

**INTERIM REPORT
26 February – 12 March 2009**

I. EXECUTIVE SUMMARY

- On 27 January 2009, the day after Parliament voted to shorten its mandate, the President called parliamentary elections for 29 March 2009. The Speaker of Parliament extended an invitation to OSCE/ODIHR to observe the elections on 28 January.
- Sixteen candidate lists were submitted for the 29 March parliamentary elections. All lists have been approved by the State Election Commission (SEC). A total of 970 candidates will be competing for 81 parliamentary seats, elected through a proportional list system. Some 15 per cent of candidates are women.
- The upcoming elections are administered by the SEC, 21 Municipal Election Commissions (MECs) and some 1,141 Polling Boards (PBs). All election administration bodies have a multi-party 'permanent' composition, which will be augmented by authorised representatives from all registered candidate lists, who will enjoy full member status.
- The parliamentary elections are regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. However, the legal framework has yet to be fully harmonized with the 2007 Constitution and key recommendations made by the OSCE/ODIHR in past elections remain to be implemented. Recent constitutional challenges to the legal framework have been unsuccessful.
- The new Law on the Registers of Electors (LRE) alters suffrage eligibility criteria by requiring Montenegrin citizenship as a condition to be registered to vote. However, on the basis of legal challenges in 2008, the Administrative Court ruled that those individuals currently registered, but who have not acquired Montenegrin citizenship may not be removed from the register. As of 4 March, 498,285 electors have been registered to vote.
- The election campaign is proceeding peacefully, although campaign activity remains low-key at the present time. Parties have signed a Code of Conduct as a mechanism to improve the campaign environment. Allegations of pressure on state-sector workers and students have been made and the OSCE/ODIHR is looking into such claims.
- As of 2 March, the OSCE/ODIHR Election Observation Mission (EOM) began its media monitoring of six national television stations and three print media.

II. INTRODUCTION

The upcoming parliamentary elections will be held on 29 March 2009. The elections were called by President Filip Vujanović on 27 January 2009, the day after Parliament voted to shorten its mandate. On the following day, the Parliamentary Speaker Ranko Krivokapić issued an invitation for the OSCE/ODIHR to observe these elections. A Needs Assessment Mission

(NAM) was sent to Montenegro from 3-5 February 2009¹, and subsequently an OSCE/ODIHR EOM was deployed, which arrived on 26 February and formally commenced its work on 2 March. The OSCE/ODIHR EOM is headed by Mr. Artis Pabriks. The OSCE/ODIHR EOM consists of a 13-member core team, based in Podgorica, 14 long-term observers deployed throughout the country, and is drawn from 21 participating States.²

Parliamentary elections will coincide with four local elections in Budva, Herceg Novi, Nikšić, and Tivat. The OSCE/ODIHR EOM will observe the parliamentary elections and will follow the local elections only to the extent that they impact upon the conduct of the parliamentary vote.

III. POLITICAL CONTEXT

The 29 March elections will be the first parliamentary elections to be held after the adoption of the 2007 Constitution. They will be the second set of parliamentary elections since Montenegro's declaration of independence in 2006.

To a large degree, the political landscape in Montenegro has not significantly altered since the OSCE/ODIHR last deployed an EOM in 2008. The main political forces on the side of the governing coalition remain the Democratic Party of Socialists (DPS, led by Prime Minister Milo Đukanović) and their partner, the Social Democratic Party (SDP, headed by Mr. Krivokapić).

The main opposition parties have fragmented further, although efforts to build a unified block were undertaken prior to these elections. New parties include: New Serb Democracy (NOVA, led by Andrija Mandić), which split from the Serb List, and the Democratic Centre (DC, under Goran Batričević), which split from the Movement for Change (PzP, led by Nebojša Medojević). The Socialist People's Party (SNP, led by Srdjan Milić) remains a key opposition party.

Certain parts of the opposition have criticised the timing of the early elections and a few parties challenged the legal framework³. Some opposition parties argue that the government has called elections due to pending economic crisis, while the governing coalition argues that it requires a renewed mandate to carry out key reforms related to European integration.⁴

IV. ELECTION SYSTEM AND LEGAL FRAMEWORK

The Montenegrin Constitution establishes a unicameral parliament of 81 deputies, elected for four-year teams. 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. However, five of these mandates are allocated among 70 polling stations specially designated for these elections by the Parliament; these are in areas populated primarily by ethnic-Albanians. If a list falls short of the established 3 per cent threshold, either in the nationwide or 'special' constituency, the votes from that constituency are reallocated to the votes received in the other constituency. A list can receive allocations in

¹ The NAM report can be found at http://www.osce.org/documents/odihr/2009/02/36253_en.pdf

² Past OSCE/ODIHR reports are available at <http://www.osce.org/odihr-elections/20443.html>

³ Following the independence of Montenegro and the subsequent constitutional reforms, parliamentary elections were to be held before the end of 2009.

⁴ A formal application for EU candidate status was submitted on 15 December 2008.

both constituencies if the threshold is surpassed in both. The law establishes that one half of the mandates won by a list must be awarded to candidates in the order in which they appear on the list, while contestants can allocate the other half to the remaining list candidates in any order; this mechanism has been noted by the OSCE/ODIHR in past reports.

Parliamentary elections are regulated by a comprehensive legal framework that generally provides an adequate basis for the conduct of democratic elections. However, the legal framework has yet to be fully harmonized with the 2007 Constitution and key recommendations made by the OSCE/ODIHR in past elections remain to be implemented. The Constitution generally guarantees fundamental political, civil and human rights.

The Election Law is the primary piece of legislation regulating parliamentary elections.⁵ 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, mainly due to a lack of agreement over the implementation of the Constitutional provision for “authentic representation” of national minorities in the Parliament. The current deadline for Parliament to conclude this harmonization process is October 2009, but this is an extension from the initial deadline of January 2008.

The Constitution provides that the right to elect and stand for office shall be granted to every Montenegrin citizen (*državljinin*) 18 years or older, with at least two years of residence in the country. Such a residency requirement is of concern. However, the Election Law is not harmonized with the Constitution on this point, stating that the right to elect and be elected is granted to *građanin* (citizens of Federal Republic of Yugoslavia and, subsequently, the State Union of Serbia and Montenegro who are permanently resident in Montenegro). The law provides that voters who are temporarily resident abroad must vote in person at the polling station of their last permanent residence.⁶

V. ELECTION ADMINISTRATION

The upcoming parliamentary elections will be conducted by the State Election Commission (SEC), 21 Municipal Election Commissions (MECs), and some 1,141 Polling Boards (PBs). The SEC and MECs are appointed for four-year terms by the Parliament and by municipal assemblies, respectively. However, when the composition of an appointing body has changed through election, the practice has been to reappoint the relevant commissions. The PBs are appointed by the MECs no later than ten days before election day.

All election administration bodies have a ‘permanent’ composition that includes at least two members nominated by the largest opposition parties in Parliament and in respective municipal assemblies. They also have an ‘extended’ composition, which incorporates one authorised representative from each registered electoral list.⁷ These authorised representatives join the SEC and MECs from 14 March, and PBs from 24 March; all participate as full voting members.

⁵ Other relevant laws include the Law on Political Parties (2004), Law on Financing Political Parties (2008), Law on Registers of Electors (2008), Law on Public Meetings (2005), Criminal Code (2004), Law on Administrative Proceedings (2003), Law on the Constitutional Court (2008), various media and broadcasting laws, and decisions and regulations of the State Election Commission.

⁶ Article 10 of the Law on the Registers of Temporary and Permanent Residence requires the inclusion of Montenegrin citizens habitually resident abroad in the Residence Registry.

⁷ The SEC has 11 ‘permanent’ members, MECs have 7, and PBs have 5.

Between the calling of the elections on 27 January and 12 March, the SEC held six sessions, which were open for observers. To date, the SEC has taken decisions regarding candidate registration and ballot printing and publicly announced the number of registered voters at municipal and polling station level. The SEC informed the OSCE/ODIHR EOM that it will adopt regulations on the work of PBs in due course.

VI. VOTER REGISTRATION

The 2008 Law on the Registers of Electors (LRE) states that Montenegrin *državlanin* are to be registered to vote in elections. The 2000 LRE granted this right to *građanin*. However, the 2008 LRE did not provide for new electoral registers to be created, leaving individuals who are currently registered but who have not acquired Montenegrin citizenship. After the adoption of the new LRE, four municipal authorities began to delete people who had not acquired Montenegrin citizenship, 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. The OSCE/ODIHR EOM was informed that all deleted entries have been reinstated by municipalities. However, it is understood that the new LRE requires new entries to be Montenegrin *državlanin*.

Eligible voters are included in the voter register automatically, based on information provided by local Interior Ministry branches and civil registration data. There are 21 separate electoral registers, held and updated by the municipal executive authorities. These registers are amalgamated to create a central electoral database, maintained by the Ministry of Informatics.⁸ This ministry has no authority to amend the data provided by the municipal authorities. Citizens may check their entries at municipal offices, on a website, or using a system accessible through the mobile phone network.

On 4 March, the day after the closing of the registers, the ministry announced that 498,285 electors are registered to vote; an increase of some 1.6 per cent since the April 2008 presidential election. Requests for changes were made to the municipal authorities, with the right to appeal to the Main Administrator of the local government. Requests for changes to the register after 4 March are made directly to the Main Administrator. All decisions can be appealed to the Administrative Court. No changes can be made to the register within 10 days of the election. There appear to have been few complaints or appeals regarding this issue.

VII. CANDIDATE REGISTRATION

Political parties may register to contest elections separately or in coalition on the basis of election (candidate) lists. Groups of *građana* can also submit election lists. All lists must be supported by the signatures of 1 per cent of the electorate; 4,904 signatures for these elections. Article 43 of the Election Law states that “political parties or groups of *građana* who represent Albanians in Montenegro” are required to submit a list containing the signatures of 1,000 electors. It is not possible to contest the parliamentary election as an individual candidate.

All major parties are contesting these elections. A total of 10 parties and 6 coalitions submitted lists prior to the 4 March deadline. Documentation 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. The list was resubmitted by the party within the legal deadline and was approved by the SEC.

⁸ Formerly, the central database was overseen by the Secretariat of Development.

In total, 970 candidates will be competing for 81 parliamentary seats. Some 15 per cent of candidates are women. On 11 March, the SEC drew lots to determine the order in which the 16 electoral lists will appear on the ballot. This, together with the names of all candidates, will be posted in all polling stations.

VIII. THE CAMPAIGN

The governing DPS-SDP parties remain in coalition, joined by the Croatian Civic Initiative (HGI) and the Bosniak Party (BS) under the banner, “European Montenegro – Milo Đukanović”. The DC, which split from PzP, has entered a coalition with the Liberal Party (LP) to contest the vote as the “For a Different Montenegro” coalition. NOVA will run separately from a new Serb National List (SNL) coalition composed of the Serb Radical Party (SSR) and the Party of Serb People (SSN). The SNP will also run independently. Also, 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) will stand. Four parties and two coalitions stemming from national minority groups have also registered. Thus, a total of 24 parties, individually or in coalition, will contest these elections.

A Code of Conduct for the campaign prepared by the NGO Centre for Democratic Transition (CDT) was signed on 27 February by all electoral contestants, with the exception of the SNL parties. The signatories publicly committed themselves to respect the principles of democratic elections with the stated aim of “further improvement of the principles of fair play and democracy.”

A new Law on Financing Political Parties was passed in July 2008. This has created a new system of state subvention in which parties are to receive a set sum of 0.15 per cent of the state budget for their campaigns; 20 per cent of this amount (1,360,000 EUR) is to be split equally among all registered contestants. This will result in initial funds of approximately 17,000 EUR for each party or coalition. The remaining 80 per cent of funds is to be allocated after the elections in proportion to the number of mandates that contestants receive. In addition, the new law establishes the conditions for soliciting private contributions to campaign funds. A number of parties have told the OSCE/ODIHR EOM that this new regime decreases the amount of funds initially available to contestants. In addition, NOVA told the OSCE/ODIHR EOM that the party faces significant obstacles in raising private donations, since businesses are wary of contributing to opposition parties.

Although the campaign is visible, it has yet to pick up pace. Campaign rallies of the larger parties and coalitions have been ongoing sporadically across the country. OSCE/ODIHR EOM observers report that the campaigns tend to target local issues relevant to those municipalities in which events are held. Rallies tend to attract between 50-250 people. No rallies by national minority parties have been noted. Door-to-door campaigning also appears to be common. The general campaign atmosphere has been peaceful.

Some parties, particularly “European Montenegro”, NOVA, PzP, SNL, and SNP, are also advertising in newspapers. In the capital, visual ads in the form of billboards are primarily used by “European Montenegro” and NOVA, with some billboards for the “For a Different Montenegro” coalition and the Serb National List. Opposition parties continue to comment negatively upon the income received by the DPS for the rental of their buildings to the government. A new Law on State Property passed in late February, but it will not be implemented before the elections.

Programmatically, the majority of parties are in favour of European integration, but many remain against Montenegro's entry into NATO. The issue of the recognition of Kosovo's independence does not appear to be a feature of the campaign.

As in previous elections, opposition parties have claimed that various state-sector workers and students are allegedly intimidated by the governing DPS into voting for the coalition. A recent news report on the issue of teachers being pressured has resulted in the Ministry of Education issuing a letter to all educational establishments, stressing that such actions are illegal and that appropriate measures will be taken in any such cases. The OSCE/ODIHR EOM is following these allegations.

IX. THE MEDIA

The media environment in Montenegro is diverse, including public and private broadcasters and numerous press outlets generally available throughout the country. According to the OSCE Representative on Freedom of the Media's report from November 2008, "there is a high degree of media pluralism in the country, in terms of both quantity of media outlets and different views that are presented."⁹ At the same time, the report highlighted certain unresolved shortcomings, such as downgrading of competencies and autonomy of the broadcast media regulator, unresolved cases of violence against media professionals and disproportionately high fines in defamation cases.

Television is, by far, the most important form of media in the context of these elections. The Montenegrin nationwide 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 *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 support *RTCG*'s regular funding shortfalls.

The Election Law contains detailed regulations for the media during the pre-election campaign; among other things, it provides for both free and paid broadcast time and newspaper space for campaigning on equal terms to all contestants during the campaign. To supplement these 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 provide for 30 minutes of free airtime for every registered political party / coalition, to be aired daily after 18.00, 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.

The media have started to broadcast campaign programmes and candidate debates. On 2 March, the OSCE/ODIHR EOM commenced its media monitoring of the campaign coverage,

⁹ OSCE Representative on Freedom of the Media, "The State of Media Freedom in Montenegro", 13 November 2008, http://www.osce.org/documents/rfm/2008/11/34890_en.pdf

including six national television stations and three daily newspapers.¹⁰ Initial findings indicate that only three contestants have purchased airtime between 18:00–24:00 hours: “European Montenegro”, NOVA, and the “For a Different Montenegro” coalition.

X. COMPLAINTS AND APPEALS

Cases challenging the legality and constitutionality of the election legal framework fall under the jurisdiction of the Constitutional Court. The Law on the Constitutional Court does not provide any timeframe for the court’s consideration of such complaints, although the court has informed the OSCE/ODIHR EOM that, in practice, such complaints would be heard prior to a scheduled election. According to the court, there is no legal mechanism for challenging the legitimacy of the election process or its final results.

In July 2008, the SNP filed a lawsuit challenging the constitutionality of the new 2008 Law on the Registers of Electors (LRE) before the Constitutional Court. 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 simple majority. The court rejected the complaint on the grounds that the law does not regulate the electoral system, but merely regulates the manner of exercising suffrage rights.

In December 2008 and January 2009, the SNP filed three lawsuits in the Constitutional Court: 1) challenging the constitutionality of the extension of the deadline for harmonization of the Election Law, 2) challenging the constitutionality of the Election Law (supported by SPI), and 3) challenging the constitutionality of the special five mandate constituency designated by Parliament (this latter suit was also filed by the Serbian National Council.) On 12 March, the court rejected all three cases; in the first two, it held that it did not have jurisdiction and the third case was rejected on substance.

The Election Law provides general procedures for complaints against decisions, actions and inactions of the election administration. Complaints are first considered by the higher-level election commission, with the Constitutional Court having final appeal jurisdiction. Timelines for submission and consideration of complaints are established in the Election Law and the Law on the Constitutional Court. The 24-hour deadlines for consideration of complaints and appeals by election commissions and for submission of election-related appeals to the Constitutional Court are particularly short and may not be sufficient to guarantee due process in all cases. Furthermore, although the SEC reports that it applies fundamental principles of due process in handling complaints, these procedures are not set out in the Election Law or the SEC rules of procedures. Since the calling of the elections, the SEC and Constitutional Court have not received any election administration related complaints.

According to the SEC, media-related complaints and issues on campaigning and campaign finance are regulated by other legal frameworks and are not dealt with by the SEC. There appears to be some confusion among interlocutors on the complaint mechanisms that apply in such cases. Election-related criminal offenses are handled by the Interior Ministry and State Prosecutor, and are adjudicated by regular courts. No cases have been reported to the OSCE/ODIHR EOM to date.

¹⁰ TV – public service broadcaster: RTCG1; privately owned: TV IN, Pink M, NTV Montena, MBC and Atlas. Newspapers: *Vijesti*, *Dan* and *Pobjeda*.

XI. OTHER OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM arrived in Montenegro on 26 February and officially opened in Podgorica on 2 March¹¹. The OSCE/ODIHR EOM was further supported by the deployment of 14 long-term observers throughout the country on 6 March. The Head of the Election Observation Mission has met with the Speaker of Parliament, the Minister of Foreign Affairs, the SEC Chairperson, other state officials, and representatives of many of the political parties and coalitions contesting these elections. The OSCE/ODIHR EOM has established regular contact with election administration bodies, the main political parties/coalitions, and the diplomatic community, including the OSCE Mission to Montenegro. It has met civil society groups, the media, and other interlocutors. The OSCE/ODIHR has requested OSCE participating States to nominate 100 short-term observers for election day.

¹¹ The OSCE/ODIHR EOM press release can be found at: http://www.osce.org/odihr-elections/item_1_36553.html