MONTENEGRO

EARLY PARLIAMENTARY ELECTIONS
14 October 2012

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT
14-16 August 2012

Warsaw
28 August 2012
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I. INTRODUCTION

On 2 August 2012, the Ministry of Foreign Affairs and European Integration of Montenegro invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 14 October early parliamentary elections. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) from 14 to 16 August 2012. The OSCE/ODIHR NAM included Dr. Beata Martin-Rozumilowicz, Head of the OSCE/ODIHR Election Department, Ms. Tamara Otiashvili, OSCE/ODIHR Election Adviser, and Mr. Steven Martin, OSCE/ODIHR Election Adviser.

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

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs and European Integration of Montenegro for its assistance and co-operation in organizing the visit. The OSCE/ODIHR would also like to thank the OSCE Mission to Montenegro for its support during the visit. In addition, the OSCE/ODIHR is grateful to all interlocutors met with during the mission.

II. EXECUTIVE SUMMARY

Early parliamentary elections will be held on 14 October following a parliamentary vote to shorten its mandate based on an initiative of the ruling coalition.

The elections will be contested by the Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP), which currently form the governing coalition. They will be challenged by the newly established Democratic Front, which includes two opposition parties: New Serbian Democracy (Nova) and the Movement for Changes (PzP). The Socialist People’s Party (SNP), the largest parliamentary opposition party, will run separately. In addition to the political parties represented in parliament, several newly established parties will contest these elections, most notably Pozitivna Crna Gora.

The elections will be regulated by a newly amended legal framework. The Law on the Election of Councillors and Members of Parliament (election law) was amended in
2011 and harmonized with the 2007 Constitution. The amendments in particular concerned the articles regulating representation of national minorities to fulfill the constitutional requirement of “authentic representation” of minorities. Other amendments include introducing the gender requirement in candidate lists contesting elections, clarifying composition of election administration, as well as refining media regulations for electoral campaign. The Joint Opinion of the OSCE/ODIHR and the Venice Commission of the Council of Europe (VC/CoE) on the amended election law concluded that the amendments generally represent a positive development but recommended some further amendments.

The Law on Political Party Financing was also amended in 2011. One key change obliges the State Election Commission (SEC) and the State Audit Office to monitor the implementation of this law. Some OSCE/ODIHR NAM interlocutors questioned whether these institutions have sufficient resources to carry out their new responsibilities, including audits of campaign expenditure and investigation of party and campaign financing.

In total 81 members of parliament will be elected in a single nationwide constituency for four-year terms through proportional representation. Candidate lists must surpass a 3 per cent threshold of valid votes, while candidate lists of specific minority or minority national communities must receive 0.7 per cent of the valid votes to participate in seat allocation. In addition, the Croatian minority is guaranteed one seat provided that it receives 0.35 per cent of the valid votes.

Under the previous electoral system five seats were reserved for a special constituency encompassing several areas populated primarily by the Albanian minority. Following the 2011 amendments, all minority groups recognized in the Constitution benefit from provisions that aim at facilitating and enhancing minority representation in parliament. There are no more reserved seats for any constituency and in order to obtain a seat, it is necessary to have received a minimum number of votes. Requirements for candidate registration for political parties and group of voters representing specific minorities or minority national communities have been eased.

Candidates can be nominated by political parties or by a coalition of parties as well as by a group of voters. In a positive development, the election law now requires that each gender should represent at least 30 per cent of the total number of candidates on a list. However, this provision does not require that candidates of each gender be ranked high enough on the list to have a realistic opportunity of being allocated a mandate.

The early parliamentary elections will be administered on three levels: the SEC, 21 Municipal Election Commissions (MECs), and some 1,155 Polling Boards (PBs) throughout the country. The 2011 amendments to the election law increase political pluralism of election administration bodies at all levels by allowing participation of opposition parties represented in the parliament, as well as authorized representatives from all registered candidate lists. Although the election law and SEC regulations require the establishment of a secretariat within the SEC to assist with the administration of elections, this has not yet been implemented.
Most OSCE/ODIHR NAM interlocutors expressed confidence in the impartiality and professionalism of the election administration and their ability to organize elections in a professional and efficient manner.

Voters are automatically included in the voter register based on information provided by local branches of the Ministry of Interior (MoI) and civil registration offices in all municipalities. Some political parties voiced concerns regarding the quality of the voter register due to alleged discrepancies in the number of registered voters compared with the number of citizens in the most recent national census of 2011 and the possible impersonation deception that could lead to electoral fraud.

Numerous media outlets, both private and public, provide a diverse range of coverage and generally enable freedom of expression. The election law includes several new provisions for the media and their role during elections, which aim at ensuring equal conditions for access and coverage of electoral contestants and better regulate how citizens are informed of the elections and the electoral campaign. Some OSCE/ODIHR NAM interlocutors voiced concerns about a lack of equal and balanced coverage by the media of the campaign and individual candidates and parties.

Most OSCE/ODIHR NAM interlocutors expressed confidence in election day proceedings and the administration of the elections. They nevertheless welcomed a potential OSCE/ODIHR observation activity for these elections and recognized that further improvements could be made to the electoral process. They also noted that an assessment and recommendations by the OSCE/ODIHR could contribute to and help build confidence in the electoral process. This particularly relates to implementing the recently amended legal framework, including on voter registration; newly introduced provisions on campaign finance; media coverage of the electoral campaign; the overall conduct of the elections; the participation of national minorities in the electoral process; and the new provisions for gender representation.

Given these circumstances and the fact that no significant concerns were expressed regarding the conduct of election day proceedings, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM) with a core team of experts and 16 long-term observers seconded by OSCE participating States. In line with the OSCE/ODIHR’s standard methodology, the LEOM would include a media monitoring element. While the mission would visit a limited number of polling stations on election day, systematic observation of voting, counting or tabulation of results on election day is not envisaged.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

On 26 July 2012, the parliament voted to shorten its mandate following the initiative of the ruling coalition, which sought a fresh mandate for the country's EU accession negotiations. The motion was supported by a vote of 47 against 27, with the ruling Democratic Party of Socialists (DPS) and the Social Democratic Party (SDP) as well as
the Bosniak Party (BS) voting in favor. The opposition voted against the motion. On 31 July, President Filip Vujanović called early parliamentary elections for 14 October 2012.

The current government is led by the DPS and the SDP. The DPS is the successor to the League of Communists of Montenegro, which ceased to exist in 1990. It has won every general election held in Montenegro since the first post-communist, multi-party elections of 1991. The SDP is a relatively small party but holds an important role as the partner of the DPS, enabling the formation of a coalition government.

The upcoming elections will be contested by the governing coalition as well as by the newly established Democratic Front, led by former foreign minister Miodrag Lekić, which includes two opposition parties: New Serbian Democracy (Nova), and the Movement for Changes (PzP). The Socialist People’s Party (SNP), the largest opposition party, was considering joining the front, but decided to run separately. Several parties representing the Albanian minority, including the Democratic Union of Albanians (DUA) and New Democratic Force (Forca) will also contest the upcoming elections; at the time of the OSCE/ODIHR NAM, it was unknown whether they would run in a coalition or separately. Several parties representing Serbs, including the Serb People’s Party (NS), the Democratic Serbian Party (DSS) and the Serbian Radical Party (SSR), will contest the elections as a coalition. In addition to these political parties represented in parliament, several newly established parties will contest these elections, including Pozitivna Crna Gora.

The OSCE/ODIHR has observed a number of elections since the introduction of the multiparty system in Montenegro, as well as three elections since Montenegro declared independence from the State Union of Serbia and Montenegro in 2006.1 The most recent OSCE/ODIHR Election Observation Mission (EOM) was deployed for the 29 March 2009 early parliamentary elections. The mission concluded in its final report that the elections “met almost all OSCE and Council of Europe commitments, although the process again underscored the need for further democratic development.” Public confidence, as well as frequent allegations of electoral fraud and a blurring of state and party structures were noted as the key challenges.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The upcoming elections will be regulated by a comprehensive legal framework, comprising the Constitution, the Law on the Election of Councillors and Representatives (election law), the Law on Registers of Electors, and the Law on Political Party Financing.

The election law was initially adopted in 1998 and has since then been amended several times, most recently on 8 September 2011. Harmonization of the election law with the Constitution was one of the requirements for opening accession talks with the EU. This particularly concerned provisions on minority representation in parliament to fulfill the

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1 All reports are available at www.osce.org/odihr/elections/montenegro.
constitutional requirement of “authentic representation of minorities.” The vote on the amendments was supported by 71 members of parliament present at the time of the vote. The parties representing the Albanian minority did not endorse the amendments due to the abolition of reserved seats for a special constituency encompassing several areas populated primarily by the Albanian minority. Following the 2011 amendments, all minority groups recognized in the Constitution benefit from provisions that aim at facilitating and enhancing minority representation in parliament. There are no more reserved seats for any constituency; in order to obtain a seat it is necessary for candidate lists representing a specific minority or minority national community to have received a minimum number of votes.

In June 2011, the OSCE/ODIHR and the Venice Commission of the Council of Europe (VC/CoE) concluded in a Joint Opinion that the amendments to the election law generally represent a positive development. However, some further improvements were recommended. Previous OSCE/ODIHR recommendations that remain to be implemented also relate to issues of voter lists, voting, counting and tabulation processes, campaign finance, as well as the separation of party and state.

In 2011, the Law on Political Party Financing was amended, partly implementing previous OSCE/ODIHR recommendations. These amendments are supplemented by several regulations of the State Election Commission (SEC) providing guidance on content of the campaign finance reports; contributions made to parties during electoral campaigns; and, the method of calculating and reporting in-kind contributions to political parties. The Ministry of Finance has issued regulations on the form of the annual party finance report to be submitted by March of each year. One of the key changes introduced by the 2011 amendments obliges the SEC and the State Audit Office to monitor the implementation of this law. However, some OSCE/ODIHR NAM interlocutors questioned whether these institutions have sufficient resources to carry out this mandate, including resources to conduct audits of campaign expenditure and to investigate party and campaign financing. In addition, although the amendments introduce clearer provisions on campaign financing, the law does not provide for periodic reporting on campaign expenditures during the campaign period.

The legal framework provides for general, direct, free and equal suffrage by secret ballot. In total 81 members of parliament are elected in a single nationwide constituency for four-year terms through proportional representation. Political parties can stand

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2 According to Article 79.9 of the Constitution, persons belonging to minority nations and other minority national communities shall be guaranteed “the right to authentic representation in the Parliament of the Republic of Montenegro and in the assemblies of the local self-government units in which they represent a significant share in the population, according to the principle of affirmative action.” The Preamble of the Constitution of the Republic of Montenegro enumerates the “peoples and national minorities” living in Montenegro: “The determination that we, as free and equal citizens, members of peoples and national minorities who live in Montenegro: Montenegrins, Serbs, Bosniaks, Albanians, Muslims, Croats and the others, are committed to democratic and civic Montenegro.”

individually or as part of a coalition with a joint candidate list. Candidate lists that surpass the three per cent threshold of valid votes can take part in the allocation of seats (using the d’Hondt method). However, there is an exceptional rule for candidate lists representing specific minorities or minority national communities. In case none of these lists passes the 3 per cent threshold, but some lists individually gain 0.7 or more per cent of the valid votes, then these lists are entitled to participate in the distribution of up to 3 seats as a single list of candidates. Candidate lists representing the Croatian minority are entitled to one seat if they obtain at least 0.35 per cent of the valid votes.

Under the previous electoral system half of the seats won by a candidate list were awarded based on the order of candidates while the other half was awarded at the discretion of the list submitter. In a welcome change now all seats won by a candidate list are awarded on the basis of the order of candidates. This also applies for replacing vacant seats. However, provisions for registered political parties to form a coalition for the purpose of submitting a joint candidate list are not always clear. Particularly, the law does not provide any guidance regarding the status of coalition parties during the campaign in terms of funding and expenditures. Neither does it provide clear rules that are to be applied when a coalition ceases to exist. In addition, the fact that members of parliament lose their mandate in the event a political party on whose candidate list they have been elected is banned, contravenes Article 87 of the Constitution.

C. ELECTION ADMINISTRATION

The elections will be administered on three levels: the SEC, 21 Municipal Election Commissions (MECs), and some 1,155 Polling Boards (PBs) throughout the country. There is no out-of-country voting envisaged by the legislation.

The 2011 amendments to the election law aim at increasing political pluralism of election administration bodies at all levels. The SEC is a permanent body, appointed by parliament for a four-year term. It is composed of a chairperson, a secretary and nine standing members. MECs are composed of a chairperson, a secretary and four members. They are appointed by their respective municipal assemblies, also for four-year terms, with the majority already established for the upcoming elections. PBs are composed of a chairperson and four members and are established 20 days before election day for each election. The SEC, MECs and PBs now have to include representatives of the political parties represented in the parliament or in the respective municipal assembly, thus ensuring representation of the opposition. In addition to their permanent appointed members, all submitters of registered candidate lists can appoint authorized representatives to all election commissions. The OSCE/ODIHR NAM found that these changes to enhance inclusiveness within the election administration were well received by political parties.

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4 In the final report for the 2009 early parliamentary elections, the OSCE/ODIHR recommended to “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.” Available at http://www.osce.org/odihr/elections/montenegro/37521.

5 This is also not fully in line with OSCE commitments and international standards, particularly with paragraph 7.9 of the 1990 OSCE Copenhagen Document.

6 The current SEC was appointed in December 2011.
Although the election law and SEC regulations provide for the establishment of a secretariat within the SEC to assist with the administration of the elections, this has not yet been realized. Nevertheless, the SEC has already started preparations for the upcoming elections and is thus far meeting the deadlines set by law. Some OSCE/ODIHR NAM interlocutors raised concern about the capacity of the SEC to perform its activities given its limited resources. They were also concerned about the lack of SEC authority to apply sanctions for potential electoral violations, in particular, related to the possible misuse of administrative resources by incumbent (ruling) political parties.

D. VOTER REGISTRATION

Citizens aged 18 years or older by election day, with ‘business capacity’, enjoy the right to vote. The requirement of a 24-months residence period in Montenegro to qualify to vote in national elections remains in place.\(^7\) The OSCE/ODIHR has previously noted that this requirement could not be considered as a reasonable restriction, and recommended that it is removed from the Constitution and the election law.\(^8\)

Voters are automatically included in the voter register, based on information provided by local branches of the Ministry of Interior (MoI) and civil registration offices. Twenty-one separate registers (one for each of the 21 municipalities) are managed by municipal authorities and forwarded to each MEC prior to the elections. Changes to the voter registers are possible until 10 days before election day based on a court decision. Political party representatives generally voiced some concerns to the OSCE/ODIHR NAM regarding the quality of the voter register, especially regarding the discrepancy in the number of registered voters compared with the number of citizens in the most recent national census of 2011 and possible multiple voting and impersonation of voters.

The amended election law tightens voting requirements. From 31 July 2012, only the standard biometric passports and identification cards currently being issued will be considered as valid proof of identity. People without proof of Montenegrin citizenship will only remain in the voter register until 31 December 2012.

E. CANDIDATE REGISTRATION AND ELECTION CAMPAIGN

A citizen of Montenegro with the right to vote and having resided permanently in Montenegro for at least two years can stand in parliamentary elections. Candidates can be nominated by political parties or a coalition of political parties as well as by a group of voters. Candidate lists must be supported by signatures of at least one per cent of the

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\(^7\) Amendments to the election law reduced the residency requirement to vote and be elected in municipal elections to 12 months.

total number of voters. However, candidate lists of political parties, coalitions and groups of voters representing a specific minority or minority national community require only 1,000 signatures from registered voters. In addition, candidate lists nominated by parties, coalitions or groups of voters representing specific minority or minority national community that have a share of up to 2 per cent of the total population require only 300 signatures.

The 2011 amendments improve the gender representation on candidate lists. The election law now requires that each gender should represent at least 30 per cent of the total number of candidates on a list. Candidate lists, which fail to meet this requirement, shall not be registered. The OSCE/ODIHR and VC/CoE commended this change but noted that, in order to be effective, this provision should require that candidates of each gender be ranked high enough on the list to have a realistic opportunity of being allocated a mandate. A number of OSCE/ODIHR NAM interlocutors opined that it may be difficult to find enough female candidates to adhere to this requirement.

The SEC is the body in charge of registering candidate lists. The candidate registration period commences on 20 August and will last until 19 September.

The electoral campaign commences following the registration of candidate lists and ends 24 hours before election day. The 2011 amendments now provide for and regulate the conduct of exit polls. During the campaign period, electoral contestants are entitled to campaign freely. Several OSCE/ODIHR NAM interlocutors highlighted the importance of the elections and expected the campaign to focus on social and economic issues. Other expected campaign issues are corruption and organized crime, as well as EU and NATO integration. In addition to public gatherings some parties envisaged conducting door-to-door campaigning to target certain voter groups, partly also due to a lack of available campaign resources.

F. MEDIA ENVIRONMENT

Numerous media outlets, both public and private, exist in Montenegro. They provide a diverse range of coverage and generally enable freedom of expression.

The election law includes numerous new provisions for media coverage of the elections and the electoral campaign, which aim at ensuring equal conditions for all electoral contestants and regulate how citizens are informed of the electoral process and the electoral campaign. The national public service broadcaster Radio and Television Montenegro (RTCG) is required to provide equal coverage free of charge and to broadcast candidate debates. In particular, the public broadcaster is required to provide

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9 The one per cent is calculated based on the number of voters registered for the previous elections.


submitters of candidate lists with opportunities to inform citizens about their candidates, programmes and activities on an equal basis, daily and free of charge. The supervisory council of RTCG is currently developing internal regulations for coverage of the upcoming elections. The 2011 amendments to the election law also oblige private broadcasters to ensure equal access and conditions for paid broadcasting for all submitters of candidate lists.

In a welcome change, the 2011 amendments clarify how coverage by the electronic media of state authorities and political parties should be separated. The election law now also stipulates that state and local self-government officials are not allowed to use their appearances in the media to advertise candidate lists or their election programmes. In addition, the election law establishes a parliamentary board to monitor the application of the electoral legislation related to media. Regulations on its operations are still under development.

Following recommendations of the EU progress report and as part of the media reform process, the regulatory framework for media was further enhanced in March 2012 with the establishment of two media self-regulatory bodies. The establishment of these bodies is not regulated in the legislation and affiliation of media outlets with either of these bodies is voluntary. The body for private and local media outlets is already functioning while the body for public and national media is not yet active. Both bodies were created with the intention to monitor the implementation of the journalistic Code of Conduct and to react in cases of violation of professional standards. In a welcome change provisions on defamation and insult were removed from the Criminal Code.12

Despite these new regulations and initiatives, some OSCE/ODIHR NAM interlocutors voiced concerns about equal and balanced coverage by the media of the campaign and individual candidates and parties.

Instances of pressure on journalists from independent media reportedly continue. Cases of violence against journalists still have to be fully investigated. OSCE/ODIHR NAM interlocutors raised broader concerns over the professionalism of journalists and the media in general. They also noted the absence of balanced news and the existence of self-censorship, a lack of thorough investigation of certain sensitive issues and restrictions on reporting on certain topics. The state-owned daily newspaper Pobjeda, which should have been privatized as stipulated within the Media Law of 2002, remains under state control.

G. INTERNATIONAL AND DOMESTIC OBSERVERS

The election law provides access for both international and domestic observers to the entire electoral process. Domestic observers are accredited by the SEC, while international observers have to apply to the MFA. Provisions outlining the rights afforded to domestic observers are less detailed, than for international observers. The

12 This change is in line with the previous OSCE/ODIHR recommendation to introduce “a provision in law to protect journalists from prosecution for undercover reporting that exposes criminal activity.” Please see the OSCE/ODIHR Final Report of 29 March 2009 early parliamentary elections, available at http://www.osce.org/odihr/elections/montenegro/37521.
OSCE/ODIHR previously noted that in practice domestic observers did not appear to encounter any limitation in their activities.

Civil society in Montenegro is active and there is a long-standing experience in election observation and other election-related activities. The Centre for Election Monitoring (CEMI) plans to assess and monitor the implementation of campaign finance regulations and the Centre for Democracy and Human Rights (CEDEM) will conduct public opinion polls before election day.

IV. CONCLUSIONS AND RECOMMENDATIONS

Most OSCE/ODIHR NAM interlocutors expressed confidence in election day proceedings and the administration of the elections. They nevertheless welcomed a potential OSCE/ODIHR observation activity for these elections and recognized that further improvements could be made to the electoral process. They also noted that an assessment and recommendations by the OSCE/ODIHR could contribute to and help build confidence in the electoral process. This particularly relates to implementing the recently amended legal framework, including on voter registration; newly introduced provisions on campaign finance; media coverage of the electoral campaign and overall conduct of elections; the participation of national minorities in the electoral process; and the new provisions for gender representation.

Given these circumstances and the fact that no significant concerns were expressed regarding the conduct of election day proceedings, the OSCE/ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM) with a core team of experts and 16 long-term observers seconded by OSCE participating States. In line with the OSCE/ODIHR’s standard methodology, the LEOM would include a media monitoring element. While the mission would visit a limited number of polling stations on election day, systematic observation of voting, counting or tabulation of results on election day is not envisaged.
ANNEX – LIST OF MEETINGS

Government
Mr. Ivan Ivanišević, Director of the Directorate for the OSCE and CoE, the Ministry of Foreign Affairs and European Integration of Montenegro

State Election Commission
Mr. Ivan Kalezić, President
Ms. Slacka Maraš, Deputy President
Mr. Milisav Ćorić, Secretary

Political Parties
Dr. Miodrag Vuković, DPS
Mr. Aleksandar Damjanović, SNP
Ms. Radmila Đurišić, SNP
Mr. Neven Gošović, SNP
Mr. Genci Nimanbegu, FORCA
Mr. Suljo Mustafić, BS
Mr. Novica Stanić, NOVA
Mr. Koča Pavlović, PzP
Mr. Slaviša Guberinić, NS
Mr. Mladen Bojanić, Pozitvna Crna Gora

Civil Society
Mr. Zlatko Vujović, CEMI
Ms. Dženita Brčvak, CEDEM
Mr. Marko Sošić, Institute Alternativa

Media Representatives
Ms. Radojka Rutović, Director, RTCG
Ms. Marina Vuković, Chief in Editor of the First Channel, RTCG
Ms. Aleksandra Pavićević, Editor of News Programme, RTCG
Mr. Radojica Bulatović, Director, Radio Crna Gora
Mr. Vladan Zugić, Vijesti
Ms. Vesna Sofranac, Pobjeda
Mr. Miodrag Rasović, Monitor

International Community
Mr. Waldemar Figaj, Acting Head of OSCE Mission to Montenegro
H.E. Tibor Csaszar, Ambassador, Embassy of Hungary
H.E. Andrey A. Nesterenko, Ambassador, Embassy of the Russian Federation
Mr. Geoff Wan, Deputy Head of Mission, Embassy of the United Kingdom
Mr. John Cooney, Chief of the Political-Economic Section, Embassy of the United States of America