



Office for Democratic Institutions and Human Rights

MONTENEGRO

EARLY PARLIAMENTARY ELECTIONS

29 March 2009

OSCE/ODIHR Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the Speaker of the Parliament of Montenegro to observe the 29 March 2009 early parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) to Montenegro on 26 February 2009. The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other standards for democratic elections, as well as with Montenegro's domestic legislation. For election day, the OSCE/ODIHR joined efforts with delegations from the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE) to form an International Election Observation Mission (IEOM).

The 29 March 2009 early parliamentary elections in Montenegro met almost all OSCE and Council of Europe commitments, although the process again underscored the need for further democratic development. Public confidence was noted as a key challenge, as were the frequent allegations of electoral fraud and a blurring of state and party structures that created a negative atmosphere among many voters.

The elections took place following a relatively lively campaign, with a wide range of candidates from diverse electoral lists presenting their programmes to voters freely. The inclusive registration of 16 electoral lists offered voters a wide range of political options from which to choose, including parties representing specifically national minority interests. There were no administrative or legal hindrances to campaigning; meetings, door-to-door canvassing and rallies were common features of the election campaign.

As in previous elections, issues regarding campaign / party financing and the blurring of state and party structures were raised by most opposition parties. Allegations of pressure on voters and ID buying were again often reported by some opposition parties, media and certain individuals. Although such allegations are notoriously difficult to quantify and were mostly not substantiated, the unsupported allegations of electoral misconduct, an element that has been noted in past OSCE/ODIHR reports, requires action from all sides if public confidence in the elections is not to be further undermined.

The parliamentary elections were regulated by a comprehensive legal framework that generally provided an adequate basis for the conduct of democratic elections. However, outstanding issues relating to the reform of the electoral framework remain, including harmonizing the election law with the Constitution, removing inconsistencies and ambiguities, regulating homebound voting and providing an adequate mechanism for processing election-related complaints. The Constitutional two-year residency requirement to

¹ The report is also available in Montenegrin. However, the English version remains the only official document.

elect and be elected, inherited from the pre-independence period, is not consistent with the principle of universal suffrage.

Overall, the elections were professionally organized and there was considerable trust in election administration bodies. State Election Commission (SEC) sessions were open to observers and there was a high degree of transparency regarding its activities. The elections were well administered by the SEC, 21 Municipal Election Commissions (MECs) and 1,155 Polling Boards (PBs), which completed its activities generally within legal deadlines. There was some lack of clarity as to which parties had the right to nominate permanent members, and the rights and duties of extended commission members. The appointment of PB Chairpersons was not regulated by law and, in practice, the PB Chairpersons tended to generally be representatives of ruling coalition parties.

The voter registration system in Montenegro, which has been amended and improved over the past years, is regarded as adequate. However, a large number of non-Montenegrin citizens remained on the electoral registers and were allowed to vote in this election, despite no longer enjoying voting rights under the new Constitution.

The media offered extensive and informative coverage of all contestants in its election-related programming, providing voters with a wide array of viewpoints, including those critical of the government. However, the news programming on all TV stations monitored predominantly covered the activities of government and state officials, mainly in an uncritical light; according to OSCE/ODIHR media monitoring, the news programmes on most monitored TV stations showed extensive, favourable coverage of the incumbents.

In general, there were very few pre-election day complaints and appeals, although there were a number of constitutional challenges on the legal framework. These were not satisfied by the court. In two cases regarding the composition of MECs, however, the complaints and appeals lodged served to show that the appeals system is not sufficiently detailed to provide effective legal redress for election stakeholders. Post-election day complaints were also dealt with in manner that could have enjoyed greater scrutiny by the SEC and the courts.

Election day was well-organized with very few incidents reported. Observers evaluated the opening, voting, counting, and tabulation processes very positively, overall. Minor procedural omissions or mistakes were noted at all levels by observers, underscoring the need for further training of election officials, notwithstanding their considerable past experience.

Preliminary and final results were published within the legal deadlines (on 30 March and 10 April, respectively) and the final results were posted on the SEC website. Results were published broken down by MEC and PB level, contributing to the transparency of the election process.

This report offers recommendations for the Montenegrin authorities to consider. The OSCE/ODIHR stands ready to support the efforts of the Montenegrin authorities, political parties, and civil society to conduct elections in line with OSCE commitments and other standards for democratic elections.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from Montenegro's Speaker of Parliament, Mr. Ranko Krivokapić, to observe the 29 March 2009 early parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 26 February 2009. The OSCE/ODIHR EOM, headed by Dr. Artis Pabriks, consisted of 16 core team experts and 14 long-term observers (LTOs) from 21 OSCE participating States. The OSCE/ODIHR EOM was based in Podgorica, with LTOs deployed to seven regional centres for the duration of the mission. The OSCE/ODIHR EOM was further enhanced by the arrival, just prior to election day, of 104 short-term observers (STOs) seconded to the OSCE/ODIHR EOM by OSCE participating States.

For election day observation, the OSCE/ODIHR EOM joined efforts with delegations from the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE) to form an International Election Observation Mission (IEOM). Mr. Roberto Battelli, Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the OSCE short-term observers. Mr. Andreas Gross headed the PACE delegation.

On election day, the IEOM deployed some 189 observers from 41 OSCE participating States, who observed the opening of 67 polling stations, voting in 736 of the 1,155 polling stations, and the counting in 71 polling stations. The IEOM also observed the handover of election material and the tabulation of results in 13 of the 21 MECs. The OSCE/ODIHR EOM remained in Montenegro until 9 April to follow post-election day developments.

The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other international standards for democratic elections, as well as with domestic legislation. This Final Report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference on 30 March 2009 and is available on the OSCE/ODIHR website (www.osce.org/odihr).

Parliamentary elections coincided with four local elections in Budva, Herceg Novi, Nikšić, and Tivat. The OSCE/ODIHR EOM observed the parliamentary elections, however, and only followed the local elections to the extent that they impacted upon the conduct of the parliamentary vote.

The OSCE/ODIHR EOM is grateful to the Ministry of Foreign Affairs of Montenegro, the State Election Commission (SEC), and to other authorities, political parties and civil society for their co-operation. The OSCE/ODIHR EOM also wishes to express its appreciation to the OSCE Mission to Montenegro and to the diplomatic representations of OSCE participating States and international organizations in Podgorica for their co-operation throughout the course of the mission.

III. POLITICAL CONTEXT

The 29 March 2009 early parliamentary elections were held under a new Constitution, adopted in October 2007. The 2007 constitutional act that implemented the Constitution stipulated that new parliamentary elections were to be held by the end of 2009. On 26 January

2009, the Montenegrin Parliament voted to shorten its mandate and on the following day President Filip Vujanović called early parliamentary elections for 29 March.

Opposition parties had called for early elections following Montenegro's recognition of Kosovo as an independent state in October 2008. After their scheduling for 29 March, certain opposition parties criticized the date of the early elections and the Socialist People's Party (SNP) challenged the constitutionality of the legal framework. Some opposition parties argued that the government had called elections due to the pending economic crisis, while the governing coalition asserted that it required a renewed mandate to carry out key reforms related to European integration.²

As of March 2009, a total of 38 political parties were registered in Montenegro, of which 12 represented national minority groups. To a large degree the political structure in Montenegro had not significantly altered since the OSCE/ODIHR last deployed an EOM in 2008. The main political forces on the side of the government remained the Democratic Party of Socialists (DPS, led by Prime Minister Milo Đukanović) and their coalition partner, the Social Democratic Party (SDP, headed by Mr. Ranko Krivokapić).

The main opposition leaders represented different groups following the fragmentation of two of the three major opposition parties. New parties included the New Serb Democracy (NOVA, led by Andrija Mandić), which split from the Serb List, and the Democratic Centre (DC, under Goran Batričević) that had split from the Movement for Changes (PzP, led by Nebojša Medojević). The SNP, led by Srdjan Milić, remained intact, not having suffered internal divisions prior to the elections.

IV. ELECTION SYSTEM AND LEGAL FRAMEWORK

A. ELECTION SYSTEM AND GENERAL FRAMEWORK

The Constitution establishes a unicameral Parliament of 81 deputies, elected for four year terms. The Law on the Election of Councillors and Representatives (Election Law) provides for the allocation of mandates on the basis of a proportional list system within a single nationwide constituency with a 3 per cent threshold. Five of these mandates, however, are allocated to a 'special' constituency comprising 70 polling stations designated for each election by Parliament in areas populated primarily by Montenegrin ethnic-Albanians. An election list can receive seat allocations in both constituencies if the established 3 per cent threshold is surpassed in both. If a list falls short of either threshold, the votes from that constituency are re-allocated to the other constituency.

The 2007 Constitution generally guarantees fundamental civil, political and human rights and freedoms necessary for the conduct of democratic elections. The Constitution provides that the right to elect and be elected shall be granted to every Montenegrin citizen (*državljanin*) 18 years or older, with at least two years of residence in the country. The two-year residency requirement, inherited from the pre-independence period, is not consistent with the principle

² A formal application for EU candidate status was submitted on 15 December 2008.

of universal suffrage.³ According to good international practice, a length of residency requirement should not be imposed on citizens for national elections, and for local or regional elections it should not exceed six months.⁴

Parliamentary elections were regulated by a comprehensive legal framework that generally provided an adequate basis for the conduct of democratic elections.⁵ However, the legal framework has yet to be fully harmonized with the 2007 Constitution and recommendations made by the OSCE/ODIHR in past elections remain to be fully addressed.⁶ Previous recommendations relate to issues concerning voter lists, candidate registration, voter education, voting, count and tabulation, complaints and appeals, campaign financing and the blurring of party and state.

The Election Law is the primary piece of legislation regulating parliamentary elections. It was initially adopted in 1998 and amended several times, most recently in 2006. Discussions to harmonize the Election Law with the Constitution, which requires a two-thirds parliamentary majority, stalled in the parliamentary working group over the lack of agreement regarding implementation of the Constitutional provision for “authentic representation” of national minorities in Parliament. Political parties have disparate views of the mechanism that would best enshrine this principle.

The law stipulates that half of mandates won by electoral lists must be awarded to candidates in their list order; the other half can be allocated to remaining candidates in any order by the party leadership. This provision has been criticized by the OSCE/ODIHR and the Council of Europe in past reports, as it limits transparency and may be misleading to voters who cannot be certain which candidates will represent them. The Election Law Article 101(1) states that if Members of Parliament (MPs) cease to be a member of the political party on whose electoral list they have been elected then their mandate terminates. Such a provision appears to be in contravention of Article 87 of the Constitution and Paragraph 7.9 of the Copenhagen Document, regarding preserving the will of the people.

The Election Law continues to contain gaps and ambiguities in provisions regulating the election administration, campaigning, media coverage, and complaints and appeals and it is not sufficiently co-ordinated with other aspects of the legal framework governing elections.

³ Article 25 of the International Covenant on Civil and Political Rights provides, in part, that every citizen shall have the right and the opportunity without unreasonable restrictions to vote and to be elected. <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>

⁴ European Commission for Democracy through Law (Venice Commission), “Code of Good Practice in Electoral Matters”, see Guideline I, “Principles of Europe’s electoral heritage.” [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf)

⁵ This includes the Law on Elections of Councillors and Representatives (1998), Law on Political Parties (2004), Law on Financing Political Parties (2008), Law on Registers of Electors (2008), Law on Registers of Permanent and Temporary Residence (2008), Law on Citizenship (2008), Law on Public Meetings (2005), Criminal Code (2004), Law on State Administration (2003), Law on Political Appointees and Civil Servants (2008), Law on the Constitutional Court (2008), Law on Administrative Proceedings (2003), various media and broadcasting laws, and decisions and regulations of the State Election Commission.

⁶ The current deadline for concluding this harmonization process is October 2009, but this is an extension from the initial deadline of January 2008.

B. LEGAL FRAMEWORK FOR VOTING

The Election Law establishes a wide array of safeguards to protect the integrity of the vote. These include the individual stamping of ballot papers by MECs and PBs, the use of detachable ballot coupons containing serial numbers, the use of indelible ink as a safeguard against multiple voting, proscriptions on calling out voters' names in polling stations or the recording of voters' identities by PB members, except on the official voter list.⁷

Nevertheless, legal procedures could still be improved. For example, previous OSCE/ODIHR reports have pointed to a "surfeit of legal provisions allowing for the dissolution of polling boards on election day and for cancelling results, regarding what are, in some instances, only minor infractions of the election rules".⁸ Other issues previously noted include: requirements to set up the polling station in such a way that secrecy of the vote could be endangered; lack of provisions for re-issuing a ballot where the voter has inadvertently made a mistake, no clear provision for a recount of ballots,⁹ and no requirement for PBs to check ballots for appropriate stamps before they are counted. These and other issues remain to be properly addressed by law. Another shortcoming is the provision that only two PB members are assigned tasks on election day by lottery, others are selected for tasks by the Chair of the PB.

The Election Law stipulates that "an elector shall vote at the polling station where he is entered in the extract of the voter register" (Article 67). While the law allows for exceptions, such as voting "by envelope" outside polling stations (mobile voting), in practice, only the old, sick and voters with disabilities were able to vote in this manner; even then, only if they resided within the polling ward where they were entered into the register. There are no special provisions for voters serving in the military or other state officials temporarily away from their place of permanent residence (including those serving abroad), or for voters hospitalized in a facility far from their permanent residence. Such voters were *de facto* disenfranchised.

The issue of homebound voting is largely regulated by the SEC's 'Regulation on the Work of Polling Boards', rather than by law. While procedures for voting by envelope have improved over time, the current arrangements still require modification. Shortcomings include:

- Not requiring votes cast outside polling stations to be mixed with other votes before counting;¹⁰
- Not making provision for candidates' authorized representatives to attend voting outside polling stations;
- Not requiring homebound voters to sign the voters list to indicate receipt of a ballot;
- Using an envelope and not using a sealed, secure 'mobile' ballot box; and
- Continued confusion as to who may submit a request on behalf of a homebound voter.

⁷ The latter provision, to an extent, protects voters from undue pressure. However IEOM observers noted in a number of previous elections that people outside polling stations have been collecting data on voters' identities, which could be inappropriate in the context of Montenegro where claims concerning pressure on citizens in their electoral choices are numerous.

⁸ OSCE/ODIHR Final Report on the Presidential Election (22 December 2002 and 9 February 2003).

⁹ In the event of a very close election a recount may be desirable to ensure that ballots have been invalidated according to uniform criteria. The recounting of votes for over 20 polling stations did occur in Pljevlja some days after the election, despite the absence of any clear legal provisions in this regard.

¹⁰ The absence of such a provision can compromise the secrecy of 'envelope votes', especially in cases where few citizens cast votes in this manner.

The Election Law (Article 77) allows candidate representatives and parliamentary parties to inspect and copy all election materials after election day, including signed voter lists and ballot papers. Allowing inspection and copying of used election material in instances outside of those where there has been a formal complaint regarding a specific polling station can compromise citizens' privacy and in smaller communities may compromise the secrecy of the vote. The OSCE/ODIHR recommended that the provision be dispensed with in its previous reports. Parliament amended the presidential election law accordingly, but it has yet to make a similar amendment to the law for parliamentary elections.¹¹ The practice was also criticized in these elections by NOVA and SNP, who argued that the governing parties used such voter list copies to exert pressure on voters working in the state sector.

There is also no requirement in the Election Law that results be publicly posted at the polling station for public scrutiny, although members of election administration bodies do receive a copy of the Record of the Work of the Polling Board, which includes the election results.

V. ELECTION ADMINISTRATION

A. STRUCTURE AND COMPOSITION OF ELECTION ADMINISTRATION

The 29 March elections were administered by the State Election Commission (SEC), 21 Municipal Election Commissions (MECs), and 1,155 Polling Boards (PBs). All electoral bodies have a 'permanent' composition of appointed members and an 'extended' composition that includes authorized representatives of all registered candidate lists, who serve on a temporary basis. The SEC has eleven members, MECs have seven members and PBs have five members.¹² The SEC's permanent members are appointed by Parliament, while MECs are appointed by municipal assemblies. PBs are appointed by MECs no later than 10 days prior to the elections. The SEC and MECs have four year terms and are responsible to their appointing bodies. When the composition of an appointing body has changed through an election, the practice has been to reappoint the relevant commissions.¹³

The Election Law provides that the two opposition parties that won the largest number of votes at the last elections in the respective assemblies are entitled to appoint one permanent member each to the three levels of the election administration.¹⁴ However, the legislation does not regulate the political composition of the other commission members; in practice, these members are considered to be appointees of the political majority in the assemblies.

While the right of opposition parties to appoint election commissions promotes pluralism, transparency and inclusiveness, the numerical strength of the political majority allows it to control the functioning of the SEC and MECs until the extended composition is appointed. A lack of pluralism in the composition of MECs can also arise because their political balance

¹¹ The 2008 OSCE/ODIHR Final Report on the Presidential Election noted that one political party had used provisions of the Law on Free Access to Information (2005) to apply for access to scrutinize election material after the presidential election.

¹² The SEC and MECs have an appointed Chair and Secretary. PBs have an appointed Chair.

¹³ Article 19 of the Election Law provides that "Election Commissions shall be appointed after the constitution of the newly elected assembly for a four-year term of office [...]". However, it is not entirely clear whether the requirement to reappoint after an election takes precedence over the right of a commissioner to serve for four years.

¹⁴ In fact, three permanent SEC members are considered to be opposition appointments.

reflects the situation in municipal assemblies rather than at the national level; e.g., in Rožaje, the two largest parties in opposition locally (the Bosniak Democratic Coalition, BDK, and the SDP) were running in coalition nationally with the majority DPS party.

The Election Law does not require MECs to take a decision on which two opposition parties are entitled to appoint members to PBs. This led to a controversy in Kolašin where the SNP, which had won the largest number of votes in the last municipal elections but had no seats in the council due to defections from the party, was not permitted to nominate any PB members. Similarly in Herceg Novi, the MEC decided that no party from the 2006 ‘Serb List’ coalition, which had splintered, was entitled to nominate any permanent PB members, a circumstance not foreseen by law.¹⁵ The law also does not provide for political pluralism in assigning PB chairs; in practice, the majority appointed all PB Chairs in most municipalities.

The status of authorized representatives (extended members) is not defined clearly in the law and they joined the SEC and MECs after many decisions had already been made.¹⁶ Nevertheless, their inclusion in the work of election administration bodies is important to promote inclusiveness and transparency. Moreover, because all commission members enjoy equal voting rights, their appointment can alter the political balance of election commissions and influence the outcome of issues put to a vote, such as rulings on complaints.¹⁷

As noted in previous OSCE/ODIHR reports, the law does not prevent electoral candidates from simultaneously holding election administration posts, thus allowing for conflicts of interest. During the 29 March elections, the OSCE/ODIHR EOM noted that some permanent SEC and MEC members concurrently held government / local government appointments, or were members of the judiciary, which could lead to potential conflicts of interest.

The Election Law does not require the state to remunerate extended commission members. While the SEC took a decision to pay extended members in 2008, in these elections it determined that there were insufficient public funds. Some parties commented that this lessened their ability to appoint extended members to the 1,155 PBs.

B. ORGANIZATION OF ELECTIONS

In general, the election administration enjoyed a high degree of confidence and election day was professionally organized. There was also a high degree of transparency regarding commission activities, such as ballot printing, and SEC and MEC sessions were open to all observers. Many SEC and MEC members were highly experienced, having administered numerous previous elections. However, the SEC’s narrow definition of its competencies raised concerns whether it fulfilled its legal obligations under the Election Law.

The Election Law grants the SEC broad competencies, which include ensuring the legality of the conduct of elections and the uniform application of the law’s provisions, monitoring the implementation of the law,¹⁸ providing opinions and issuing instructions on the

¹⁵ The Serb List received the second largest number of votes in the last municipal elections.

¹⁶ Authorized representatives joined the SEC and MECs on 14 March, and PBs on 24 March.

¹⁷ All election administration bodies take decisions by a majority vote of all members.

¹⁸ The SEC has issued Rules of Procedures (2008), Regulation on the Work of Polling Boards (2009), Opinions in regard to the implementation of specific provisions of the Election Law (2006).

implementation of the law, and co-ordinating and supervising the work of MECs.¹⁹ In practice, the SEC defined its competences over MECs narrowly, stating that it had no jurisdiction over their administrative decisions and limiting its role to ensuring MECs did not violate suffrage rights, which the SEC also interpreted in a narrow fashion.

This was illustrated by the SEC's handling of complaints on the PB compositions in Kolašin and Herceg Novi (see Complaints and Appeals, below). The SEC's narrow interpretation of its role also raised concerns whether it had the authority to provide legal redress in cases where the law has been incorrectly applied by MECs. The dispute in Kolašin also served to illustrate that the relationship between the SEC and MECs is not strictly hierarchical.

In general, election commissions at all levels met deadlines required by the law.²⁰ Between the calling of the elections and election day, the SEC held 12 sessions, dealing *inter alia* with candidate registration, ballot printing, remuneration of polling officials, voting in prisons, determining when the campaign silence period began, and ruling on complaints. On occasion, lively exchanges took place among SEC members, particularly when discussing complaints and especially after the authorized representatives had joined the SEC.

Notwithstanding a generally positive assessment of the organization of the elections, some minor procedural shortcomings were noted including not printing bilingual ballots for polling stations in Plav,²¹ an inconsistency between apparently simultaneous deadlines for the closing of candidate nominations and electoral registers,²² and a discrepancy between the decision of Parliament on appointing 70 'special constituency' polling stations and the polling stations that were actually in the special constituency. It is commendable that the SEC posts its decisions on its website.

In these elections, the SEC did not organize a public information programme. A public information programme would benefit citizens in many respects: i.e., regarding assurances concerning the secrecy of the vote, voter registration, which state bodies are to protect citizens in the event of inducements offered to vote or abstain from voting or any undue pressure, correct polling procedures, including filing requests to vote outside polling stations (homebound voting) and various complaints and appeals procedures. Similarly, no systematic training of PB members and authorized representatives was conducted. Thus, on election day, many of the procedural inconsistencies observed in past elections again occurred. Without additional human and financial resources to support the SEC, however, a more systematic approach to voter education and training of election officials would be difficult.

VI. VOTER REGISTRATION

There is in general a high level of confidence in the accuracy of electoral registers. The Law on the Registers of Electors (LRE) retains provisions that afford a commendable degree of transparency in the registration of voters. However, the level of access to voter registration

¹⁹ The Election Law was amended in 2002 to permit the SEC to issue instructions to MECs. This addressed a previous OSCE/ODIHR recommendation in this regard.

²⁰ In Podgorica, there appeared to have been a delay in the appointment of PB permanent members.

²¹ This was remedied by using ballots from the 3 per cent reserve held by the SEC.

²² Although the deadlines appeared to fall on the same day (25 days prior to election day), they were interpreted differently by different competent authorities.

source data for parliamentary parties and contestants also raises concerns over confidentiality of citizens' data held by the authorities.²³ It is hoped that a new Law on Protection of Personal Data, adopted in December 2008 and to be implemented in June 2009, may address this concern.

Eligible voters are included in the electoral register automatically, based on information provided by local branches of Ministry of Interior (MoI) and civil registration offices. There are 21 separate electoral registers, held and updated by the municipal executive authorities.²⁴ These registers are amalgamated to create a central electoral database, maintained by the Ministry of Informatics. The Ministry has no authority to amend data provided by the municipal authorities, although it undertakes crosschecks for duplicate entries and incorrect or missing data. Citizens are able to check their entries at municipal offices, on a website, or using a system accessible through the mobile phone network, although there is still no legal requirement to publicly display preliminary voter lists. The authorities are required to notify electors in all cases where their registration entry is deleted, thus allowing for a legal appeal to be filed.²⁵

A new LRE was adopted in June 2008. Other recently adopted legislation relevant to the eligibility to be included in voter registers includes the Law on Permanent and Temporary Residence (February 2008, hereinafter the LPR) and the Law on Montenegrin Citizenship (February 2008).

The newly adopted LRE has not fundamentally altered the voter registration process. It provides that "the registration into the Register of Electors is the condition for obtaining the suffrage" and that *državljeni* (citizens of Montenegro), rather than *građani*,²⁶ are eligible for registration as electors. This change brought the LRE into line with the Constitution and the Law on Citizenship. However, the LRE does not clearly regulate how the electoral registers are to be updated to remove those no longer eligible.

Following the adoption of the LRE, four municipal authorities began to delete entries of people who did not meet the new criteria, causing several individual appeals to be filed to the Administrative Court. In all cases, the court upheld the appeals on grounds that the LRE does not provide explicitly for deletion of pre-existing entries. All deleted entries were reinstated by municipalities. As a result of these judgements, a significant number of people who were not Montenegrin *državljeni* remained in the electoral registers and were able to vote in these elections.²⁷ There are many more people whose citizenship was not indicated on the voter

²³ Under the LRE, parties and contestants are able to access data on citizenship, residence, ID card issuance, Personal Identification Numbers, etc.

²⁴ The election commissions have no role in voter registration, although a number of MEC members were, in their permanent professional positions (e.g., as municipal 'Main Administrators'), ultimately responsible for the accuracy of the electoral registers. The SEC Chairperson is also the President of the Administrative Court, with jurisdiction over voter registration appeals.

²⁵ Fifteen voters who were deleted from the electoral register by the Nikšić municipality were not notified of the decision or their right to appeal it, as required by law. The municipality informed the OSCE/ODIHR EOM that they did not inform these individuals as the deadline for closing the register was approaching. After the elections, the municipality realized that one of the individuals had been mistakenly deleted. This voter was not permitted to vote on election day.

²⁶ Defined as citizens of the Federal Republic of Yugoslavia and, subsequently, the State Union of Serbia and Montenegro, who are permanently resident in Montenegro.

²⁷ The Ministry of Informatics informed the OSCE/ODIHR EOM that 16,023 people included in the registers were listed as citizens of Serbia and a further 1,209 were listed as citizens of Serbia and Montenegro.

registers.²⁸ Although political parties did not complain about this lack of conformity, some civil society groups expressed concern over this issue and thought the court's decision in these cases was not legally grounded.

The Election Law (Article 88) provides that, "the electors who, at the time of holding of the election, temporarily reside abroad shall vote at the polling station in the area of their last permanent residence on the territory of Montenegro, before going abroad." This provision requires those abroad to return to Montenegro to vote, and raised concerns among some parties who alleged that voters were being paid to return to the country to vote.

The LPR (Article 12) requires citizens to de-register their permanent residence when moving permanently out of Montenegro, and authorities may delete records in some cases. This affects citizens' rights to be included in the elector register and, thus, their electoral rights. The OSCE/ODIHR EOM was informed by the MoI that in 2008, the Serbian authorities had data on a large number of Montenegrin citizens resident in Serbia. These citizens are also not entitled to vote in Montenegrin elections unless they maintain a permanent residence in Montenegro. This problem could also disenfranchise an unknown number of Montenegrin citizens resident in other countries.

The new LRE provides for first instance complaints on voter registration issues to be filed with local administrative bodies rather than courts. Initially, complaints are made to local administration bodies, with the right of appeal to a Main Administrator and, subsequently, to the Administrative Court. Following the initial closing of electoral registers 25 days before election day, complaints are lodged with the Main Administrator, with appeals made to the Administrative Court. Ten days prior to election day, all registers are closed and no further changes are permitted. Compared to previous elections, few appeals were filed, which appears to indicate that the LRE has improved procedures for resolving registration-related appeals.

On 4 March, the day after the closing of the registers, the Ministry of Informatics announced that 498,285 electors were registered to vote. This marked an increase of some 1.6 per cent since the April 2008 presidential election. On 19 March, the day after the deadline for ruling on all voter registration appeals, it was announced that 498,305 electors were registered to vote.

VII. CANDIDATE REGISTRATION

All major parties contested the elections. Ten parties and six coalitions submitted lists before the 4 March deadline. Documents submitted by the Party of Democratic Prosperity (PDP) contained certain errors and omissions and the SEC granted the party 48 hours to correct the shortcomings, as provided by law.²⁹ The list was resubmitted by the party within the legal deadline. The SEC took an inclusive approach in the registration of all candidate lists and no political contestants were rejected. In total, 24 parties and 970 candidates contested 81 seats.

²⁸ The Ministry of Informatics informed the OSCE/ODIHR EOM that 88,697 voter register entries had no information on the person's citizenship status.

²⁹ The party only provided the names of five candidates instead of the minimum number of 27 (for parties representing Albanians in Montenegro) and an insufficient number of supporting signatures.

Under the Election Law, political parties and groups of citizens (*građani*) may register to contest elections, individually or in coalition, on the basis of election (candidate) lists. Thus, under the current legal framework, *građani* who may not be Montenegrin citizens but were citizens of the former Serbia and Montenegro and who are permanent residents in Montenegro, appear to be able to stand for election. This issue appears also to be linked to the lack of legal harmonization.

Election lists must be supported by the signatures of one per cent of the electorate. The law establishes preferential treatment for lists that “represent Albanians in Montenegro”. These lists must provide only 1,000 supporting signatures.³⁰ No similar provision exists for other minority groups, such as Croat, Bosniak, Muslim or Roma. This seems discriminatory, as is the requirement that ethnic-Albanian parties can supply a candidate list with fewer candidates than those submitted by parties seeking to represent other minority populations.

Unlike the Presidential Election Law (PEL), the law regulating parliamentary elections does not establish a procedure for the collection of signatures.³¹ The Election Law does not require the SEC to scrutinize the signature lists, but only to confirm that the required number was submitted. Finally, the Election Law (Article 44) states that voters may support only one election list. However, no procedure exists to verify if voters have signed for more than one and as noted in previous OSCE/ODIHR reports this measure is of limited utility.

The SEC also invited all parties to scrutinize the submitted candidate documentation, including the signature sheets. However, to the best knowledge of the OSCE/ODIHR EOM, no parties availed themselves of this opportunity. No complaints on candidate registration were filed. On 11 March, the SEC drew lots to determine the order in which the 16 electoral lists would appear on the ballot. This process was fully transparent. The general electoral list, which included the names of all candidates, was posted in almost all polling stations.

VIII. ELECTION CAMPAIGN

For these elections, the governing coalition of the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP) was joined by the Croatian Civic Initiative (HGI) and the Bosniak Party (BS) under the banner, “European Montenegro–Milo Đukanović”. Among the opposition, the Democratic Centre (DC) entered a coalition with the Liberal Party (LP) to contest the elections as the coalition “For a Different Montenegro”. New Serb Democracy (NOVA) ran separately from a new Serb National List (SNL) coalition composed of the Serb Radical Party (SSR), the Party of Serb People (SSN) and a group of citizens. The Socialist People’s Party (SNP) and the Movement for Changes (PzP) also ran independently. The Montenegrin Communists, a new Party of Pensioners and Invalids (SPI) and a coalition between the People’s Party (NS) and the Democratic Serb Party (DSS) also stood. Four parties and two coalitions from national minority groups participated in the elections, including parties representing ethnic Albanians.

³⁰ The Election Law (Article 43) uses the term ‘representing Albanians in Montenegro’, although citizens from national minorities, including ethnic-Albanians, may choose ‘to be represented’ by non-ethnic based parties or groups.

³¹ The PEL requires that supporting signatures for presidential candidates are provided by voters at MEC premises and witnessed by two MEC members. The negative consequences of this practice are set out in previous OSCE/ODIHR election reports.

Prior to the registration of electoral lists, a Code of Conduct for the electoral campaign was signed on 27 February by all potential electoral participants, with the exception of the SSR. The Code was presented by the non-governmental organization (NGO), Centre for Democratic Transition (CDT) and committed participants to respect the principles of democratic elections.

Overall, the campaign environment was peaceful and parties/coalitions campaigned freely across the country. The campaigns of most contestants focused on the economy, crime and corruption, and the financial crisis. Local issues also featured prominently. Political parties seemed largely to have reached a consensus over the desirability of Montenegro's movement towards EU integration. Attitudes toward membership in NATO remained ambivalent during the campaign. The recent recognition of Kosovo as an independent state by the Montenegrin government did not appear to become a major feature of the campaign, although NOVA, SNL, and the SNP addressed the issue to some extent. Campaign events ranged from small meetings of some 50 people to large rallies with up to 2,000 participants. Campaigns tended to be centrally organized, but with frequent activities in the municipalities, addressing local communities. Campaign rallies were broadcast on national TV channels. The majority of the parties reported that they were focusing on door-to-door campaigning.

Opposition parties, especially the smaller ones, tended to advertise themselves through local broadcasters, while the large parties aired their media campaigns on national TV stations. Billboards were used extensively by a number of different parties and coalitions. Most billboards appeared after the drawing of list order and featured the contestants' list numbers as part of their campaign advertising.

Small national minority parties freely and actively campaigned in the areas where they are concentrated, addressing issues of identity and the implementation of the constitutional requirement for "authentic representation" of national minorities. However, their campaigning was not evident at the national level. The HGI and the BS did not appear to campaign independently of their coalition. Albanian-oriented parties tended to compete with each other over the five specially allocated seats, discussed above. One complaint was received by the OSCE/ODIHR EOM from two of these parties, Albanian Alternative and Democratic Alliance of Montenegro coalition, over alleged campaign violations by the European Montenegro coalition.

Symbols and flags of other States were widely used in the electoral campaigns of national minority parties. It is against the Law on Public Order and Peace to display national insignia of foreign States without prior authorization, although the authorities do not appear to actively enforce this provision. Two cases involving problems in hanging the Serbian state flag were reported to the OSCE/ODIHR EOM by the SNL.

As in previous elections, some opposition parties claimed that vulnerable groups (including teachers, students and state workers) were intimidated by the governing DPS. A news report by *Vijesti* on teachers being pressured to support the DPS resulted in the Ministry of Education issuing a letter to all educational establishments stressing that such actions are illegal and that appropriate measures would be taken in any such cases. In a national interview, the Speaker of Parliament did not rule out that isolated instances of intimidation may have occurred. However, to the knowledge of the OSCE/ODIHR EOM, no official investigations over the allegations were undertaken.

Allegations that the authorities were engaged in buying ID cards from opposition supporters and undecided voters to suppress voting were common among certain opposition parties and were covered by some newspapers. The OSCE/ODIHR EOM looked into the matter and was able to identify certain individuals who stated first-hand that they had been approached as part of such a scheme. These allegations (which are a regular opposition concern) are notoriously difficult to quantify and mostly not substantiated, but the authorities again failed to take sufficient measures to properly address such allegations.

Although many opposition parties complained to the OSCE/ODIHR EOM regarding purported election violations, such as vote buying and intimidation, they did not issue any formal complaints. They justified this position on the grounds of a lack of confidence in the judiciary and investigative agencies to provide effective redress and a reluctance of citizens to give witness accounts. As a result, the campaign atmosphere was overshadowed by frequent but unsubstantiated allegations of electoral misconduct, an element that has been noted in past OSCE/ODIHR reports, and which requires action from all sides if public confidence in the elections is not to be further undermined.

A. CAMPAIGN FINANCING

A new Law on Financing of Political Parties (LFPP), adopted in July 2008, was implemented for the first time in a national election. The campaign finance reporting and auditing provisions offer an improvement to the former law; however, issues relating transparency and accountability remain. The law does not provide for periodic reporting on campaign finances during the campaign period, only submission and publication after the election, and does not provide procedures for filing complaints on campaign finance violations. Although the Ministry of Finance is responsible for auditing reports on public campaign fund expenditures, the law only requires auditing of private donations if the total exceeds €50,000. Furthermore, the responsibility for auditing such donations lies with private auditors contracted by political parties and not a public body.

The LFPP created a new system of State subvention in which parties received a set sum of 0.15 per cent of the State budget in regular elections for their campaigns; 20 per cent of this amount (amounting to 1,360,000 EUR) was split equally among all registered contestants, which resulted in initial funds of approximately 17,000 EUR for each party or coalition contesting the elections. The remaining 80 per cent of funds is to be allocated after the elections in proportion to the number of mandates that contestants have received. In addition, the new law establishes the conditions for soliciting private contributions to campaign funds.

Certain parties did not supply their bank account details on time and, therefore, experienced a delay in the allocation of their initial subvention amounts; some did not receive them until 19 March. Many opposition parties complained to the OSCE/ODIHR EOM about the lack of accountability over campaign expenditures and the lack of an adequate mechanism to complain of potential campaign finance violations during the election process. The private auditing procedures were also criticized by some opposition parties.

Financing of political parties has, however, been a longstanding concern among the opposition. Some parties stated that due to the new legislation, their income was reduced by some 30 percent vis-à-vis the previous State subvention figures. They also believe that they were at a disadvantage vis-à-vis the ruling parties; per information received by the SNP from

the Ministry of Finance, the DPS received over 4 million EUR between 2002 and 2007 in renting its party building to the government. This also results in blurring between state and party structures, contradicting Montenegro's commitment under paragraph 5.4 of the 1990 OSCE Copenhagen Document. It is expected that the new Law on State Property, which took effect on 28 March, should remedy the issue in the future.

IX. MEDIA

A. BACKGROUND

Montenegro has a diverse media environment, generally enabling freedom of expression and offering voters a wide range of political views. However, there are a number of unresolved issues, such as downgrading of competencies and autonomy of the broadcast media regulator and disproportionately high fines in defamation cases.³²

Television is, by far, the most important source of news and information. The nationwide Montenegrin public service broadcaster, "Radio and Television Montenegro" (*RTCG*), consists of two TV and two radio channels. A new law on public service broadcasting, passed in December 2008, altered the method by which *RTCG* receives its funding. Instead of collecting a license fee charged to all citizens, the public broadcaster is to receive an automated transfer from the annual state budget (1.2 per cent). The new system is aimed at improving the *RTCG*'s difficult financial situation and, if implemented properly, should make the body financially and politically more independent of the government. Under the previous system, the government would decide on an ad-hoc basis whether or not to make up for *RTCG*'s regular funding shortfalls.

B. LEGAL FRAMEWORK FOR THE MEDIA

The Election Law contains detailed regulations for the media during the pre-election campaign; among other things, it provides for free and paid broadcast time as well as equal terms for newspaper space to all contestants during the campaign. To supplement the provisions, the *RCTG* Council, which oversees the work of the public broadcaster, adopted campaign coverage rules on 10 February, within the legal timeframe. These rules provided for 30 minutes of free airtime for every registered political party / coalition, a portion of which is to be aired daily, two free five-minute reports from contestants' rallies, one ten-minute report on contestants' final rallies, and four live television debates among all 16 registered contestants. The order of appearance in the free airtime programmes and debates of all registered political entities was determined by a lottery held at the SEC on 11 March.

C. OSCE/ODIHR EOM MEDIA MONITORING

The OSCE/ODIHR EOM's media monitoring was conducted from 2 to 27 March and focused on six TV stations and three daily newspapers.³³ Media monitoring included quantitative and

³² See the OSCE Representative on Freedom of the Media's report, "The State of Media Freedom in Montenegro", 13 November 2008, http://www.osce.org/documents/rfm/2008/11/34890_en.pdf

³³ Media monitoring included *RTCG1*, privately owned TV IN, NTV *Montena*, MBC, TV *Pink M* and TV *Atlas* and the daily newspapers *Vijesti*, *Dan* and *Pobjeda*.

qualitative analysis of the coverage³⁴, assessing both the amount of time and space allocated to each political party or coalition and the tone of the coverage. The coverage of other relevant subjects, such as the government and the President, was also analyzed.

Publicly funded *RTCGI*, in particular, offered voters an opportunity to compare contestants in four televised debates and with free airtime, provided equally to all registered contestants. Private broadcasters aired talk shows and special election programmes attended by different political parties and candidates. Paid advertising was used extensively by a number of contestants, although some complained to the OSCE/ODIHR EOM about high advertising prices.

Despite the pluralistic media environment, most outlets remain strongly influenced by their owners and questions exist about media's independence from political influence. In primetime news, all monitored TV stations provided extensive coverage of the activities of authorities, many of whom stood as candidates, outside of the campaign context. There was a notable tendency to cover their work and activities positively, often pointing out achieved results and successes. Critical and independent opinions on the authorities' performance were generally absent in the news programmes of monitored broadcast media.

Public TV's coverage of contestants' campaign activities in special election programmes and its conduct of the televised debates were in line with the rules adopted by the public broadcaster. During the monitoring period, public TV devoted 61 per cent of its political and election primetime news coverage to state authorities, of which the government received 40 per cent, the ruling coalition 14 per cent, the Speaker of Parliament 4 per cent, and the President 3 per cent. 80 per cent of the government's coverage was positive in tone. In comparison, the 'For a Different Montenegro' coalition, PzP and SNP received 6 per cent each, mainly positive or neutral in tone.

Monitored private broadcasters adopted a similar approach and devoted extensive, favourable coverage to the incumbents. The most popular private broadcaster TV IN devoted 67 per cent of its political and election prime time news coverage to state authorities, of which the government received 37 per cent, the ruling coalition 26 per cent, the Speaker of Parliament 3 per cent and the President 1 per cent, which was mainly positive or neutral in tone. The second most-featured political party was the SNP (11 per cent, mainly positive coverage), followed by the 'For a Different Montenegro' coalition (10 per cent, mainly positive coverage).

Other private TV stations (TV Pink M, NTV *Montena*, MBC and *Atlas*) devoted more than half of their political and election related primetime news to the activities of government ministers, all of which was overwhelmingly positive and neutral in tone. However, their regular talk shows and special programmes, such as "Parliamentary Elections", "Eye to Eye" (TV *Montena*), "Real truth" (TV IN) and "Forum Special" (TV *Atlas*) gave contestants opportunities to inform voters of their platforms.

The Broadcasting Agency, which deals with media-related complaints, received only one official complaint on media coverage of the campaign. On 26 March, the SPI complained over *RTCG*'s refusal to announce their campaign rallies for free and that *RTCG* was charging four times more for campaign advertising than for commercial ads. *RTCG* campaign coverage

³⁴ This included daily coverage of newspapers and television during prime viewing hours in the evening.

rules oblige contestants to pay for the announcement of their campaign rallies; this rule contradicts provisions in the Election Law.³⁵

Print media provided extensive coverage of the election campaign and a plurality of views. State-funded *Pobjeda* showed support for the governing parties, both in the amount of allocated space and the tone of the coverage. By contrast, private newspapers *Dan* and *Vijesti* provided readers with greater analysis and more critical views of the government. Opposition parties (especially NOVA and SNP) received greater coverage in *Dan*, whereas *Vijesti* gave approximately equal proportions of its coverage to opposition and incumbent parties.

X. PARTICIPATION OF NATIONAL MINORITIES

The participation of national minorities in the election process in Montenegro has been active. Some of the mainstream parties have successfully begun to integrate national minorities into their ranks and historically have had a strong appeal among national minority voters. In these elections, the governing DPS-SDP coalition was joined by the ethnic political parties, HGI (Croat) and BS (Bosniak). Moreover, different coalitions originating from national minority groups contested these elections; they included the ethnic Albanian List coalition of the Democratic League of Montenegro (DSCG) and the Albanian Alternative (AA) and the ethnic Bosniak/Muslim coalition of the Democratic Union of Muslims-Bosniaks of Montenegro (DZMBCG), the Bosniak Democratic Party (BDP) and the Bosniak Democratic Community (BDZ). Two new ethnic Albanian parties, the Party of Democratic Prosperity (PDP) and the Perspektiva also stood.

National minorities were able to participate in the electoral process without difficulty. Minority rights are protected by the new Constitution, although the terminology used is often vague. The Constitution does not provide a definition for national minorities, although the Law on Minority Rights and Freedoms (LMRF) foresees a concrete definition. Furthermore, the Constitution provides for “authentic representation” of national minorities in Parliament, but political parties have disparate views of the mechanism that would best enshrine this principle. The LMRF had guaranteed seats for national minorities, but a July 2006 Constitutional Court ruling declared those provisions (Articles 23 and 24) unconstitutional. Furthermore, as discussed above, the Election Law provides for five mandates to be allocated among specially designated polling stations, which have tended to be in areas populated by ethnic Albanians. Agreement on a comprehensive mechanism for “authentic representation” will be necessary to harmonize the Election Law with the Constitution, but the sensitivity of the topic requires that the provision be approached with due caution.

The ethnic Albanian population in Montenegro is concentrated mainly in the municipalities of Ulcinj, Plav and the Tuzi district of Podgorica, with a smaller number found in the municipality of Bar. The Bosniak population lives predominantly in the north-east of the country in the municipalities of Berane, Rožaje and Bijelo Polje. A sizeable population of Roma also exists, spread throughout the country, with the biggest concentration around Podgorica. A large percentage of Roma still do not possess personal identity documents, which has meant that they have been unable to register to vote. Although the PzP sent a complaint to the OSCE/ODIHR EOM stating that displaced Roma from Kosovo were being

³⁵ Article 53 of the Election Law stipulates that *RCTG* shall announce all contestants’ campaign rallies free-of-charge during the election campaign, under equal conditions.

granted Montenegrin citizenship, potentially impacting the voter registers, the party was unable to provide any concrete information in this regard. Information supplied by the MoI regarding this issue did not appear to provide grounds for concern.

XI. PARTICIPATION OF WOMEN

Equality of rights for men and women, including an anti-discrimination provision, is enshrined in the Constitution.³⁶ This legal provision is further developed in the 2007 Gender Equality Act.³⁷ Following recommendations for the introduction of positive measures specified by the law, the government adopted an “Action Plan for the Achievement of Gender Equality 2008-2012.”³⁸ Since 2006, Montenegro is a state party to the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and its optional protocol.

Although women represent 50.2 per cent of the Montenegrin population, they continue to play a marginal role in political and public life. At the local government level, only one of 21 mayors is a woman. Despite the fact that women constitute 60 per cent of government employees, they were reported to occupy only 10 per cent of management posts.³⁹ Traditional attitudes regarding gender roles persist, especially in rural areas. The judiciary, where women comprise more than 50 per cent of judges, is the only branch of where gender balance is achieved. The head of the Supreme Court is also a woman.

In these elections, only 14.7 per cent of contestants (143 out of 970) were women. Among the largest political parties / coalitions, the electoral lists with the highest percentage of women candidates were submitted by PzP (22.2 per cent) and SNP (18.5 per cent). Female candidates accounted for only 13.5 per cent of the European Coalition’s list. Electoral lists from national minority parties with the highest proportion of women were the ‘Bosniaks and Muslims Together as One’ (25 per cent) and the Democratic Union of Albanians (16 per cent).

Over the course of the election campaign, women candidates generally received little attention. With a few exceptions, issues of particular interest to women (e.g., family programmes, domestic violence, or low levels of political participation) were not addressed at rallies by the political parties and coalitions. During the election period, a number of NGOs expressed concern over the low number of women contestants.

Women also remained under-represented within the election administration. Three of 11 SEC members were women and there were only two female MEC chairpersons. In polling stations visited on election day by observers, 21 per cent of polling board chairpersons were women.

Following the posting of final results, seven women were awarded mandates, comprising 8.6 per cent of all deputies and two less than in the outgoing Parliament.

³⁶ See Article 8.

³⁷ Article 12 addresses the principle of gender-balanced representation in elections, on candidate lists, and nomination and selection procedures of political parties’ bodies.

³⁸ The Action Plan outlines a policy addressing eight key areas: European Integration, Education, Health, Violence against Women, Economy and Sustainable Development, Politics and Decision-Making, Media and Culture, and Institutional Mechanisms.

³⁹ Human Resources Management Authority of Montenegro, *Vijesti*, 20 April 2008.

XII. COMPLAINTS AND APPEALS

In July 2008, the SNP filed a lawsuit before the Constitutional Court challenging the constitutionality of the 2008 LRE. It argued that the law, as one relating to the electoral system, should have been passed by a two-thirds parliamentary majority rather than by a simple one. The complaint was rejected on grounds that the law does not regulate the electoral system, but merely regulates the manner of exercising suffrage rights, thus requiring only a simple majority, as set out in the Constitution.

On 12 March, the Constitutional Court heard three further lawsuits filed by the SNP: 1) challenging the constitutionality of the extension of the deadline for harmonization of the Election Law with the Constitution,⁴⁰ 2) challenging the constitutionality of the Election Law and 3) challenging the constitutionality of the five mandate constituency in ethnic Albanian areas (the third suit was also filed by the Serbian National Council).⁴¹ Despite the importance and complex nature of these cases, the complainants were not invited to present arguments in court and the cases were hastily considered with little discussion, raising concerns about the application of court procedure⁴² and the principle of procedural fairness.

The Constitutional Court rejected all three cases. In the first two, it held that it lacked jurisdiction⁴³ and the third case was rejected on merit. The written judgments, however, did not provide full and clear legal reasoning an important aspect of the transparency of the judicial process. A number of OSCE/ODIHR EOM interlocutors, including legal experts, raised questions on the strict constitutionality of the legal framework.

The Election Law does not comprehensively regulates procedures for all types of election-related complaints, including disputes regarding election administration, campaigning, media coverage, and campaign finance and expenditures. Furthermore, general administrative complaint procedures are not sufficient to address such issues, as they lack the timeliness required during an election process. The SEC did not properly inform MECs or co-ordinate with the courts to clarify the complaint jurisdictions and did not properly inform the public on the means to protect electoral rights, as required by law.⁴⁴ Thus, there was a confusion and divergence of opinion among the election administration, courts, and political parties regarding proper complaint jurisdictions.

The Election Law does not provide adequate guarantees of due process in the complaint process, and does not ensure open complaint hearings, opportunity for all sides to present

⁴⁰ The SNP argued that there was no constitutional or other legal authority for the parliament to amend (extend) the harmonization deadline, thus rendering the Election Law unconstitutional.

⁴¹ In those cases, it was argued, in part, that the five mandate constituency violates the constitutional guarantee for 'authentic representation' in parliament for national minorities, the constitutional principles of equality of permanent residents, and equality of the voting right.

⁴² Article 30 of the Law on the Constitutional Court provides that cases of particularly complex legal and constitutional issues should have a "public hearing", which involves participation of parties to the dispute.

⁴³ In the first case, although the SNP requested review of the *manner* in which the law on the implementation of the constitution was amended (the extension of the harmonization deadline), the court refused to review the case on grounds that *the law itself* was of a constitutional nature and thus not subject to judicial review. The result of that decision was that the court then refused to consider the second case because with the harmonization deadline not yet passed, the constitutionality of the Election Law could not be reviewed.

⁴⁴ See Article 106 of the Election Law.

cases, and right to full legal reasoning of decisions could be further improved. Some deadlines in the law for consideration of complaints and submission of appeals are too short to guarantee due process. The SEC does not have a legal department and its rules of procedure do not set out detailed procedures for receipt and consideration of complaints, and issuance of related decisions. In its hearing of complaints, the SEC tended not to sufficiently discuss the substance of cases and application of the law. Written decisions of election bodies did not address complainants' arguments or provide comprehensive factual-legal reasoning; this undermined principles of due process and transparency. Election bodies' decisions were not always legally sound in complaint matters.

The SEC received only two complaints in the pre-election period, from SNP and NOVA, challenging MEC appointments to PBs in Kolašin and Herceg Novi, respectively. The parties argued they had not had permanent members appointed to PBs, as was their apparent legal right.⁴⁵ In the Kolašin case, the SEC had recommended in writing that the MEC act on the proposal of SNP, as it had a legal right to representation; the MEC did not comply with this recommendation. In considering the complaints, the SEC held that it was not within its jurisdiction to review MEC decisions on appointment of PBs, a decision in apparent contravention of the law.⁴⁶ Notably, the MEC Herceg Novi decision specifically stated that it could be appealed to the SEC. The SNP further appealed the SEC decision to the Constitutional Court, which confirmed the SEC's action. In its written decisions, neither the SEC nor the Constitutional Court ruled which body had jurisdiction over the cases.

The SNP filed the same complaint to the Administrative Court, which also held it had no jurisdiction over the case, on grounds that the MEC decision was not included in the complaint. This was decided despite the fact that MEC Kolašin had failed to deliver the decision on the appointments of PBs to the SNP, as was its obligation under the Election Law.⁴⁷ The MEC also refused to provide the decision to the SNP, who had requested it, stating that since SNP representatives had not been appointed to the PBs, the party had no right to the decision. The Supreme Court confirmed the Administrative Court decision on 27 March. As a result, the merit of these complaints was left unconsidered, thus *de facto* denying the right to seek legal redress against decisions and actions of the election administration, as guaranteed in the Election Law and the Constitution of Montenegro.⁴⁸ Furthermore, the finding that the SEC was not responsible for such complaints underscores its lack of oversight over lower-level election commissions.

Hearings of the Constitutional and Administrative Courts in these cases were not open to the parties to the dispute, the public or to election observers.⁴⁹ This was in apparent contravention

⁴⁵ Article 35(2) of the Election Law states that, "representatives of each of the two oppositional parties in the respective Assembly that have won the highest number of votes in the last elections shall also be appointed to the permanent composition of the Polling Boards."

⁴⁶ Article 108(2) of the Election Law states: "Complaints against a decision, act or omission of the MEC shall be lodged to the higher SEC."

⁴⁷ Article 35(6) of the Election Law states: "the MEC shall deliver the decision on appointment of the polling boards to the submitters of the verified lists of candidates within 48 hours of rendering the decision."

⁴⁸ Article 20 of the Constitution of Montenegro states: "Everyone shall have the right to legal remedy against the decision ruling on the right or legally based interest thereof."

⁴⁹ The President of the Constitutional Court expressed an opinion to the EOM that election dispute cases (hearings) need not be open to the public or participation of the parties as they are of a technical nature; he believes their presence only serves to extend the period of time needed for resolution of the cases.

of the Law on the Constitutional Court,⁵⁰ undermining important principles of transparency and due process in the adjudication of election disputes.

XIII. ELECTION OBSERVATION

The Election Law provides for ‘undisturbed’ access to the entire election administration process by international and domestic observers. The provisions outlining the rights afforded to international observers are, however, more detailed than for domestic observers, although in practice domestic observers did not appear to encounter any limitation of their activities.⁵¹

Civil society in Montenegro is well-established and engaged in the democratic reform process. It includes a number of organizations that have extensive experience in non-partisan election observation, such as the Centre for Election Monitoring (CEMI) and the Centre for Democratic Transition (CDT).⁵² These groups undertook targeted long-term observation, including among other things a focus on campaign financing and the use of state resources in the election campaign. Both undertook parallel vote tabulation exercises based on samples of polling results and announced election results shortly after the close of polling. As in previous elections, the active participation of civil society groups enhanced transparency and may have contributed to increased public confidence in the election process. Domestic non-party observers were present in 42 per cent of polling stations visited by IEOM observers.

XIV. ELECTION DAY

A. OPENING AND VOTING

Election day was well-organized with very few incidents reported. IEOM observers attended 67 opening procedures and all observers evaluated the overall conduct of the openings as good or very good. Voting was observed in 736 polling stations and observers evaluated the conduct of voting as good or very good in 98 per cent.

Certain procedural problems during the opening of polling stations included: not drawing lots to determine responsibilities of PB members, ballot boxes not being sealed in the presence of the first voter, and control slips not being signed by all PB members and the first voter. This underscores the point that although polling station members tended to be very experienced, further training may be required.

The voting process was also evaluated in highly positive terms by observers with only limited irregularities noted. Very positively, observers reported high levels of transparency in all aspects of election day procedures. Authorized party representatives were noted in 94 per cent of polling stations visited. However, the legal requirement to have two PB members

⁵⁰ Article 29 of the Law on the Constitutional Court provides that a hearing should be open to the public unless the case falls within the listed exceptions; election disputes are not an exception.

⁵¹ As set out in Articles 111b (domestic observers) and 111c (international observers). Other differences include requiring domestic observers to apply for accreditation no later than five days prior to election day, while international observers are required to submit applications no later than 10 days before election day.

⁵² Although not directly involved in domestic election observation Center for Democracy and Human Rights (CEDEM) did undertake a public poll some two weeks before election day.

appointed from opposition parties was not respected in 4 per cent of cases. Ballot boxes were reported to not have been properly sealed in 6 per cent of polling stations visited.

Some procedures were again not always followed in the order established by law, especially regarding the signing of voter lists, inking, and receipt of ballots. Group voting was observed in 6 per cent of cases, giving rise to some concern. Proxy voting and identical signatures in the voter lists were both noted in 3 per cent of polling stations observed. Four instances of tension or unrest were noted inside polling stations, as were two cases of voters taking photographs of their ballots with their mobile phones. Although mobile phones are prohibited by law inside polling stations, polling boards did not appear to address this issue adequately.

Homebound voting was also followed by observers in 93 cases. Notably, in 51 of these cases, procedural errors were noted during the homebound voting process and seven observations commented that the secrecy of the homebound voting was not adequately ensured. Again, further training of election officials could potentially this situation.

B. COUNTING AND TABULATION

During the 71 closing and counting procedures observed, all but two teams noted the following of procedures positively, and organization was also assessed positively in all but two polling stations. Transparency of the count was evaluated as good or very good in all polling stations observed and observers were given unrestricted access in all cases. Domestic observers were noted in 57 per cent of cases. Only in one case did observers comment that the count had not been conducted honestly.

Procedures were not always followed in the order established by law, but this did not appear to impact the overall integrity of the counts. In a limited number of cases (six), observer teams reported that people waiting to vote at closing time were not permitted to do so. Also, in ten cases, unused ballots were not counted before the ballot box was opened, and in 20 cases, control coupons were not counted before, giving rise to some concerns. There were two observed cases of special marks on ballots (circles, squares, triangles, etc.) with different coloured pens.⁵³

Although the number of teams that observed the entire tabulation process at MECs was limited, 13 MEC tabulations were followed and were all evaluated as good or very good. In five cases, MECs instructed PBs to correct their Records of Work and in one case the MEC itself made a change to a PB Record. However, this did not appear to impact the overall integrity of the process.

XV. POST ELECTION DAY COMPLAINTS

MECs received some 25 complaints pertaining to election day irregularities. Most of these complaints were filed by the NS-DSS coalition, requesting annulment of results from 32

⁵³ This was also remarked upon in a recount of polling station results by the MEC in Pljevlja. Although limited, this could indicate some form of controlled voting or vote buying. The law does not give any indication of whether such ballots should be considered as 'valid' or 'invalid'. The SEC document "Opinions in regard to the implementation of specific provision of the Election Law" issued as a guideline to MECs in 2006 states that "any shape which may be drawn around [the ordinal number] is considered circling if it can be clearly established who the voter has voted for".

polling stations in six municipalities. Most of these related to minor discrepancies in the count reconciliations. The NS-DSS was several hundred votes short of passing the 3 per cent threshold and appeared to contest these irregularities with the aim of getting the necessary votes during reruns, although it noted that all complaints were legally grounded.

Ten of the NS-DSS coalition complaints were rejected by the MECs and two were accepted. The rejected cases were then appealed to the SEC, which also rejected them, most without a discussion of the substance of the case or law. Without investigating the substance of the allegations, in some cases the SEC cited as its reasoning that no remark of the irregularity had been noted in the Record of Work of the polling station on election day and that all representatives had signed the protocols. This reasoning was given even in cases where the fact of the irregularity was not an issue. The SEC also reasoned that these irregularities did not have an impact on the results of the election, despite the requirement in the Election Law that polling results be automatically annulled in cases of reconciliation discrepancies.⁵⁴ The SEC Chairman noted to the OSCE/ODIHR EOM that this annulment should have taken place immediately and, as it did not, the results thus stood. These automatic provisions appear overly rigid and it has been recommended in previous OSCE/ODIHR reports that these be reconsidered.

The European Coalition appealed the MEC decisions that had annulled results in two polling stations, based on NS-DSS complaints. The SEC satisfied the appeal in both cases, again citing that the irregularities did not have an impact on the final results. In none of the cases were the MECs invited to the SEC session to defend their decisions.

The NS-DSS appealed six of the SEC decisions to the Constitutional Court, which rejected all appeals. The court did not invite parties to the dispute to participate in the proceedings and the hearings were not open to the public; this called into question procedural fairness and transparency. The court also did not evaluate whether the SEC had taken a legal decision based on the Election Law, as it is required to do, but only cited that the irregularities in question did not significantly affect suffrage rights or impact the election results.

XVI. ANNOUNCEMENT OF ELECTION RESULTS

The SEC announced preliminary election results at 20:00 on 30 March, within the legally established deadline. CEMI and CDT had already announced the results of their PVTs on election night. The SEC published final results on 10 April, which was within the legal deadline. As in past elections, it also published results broken down by MEC and polling station, even though the law does not require this level of transparency. This is considered a very positive step in increasing public confidence in the election process.

An examination of the final results, broken down by polling station, indicated a high level of homebound voting on election day, especially in the rural areas of north and north-east Montenegro. It should be noted that two polling stations could not open on election day in

⁵⁴ Article 89(8) states: "If it is established that the number of ballot papers found in the ballot box is higher than the number of electors who have cast their vote or the number of ballot papers in the ballot box is higher than the number of control coupons...the polling board shall be dissolved and a new one shall be appointed and the polling at that polling station shall be repeated. The election results at that polling station shall be established after the repeated polling."

these areas due to snow and bad weather. Nevertheless, the frequency of homebound voting highlights the necessity for further regulation of this method of voting.

XVII. RECOMMENDATIONS

The following recommendations are offered for consideration by the relevant authorities of Montenegro, political parties and civil society, with a view to supporting their efforts in improving the electoral process and in conducting elections in line with OSCE commitments and other standards for democratic elections. The OSCE/ODIHR stands ready to assist the authorities and civil society of Montenegro to further improve the electoral process.

A. GENERAL

1. All outstanding recommendations made in past OSCE/ODIHR reports should be considered seriously and implemented as soon as practicable. They remain essential to improving the electoral process in Montenegro.

B. LEGAL FRAMEWORK

2. The Constitution could provide all Montenegrin citizens, regardless of their length of residence, the right to elect and to be elected. The issue that, in practice, voters without Montenegrin citizenship are allowed to vote, should be addressed in a transparent manner.
3. Consideration could be given to the following proposed amendments:
 - A. Address all gaps and ambiguities in the Election Law, including unclear provisions regarding the campaign. Harmonize the Election Law with other legislation governing election issues.
 - B. As the SEC is the body responsible for the overall legality of the elections, provide unambiguously that the SEC has the authority to cancel all MEC decisions, actions and inactions, in order to ensure correct and consistent application of the law.
 - C. Clarify the right of parties in coalition to nominate members to election administration bodies, including regulating this entitlement in cases where coalition parties separate after the previous election.
 - D. Require MECs to take a formal decision on which two opposition parties are entitled to appoint members to PBs well in advance of the deadline on their appointment. This would allow for formal challenges and, thus, protect parties rights established in law. Also, regulate which entity has the right to nominate the other (i.e., majority) members of the SEC and MECs.
 - E. Provide for a fair distribution of the PB Chair positions among all parties eligible to appoint permanent PB members.
 - F. Distribute all tasks assigned to PB members for administering the process on election day by lottery.
 - G. Allow voters in places other than their permanent residence on election day, through no choice of their own (e.g., hospitalized, military and state officials on duty, diplomats, etc.), to vote. At the same time, ensure the full transparency and integrity of such voting.
 - H. Prohibit the inspection or copying of used election material (signed voter lists and ballot papers), except in cases where a formal complaint regarding a specific

polling station has been filed within the legal deadline. Article 77, currently allows for inspection of all election material, which could compromise citizens' privacy and in small communities possibly even compromise the secrecy of the vote.

- I. Fully regulate homebound voting procedures to include that:
 - Votes cast outside the polling station are mixed with other ballots before votes are counted;
 - Candidates' authorized representatives on PBs are permitted to attend voting outside polling stations;
 - Homebound voters sign the voters list to indicate receipt of a ballot;
 - Use of sealed, secure 'mobile' ballot boxes in place of envelopes; and
 - Clear regulations on who may submit a request on behalf of a homebound voter and when such voting should take place.

C. ELECTION ADMINISTRATION

4. The SEC would benefit from adequate funds to establish a professional Secretariat to support the SEC in implementing its functions. This includes a legal department responsible for providing opinions and interpretations of the Election Law and advising on adjudication of complaints.
5. As coalitions often form differently at the national level and the local level, and as a number of decisions are made before the inclusion of extended members to election administration bodies, consideration could be given to increasing the number of political parties in their permanent compositions to ensure the broadest distribution between the government and the opposition. If such an amendment were to be made, there should then be a re-appointment of these bodies to represent the new structure.
6. The SEC could consider passing a regulation providing that any ballot that contains any mark that may reveal the identity of a voter should be considered 'invalid'.
7. The introduction of proper security seals for ballot boxes is recommended.

D. VOTER REGISTRATION

8. A general audit of the voter list could be considered to address the inconsistency of data regarding citizenship. Any removal of names from the register resulting from the audit should be fully regulated and overseen by state-level institutions, and should ensure an adequate mechanism for appealing against individual decisions on the deletion of entries.

E. ELECTION CAMPAIGN

9. Law enforcement bodies should take greater initiative in properly investigating allegations of election-related criminal activity. This might also increase public confidence in the election process. Citizens should be protected from any negative repercussions as a result of providing witness accounts.

F. CAMPAIGN FINANCE

10. The Law on Financing of Political Parties should be amended to provide for periodic reporting on funding and expenditures during the campaign period, clear complaints procedures, and an audit of all campaign funding sources and expenditures, by one public body, such as the Ministry of Finance or the SEC.

G. MEDIA

11. Broadcast media should ensure more balanced editorial practices, especially in news programmes. Reporting should provide for greater objectivity and diversity, especially when covering activities of the authorities.
12. In co-operation with the SEC, the Broadcasting Agency should monitor the implementation of media-related provisions of the Election and Broadcasting Laws and take prompt and effective action against violations, including identification of any inequitable and preferential news coverage of candidates and parties. Availability of sufficient resources for a systematic monitoring of the media during an election period would assist the Broadcasting Agency in its work.
13. The discrepancy between Article 53 of the Election Law and Article 13 of the *RTCG*'s Rules and Regulations relating to informing voters about campaign rallies free of charge should be addressed.
14. Consideration could be given to introducing a provision in law to protect journalists from prosecution for undercover reporting that exposes criminal activity. Such a provision is currently included in the Code of Conduct of Journalists, but is not law.

H. COMPLAINTS AND APPEALS

15. Election related hearings by all bodies hearing complaints and appeals could improved by allowing for: hearings that are open to the public, the opportunity for all sides to present cases, and decisions which include full legal reasoning of decisions.
16. The Election Law would benefit from further clarity on jurisdiction and procedures for all types of election-related complaints, including disputes regarding election administration, campaigning, media coverage, and campaign finance and expenditures.
17. Unreasonably short deadlines for bodies hearing complaints and appeals could be extended to allow time for all complaints to be heard in a manner to ensure fairness and transparency. At the same time, longer deadlines, which would not allow for election stakeholders to receive a remedy to their complaint during an election period, should be shortened.
18. Co-ordination among the SEC, courts, and relevant public bodies regarding complaint jurisdiction should take place and public information initiatives should be implemented on the means to protect rights of voters.
19. The SEC could also consider allowing for post-election day complaints, even if the complaint was not entered in an EB Record of Work on election day.

I. PARTICIPATION OF NATIONAL MINORITIES

20. Agreement should be obtained on the implementation of the constitutional provision for “authentic representation” of national minorities in Parliament.
21. Efforts should be made to improve equitable representation of minorities in all State institutions.

J. PARTICIPATION OF WOMEN

22. The Action Plan for the Achievement of Gender Equality should be implemented focusing particularly on gender-sensitive voter education and training programmes targeting election administration and public officials at local and national level.
23. On the basis of special provisions recommended by the Gender Equality Act, Parliament may consider, as a temporary measure, the introduction of a quota system on candidate lists to increase participation of women in the election process.

ANNEX I : FINAL RESULTS

MONTENEGRO, STATE ELECTION COMMISSION

No. 328

Podgorica, 10 April 2009

Based on Article 98, paragraph 2 of the Law on Election of Councillors and Representatives [hereinafter: the LECR] (“Official Gazette of the Republic of Montenegro”, no 4/98, 17/98, 14/00, 9/01, 41/02, 46/02 and 48/06), at the session from 10 April 2009, the State Election Commission [hereinafter: the SEC] has established

FINAL RESULTS OF THE ELECTION OF REPRESENTATIVES IN THE PARLIAMENT OF MONTENEGRO

I. Election of representatives in the Parliament of Montenegro, called for by the Decision on Calling For the Election of Representatives in the Parliament of Montenegro (“Official Gazette of Montenegro, no 5/09) have been held on 29 March 2009.

II. At the elections held on 29 March 2009, pursuant to the Constitution of Montenegro, 81 representatives have been elected to the Parliament of Montenegro.

III. Election of representatives in the Parliament of Montenegro, pursuant to Article 12 of the LECR, have been announced in Montenegro as a single constituency, with five of the total number of representatives elected at the polling stations set up by the Decision on Appointing of the Polling Stations for the Election of Five Representatives in the Parliament of Montenegro (“Official Gazette of the Republic of Montenegro”, no 51/06).

IV. Based on electoral material, the total results of the elections are the following:

- Voters register contains altogether 498,305 voters;
- the total number of voters who have turned out is 329,819 out of which:
 - 314,627 at the polling stations;
 - 15,192 outside of polling stations, i.e. via homebound voting;
- the total number of ballot papers received is 499,241 out of which 936 used for voting of prisoners and detained persons;
- the number of unused ballot papers is 169,422;
- the number of used ballot papers is 329,819;
- the number of invalid ballot papers is 5,827;
- the number of valid ballot papers is 323,992.

Respective lists of candidates won the following number of votes:

1. EUROPEAN MONTENEGRO – MILO DJUKANOVIĆ	168,290
2. SNP- SOCIALIST PEOPLE’S PARTY OF MONTENEGRO – SRDJAN MILIĆ	54,547
3. NEW SERBIAN DEMOCRACY – ANDRIJA MANDIĆ	29,883
4. MOVEMENT FOR CHANGES – WE CAN DO IT – NEBOJŠA MEDOJEVIĆ	19,546
5. PEOPLE’S COALITION – PEOPLE’S PARTY AND DEMOCRATIC SERBIAN PARTY	9,448
6. COALITION OF LIBERAL PARTY AND DEMOCRATIC CENTRE – “FOR DIFFERENT MONTENEGRO” - PhD GORAN BATRIĆEVIĆ	8,759
7. PARTY OF PENSIONERS AND INVALIDS OF MONTENEGRO	7,691
8. UDSH – DEMOCRATIC UNION OF ALBANIANS - FERHAT DINOSHA	4,747
9. SERBIAN NATIONAL LIST	4,291
10. “BOSNIAKS AND MUSLIMS TOGETHER AS ONE“	3,489
11. FORCA – NAZIF CUNGU	2,939
12. ALBANIAN LIST: DEMOCRATIC ALLIANCE IN MONTENEGRO – MEHMET	2,898

BARDHI & ALBANIAN ALTERNATIVE – GJERGJ CAMAJ	
13. ALBANIAN COALITION – PERSPECTIVE	2,619
14. FATHERLAND SERBIAN PARTY – ALEKSANDAR STAMATOVIĆ “FOR GENUINE SERBS“	2,446
15. MONTENEGRIN COMMUNISTS	1,594
16. PARTY OF DEMOCRATIC PROSPERITY	805

V. By implementing Article 95 of the LECR, it has been established that particular lists of candidates for the election of representatives in the Parliament of Montenegro have won the following number of seats:

1. EUROPEAN MONTENEGRO – MILO DJUKANOVIĆ	48
2. SNP- SOCIALIST PEOPLE’S PARTY OF MONTENEGRO – SRDJAN MILIĆ	16
3. NEW SERBIAN DEMOCRACY – ANDRIJA MANDIĆ	8
4. MOVEMENT FOR CHANGES – WE CAN DO IT – NEBOJŠA MEDOJEVIĆ	5
5. UDSH – DEMOCRATIC UNION OF ALBANIANS - FERHAT DINOSHA	1
6. FORCA – NAZIF CUNGU	1
7. ALBANIAN LIST: DEMOCRATIC ALLIANCE IN MONTENEGRO – MEHMET BARDHI & ALBANIAN ALTERNATIVE – GJERGJ CAMAJ	1
8. “ALBANIAN COALITION – PERSPECTIVE”	1

VI. Final results of the election of representatives in the Parliament of Montenegro shall be publicised in “Official Gazette of Montenegro”.

SECRETARY
Branka Lakočević

PRESIDENT
Branislav Radulović

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 coordinates 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).