoring the media and the adoption of internal guidelines by private media were not implemented during this election, and it was not clear to OSCE/ODIHR LEOM interlocutors whether this was required for the presidential election. As a result, there was no independent authority tasked with overseeing the compliance of media with electoral law.³⁹

Electoral legislation should be amended to include specific provisions that clearly address the role of the media during a presidential campaign. Amendments should include provisions for the establishment of an independent authority overseeing media conduct during the elections and with the capacity to effectively deal with media-related complaints.

For this election a RTCG council was established to oversee the conduct of the RTCG and act upon complaints against the RTCG. Its membership consists of nine representatives of civil society and state-funded institutions appointed by the parliament. Many OSCE/ODIHR LEOM interlocutors questioned the lack of independence of the RTCG council, including from within its membership, due to the large number

³⁷ Statistics from MIST are available at: <http://www.mid.gov.me/en/library/document>.

³⁸ The Representative on Freedom of the Media "urged the authorities to end the impunity against journalists' attackers". See the Regular Report to the Permanent Council for the period from 30 November 2012 to 13 June 2013 at <http://www.osce.org/fom/102651>.

³⁹ The Agency for Electronic Media (AEM) is a state institution in charge of overseeing the conduct of electronic media in compliance with the Law on Electronic Media and protection of viewers' rights. The AEM does not have adequate resources to conduct any media monitoring activities or any specific authority related to the election campaign.

of representatives drawn from state-funded institutions.⁴⁰ During the campaign, the council failed to provide effective oversight due to a stated lack of capacity to promptly approve and enforce decisions. In addition, the law is vague on deadlines for resolving media complaints. The council received an official complaint from Mr. Lekić regarding unprofessional conduct of RTCG and biased coverage within its news programmes. The council reviewed the complaint and found that RTCG's airing of selective footage from Mr. Lekić's interview on *TV Vijesti* violated RTCG's internal regulations on its objectivity. While the council decided upon the complaint, no sanctions were issued.

The Law on Broadcasting Services should contain clear provisions regarding deadlines for the RTCG council to effectively handle complaints. In addition, in order to enhance the independence of the council, consideration could be given to provide a greater participation of members from independent civil society organizations.

Whereas the public broadcaster considered the RTCG council as the sole authority to deal with election-related complaints, private media considered the Media Council for Self-Regulation as the competent authority for this matter.⁴¹ On 15 March, the Media Council for Self-Regulation issued a report focusing almost entirely on the activities of non-members, in particular private print media *Dan* and *Vijesti*. The Press Council, established in August 2012, by representatives of the dailies *Vijesti* and *Dan* and the weekly magazine *Monitor*, remained inactive.

Consideration could be given to creating a self-regulatory body with the capacity to promote the objective and professional election related coverage of all media.



C. OSCE/ODIHR LEOM MEDIA MONITORING

The OSCE/ODIHR LEOM conducted media monitoring from 12 March until 6 April. The mission monitored a cross-section of media outlets, with quantitative and qualitative analysis of their political and election-related coverage.⁴² All media monitored by the OSCE/ODIHR LEOM provided adequate news coverage of the two candidates' activities during the campaign, and major private media offered critical reporting on the current political landscape. Paid advertising was used by the two candidates in both national and local media throughout the course of the campaign.

In the weeks before the election, both RTCG and *TV Vijesti* frequently broadcast voter education spots to inform voters that buying and selling identification documents was a criminal offence.⁴³ They also aired spots informing voters about procedural aspects of the election. In addition, a media campaign led by DF urged voters to replace their old identification cards.

RTCG complied with its legal obligation to provide candidates with free airtime on equal terms during primetime. However, throughout the campaign extensive coverage was given to the prime minister and other government officials' activities in news programmes without clearly distinguishing between state

⁴⁰ Council's all nine members are appointed by the parliament.

⁴¹ The Media Council for Self-Regulation established in March 2012 to monitor professional and ethical standards in journalism, is currently composed of 18 print and electronic media outlets.

⁴² TV: *RTCG1*, *TV Vijesti*, *TV Atlas*, and *TV Prva*. Newspapers: *Pobjeda*, *Vijesti*, *Dan*, and *Dnevne Novine*.

⁴³ The voter education spot was financed by the OSCE Mission to Montenegro.

activities and political campaigning.⁴⁴ Previously the OSCE/ODIHR has recommended to further efforts to draw a clear distinction between official government activities and their campaign appearances.

In RTCG news programmes, Mr. Vujanović received 6 per cent, Mr. Lekić 7 per cent while the prime minister and other government officials received 20 per cent and 32 per cent respectively. The most popular private broadcaster *TV Vijesti*, while generally neutral in tone, was less equitable during its news programmes, dedicating 16 per cent to Mr. Lekić and 8 per cent to Mr. Vujanović, with 14 per cent to the prime minister, 16 per cent to DPS, and 10 per cent to DF. Private media *TV Atlas* favored Mr. Vujanović dedicating to him and government officials extensive news coverage of 21 per cent and 16 per cent respectively, overwhelmingly positive in tone. Mr. Lekić received 10 per cent of coverage. *TV Prva* provided very limited coverage of the election, always neutral in its tone. It devoted 16 per cent of coverage to Mr. Vujanović and 11 per cent to Mr. Lekić.

Print media provided a wide range of views, although often biased along party lines. The state-owned newspaper *Pobjeda* did not provide balanced and neutral coverage, dedicating 15 per cent of mostly positive coverage to Mr. Vujanović and 9 per cent of mostly negative coverage to Mr. Lekić. At the same time, DPS and DR received 33 and 6 per cent of coverage respectively. *Dan* and *Vijesti* dedicated extensive coverage to the election, often critical in tone towards the ruling coalition and the prime minister. *Dnevne Novine* provided equal and neutral coverage of the two candidates.

X. COMPLAINTS AND APPEALS

The electoral law stipulates that electoral bodies, the Constitutional Court and competent courts shall provide protection of suffrage and that the electoral bodies shall notify voters of the means of protection of their electoral rights. The Constitutional Court is mandated to adjudicate complaints challenging the legality and constitutionality of the electoral legal framework, as well as to hear appeals of SEC decisions as a last instance. The Administrative Court considers complaints related to the composition of the MECs, as well as appeals of decisions of the municipalities related to voter registration. Hearings before the Administrative Court are public at the request of one of the parties to the case, while the Constitutional Court has discretion over whether hearings are public. The lack of guaranteed public hearings, including in electoral matters, challenges paragraph 12 of the 1990 OSCE Copenhagen Document and other international standards.⁴⁵

The transparency of Constitutional Court would be enhanced by holding public hearings, with parties having the right to attend and to present their cases directly or through their legal representatives.

Voters, candidates, and submitters of candidate nominations have the right to file complaints on decisions or actions/inactions of an election administration body to the higher-level body. The legal framework lacks detailed formal procedures for submitting complaints to the MECs or the SEC nor are there guidelines for the processing of complaints or requirements for maintaining a registry of complaints. On a positive note, as previously recommended by the OSCE/ODIHR, the SEC developed a complaint form for voters to submit complaints in polling stations.

⁴⁴ On 27 March RTCG dedicated a 2 hour documentary to Prime Minister Đukanović's trial case. RTCG Council member informed the public that the funding of the program was not foreseen in the annual plan of the Council.

⁴⁵ Paragraph 12 of the 1990 OSCE Copenhagen Document states that "proceedings may only be held in camera in circumstances prescribed by law and consistent with obligations under international laws and international commitments." See also Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights.

Consideration could be given to formalizing the processing of complaints by the election administration bodies through the adoption of procedural guidelines, and the recording of complaints in a publicly accessible register.

The law imposes very short timelines for the submission and adjudication of complaints. Depending on the instance, complaints and appeals must be submitted within 24 to 72 hours from the alleged breach of law, and the adjudicating body shall issue its decision within 24 to 48 hours.⁴⁶ As previously noted by the OSCE/ODIHR these timelines may not be sufficient to ensure effective redress, as provided for by paragraph 5.10 of the 1990 OSCE Copenhagen Document.⁴⁷

In line with previous OSCE/ODIHR recommendations, deadlines for the submission and adjudication of complaints should be revised to allow effective legal remedy.

Apart from the challenge of the legality of the candidacy of Mr. Vujanović on 5 April 2013, the Constitutional Court rejected an appeal of an opinion issued by the SEC stating that the use of expired identification cards for voting purposes is contrary to the electoral law.

At the start of the electoral process the Administrative Court received two complaints related to the composition of the MECs in Kolašin and Andrijevica. On 20 March, the court confirmed the legality of the decision on the composition of the MEC of Andrijevica. The case of the composition of the MEC in Kolašin was pending at the end of this electoral process. The late decision in the first case and the absence of decision in the second are not in line with OSCE commitments and international good practice for effective means of redress against administrative decisions, and the expeditious review of electoral matters before a court.⁴⁸ The court also decided on six cases related to decisions of municipalities to delete persons from the voter registers for not being citizens.⁴⁹ In all cases, the court annulled the decisions of municipalities, due to procedural or competency reasons, and ordered the review of the matter and the issuance of a new decision.⁵⁰ All complaints were addressed in a timely manner, giving the affected persons the opportunity to effective legal redress.

Despite widespread allegations of the misuse of state resources and pressure on voters, very few official complaints were filed with the relevant authorities. The majority of interlocutors informed the OSCE/ODIHR LEOM that this was due to a general lack of public confidence in the judiciary system and investigatory bodies. In its Opinion on Draft Amendments to the Constitutional Provisions Relating to the Judiciary of Montenegro, the Venice Commission encourages Montenegro to proceed with planned reforms of the judiciary.⁵¹

⁴⁶ According to Article 109 of the electoral law, if an election administration body does not issue its decision within the deadline, the complaint is deemed justified.

⁴⁷ Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.”

⁴⁸ Paragraph 5.10 of the 1990 OSCE Copenhagen Document and Venice Commission Code of Good Practice in Electoral Matter, Section II, paragraph 3.3.

⁴⁹ Two in Bar, two in Žabljak, one in Podgorica, and one in Pljevlja.

⁵⁰ In Bar, the municipality’s decision was reaffirmed.

⁵¹ Available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)024-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)024-e).

XI. PARTICIPATION OF NATIONAL MINORITIES

According to the 2011 census, 45 per cent of the population identified themselves as Montenegrins, 28.7 per cent as Serbs, nearly 9 per cent as Bosniaks. Albanians made up 4.9 per cent and 3.3 per cent identified themselves as “Muslim”. Roma and Croats each represented some 1 per cent. Additionally, there are a small number of Slovenes, Hungarians, ethnic Macedonians, Egyptians, Turks, Italians, Germans, and Russians living in Montenegro.

National minorities continue to play an important role in the political context of Montenegro, mainly aligning with the ruling coalition. The leaders of the BS and HGI called their members to support the DPS candidate. The Albanian parties linked their support for the incumbent, Mr. Vujanović, to the possibility of holding a referendum on the municipality status of the city of Tuzi.

While both candidates held rallies in areas with large minority populations, promising continued respect for minority rights, campaign messages did not specifically address minority needs, and no campaign materials, including TV spots in minority languages, were observed.

XII. CITIZEN AND INTERNATIONAL OBSERVERS

The electoral law provides for observation of the entire election process by citizen and international observers, in line with OSCE commitments. For this election, the SEC accredited 113 international observers, from six different organizations. No domestic organization applied to observe the election process. Civil society organizations that previously engaged in observation, such as the Center for Monitoring Elections and the Center for Democratic Transition, limited their activities to monitoring campaign finance regulations.

The presence of the candidate’s authorized representatives in polling stations was granted through the extended membership of the PBs. By law, these representatives are full members of the PBs with voting rights; however, the authorized representatives typically act as observers and are treated as such by other PB members. The electoral law does not provide for the possibility of political parties or candidates to accredit observers.

Authorities should review the electoral law to clarify the role of authorized candidate representatives and ensure the possibility for political party and candidate observers.

XIII. ELECTION DAY PROCEDURES AND ANNOUNCEMENT OF RESULTS

In line with standard OSCE/ODIHR methodology for LEOMs, the mission did not include short-term observers and did not undertake a comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations and followed the tabulation of results in some municipalities.

A. VOTING

Election day procedures in the polling stations visited were conducted professionally and transparently. Election commissions were well prepared and voting proceeded in an orderly manner. However, the secrecy

of the vote was compromised in the 116 polling stations where less than 50 voters were registered.⁵² This is of particular concern when coupled with candidates and parliamentary political parties having the right to copy voter lists on the basis of which they can determine who has voted in each polling station.

To ensure the secrecy of the vote, authorities could consider counting votes from small polling stations at the municipal level or other means, while safekeeping the integrity of the electoral process.

Homebound voters could request to vote through mobile voting by submitting a written application to the PB.⁵³ In total, 11,683 voters voted at home, which constituted 3.6 per cent of the total number of votes cast. On election day, upon request from the MEC in Ulcinj, the SEC issued a formal opinion that the authorized representatives of candidates could join the two PB members who were selected to conduct mobile voting. While the opinion was provided immediately, some PBs were not informed about this possibility. The mobile ballots remained sealed in envelopes when inserted in the ballot box at the polling station and were therefore identifiable as mobile ballots, potentially breaching the secrecy of the vote. In addition, homebound voters do not sign the voter lists, reducing the accountability of the process.

Authorities should amend the electoral law so that the mobile voting procedures are more transparent and accountable, including explicitly allowing candidate representatives to accompany the mobile teams and requiring that homebound voters sign an extract of the voter list. In addition, consideration could be given to introducing a mobile ballot box and mixing the mobile with other ballots before the count.

Following a previous OSCE/ODIHR recommendation, newly adopted complaint forms were available to voters at polling stations. Six complaints using the forms were submitted to MECs, largely related to discrepancies in the spelling of names as written in the voter lists compared to identification cards. Three complaints appealed to the SEC were rejected.

The electoral campaign silence period, which started 24 hours prior to election day, was not respected by major print media which published partisan electoral messages prohibited by law. Breaches of the campaign silence period were monitored in *Pobjeda*, *Dan*, *Dnevne Novine*, and *Vijesti*. No complaints were submitted and no actions were taken against violators of the law.

The SEC collected and published voter turnout information at 09:00, 12:00 and 17:00. However, the SEC did not collect and publish turnout information at the time of closing. The final turnout was made public only the next day at 18:30 together with the official preliminary results. The turnout was announced as 63.9 per cent.

As a means to enhance transparency, the State Election Commission could consider announcing the preliminary turnout as soon as tenable after closing of polling stations.

In the limited number of polling stations observed by the OSCE/ODIHR LEOM, counting and tabulation appeared to have been conducted in a transparent and efficient manner, without complaints. However, the electoral legislation does not regulate in detail the results tabulation procedures at the MECs and the SEC did not issue any instructions in this respect. This led to varied practices across the country.

⁵² The 116 polling stations affect 0.7 per cent of registered voters.

⁵³ Voters needed to provide a reason for requesting mobile voting, but there is no need to provide additional documentation. Voters could also authorize another person to submit the request in their name, however they needed to personally sign the application.

The State Election Commission could consider regulating tabulation procedures to enhance consistency in the reporting of results and ensure the transparency and accountability of the process.

B. ANNOUNCEMENT OF RESULTS

PBs had 12 hours to conduct the vote count and submit the results protocols to the MEC.⁵⁴ However, the majority of PBs completed their work within few hours and submitted their results protocols to the MEC in the evening of election day.⁵⁵ The MECs had 12 hours after receiving all PB result protocols, to determine the summary election results at the municipal level and submit the results to the SEC. In general, MECs closed for the night and submitted their results to the SEC on the morning of Monday 8 April.⁵⁶ The SEC only published preliminary results at 18:30 on 8 April. However, immediately after announcing the preliminary election results, the SEC published a breakdown of the results by municipality and polling station on its website, in line with a previous OSCE/ODIHR recommendation.

Although partial, preliminary results were not immediately released to the public, the SEC did have access to the result protocols from each polling station as they were uploaded via the internet to the SEC database. However, the SEC took a unanimous decision not to release any results before receiving the formal MEC protocols in hard copy so as to avoid any mistakes. It also grounded its decision on the fact that the electoral law does not explicitly provide for the release of partial, preliminary results. With relatively close results and both candidates declaring victory on election night, the decision not to release any results to the public caused uncertainty and raised doubts about the integrity of the process among many OSCE/ODIHR LEOM interlocutors.

In order to enhance transparency and confidence in the process, authorities could consider publishing partial, preliminary results as soon as possible following the close of voting.

C. POST-ELECTION DEVELOPMENTS

The election results were not accepted by Mr. Lekić, who claimed that numerous irregularities had denied him electoral victory. On 8 April, Mr. Lekić requested the physical inspection of election materials from 22 PBs in Podgorica. The Podgorica MEC consulted the SEC for an opinion whether to grant the request, to which the SEC responded that candidate representatives have the right to inspect all election materials.⁵⁷ Representatives of Mr. Lekić then extended the request to all polling stations in Podgorica and, subsequently, polling stations across the country except in Danilovgrad. According to the MECs, and where observed by the OSCE/ODIHR LEOM, these inspections were generally organized in a prompt manner. Mr. Vujanović requested such inspections in Kotor, Budva, Mojkovac and Herceg Novi; however, no complaints were subsequently filed related to these inspections.

According to the SEC, the inspections conducted by the MECs revealed some counting mistakes in several polling stations, including a couple of ballots for Mr. Lekić added to Mr. Vujanović, or one or more invalid ballots found together with ballots for one of the candidates. The SEC instructed the MECs to reflect the corrections in the PB results protocols. In Podgorica, the MEC found that three PBs did not properly stamp

⁵⁴ See Article 92 of the electoral law and Articles 13 and 14 of the presidential electoral law.

⁵⁵ Only two PBs in Pljevlja could not submit their protocols the same evening, due to bad weather conditions.

⁵⁶ MECs in Danilovgrad and Nikšić submitted their MEC-level result protocols on election night.

⁵⁷ Article 77 of the electoral law prescribes the inspection of election material is done at the premises of the MEC and is handled by the MEC members in the presence of the candidates representatives.

the ballots and the MEC decided to hold a repeat election in those polling stations on 18 April. The results of the repeated polling did not affect the overall outcome of the election.

Following the inspection of election materials, Mr. Lekić submitted 16 complaints to 14 MECs, requesting that the results in approximately 120 polling stations be invalidated and excluded from the overall election results. All concerned MECs rejected the complaints, on the grounds that the law does not provide for the exclusion of results from individual polling stations. On 14 April, Mr. Lekić appealed all 16 MEC decisions to the SEC and requested that elections be repeated in all polling stations where mobile voting took place, approximately 95 per cent of all polling stations.⁵⁸ The SEC rejected all 16 appeals, stating in its decision that the appeals were not supported by material evidence and that the claims were not supported by written remarks in the PB records. A last appeal from Mr. Lekić containing claims of deliberate inaccuracies in the voter lists was regarded as inadmissible as the appeal was based on the same issues raised separately in the previous 16 appeals. Mr. Lekić further appealed to the Constitutional Court, which upheld all SEC decisions. The SEC established the final results on 21 April.

XIV. RECOMMENDATIONS

The following recommendations, as contained throughout the text, are offered for consideration by the authorities, political parties, and civil society with a view to supporting efforts to conduct elections fully in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of Montenegro to further improve the electoral process and in following up on the recommendations contained in this report.

A. PRIORITY RECOMMENDATIONS

1. The authorities could consider conducting an audit of the voter registers, including a detailed comparison of entries in the voter registers and the source information held in the MoI registers. In order to ensure trust in the outcome of such an audit, the relevant authorities could invite election stakeholders to monitor the process, while ensuring that the security of personal data is maintained.
2. The MoI, MIST, and other relevant authorities could conduct a thorough information campaign before each election to inform political parties and citizens about the measures taken to ensure the accuracy of the voter registers.
3. In accordance with the electoral law, the authorities should comply with the obligation to provide resources for a permanent secretariat to support the SEC. To this end, consideration could be given to allocating additional funds to the SEC to allow it to fully function in its supervisory and monitoring role.
4. Authorities should consider introducing measures to ensure greater confidentiality in the signature collection process and consider taking steps to safeguard the privacy of citizens' data when giving support to prospective candidates. In addition, consideration could be given to allow a voter to sign for more than one candidate.

⁵⁸ The appeals to the SEC included requests that were considerably different from the original complaints submitted to the MECs.

5. Electoral legislation should be amended to include specific provisions that clearly address the role of the media during a presidential campaign. Amendments should include provisions for the establishment of an independent authority overseeing media conduct during the elections and with the capacity to effectively deal with media-related complaints.
6. In line with previous OSCE/ODIHR recommendations, deadlines for the submission and adjudication of complaints should be revised to allow effective legal remedy.
7. Authorities should amend the electoral law so that the mobile voting procedures are more transparent and accountable, including explicitly allowing candidate representatives to accompany the mobile teams, and requiring that homebound voters sign an extract of the voter list. In addition, consideration could be given to introducing a mobile ballot box and mixing the mobile with other ballots before the count.

B. OTHER RECOMMENDATIONS

Legal Framework

8. Consideration should be given to eliminating ambiguities in the electoral law in order to avoid differing interpretations and to clearly specify how the law applies in the context of a presidential election.
9. In line with previous OSCE/ODIHR recommendations and international good practice, consideration could be given to eliminating the 24-month residency requirement to be eligible to vote.
10. Consideration should be given to significantly reducing the length of residency requirement to be eligible to stand as a candidate.

Election Administration

11. In order to further increase the transparency and accountability of the election administration, the SEC could consider officially adopting and publishing the election calendar and publishing the minutes of the SEC sessions.
12. To comply with the electoral law, and with the aim of increasing transparency, the MECs should publish all their decisions without delay. In this respect, relevant authorities, including the SEC, MECs, and the municipal administrations should ensure that all MECs have their own websites.
13. To ensure consistent application of the electoral law, consideration could be given to ensuring a uniform training program for all PB members including authorized representatives.
14. Consideration could be given to introducing mechanisms that would ensure greater participation of women in senior decision-making roles within the election administration.

Voter Registration

15. To provide a genuine opportunity for seeking legal redress and to ensure consistent application, the Law on the Voter Register should be amended to include procedures for the addition or removal of entries from voter registers, including the means of notifying the affected persons.
16. The authorities could consider enhancing the Law on the Voter Register, by harmonizing it with the Law on Protection of Private Information. While political subjects should retain the possibility to conduct detailed inquiries in the voter registers, the current practice of mass copying and disseminating private information contained in voter registers should be addressed.
17. It is recommended that the authorities continue their efforts in assisting eligible citizens to obtain the necessary identification documents required to be able to vote.

Candidate Registration

18. The presidential electoral law could be amended to limit the total number of support signatures required to stand for office to no more than one per cent of the total electorate.

Campaign and Campaign Finance

19. In order to further enhance public confidence in the electoral process and to ensure an open campaign environment, relevant authorities should undertake greater initiatives to properly investigate allegations of the misuse of state resources, intimidation of employees, and vote buying, and to take appropriate actions should any violations be proven.
20. The working group tasked with reviewing the regulatory framework for campaign finance should consider addressing the gaps and ambiguities identified in this report, as well as by the Council of Europe's Group of States against Corruption (GRECO).
21. Consideration could be given to designate one independent authority with sufficient resources necessary for an effective oversight of campaign finance regulations.
22. It is recommended the current system of public funding be revised to provide for greater proportionality and promote a level playing field for all contestants.
23. It is recommended that the reporting period for campaign finance be clarified in the law.

Media

24. The Law on Broadcasting Services should contain clear provisions regarding deadlines for the RTCG council to effectively handle complaints. In addition, in order to enhance the independence of the council, consideration could be given to provide a greater participation of members from independent civil society organizations.
25. Consideration could be given to creating a self-regulatory body with the capacity to promote the objective and professional election related coverage of all media.

Complaints and Appeals

26. The transparency of the Constitutional Court would be enhanced by holding public hearings with parties having the right to attend and to present their cases directly or through their legal representatives.
27. Consideration could be given to formalizing the processing of complaints by the election administration bodies through the adoption of procedural guidelines, and the recording of complaints in a publicly accessible register.

Observation

28. Authorities should review the electoral law to clarify the role of authorized candidate representatives and ensure the possibility for political party and candidate observers.

Voting, Counting and Tabulation of Results

29. To ensure the secrecy of the vote, authorities could consider counting votes from small polling stations at the municipal level or other means, while safekeeping the integrity of the electoral process.
30. As a means to enhance transparency, the State Election Commission could consider announcing the preliminary turnout as soon as tenable after closing of polling stations.
31. The State Election Commission could consider regulating tabulation procedures to enhance consistency in the reporting of results and ensure the transparency and accountability of the process.
32. In order to enhance transparency and confidence in the process, authorities could consider publishing partial, preliminary results as soon as possible following the close of voting.

ANNEX: FINAL RESULTS

Election of President of Montenegro Final Results⁵⁹

| Montenegro | Total | |
|---|--------------|-------|
| No. of Registered Voters | 511,405 | |
| No. of Ballots Cast | 326,803 | 63.9% |
| No. of Ballots Cast in Polling Stations | 315,095 | 96.4% |
| No. of Ballots Cast Through Mobile Voting | 11,708 | 3.6% |
| No. of Valid Ballots | 316,229 | 96.8% |
| No. of Invalid Ballots | 10,574 | 3.2% |

| Candidate | Percentage | No of Votes |
|--------------------|-------------------|--------------------|
| 1. Filip Vujanović | 51.2% | 161,940 |
| 2. Miodrag Lekić | 48.8% | 154,289 |
| Total | | 316,229 |

⁵⁹ Data aggregated according to final results published on the SEC website on 21 April 2013:
<http://www.dik.co.me/>.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).