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OPINION ON THE LAW ON ELECTION OF COUNCILLORS AND MEMBERS OF PARLIAMENT AND THE LAW ON ELECTION OF THE PRESIDENT

MONTENEGRO

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Based on an unofficial English translation of the Laws provided by the Parliament of Montenegro.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") welcomes the initiative to conduct a comprehensive review of Montenegro's existing legal framework governing elections and political parties to assess compliance with international standards and OSCE commitments, ensure effective implementation and inform future reform efforts. This Opinion, which analyses the Law on the Election of Councillors and Members of Parliament (hereinafter the "Election Law") and the Law on the Election of the President of Montenegro (hereinafter the "LEP"), should be read together with the ODIHR Opinion on the Law of Montenegro on Political Parties, ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns and the upcoming Opinion on other pieces of legislation governing voter registration, citizenship, personal identification documents and permanent and temporary residence registration. It also takes into account prior ODIHR recommendations from past election observation activities, in particular those for the 2023 parliamentary and presidential elections, but also provides additional recommendations pertaining to the entire scope of the two laws.

The Election Law is applicable to parliamentary and municipal elections, and regulates, *inter alia*, suffrage rights, the electoral system and electoral constituencies, candidate registration, the election administration, the election campaign, the election day procedures and the design of the ballot, as well as election dispute resolution. The LEP regulates some key aspects specific to presidential election, while all other aspects of the electoral process are governed by the Election Law.

Overall, the two laws offer an adequate framework for regulating elections, if effectively implemented. However, there are a number of areas, which require revision to further align the laws with international standards and good practice. There are also a number of inconsistencies among the laws as well as within the Election Law, partially attributable to continuous revisions, which necessitate harmonization, to enhance coherence and legal clarity, *inter alia*, by ensuring a consistent use of terminology and regulatory solutions. Moreover, there are several gaps which would benefit from additional regulation, preferably by the primary law.

As part of a broader electoral reform, there is a need to review the method of formation of election commissions to ensure their impartiality, independence and effectiveness; to review the rules for candidate registration, in particular those related to pluralistic representation, and for election dispute resolution, to ensure effective legal remedy for a wider scope of irregularities and violations, including in contesting election results; to take steps to increase the transparency of the electoral process, in particular in the transmission of election results; and to optimise the campaign regulations, including those pertaining to the media and social networking platforms.

Additionally, it is proposed that the legal drafters should consider synchronizing the timing of municipal elections to improve monitoring and oversight, reduce opportunities for political manipulation and the perception thereof, and decrease procedural costs.

Lastly, consideration should be given to strengthening mechanisms for gender representation in candidate nomination and other areas envisaged by the two laws, to better reflect the constitutional principle of equality between women and men and to promote and enhance the participation of women in political life.

More specifically, and in addition to what is stated above, this Opinion makes the following priority recommendations to further strengthen the laws in accordance with international standards, OSCE commitments and good practice:

A. To consider consolidating all electoral legislation in one law that would regulate all types of elections and all aspects of the electoral process, while eliminating conflicting provisions and aligning the new election law with international standards and good practice pertaining to democratic elections, and addressing prior ODIHR recommendations;

B. The constitutional and Election Law provisions regulating the dissolution of the parliament, the shortening of its mandate and the calling of early parliamentary elections should be reviewed to ensure clarity and provide legal certainty, including on what qualifies as “prolonged inactivity”. The good-faith, consistent, and coherent implementation of the legislation in force is a key element of the rule of law with which Montenegro committed to comply within the framework of the OSCE human dimension commitments, and should be ensured at all times. While acknowledging that such a change would require an amendment to the Constitution, such an option should be kept in mind should a constitutional reform be undertaken in the future;

C. To prescribe clear and objective criteria for the early dissolution of municipal assemblies and the holding of early municipal elections;

D. To consider synchronizing the timing of all regular municipal elections to be held simultaneously nationwide;

E. To ensure compliance with international standards on democratic elections, the legal two-year permanent residence requirement for the right to vote should be abolished from the legal framework for national elections. For any residence requirements remaining in place, clear and objective criteria for determining when a citizen has habitual residence in the country, such as submission of tax declarations or the ownership or renting of property, could be introduced;

F. Consideration should be given to further enhancing the temporary special measures to work towards achieving greater gender representation in legislative bodies in line with CEDAW recommendations;

G. To consider introducing measures facilitating access of persons with disabilities to political office and promoting their electoral chances, including financial, infrastructural, and in-kind measures facilitating visibility in electoral campaigns, as well as public outreach trainings and large-scale public awareness-raising campaigns;

H. To consider removing from Article 44 of the Election Law the restriction that a voter may sign in support of only one candidate list and introduce the possibility to support the nomination of multiple candidates lists for

parliamentary and local elections, with a view to promote pluralism and bring the law in line with international good practice;

I. To revise the procedures of appointment of election management bodies in a manner that better facilitates impartial and balanced compositions. Consideration could be given to conducting inclusive consultations to weigh the benefits of a public merit-based competition and the appointment of the election administration by an independent and impartial body;

J. To fully decriminalize defamation while reviewing vague and broad legal provisions on the content of speech and on false information, to ensure legal certainty and foreseeability and to bring their scope in line with international standards;

K. To consider extending the rights of voters to file complaints on all aspects of the electoral process, including the possibility to challenge election results with a reasonable quorum;

L. To ensure that all violations of the Election Law are provided with graduated, dissuasive and proportionate sanctions and that the existing definitions of offences encompass fully the scope of violations and possible perpetrators;

M. To supplement the legal framework to define and regulate all aspects of the second round of presidential elections.

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 28 January 2025, the Vice President of the Parliament of Montenegro and the Co-Chair of the Committee for Comprehensive Electoral Reform requested the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") to provide a legal review of the Law of Montenegro on the Election of Councillors and Members of Parliament (hereinafter "the Election Law"), the Law on the Election of the President (hereinafter "the LEP"), the Law on Political Parties, the Law on Voter Register, the Law on Montenegrin Citizenship, the Law on Identity Card, and the Law on Registers for Permanent and Temporary Residence.
2. On 18 February 2025, ODIHR responded to this request, confirming the Office's readiness to prepare three separate legal opinions on the compliance of these laws with international human rights standards and OSCE human dimension commitments.
3. The present legal analysis should be read together with the recently published *ODIHR Opinion on the Law of Montenegro on Political Parties*[1] and the *ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns* (2024).[2] It should also be read in conjunction with the recommendations made by previous ODIHR election observation activities, and thus it must be stressed that the previous ODIHR recommendations remain valid.[3] This Opinion should also be read together with the fourth Opinion on the Law on the Voter Register, the Law on Montenegrin Citizenship, the Law on Identity Cards and the Law on Permanent and Temporary Residence.
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.[4]

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers the Election Law and the LEP, which were submitted for review. Along with the other Opinions analysing the Law on Political Parties, the Law on Financing of Political Entities and Election Campaigns, the Law on the Voter Register, the Law on Montenegrin Citizenship, the Law on Identity Cards and the Law on Permanent and Temporary Residence, this will constitute a comprehensive review of the main legal and institutional framework regulating parliamentary, presidential and municipal elections in Montenegro. However, this review does not cover the entire electoral legal framework, as

1 See ODIHR, *Opinion on the Law of Montenegro on Political Parties*, 25 April 2025.
2 See ODIHR, *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, 9 October 2024.
3 See all previous ODIHR election observation reports on Montenegro. In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations".
4 See, in particular, 1998 Oslo Ministerial Declaration, MC.DOC/1/98, stating "*Expression should be given to support for the enhancement of OSCE electoral assistance work and the strengthening of internal procedures to devise remedies against infringements of electoral rules, with the participating States invited to provide the ODIHR in a timely fashion with draft electoral laws and draft amendments to these laws for review so that possible comments can be taken into account in the legislative process*". See also 1999 Istanbul Document which states: "… *appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments*".

additional election-related regulations are included in the Constitution, the Law on Public Assemblies and Public Events, the Law on Territorial Organisation, the Law on Media and relevant provisions of the Criminal Code, and the Law on Misdemeanours, among others.

6. The Opinion focuses on the conformity of these laws with international standards and good practice in electoral matters and highlights proposed changes that might address previous ODIHR election-related recommendations. As such, this Opinion should be read in conjunction with the recommendations made by previous ODIHR election observation activities, and thus it must be stressed that the previous ODIHR recommendations remain valid.[5]

7. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*[6] (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality*[7] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

8. The Opinion provides comments to the two laws thematically. It raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Laws. The ensuing legal analysis is based on international and regional standards and good practice pertaining to democratic elections, relevant OSCE human dimension commitments, and prior ODIHR recommendations. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

9. This Opinion is based on an unofficial English translation of the Laws provided by the Parliament of Montenegro, which is attached to this document as an Annex. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

10. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Montenegro in the future.

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6 *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Montenegro became a State Party to the CEDAW by succession on 23 October 2006.

7 See *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

11. The main relevant international standards, commitments and good practice related to the analysis of the two Laws include:

- Article 25 of the International Covenant on Civil and Political Rights (ICCPR),[8] with the UN Human Rights Committee's General Comment 25, obliging the States Parties to "[…] take effective measures to ensure that all persons entitled to vote are able to exercise the right";
- Article 2 of the ICCPR under which the States Parties undertook to "respect and to ensure to all individuals within [their] territory and subject to [their] jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status";
- Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD)[9] that obliges States Parties "a) To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected […]; b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs […]";
- Article 5c of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)[10] imposes on the States Parties "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the […] political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service";
- Under Article 3 of the Protocol 1 to the European Convention for Human Rights and Fundamental Freedoms,[11] the States Parties undertook "to hold free elections at reasonable

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8 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Montenegro became a State Party to the ICCPR by succession on 23 October 2006.

9 See the *UN Convention on the Rights of Persons with Disabilities*, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Montenegro ratified the Convention on 2 November 2009.

10 See *International Convention on the Elimination of All Forms of Racial Discrimination* adopted by the General Assembly of the United Nations in resolution 2106 (XX)2 of 21 December 1965. Montenegro became a State Party to the ICERD by succession on 23 October 2006.

11 See Protocoal 1 to the *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms,* entry into force in Montenegro on 6 June 2006.

intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature";

- Paragraph 6 of the 1990 OSCE Copenhagen Document, which stipulates the free expression of the will of people through periodic and genuine elections and the respect for the rights of the citizens to take part in the governing of their country either directly or through freely chosen representatives;
- Paragraph 7.6 of the 1990 OSCE Copenhagen Document that guarantees universal and equal suffrage of the adult citizens;
- Paragraph 35 of the 1990 OSCE Copenhagen Document states that "The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs".

12. These standards and commitments are further reinforced by guidelines and international good practices from the Council of Europe (CoE), ODIHR, and other organizations. In addition to the CoE Venice Commission's 2002 *Code of Good Practice in Electoral Matters*, this Opinion refers, *inter alia*, to the Venice Commission's 2020 *Report on Electoral Law and Electoral Administration in Europe*, the 2020 ODIHR-Venice Commission *Joint Guidelines on Political Party Regulation*, the Venice Commission's 2011 *Report on Out-of-Country Voting*, and the case law of the European Court of Human Rights on *Article 3 of Protocol No. 1 to the European Convention on Human Rights.*

13. The recommendations of this Opinion will refer, as appropriate, to other non-binding documents. These include the 2013 ODIHR *Guidelines for Reviewing a Legal Framework for Elections* as well as the ODIHR Handbooks on the *Observation of the Election Administration, Election Dispute Resolution, Election Campaigns and Political Environments, Campaign Finance, Electoral Campaigns on Social Networks, Media Monitoring,* and on *Observing and Promoting the Electoral Participation of Persons with Disabilities.* Likewise, this Opinion takes into account reports from ODIHR election observation activities in Montenegro.

14. As such, this Opinion should be read in conjunction with the recommendations made by previous ODIHR election observation activities, and thus it must be stressed that the previous ODIHR recommendations remain valid.[12]

2. BACKGROUND AND GENERAL COMMENTS

15. Elections in Montenegro are primarily regulated by the 2007 Constitution, the 1998 Law on Elections of Councillors and Members of Parliament (hereinafter "Election Law"), the 2007 Law on the Election of the President (hereinafter "LEP"), the 2020 Law on Financing of Political Subjects and Election Campaigns, the 2014 Law on Voter Register (LVR).[13] Other relevant regulations, including the 2015 Law on Registers for Permanent and Temporary Residence (LRPTR), the 2008 Law on Montenegrin Citizenship (LMC), the 2007 Law on Identity Card (LIC), the 2002 Law on Media, and the Law on Political Parties, are also applicable.

[13] Montenegro is party to the major international and regional instruments on democratic elections, this includes the 1966 International Covenant on Civil and Political Rights (ICCPR), 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 2006 UN Convention on the Rights of Persons with Disabilities (CRPD), 2003 Convention against Corruption and 1950 European Convention on Human Rights. It is a member of the Council of Europe Venice Commission and Group of States against Corruption (GRECO).

16. Montenegro's election-related legislation is not consolidated, and is not harmonized, with legal gaps and conflicting provisions diminishing legal clarity. While some OSCE participating States have separate laws specific to the particular elections to each state body, some other states include the entire electoral legislation in one law, with separate chapters establishing provisions for various specific elections. Although both approaches are acceptable, one consolidated electoral law regulating all elections is recommended for Montenegro, as this approach safeguards consistency and helps ensure that conflicting legal provisions and gaps are fully eliminated during the revision; it also simplifies the drafting process.[14]

17. The Election Law was adopted in 1998, and was since subject to multiple amendments.[15] The numerous legal amendments resulted in inconsistencies, while the 1998 Law itself is, in several respects, outdated. The Law on Election of the President was adopted in 2007 and it was subsequently amended in 2009, 2016 and 2018.

18. The Constitution requires a two-thirds majority in parliament for amendments pertaining to the Election Law and the LEP, necessitating a broad consensus across the political spectrum. Other election-related laws, including those on voter registration, the media, political parties and political finance, may be amended with a simple majority in parliament. Adopting or amending the electoral legislation with a broad consensus in parliament enhances its legitimacy. In Montenegro, the lack of political will and consensus among political parties, with consecutive boycotts by parliamentary political parties, rendered the requisite enhanced majority difficult to achieve. As a result, due to the political situation and ensuing institutional crisis, the recent amendments to the Election Law, were predominantly introduced by Constitutional Court decisions on the unconstitutionality of certain of the Election Law's provisions, while other election-related laws were subject to a more substantial review.

19. In 2018, a parliamentary Committee for a Comprehensive Reform of Electoral and Other Legislation was established and functioned until 2019. The opposition gradually decided to abstain from its work, while representatives of academia and civil society participated as associate members. A draft election law elaborated by the Committee addressed some prior ODIHR recommendations but was not put to a vote in parliament.[16] In 2022, in an attempt to resolve a political stalemate that resulted in a constitutional crisis, the Law on the Election of the President was amended with provisions to resolve the deadlock of non-appointment of the Prime Minister by the President. The amendments were not implemented, and in 2023 were found unconstitutional by the Constitutional Court.[17] The *ad hoc* parliamentary Committee for electoral reform was re-established in 2021, but it did not agree on draft legislation.[18] The Committee was again re-established on several occasions between 2023 and 2025, but its work has not led to substantial results so far.

20. Overall, it is noted that the laws under review lack sufficient detail in some areas, including, importantly, regulation on a second round of a presidential election, some aspects pertaining to

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14 See Section 4.3 of the ODIHR Guidelines for Reviewing a Legal Framework for Elections.

15 The Election Law was amended in 1998, 2000 (three times), 2001, 2002 (twice), 2004, 2006 (twice), 2011, 2014 (twice), 2016, 2017, 2018 and 2020. Eight of these amendments (in 2000, 2004, 2006, 2014, 2016, 2017, 2018 and 2020) result from Constitutional Court decisions finding certain provisions not to be in conformity with the Constitution, and hence that became invalid on the date of publication of the respective decisions of the Constitutional Court as per Article 152 of the Constitution.

16 See the ODIHR and Venice Commission 2020 Urgent Joint Opinion on the draft law on election of members of parliament and councillors.

17 See the 2023 Venice Commission Information on the follow-up to Urgent Opinion on the Law on amendments to the Law on the President of Montenegro, issued on 9 December 2022, pursuant to Article 14a of the Venice Commission's Rules of Procedure (CDL-AD(2022)053).

18 The Committee held two sessions in 2022, and its mandate ended in July 2022 without its work being finalized. The DF-led opposition boycotted to a varying extent the work of the Parliamentary Committee before the August 2020 parliamentary elections, while the DPS-led opposition boycotted its work afterwards.

the formation of election commissions, the resolution of election disputes, some procedures related to the nomination of candidates, including signature verification, as well as the invalidation of results. In addition, to ensure a coherent and effective implementation of the legal framework, complementary secondary legislation will be essential to facilitate and clarify the application of the law. The Council of Europe's European Commission for Democracy through Law (Venice Commission) *Code of Good Practice in Electoral Matters* notes that primary legislation should establish the fundamental principles of electoral law, while secondary legislation – by-laws and other regulations – should focus on *"rules on technical matters and detail"*.[19] This Opinion will seek to identify the gaps to be addressed through primary legislation, recognizing that some related issues may have been regulated through secondary legislation, which falls outside the scope of this analysis. In any case, as part of the comprehensive reform of the election legal framework, ideally, secondary legislation should be prepared in tandem with primary legislation, to ensure consistency and avoid delays in implementation.[20]

21. The laws under review are characterised by considerable deficiency in the coherence of their structural design, which is partially attributed to multiple amendments. A number of logically unaligned provisions are disseminated throughout several sections of the law, in particular the sections on basic provisions, election campaign coverage and election day procedures. For example, Article 2 contains provisions about three different issues, i.e, suffrage rights, voter intimidation (paragraph 2) and exit polls (paragraphs 3 and 4). There are multiple overlapping provisions, which are not coherent in scope and detail.[21]

22. The terminology applied throughout the law is inconsistent, and in several aspects is underdeveloped. In several instances, the lack of harmonisation of terminology across legal acts undermines legal certainty (e.g., with respect to the election campaign definition and its starting date; the definition of the final results in the Law on Election of the President; etc.).[22]

23. The existing legal gaps, especially within the regulation of key aspects of elections, undermine legal certainty and may impact the integrity of the process, including on the verification of candidate nomination signatures, liability of candidate list submitters for falsified documents, sanctions for violations, the determination and invalidation of election results, election dispute resolution, and the second round of the presidential election.

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19 Section II.2.a of the 2001 Venice Commission Code of Good Practice in Electoral Matters (Code of Good Practice) states that "[a]part from rules on technical matters and detail – which may be included in regulations of the executive – rules of electoral law must have at least the rank of a statute." Fundamental issues that should be addressed in the primary electoral legislative frameworks (the electoral law and the constitution) include: qualification to register as a voter, together with any restrictions on such right, if any; qualification for and restrictions on candidacy; rules governing seat allocation; qualification on terms of office; methods of filling casual vacancies; removal of mandates; the secrecy of the vote; and election management".

20 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), para. 115.

21 Article 4 paragraph 1 regulated entities entitled to nominate candidates for municipal and parliamentary elections, partly overlapping with article 38 paragraph 1 while they are not fully consistent. Article 4 paragraph 2 refers to the allocation of seats to election contestants based on the election results, partly overlapping with article 93 paragraph 2. Article 6 refers to the election campagn in the media, overlapping with a number of provisions under Section VII on Representation of the submitters of the candidate lists and candidates from the lists which regulate the election campaign coverage by the media (articles 50, 51, 53, 53a, 54, 55, 56. 62, 63, 64, 64a, 64b). Moroever, the provision of Article 6.2 on election campaign duration is partially repetitive and appears misplaced under Section I on Basic Provisions.

22 For example, in a repetitive regulation on entities entitled to nominate candidates, Article 4 refers to "groups of citizens" while Article 38 refers to "groups of voters"; the definition of campaign period differs with respect to different aspects of the campaign (e.g. for campaign finance, nomination of candidates and election campaign coverage); multiple structural and terminology incoherences are characteristic to the election campaign coverage section.

24. In several past elections, ODIHR election observation activities recommended, *inter alia*, a comprehensive review and harmonization of the electoral legal framework, to eliminate gaps and inconsistencies, enhance its compliance with international standards and good practices, and address previous ODIHR recommendations. Prior ODIHR recommendations included those related to the revision of the election commission formation mechanism, elimination of undue restrictions on voting and candidacy rights, enhancement of transparency and optimization of dispute resolution procedures, strengthen media and campaign finance oversight, as well as provide safeguards for the transfer, tabulation, publishing and invalidation of election results. However, as the result of a prolonged lack of political agreement for an effective electoral reform, most previous ODIHR recommendations remain unaddressed. This Opinion should be read in conjunction with previous ODIHR election observation reports and the ODIHR Opinions on other election-related laws.

RECOMMENDATION 1.

To consider consolidating all electoral legislation in one law that would regulate all types of elections and all aspects of the electoral process, while eliminating conflicting provisions and aligning the new election law with international standards and good practice pertaining to democratic elections, and addressing prior ODIHR recommendations.

3. The Law on Election of Councillors and Members of Parliament

3.1. Electoral System and Electoral Districts

25. While ODIHR respects that the choice of electoral system remains the sovereign decision of a state, the design and implementation of an electoral system should be carefully considered, in conjunction with other existing regulations on elections and political parties and the political life of the country, to ensure conformity with the principles contained in OSCE commitments and other international standards and good practice pertaining to democratic elections. In particular, the implementation of the electoral system should guarantee that universal, equal, free and secret suffrage are respected and take into consideration the country's commitments to promoting inclusive participation. ODIHR therefore offers comments and assessments on the established characteristics, potential impact, and other considerations of the electoral system design.

26. In Montenegro, the 81-member parliament is elected for a four-year term from closed candidate lists under a proportional representation system with a single nation-wide constituency. Given the geographical situation of the country and the size of its population, the single nationwide constituency for parliamentary elections ensures the ability of contestants to reach out to the electorate and the ability of voters to make an informed choice about the contestants and their platforms. Moreover, the system of a nationwide constituency safeguards against concerns about delimitation of constituency boundaries (gerrymandering) and about the equality of voting power.

27. In municipal elections, each municipality elects 30 councillors and an additional councillor per every 5,000 voters. Councillors are elected under a proportional system for a four-year term from a single municipality-wide constituency (Articles 4, 5 and 12 of the Election Law). The law provides that the municipal assemblies determine the number of councillors to be elected for each election no later than the day the elections are called and based on the number of registered voters in the corresponding municipality (Article 3 of the Election Law).

28. It is in line with international good practice that the number of councillors in municipal assemblies in a country varies based on population size, or as in Montenegro – based on the number of voters, to ensure proportional representation. International good practice recommends that "[i]n order to guarantee equal voting power, the distribution of seats must be reviewed at least every ten years, preferably outside election periods".[23] The rule in force on determining the number of seats prior to each election does not ensure the stability of the system or safeguard against political manipulation. Such a legislative solution may undermine public trust in the process, creating the perception that the number of councillors is adjusted through voter migration to serve political interests and create political majorities.[24] **To bring the Election Law closer in line with international good practice, it is recommended to review the rule on determining the number of seats prior to each municipal election to prevent manipulation of the size of municipal councils. The rule on determing the number of seats should not diminish legal stability nor undermine public trust through perceived politically-motivated manipulation.**

29. Moreover, international good practice recommends that the reallocation of seats should be determined by an independent and impartial body.[25] In Montenegro, the Election Law tasks the respective municipal assemblies with determining the number of seats. Generally, this solution may be considered sufficient, taking into consideration that the formula for the determination of seats is prescribed by the law, and thus the discretionary power of the authority in charge of implementation is minimised.[26] However, it is critical to ensure that the bodies administering key electoral decisions not only act in an impartial and independent manner, but are also perceived as such. The municipal assemblies in this respect may be perceived as having an inherent conflict of interest. **Therefore it could be advisable to review the rule to ensure the perception of impartiality and independence is embedded in the institutional design of the entity in charge of the redistribution of seats.**

30. Given that voter registration data serves as the basis of determining the number of seats, it is important to ensure adequate transparency with respect to the maintenance and use of voter registration data, which in the context of Montenegro is generally perceived as insufficient.[27] To this aim, the voter registration data used for determination of the number of seats in the municipal assembly should be treated with integrity and its maintenance should incorporate due safeguards against manipulation, including pertaining to the registration of voters prior to the elections. The transparency of the process could be strengthened through the engagement of civil society representatives and by ensuring the access of the media to the decision-making on the number of seats.

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23 Paragraph I.2.2.v. of the 2002 Venice Commission Code of Good Practice in Electoral Matters and paragraphs 13-17 of its Explanatory Report.

24 The 2023 ODIHR Final Report on the early parliamentary elections in Montenegro underlined that public trust is affected, in particular with respect to the voter registration, by "the alleged practice of voters changing their residence before elections to vote" (p. 10).

25 Paragraph 20 of the 2017 Venice Commission Report on Constituency Delineation and Seat Allocation recommends "[N]ational legal frameworks for boundary delimitation are expected to provide that the persons or institutions responsible for drawing the electoral boundaries are independent and impartial […]".

26 Paragraph 114 of the 2017 Venice Commission Report on Constituency Delineation and Seat Allocation states that "If the law provides for a clear mathematical method for the allocation of seats to constituencies as well as for regular reallocation, the authority which will take the formal decision will have no discretionary power".

27 The 2023 ODIHR Final Report on the early parliamentary elections in Montenegro stated that "the trust in the voter registration framework is diminished as some IEOM interlocutors reiterated longstanding concerns about the accuracy of the voter list" (p. 9).

RECOMMENDATION 2

To bring the Election Law closer in line with international good practice, it is recommended to change the rule on change of the number of seats in municipal assemblies prior to each municipal election into a system with longer intervals between reallocations, which would allow adequately reflection of the demographic situation and balance it with the stability of the law.

3.2. Announcement of the Elections

3.2.1. Call of Parliamentary Elections

31. Article 14 of the Election Law states that regular parliamentary elections shall be held at least 15 days prior to the expiration of the mandate of the parliamentary convocation, at least 60 but not more than 100 days after the elections were announced. The continuity of the legislature is ensured by the provision that the outgoing parliament serves until the validation of the mandates of the new convocation, which shall take place within 30 days after the elections. However, given that the law allows to verify the mandates within 30 days after the elections, while elections may be held as late as 15 days before the expiration of the outgoing parliament's term, it may be beneficial to adjust the dates to ensure compliance with the constitutionally prescribed length of the parliamentary mandate and to ensure legal certainty.[28]

32. Article 15.1 of the Election Law regulates the calling of elections in case of early dissolution of the parliament. It prescribes that the president shall call for early parliamentary elections in cases of dissolution of parliament or adoption of a decision [by parliament] on shortening the term of office of parliament. Article 84 of the Constitution stipulates the possibility of shortening the parliament's mandate by a majority vote of all members of parliament (MPs) upon a proposal of the president, the government or at least 25 MPs.[29] Article 92.1 of the Constitution stipulates that: "the parliament is dissolved in case it fails to elect a government within 90 days from the date the president nominated for the first time a candidate for prime minister", while the government may dissolve the parliament in case it does not perform its duties for a "prolonged period of time."[30]

33. The regulation of the dissolution of the parliament and the resolution of inter-institutional crises is not comprehensive in the current legal framework, limiting legal certainty. The Constitution does not regulate the process in case of a vote of no-confidence.[31] Moreover, the Constitution does not stipulate clear and objective criteria for shortening the term of parliament and grants the president wide discretionary powers to dissolve parliament and call early parliamentary elections. The 2020 ODIHR Final Report on parliamentary elections found, *inter alia*, that

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[29] These provisions are identical for the municipal elections, therefore the recommendation stands for both types of the election.

[29] Article 84 of the Constitution states: "The mandate of the Parliament shall last for four years. The mandate of the parliament may cease prior to the expiry of the period for which it was elected by dissolving it or reducing the mandate of the Parliament. […] At the proposal of the president of Montenegro, the Government or minimum 25 MPs, the Parliament may reduce the duration of its mandate."

[30] Article 92 of the Constitution states: "The Parliament shall not be dissolved during the state of war or state of emergency, if the ballot procedure of no condence in the Government has been initiated, and in the first three months from its constitution and the three months prior to the expiry of its mandate. The president of Montenegro shall call for the elections the first day after the dissolution of the Parliament."

[31] In 2023, a no-confidence vote was passed against the government of Prime Minister Dritan Abazović. At the time, President Milo Đukanović, refused the prime ministerial nomination of Miodrag Lekić from the Democratic Alliance (DEMOS). Subsequently, the government of Mr. Abazović remained in office. On 16 March 2023, President Đukanović dissolved the parliament and called early elections for 11 June.

"[t]he Constitution falls short of sufficiently regulating some issues pertaining to parliamentary elections. Namely, while early elections shall be conducted only if parliament is dissolved or its mandate is shortened, the Constitution is silent about the conditions that trigger the reduction of the mandate. In addition, it provides wide discretionary powers to the president on nomination of the prime minister and the formation of the new government, which may incur dissolution of the parliament […]".[32] The recent assessment of the constitutional regulation on this issue by the Venice Commission concluded that the regulation "would benefit from additions and anti-deadlock mechanisms."[33] **It is recommended to ensure comprehensive regulation pertaining to dissolution of the parliament and the calling of early elections, though acknowledging that certain of these changes would require constitutional amendments and may not be immediately or easily implementable**.

34. The Election Law prescribes the possibility to dissolve the parliament in case of prolonged inactivity (as per Article 92 of the Constitution). However, the law does not define the term that would qualify as "prolonged inactivity" to trigger the dissolution of the parliament. This undermines legal certainty and may lead to institutional instability or misuse. It is recommended **to address the legal gap and clearly define the termination of parliamentary mandate on the basis of prolonged inactivity, in consideration of due legal safeguards against politically motivated misuse**.

35. The constitutional regulation of early dissolution of the parliament due to a no-confidence vote or the failure to appoint the prime minister has played a key role in the recent constitutional crisis in Montenegro, which signifies the importance that should be attached to a potential revision of these provisions.[34] The calling of early parliamentary elections in 2020 and 2023 raised concerns among some election stakeholders regarding their compliance with the Constitution and the effectiveness of the constitutional and legal provisions. To address the above-mentioned issue, in 2022, amendments to the Law on the President allowed for nomination of a prime minister supported by a majority of MPs, in case the president declines to do so, but these amendments were not implemented in 2023 due to concerns that the introduced changes constituted a *de facto* change of the Constitution in violation of the required procedure.[35]

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32 See the 2020 ODIHR Final Report on Parliamentary Elections, which also highlighted that "does not require the president to nominate a prime minister from the party or coalition which won most votes or has the parliamentary majority and does not provide for an alternative if the nominated prime minister fails to obtain a vote of confidence" (p. 6).

33 See para 45 of the 2022 Venice Commission Urgent Opinion on the Law on Amendments to the Law on the President; see also para 142 of the 2007 Venice Commission Interim Opinion on the Constitution of Montenegro.

34 See the 2022 European Commission Enlargement Report on Montenegro (12 October 2022) stated: "As regards the political criteria, political tensions, polarisation, the absence of constructive engagement between political parties and the failure to build consensus on key matters of national interest continued and caused two fractious governments to fall on votes of no-confidence. The proper functioning of Montenegrin institutions has been affected by political volatility, government instability and tensions within the ruling majorities, stalling decision-making processes and reform implementation."

35 See the 2022 Venice Commission Urgent Opinion on the Law on Amendments to the Law on the President, which recommended against the adoption of the law, as "the amendments to the Law on the President do not to merely clarify these provisions, but rather supplement them and even contradict them. Art. 156(3) of the 2007 Montenegrin Constitution requires a qualified majority for its amendment. Changing the provisions on the formation of the government through the Law on amendments to the Law on the President, which is an ordinary law, would therefore amount to changing the Constitution with a smaller majority than the one required by the Constitution (41 votes instead of 54).)"; see also the 2023 Venice Commission Information on the Follow-up to the Urgent Opinion on the Law on Amendments to the Law on the President, issued upon the invalidation of the amendments in question by the Constitutional Court. Under paragraph 5.3 of the 1990 OSCE Copenhagen Document the Participating States committed to ensure "the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law".

RECOMMENDATION 3.

The constitutional and Election Law provisions regulating the dissolution of the parliament, the shortening of its mandate and the calling of early parliamentary elections should be reviewed to ensure clarity and provide legal certainty, including on what qualifies as "prolonged inactivity". The good-faith, consistent, and coherent implementation of the legislation in force is a key element of the rule of law with which Montenegro committed to comply within the framework of the OSCE human dimension commitments, and should be ensured at all times. While acknowledging that such a change would require an amendment to the Constitution, such an option should be kept in mind should a constitutional reform be undertaken in the future.

3.2.2. Call of Municipal Elections

36. The Election Law prescribes that municipal elections shall be held at least 15 days before the mandate of the sitting assembly expires (Article 14). Article 15 of the Election Law grants the president the power to call early municipal elections in case of early termination of the mandate of a municipal assembly. In the absence of any reference to the grounds for early dissolution of municipal assemblies in the Election Law, the Law on Local Self-government applies, under which early dissolution of a municipal assembly may occur in case of a vote of no-confidence or in case the head of the municipal assembly is recalled in line with a legally prescribed procedure.

37. Since 1998, Montenegro has been holding partial municipal elections every one to two years in some municipalities, often in parallel with parliamentary elections.[36] These municipal elections were initially triggered by votes of no-confidence in the municipal assemblies, and subsequently the mandates of municipal assemblies did not expire at the same time and elections were held on a rolling basis. This practice was perceived by several stakeholders as an intentional and strategic dissolution of municipal assemblies and holding of partial municipal elections to serve political interests, including allegations of voter migration, capitalizing on popularity and taking the opposition by surprise, contributing to the erosion of public trust in the electoral process.[37]

38. The disruption of regular electoral cycles by means of the early dissolution of a municipal assembly is acceptable in case of extraordinary circumstances resulting in a failure of the municipal assembly to perform its duties. However, the existing provisions do not establish sufficient safeguards against politically-motivated abuse, including safeguards to prevent manipulating the mechanisms for votes of no-confidence. **It is advised to review the legal framework to foresee safeguards against political manipulation of procedures for the dissolution of municipal assemblies.**

39. The lack of a legally-prescribed unified nationwide date for municipal elections in Montenegro has been a subject of long-standing criticism from national stakeholders and the international community. Positively, in May 2022, amendments to the Law on Local Self-Government stipulated that municipal elections in Podgorica and 13 other municipalities should be held on the same day, no later than 30 October 2023. To ensure the integrity of the electoral process

[36] Municipal elections were held in Montenegro in 1998, 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2014, 2016, 2017, 2018, 2019, 2020, 2021, 2022.

[37] See the Local Elections in Montenegro: beyond political campaigns; see also the 2022 European Commission's Enlargement Report on Montenegro.

and to prevent election-related manipulation, leading to institutional instability and deterioration of public trust in public administration, it is recommended to review the legislation to establish the unified day for municipal elections in all municipalities of Montenegro.[38] A transitory mechanism for aligning the election cycles across municipalities could be developed through a transparent consultative process, with the participation of all political parties and representatives of civil society and academia.

RECOMMENDATION 4.

To prescribe clear and objective criteria for the early dissolution of municipal assemblies and the holding of early municipal elections.

RECOMMENDATION 5.

To consider synchronizing the timing of all regular municipal elections to be held simultaneously nationwide.

3.3. Suffrage Rights

3.3.1. The Right to Vote

40. The right to vote is primarily regulated by the Constitution and the Law on Voter Register, and the Election Law provides limited regulation. The right to vote is granted to citizens of at least 18 years of age on election day.In November 2020, the Constitutional Court invalidated as unconstitutional the provision requiring legal capacity, which disenfranchised persons with intellectual and psychological disabilities; this addressed a prior ODIHR recommendation.

41. The Election Law inconsistently uses terminology and contains overlapping provisions. Article 2.1 of the Election Law regulates the right to vote and to be elected both for the municipal and the parliamentary elections. Article 11 contains a similar provision, partly overlapping with Article 2.1. The terminology used in the two provisions is inconsistent, namely, Article 2.1 refers to "*citizens who are included in the voter register*" while Article 11 refers to *"adult voters with permanent residence in Montenegro for no less than two years prior to election day*". Moreover, Article 11 is inconsistent with the constitutional provision on the right to vote and to be elected which refers to "*citizens with permanent residence in Montenegro for at least two years*". **The provisions on the right to vote and to be elected should be streamlined and harmonized to ensure their coherence and consistency.**

42. At odds with international good practice, the Constitution limits the right to vote to citizens who have resided in the country for two years, and the Election Law further clarifies that the right is limited to those who were residents for two years immediately before election day.[39] The residence requirement is more restrictive for municipal elections, as it is prescribed in conjunction with permanent residence in the respective municipality where a voter votes or stands for election. The 2002 Venice Commission Code of Good Practice in Electoral Matters

[38] Currently, municipal elections are regulated in the Election Law and the Law on Local Self-Government.

[39] See Article 25 in conjunction with Article 2 of the 1966 UN International Covenant on Civil and Political Rights. Paragraph 11 of the 1996 UN Human Rights Committee (UNHRC) General Comment No. 25 to the International Covenant on Civil and Political Rights (hereinafter UN HRC General Comment No. 25 to the ICCPR) provides that "if residence requirements apply to registration, they must be reasonable". See Paragraph I.1.1.c.iii of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

states that "a length of residence requirement may be imposed on nationals solely for local or regional election" and that "residence in this case means habitual residence" of up to six months.

43. OSCE participating States have diverse criteria for determing permanent resident status of their citizens, including dual citizens, e.g., based on a valid ID or passport, social security or healthcare, proven business or employment activities, ownership or rent of property, residence in the country for more than half of the year, tax residency, a registered address in country, or the absence of established primary residence in another country for an extended period.

44. The Law on the Register for Permanent and Temporary Residence does not prescribe clear and objective criteria and a transparent procedure for losing permanent residence.[40] Citizens permanently residing abroad may maintain their permanent residence status in Montenegro and, therefore, are included in the voter register, unless they have opted for deregistering their permanent residence.[41] Moreover, Article 88 of the Election Law stipulates that voters who temporarily reside abroad at the time of elections, shall vote at their last permanent address in Montenegro.

45. Therefore, the restrictive length of requisite residence, in practice, mainly affects those who obtain citizenship and permanent resident status in Montenegro by means of naturalisation. Additionally, this requirement may also apply to those who have lost their permanent residence for any reason, such as deregistration or homelessness, and seek to regain it. These voters can be included in the voter register only two years after they obtain citizenship and permanent residence.

46. International standards do not mandate granting voting rights to citizens residing abroad. A number of OSCE participating States do grant voting rights to their citizens residing permanently abroad, by holding out-of-country voting in diplomatic representations or through postal or internet voting. In such cases, states may maintain a separate voter register for out-of-country voters which is often updated by means of active voter registration.[42]

47. The Venice Commission Code of Good Pratice states that while, "[q]uite a few states grant their nationals living abroad the right to vote and even to be elected. This practice can lead to abuse in some special cases e.g. where nationality is granted on an ethnic basis. Registration could take place where a voter has his or her secondary residence, if he or she resides there regularly and it appears, for example, on local tax payments; the voter must not then of course be registered where he or she has his or her principal address".[43]

RECOMMENDATION 6.

To ensure compliance with international standards on democratic elections, the legal two-year permanent residence requirement for the right to vote should be abolished from the legal framework for national elections. For any residence requirements remaining in place, clear and objective criteria for determining when a citizen has habitual residence in the country, such as submission of tax declarations or the ownership or renting of property, could be introduced.

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40 Paragraph 4 of the UN HRC General Comment No. 25 to the ICCPR states "any conditions which apply to the exercise of the rights protected by Article 25 should be based on objective and reasonable criteria".

41 While citizens of Montenegro are required by law to deregister their residence when they intend to reside permanently abroad, the law does not provide an effective mechanism for the enforcement of this legal requirement.

42 Paragraph 34 of the 2011 Venice Commission Report on Out-of-Country Voting.

43 Section I.1.c of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

3.3.2. The Right to be Elected

3.3.2.1. Candidacy Requirements and Candidates Lists

48. All voters are eligible to stand as candidates. The residency requirement prescribed for eligibility for suffrage rights (see section The Right to Vote), when applied to candidacy requirements, may constitute an unreasonable restriction on the right to stand. In particular, paragraph 15 of the UN Human Rights Committee's General Comment No. 25 states that "persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". **The respective provision of the law imposing a length of residence as a criterion for candidate eligibility should be brought in line with international standards and OSCE commitments.**

49. Article 38 stipulates that candidate lists may be nominated by political parties, coalitions of parties and groups of voters. Further, Article 39 stipulates that each candidate list must include at least two thirds of the total number of candidates to be elected (i.e., 54 of the 81 MPs for the parliamentary elections, while the application of the rule for for municipal assemblies is unclear, the number would fluctuate per size of the municipal assembly) up to the maximum of all seats in the respective assembly. The requirement to nominate a reasonable minimal number of candidates is not contrary to international good practice. Considering the candidates are allowed to withdraw prior to the registration of the lists and the parties are allowed to change the candidates, the provision requiring the maximum number of candidates may hamper implementation, as the parties will be obliged at the last minute to recruit new candidates to substitute those withdrawn. The elimination of this bar and allowing a reasonable pool of additional candidates for the substitution of those withdrawn would facilitate the nomination of candidates for political parties and the election management bodies that verify the compliance of the lists with the eligibility criteria, and would facilitate the foreseeability and transparency of candidate registration process. This measure would also contribute to transparency and integrity of the candidate nomination process.[44] **The provisions of Articles 4.1 and 38.1 of the Election Law on candidate nomination should be streamlined and harmonized to ensure their coherence and consistency. To improve transparency and integrity of the candidate nomination process, it is recommended to consider revising the limit on the number of candidates in the list, and allow a supplementary list of substitute candidates in case of withdrawal.**

3.3.2.2.Gender considerations

50. Article 39a of the Election Law stipulates that each candidate list should contain 30 per cent of candidates of the underrepresented gender, while among every four candidates in the order on the list one should be from the underrepresented gender. Lists failing to meet the gender requirement are offered an opportunity to correct deficiencies or they are denied registration.

51. While the gender requirement for candidate lists is a positive measure, as it ensures a minimum representation of women in the candidate nomination process, it could be further enhanced to ensure more representative legislative bodies.[45] The 2024 CEDAW General Recommendation No. 40 prescribes States Parties to the CEDAW to "amend the Constitution and legislative

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44 See paragraph 7.9 of the 1990 OSCE Copenhagen Document and Article 25 of the ICCPR. See also paragraph 15 of the UN HRC General Comment No 25 that states "[t]he effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates."

45 Article 15 of CEDAW's General Recommendation No. 23 stresses the importance of not only removing de jure barriers but also achieving de facto equality in public and political life.

frameworks to institutionalize 50:50 parity between women and men in all spheres of decision-making".[46]

RECOMMENDATION 7.

Consideration should be given to further enhancing the temporary special measures to work towards achieving greater gender representation in legislative bodies in line with CEDAW recommendations.

52. Prior ODIHR election observation activities noted that despite the affirmative measure, women's participation and representation in Montegrin politics remained low, which was attributed to the persistent "lack of interest among most parties to promote the participation of women beyond the legal minimum", based on the socio-cultural gender-related stereotypes and misconceptions.[47] It is recommended that political parties "shall consider incorporating gender issues in their political agenda, taking measures to ensure that women can participate in the leadership of political parties on an equal basis with men".[48] Political parties should make efforts to introduce internal mechanisms for mainstreaming a gender perspective in parties' rules, policies and practices, including but not limited to, increasing the number of women candidates and enhancing the support they receive for standing as candidates. Parties could adopt a code of ethics and set up independent complaint mechanisms to address all forms of gender-based violence against women in politics, with confidential counselling.[49]

53. It is noted that the legislation in Montenegro allocates public funding for the activities of women's organizations within political entities in the parliament and local assemblies, which have been assessed as complying with international good practice and recommendations.[50] In its 2024 Final Opinion on the respective regulation, noting the ineffectiveness of this scheme, ODIHR recommended to clearly specify in the Law the types of activities that may be supported by such funds while further strengthening the monitoring and oversight of their spending and applying proportionate and dissuasive sanctions in case of non-compliance.[51] In addition, the 2016 OSCE Compendium of Good Practices for Advancing Women's Political Participation in

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46 See the 2024 CEDAW General Recommendation No. 40.

47 See the 2023 ODIHR Final Report on early parliamentary elections in Montenegro, p.p. 10-11.

48 See the assessment of measures under Article 13 of the Law on Financing of Political Entities and Election Campaigns in para 46 of the 2024 ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns.

49 See the 2024 CEDAW General Recommendation No. 40, para. 39 (c). See also ODIHR Opinion on the Law of Montenegro on Political Parties (2025), para. 41 and references therein. See also ODIHR, Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit (2022), including specific Tool 3 on political parties, p. 20.

50 See the 2016 OSCE Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region, p. 32. See paragraph 22 of the CEDAW Committee General Recommendation No. 25, on Article 4, paragraph 1 of the CEDAW on temporary special measures, the term "measures" encompass "a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems. See recommended measures in paragraph 48 of the 2024 ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns, inter alia "establishment or enhancement of women party caucuses, associations or other similar structures as well as training for women candidates, programmes related to women's empowerment, relevant public awareness-raising and educational campaigns, promotion and support to women candidates' campaigning, measures to combat discrimination and violence against women in politics, etc".

51 See the 2024 ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns, paras. 47-49.

the OSCE Region states that "[q]uotas and other temporary special measures, while necessary instruments and good starting points, on their own are not going to achieve the desired changes. They need to be complemented with other measures".

RECOMMENDATION 8.

To include in the laws a wider scope of measures aimed at promoting the political participation and parliamentary representation of women, including additional publicly-funded initiatives and incentives, capacity-building activities and awareness-raising programmes.

3.3.2.3. Nomination of Candidate Lists representing National Minorities

54. Paragraph 35 of the 1990 OSCE Copenhagen Documents states that "[t]he participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities".[52] International standards recommend special measures, i.e., temporary affirmative measures, when these are necessary to ensure the effective participation of national minorities in public affairs.[53] Namely, "[s]pecial measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved".[54]

55. The Election Law provides a set of preferential measures for candidate lists representing national minorities. Article 39 paragraph 4 stipulates that candidate lists nominated by political parties or groups of citizens representing a national minority or a minority national community must include at least one third of the total number of candidates to be elected (i.e., 27 of the 81 MPs), as opposed to the generally prescribed minimum of two-thirds. Article 43 stipulates that lists representing national minorities constituting up to 2 per cent of the total population, based on the latest population census, are only required to submit support signatures of at least 300 voters, which is lower than the generally prescribed number. These preferential terms, *inter alia*, constitute affirmative measures to enhance political participation and representation of national minorities.

56. The law does not prescribe any criteria for the SEC to grant a candidate list the status of a national minority list. In 2020 and again in 2023, the SEC denied registration to two lists alleging to represent national minorities.[55] Several ODIHR EOM interlocutors raised concerns

52 See the 1990 OSCE Copenhagen Document.

53 Article 4.2 of the 1992 UN Declaration on the Rights of Persons Belonging to National Minorities; paragraph 35 of the 1990 OSCE Copenhagen Document; 2013 OSCE Guidelines on Political Participation of National Minorities; articles 4 and 15 of the Council of Europe Framework Convention for the Protection of National Minorities (FCNM); Section I.2.4 of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

54 Article 1.4 of the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (CERD).

55 In the 2011 population census, 1,154 citizens declared themselves Yugoslavs. In 2020, the SEC denied registration to a list which claimed to represent the 'Yugoslav community', arguing that they did not qualify as a minority in the sense of the Law on Rights and Freedoms of Minorities, due to the absence of legally prescribed cultural determinants. In 2023, the SEC denied registration to the list 'Casa del Papel' seeking registration as representing the Italian and Croatian minorities.

that the provisions are open to abuse by political actors, in order to gain representation in parliament and access to public funding under easier conditions.[56] Moreover, members of national minorities are also included and elected with several mainstream political parties and candidate lists while some lists were multi-ethnic. **While special temporary measures to support the electoral participation of national minorities are commendable, clear criteria should be provided related to the nomination of candidate lists representing national minorities that would ensure an objective assessment of eligibility and safeguard against misuse.**

RECOMMENDATION 9.

To provide in the election legislation clear and objective criteria for granting a candidate list the status of a national minority list, and to ensure objective assessment of eligibility and safeguard against misuse. It is recommended to stipulate in the Election Law that. in case a list does not qualify for the status of national minority, it should be assessed as to its compliance with the registration criteria without the preferential terms.

3.3.2.4. Participation of Persons with Disabilities

57. The law does not stipulate any measures to facilitate the participation of persons with disabilities, and ODIHR observed a low level of engagement in the recent electoral cycle.[57] This does not ensure the fulfilment of the rights of persons with disabilities in line with OSCE commitments and international obligations. U nder Article 29 of the UN CRPD, States undertook to ensure the right of persons with disabilities to "stand for elections, to effectively hold office and perform all public functions at all levels of government, […] facilitating the use of assistive and new technologies where appropriate".[58] Article 29 also prescribes that States Parties should actively promote "an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs".

RECOMMENDATION 10.

To consider introducing measures facilitating the access of persons with disabilities to political office and promoting their electoral chances, including financial, infrastructural, and in-kind measures facilitating visibility in electoral campaigns, as well as public outreach trainings and large-scale public awareness-raising campaigns.

56 See the 2020 ODIHR Final Report on parliamentary elections in Montenegro and the 2023 ODIHR Final Report on early parliamentary elections in Montenegro.

57 See the 2023 ODIHR Final Report on early parliamentary elections in Montenegro, which observed that only four candidate lists included persons with disabilities on their lists, "yet almost none of those were placed in a winnable position. Issues related to persons with disabilities were largely absent from the electoral programs and campaign events", p. 15.

58 Article 29 of the United Nations Convention on the Rights of Persons with Disabilities. The 1991 OSCE Moscow Document that states should "take steps to ensure the equal opportunity of persons with disabilities to participate fully in the life of their society" and "to promote the appropriate participation of such persons in decision-making in fields concerning them". See the 1966 UN ICCPR, Article 25 in conjunction with Article 2.

3.3.3 Voters' Supporting Signatures for Candidate Nomination

58. Pursuant to Article 42 of the Election Law, to be registered to stand at parliamentary elections, candidate lists require support signatures of at least 0.8 per cent of the number of voters registered nationwide in the previous elections (e.g., 4,338 signatures for the 2023 elections) or, to run for municipal elections, 0.8 per cent of the voters registered in the corresponding municipality. The number of voter support signatures is in line with international good practice.[59] However, at odds with the freedom of association, international good practice and previous ODIHR recommendations, a voter may sign in support of only one list (Article 44 of the Election Law).[60] **This restriction on signing in support of multiple candidate lists should be reconsidered entirely**.

RECOMMENDATION 11.

To consider removing from Article 44 of the Election Law the restriction that a voter may sign in support of only one candidate list and introduce the possibility to support the nomination of multiple candidate lists for parliamentary and local elections, with a view to promote pluralism and bring the law in line with international good practice.

59. To register a candidate list, the SEC or the respective MEC is required to verify the supporting signatures submitted with lists, and in practice does so in the order of their submission. If the SEC finds that a voter's signature had already been identified for a previously verified list, only the signature for the first verified list is deemed valid. Although this practice aims at adherence to the law, it is arbitrary and discriminative, and requires revision.[61]

60. The law does not provide clear and unambiguous regulation on signature verification, which is at odds with international good practice and has resulted in disputes in past elections.[62] Paragraph 96 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation states that "[w]hile lists of signatures can be checked for verification purposes, experience has shown that this practice can also be abused. These types of processes should thus be carefully regulated, should foresee the publication of lists and specify who has the standing to challenge them and on what grounds. If legislation includes verification processes, the law should clearly state the different steps of the process and ensure that it is fairly and equally applied to all parties and feasible in terms of implementation. Such processes should also follow a clear methodology, may not be too burdensome (e.g., by requiring a disproportionately high number of signatures), and should be implemented in a consistent manner."[63]

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59 Section I.1.1.3.ii of the Venice Commission Code of Good Practice in Electoral Matters.

60 Paragraph 196 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation states that "a requirement that a citizen be allowed to sign in support of only one party should be avoided, as such a regulation would affect his/her right to freedom of association".

61 Paragraph 77 of the 2010 ODIHR and Venice Commission Guidelines on Political Party Regulation recommends that "*in order to enhance pluralism and freedom of association, legislation should not limit a citizen to signing a supporting list of only one party. Such a limitation is too easily abused and can lead to the disqualification of parties who in good faith believed they had fulfilled the requirements for registration."*

62 Paragraph of the 2002 Venice Commission Code of Good Practice in Electoral Matters states "the signature verification procedure must follow clear rules, particularly with regard to deadlines, and be applied to all the signatures rather than just a sample"; Section I.1.1.3.iv. states: "The checking process must in principle cover all signatures; however, once it has been established beyond doubt that the requisite number of signatures has been collected, the remaining signatures need not be checked."

63 See Paragraph 96 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation.

61. Previous election observation reports have noted that the law does not regulate signature verification clearly and unambiguously. . In the 2023 elections, ODIHR noted that the SEC verified whether the data of voters who provided signatures were complete and corresponded to their data in the voter register.[64] The SEC verifies the names submitted by a list until it reaches the legally required number of valid signatures; the remaining signatures are not checked, which is in line with international good practice. The SEC does not conduct graphological examination of the signatures, and such a practice has proven unreliable in most participating States where it is applied.[65] The SEC does not contact a random sample of voters to verify whether they signed for a certain candidate list, which is a good practice implemented in some states that contributes to the accountability of the process.

62. In past elections, ODIHR noted that the signature collection process is prone to abuse and does not adequately ensure integrity. By law, contestants have access to the voter list during the electoral period, while parliamentary parties have such access throughout the year. Contestants also have the right to make copies of the signed voter lists within seven days after election day. In past elections, a number of stakeholders alleged to ODIHR that some parties unduly used voter data from the voter list to forge voters' signatures for candidate registration.

63. Voters can check online if their names were included in the SEC database as supporters of any candidate list, but only after candidate registration is completed, thus not effectively safeguarding the integrity of the process. In past elections, ODIHR reports noted that, following candidate registration, a number of voters alleged that their names were included in the database, although they had not supported any candidate or they had signed in support of a different candidate. ODIHR consistently monitored a number of disputes that originated due to alleged abuse of voters' personal data for candidate nomination purposes.[66]

64. In such cases, the prosecutor initiated year-long investigations which did not result in charges. Notwithstanding, the law does not prescribe liability for the forgery of voters' support signatures and does not provide for an expedited adjudication, failing to ensure accountability and an effective legal remedy. **The forgery of voters' supporting signatures should be explicitly prescribed as a criminal offence under the purview of the prosecutor with proportionate, effective and dissuasive sanctions to be imposed by a court of law.**

65. In view of the above challenges implementing the signature verification process, to enhance the integrity of the candidate registration process, consideration should be given to applying additional good practices from other states, whereby voters are able to provide signatures online by using their credentials to access e-government platforms or prescribing a reasonable deposit refundable to the candidates upon receiving a certain number of votes

3.4. Election Administration

3.4.1. Composition of Election Commissions

66. The Election Law provides for a three-tiered election administration, composed of the SEC, MECs and polling boards (PBs). The SEC and MECs are appointed for a four-year term upon a new convocation of the parliament or the municipal assemblies, respectively, whereas the PBs are established for each electoral cycle. By law, the composition of the election management

64 The IT department of the parliament enters the data of all signatories in a database and cross-checks them against the VR. Signatures are declared invalid on the grounds that the data provided was incomplete, the voter supported multiple lists, or the signatory was not a registered voter.

65 See European Court of Human Rights, case of *Tahirov vs. Azerbaijan* (app. No 31953/11), jud. (Merits and Just Satisfaction), 11 May 2015.

66 See the 2020 ODIHR Final Report on Parliamentary Elections; see also the 2023 ODIHR Final Report on early parliamentary elections in Montenegro.

bodies (EMBs) reflects the political composition of the respective assemblies. The law provides for a permanent (permanent members) and an extended composition (authorized representatives) of the EMBs, with the extended compositions formed prior to elections to include the representatives of the contestants.

3.4.1.1. Permanent Composition of Election Administration

67. Article 30 stipulates that the permanent composition of the SEC comprises a chairperson and 10 members. The chairperson, independent of a political affiliation, is appointed by parliament following a public call. Of the remaining 10 members, 4 are nominated by the parliamentary majority, 4 by the parliamentary opposition, 1 by the national minority group which received the highest number of votes in the previous parliamentary elections and 1 by civil society or academia.

68. Article 25 stipulates that each MEC consists of a chairperson and four permanent members. MECs are composed of members nominated by the political entities which have councillors in the corresponding municipal assembly; two members are appointed by the majority in the respective council and two on the proposal of the parliamentary opposition. The MEC chairperson is appointed by the party that won the highest number of councillor mandates in the previous elections. Article 25 contains a conflicting provision regarding the appointment of the MECs' secretaries: while paragraph 4 states that the MEC secretary is appointed upon the proposal of the parliamentary opposition, i.e, the opposition in the national parliament, paragraph 5 states that the secretary of the SEC shall be appointed upon the proposal of the opposition list that won the highest number of seats in the respective municipal assembly. These ambiguous provisions undermine legal certainty, and require correction.

69. Article 35 stipulates that PB members are appointed by the MEC of the respective municipality, following the same formula. PB chairpersons are nominated by the parties in proportion to their representation in the corresponding municipal council; two permanent PB members are nominated by the majority in the council, and two by the opposition in the corresponding municipal assembly.

70. International good practice suggests that the composition of election commissions, regardless of the formation method used, should ensure pluralism and credibility of the election administration, which should function in an independent and professional manner. The law opts for a partisan composition of election commissions, as opposed to a professional one. The composition formula aims to ensure the impartiality of the election administration by providing for a balance of political powers. Both partisan and professional systems are in line with international good practice, as long as they ensure the independence, impartiality and transparency of the work of the election administration. In case of partisan composition, international good practice recommends that "political parties already in parliament or having scored at least a given percentage of the vote must be equally represented on election commissions or must be able to observe their work. Equality must be construed strictly or on a proportional basis".[67]

71. In the case of Montenegro, the appointment formula does not ensure the balance of the political representation within the EMBs, and does not provide for a mechanism to address potential one-party domination in MECs based on the composition of municipal assemblies. In the 2023 elections, ODIHR noted that "this formula did not prevent one political party from obtaining a significant majority of chairpersons, secretaries and members of lower-level commissions, benefiting from being the strongest party nationwide and, at the same time, being in opposition

[67] See Section II.3.1 of the the Venice Commission Code of Good Practice in Electoral Matters.

in several municipalities."[68] **It needs to be ensured that the appointment mechanisms of election management bodies guarantee balance in their composition, including by providing safeguards against the domination of a single political force on various levels of election administration**.

72. Moreover, the law does not provide a solution for the nomination of EMB members under conditions where the ruling and opposition sides of assemblies are represented by multiple parties within coalitions, which would reflect the political reality in Montenegro. For the SEC composition, the law regulates how the nominations should be conducted among multiple lists of nominees of individual political parties, providing for proportional representation and reflecting the election results, but does not address the situation when the list was nominated by a coalition (Article 30 of the Election Law). The lack of a related regulation for distribution of EMB mandates within coalitions limits legal certainty and renders the implementation of the law difficult in the political context of Montenegro, as in practice it is difficult to establish which parties are eligible to nominate EMB members to represent the ruling majority and which ones represent the opposition.

73. Article 25 of the Election Law prescribes for all permanent commission members at all levels to be law graduates. This legal requirement creates an undue limitation on the participation of citizens in the election administration, at odds with international standards.[69] It is, however, common in various OSCE participating States and acceptable for the election commission chairpersons to be law graduates.[70] Taking into consideration the size of the population of Montenegro in conjunction with other eligibility requirements imposed on the membership of the EMBs, the requirement of all members to have a law degree appears burdensome and was observed to create practical problems in the recruitment of eligible members.

74. International good practice provides for a pluralistic composition of election commissions, including consideration to gender equality and the representation of national minorities and persons with disabilities.[71] The Election Law in force contains no provision on gender balance nor a requirement to collect gender disaggregated data on the composition of the election administration, which should be addressed. The Election Law in force allocates one place in the EMBs to be nominated by the political party representing national minorities with the most seats, and one seat to the representation of academia and civil society. The law does not provide for a rule to facilitate participation of persons with disabilities in the work of election administration. **To ensure compliance of the Election Law with international good practice, consideration should be given to introducing measures to ensure the participation of women and persons of disabilities in the work of the election administration, and to**

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68 See the 2023 ODIHR Final Report on presidential election, p. 9. In regard to the 2023 presidential election, ODIHR noted "While the law provides for politically-balanced election commissions, the Democratic Party of Socialists had a significant majority among members and chairpersons of lower-level election commissions in the first round. The SEC maintained the same composition of election commissions for the second round, including the authorised representatives of all first-round candidates, which reversed the political balance in lower-level election commissions in favour of the opposition candidate, given his endorsement by three first-round candidates.

69 Article 25(c) of the General Comment No. 25 to the ICCPR states that "every citizen shall have the right and the opportunity [...] without unreasonable restrictions to have access, on general terms of equality, to public service in his country". In past elections, stakeholders informed the ODIHR that in practice any university degree close to a law degree is deemed acceptable.

70 Section II.3.1c. of the Venice Commission Code of Good Practice in Electoral Matters recommends that election commissions should include at least one member of the judiciary.

71 See Paragraph 31 of the 1990 OSCE Copenhagen Document that prohibits discrimination and obliges States Parties to adopt measures ensuring equal enjoyment of rights, and Paragraph 35 ensuring effective participation in public affairs. See also paragraph II.3.1.d.iv of the Venice Commission Code of Good Practice in Electoral Matters and paragraph 76 of the Explanatory Report which state that "the electoral commission may include… representatives of national minorities."

reinforce the requirement for the representation of national minorities in election management bodies.

75. The Election Law restricts party affiliation for the SEC member nominated to represent civil society. Some limitations are foreseen for the SEC chairperson, who should not hold positions in the body of the political parties for three years. However, there are no limitations on political functioning for other members of the SEC, which may affect the neutrality and impartiality of the SEC, or the perception thereof. This could be reconsidered.

3.4.1.2. Extended Composition of Election Administration

76. During the electoral period, the permanent members of the SEC, MECs and PBs are joined by the authorized representatives of registered candidate lists, who are temporary members with full voting rights. In previous elections, ODIHR noted that candidate lists do not always have sufficient resources to nominate representatives at all commissions, or submit nominations late in the process, as there is no deadline for their appointment, resulting in lower-level commissions varying in size.

77. In case parliamentary and municipal elections are held on the same day, both the contestants of the parliamentary race and the contestants of the municipal elections have the right to appoint authorized representatives to election commissions. Since the two types of elections are often held in parallel, the appointment of authorized representatives could be used as a mechanism for enhancing representation and securing a majority in election commissions, which is decisive for complaints and election results. Generally, ODIHR observation reports have noted that the performance of the EMBs in the extended compositions was marred by politicization in decision-making and difficulty in reaching compromises needed to pass decisions.[72] The legal solution for the extended composition of the EMBs, as currently implemented, does not ensure compliance of the performance of election administration with international good practice, which calls for independence and impartiality of the election administration.

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78. The law does not prescribe any criteria for the dismissal of election commission members, and nominating bodies have the discretion to recall and replace their nominated election commission members, which may impact their independence.[73] Further, there is also no coherent approach to regulating the potential replacement of commissioners.[74] In designing disciplinary measures against members of EMBs leading to their replacement or dismissal, international good practice requires a clear and exhaustive design of the legal norms in order to safeguard against arbitrariness and an excessively wide margin of appreciation. Judicial oversight for such proceedings should be required.[75] **It is recommended to design a**

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72 See the 2018 ODIHR Final Report on presidential elections in Montenegro.

73 Paragraph 77 of the the Venice Commission Code of Good Practice in Electoral Matters states that "… bodies that appoint members to electoral commissions should not be free to recall them, as it casts doubt on their independence. Discretionary recall is unacceptable, but recall for disciplinary reasons is permissible - provided that the grounds for this are clearly and restrictively specified in law".

74 ODIHR Final report on 2018 Presidential Election states that: "Many PB members were replaced closer to election day with mostly non-trained staff."

75 Article 25 of the 1966 ICCPR establishes the right to have access, on general terms of equality, to public service while Paragraph 23 of the General Comment 25 to Article 25 of the ICCPR states that "Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable […]." Paragraph 24 of the 1990 OSCE Copenhagen Document provides that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law". Paragraph 7.5 of the 1990 OSCE Copenhagen Document requires that the right of citizens to seek political or public office is implemented without discrimination.

comprehensive regulation on replacement, dismissal, and withdrawal procedures, as well as disciplinary sanctions, with respect to members of election commissions.

RECOMMENDATION 12.

To revise the procedures of appointment of election management bodies in a manner that better facilitates impartial and balanced compositions. Consideration could be given to conducting inclusive consultations to weigh the benefits of a public merit-based competition and the appointment of the election administration by an independent and impartial body.

RECOMMENDATION 13.

To consider introducing measures to ensure the participation of women and persons of disabilities in the work of the election administration, and to reinforce the requirement for the representation of national minorities in election management bodies.

3.4.2. Functioning of the EMBs

3.4.2.1. Independence of Election Commissions

79. Article 17 stipulates that election commissions are accountable to the authority that appointed them. Therefore, the SEC is accountable to the parliament, while the MECs are accountable to the municipal councils that appoint them.[76] A key principle under international good practice is that elections are administered by impartial and independent commissions.[77] In particular, the independence of the EMBs should be ensured with respect to other public administration bodies regarding the performance of election-related activities. The law does not provide clear regulation on the tenure of election commissions, which needs to be addressed, with sufficient safeguards to ensure their independence and impartiality. **Additional checks and balances, as well as provisions for the guiding ethical and professional principles of the election administration, could be introduced to help safeguard and promote the neutrality, independence and professional performance of election commissions**.

RECOMMENDATION 14.

To provide clear and objective criteria and a transparent procedure for the dismissal of election commissioners to ensure security of tenure and strengthen their independence.

[76] See the Explanatory Comments on the Inventory of OSCE Commitments and Other Principles for Democratic Elections: "Election bodies should not be subordinate to other state agencies with respect to conducting election activities" (p. 31).

[77] Paragraph 20 of the 2005 Venice Commission Report on Electoral Law and Electoral Administration in Europe that states "autonomous electoral commissions which are independent from other government institutions are increasingly viewed as the basis of impartial electoral management…" Paragraph 7.5 of the 1990 OSCE Copenhagen Document requires that the right of citizens to seek political or public office is implemented without discrimination.

3.4.2.2. Oversight function of the State Election Commission

80. Article 32.3 stipulates that "the SEC shall co-ordinate the work of MECs, issue instructions *with regard to the implementation of this Law, and supervise their work"* but it does not explicitly prescribe concrete obligations. In past elections, ODIHR noted that the SEC did not perform some tasks which are common in other OSCE participating States and would be part of its supervisory role, including collecting information on the composition of MECs and PBs; issuing an instruction on the review of complaints by MECs, including complaints against PB results; prescribing a format for MECs to publish election results; obtaining and publishing information about complaints filed with lower-level commissions, as well as publishing election results disaggregated by polling stations.

RECOMMENDATION 15.

To ensure accountability of the election administration by explicitly prescribing in the Election Law the supervisory function of the State Election Commission over the municipal electoral commissions.

81. Articles 27 and 32 of the Election Law list the competences of the MECs and the SEC respectively. However, both provisions appear to omit some responsibilities which fall under the scope of the election commissions. Inter alia, the list of competences of the MECs omits election dispute resolution functions on the municipal level, arrangements pertaining to the equipment of voting premisses with equipment, ensuring their accessibility for persons with disabilities, and oversight over the election day procedures. **The list of MEC responsibilities should be reviewed to ensure a comprehensive regulation and adequate scope of functions to ensure effective election administration; these should provide clarity on the resolution of election disputes at the municipal level, and include ensuring polling-station accessibility for voters, accrediting observers and media representatives for municipal elections, and supervising election day operations in a given area. The list of State Election Commission responsibilities should be further developed to include the oversight of voter registration and election security, handling electoral disputes, conducting voter education, and accrediting observers and media representatives.**

82. Article 27.2 stipulates that each MEC shall publish, immediately on its own website, its acts and information of significance as well as the preliminary and final voting results for every polling station. The term "acts and information of significance" is vague and may be interpreted inconsistently by MECs. Moreover, in past elections, ODIHR noted that not all MECs have their own website. In several OSCE participating States, all pertinent information is published in a centralized manner on the website of the nationwide election management body, which is a good practice that enhances transparency.[78] **The Election Law should require the SEC to consistently and comprehensively publish all information of public importance on its website in a user-friendly, searchable manner and within a short deadline. The law should explicitly list which information should be published, including MECs decisions, the lists of polling stations, the PB composition, nominated and registered candidates as well as voting results disaggregated per polling station.**

83. Article 27.4 states that MECs shall organise training for PB members, without clarifying whether such training is mandatory and whether this is so for all PB members, including the authorized representatives of contestants. **The law should clarify whether the training is**

[78] See, for example, the 2020 ODIHR Final Report on parliamentary elections, p. 22; see also 2018 ODIHR Final Report on presidential election, p. 7.

mandatory for all PB members or only for permanent ones. It is recommended to ensure that all members of polling boards undergo some form of mandatory trainings.

84. Election commissions render decisions by the majority of votes of their members which facilitates decision-making but allows for politicized decisions along party lines. International good practice recommends that election commissions take decisions by a qualified majority or by consensus.[79] To provide for the neutrality of election commission decisions, the respective provision of the Election Law could be brought in line with international good practice.

RECOMMENDATION 16.

To consider providing a qualified majority instead of simple majority of votes for decision-making within election commissions to ensure their neutrality and align with international good practice.

85. Articles 35 and 37 regulate the PBs, noting that detailed rules are set down by the SEC. The law does not explicitly regulate how PB decisions are taken, namely whether decisions are taken unanimously, by a simple majority of the members, by a qualified majority etc. This is significant particularly in regard to election dispute resolution and certain aspects of the counting of voting results. Article 89 regulates the counting, establishment of voting results by PBs and filling in of PB result protocols, but it does not state how decisions are taken on controversies pertaining to the counting, including the validity of ballots and the establishment of voting results. Moreover, the law does not clarify whether the PB result protocols must be signed by all PB members or the majority of them to be deemed valid, or whether PB members who disagree with the established results are still obliged to sign them. **The law would benefit from regulating how Polling Board decisions are taken, including those on disputes and results. Consideration could be given to clarifying whether Polling Board result protocols must be signed by all members to be deemed valid.**

3.5. Election Campaigns

3.5.1. General Comments

86. Articles 50-64b contain campaign regulations, including pertaining to the media coverage of the campaign, campaign events, print campaign materials and prohibitions on the use of state resources.

87. The structure and sequence of the regulations is incoherent and inconsistent, mainly due to numerous amendments and a lack of consistent harmonisation of the law. For instance, Article 50 paragraphs 1-3 contain regulations pertaining to the campaign in the media, while the last paragraph (4) prescribes a ban on the use of state resources in the campaign; as such the last paragraph could be joined with article 50a which refers to state resources and the role of public officials in the campaign. Articles 51, 53, 53a 54, 55, 56, 62, 63, 64, 64a and 64b pertain to media coverage of the campaign, while Articles 50a and 51a regulate the participation of public officials, undermining the coherence of the regulation. Articles 50, 51, 53, 53a, 56 and 64a, which regulate the campaign coverage of the public broadcast media, contain repetitions and overlap to some extent. **The regulations on election campaigns require revision to ensure**

[79] See Section II.3.1 of the the Venice Commission Code of Good Practice in Electoral Matters.

logical coherence and structural consistency, to eliminate repetitive and conflicting provisions, and to identify and remedy gaps.

RECOMMENDATION 17.

To provide a clear and uniform definition of the election campaign and its duration.

RECOMMENDATION 18.

The campaign regulations under section VII of the Election Law should be restructured and streamlined to improve their coherence, consistency and clarity. To distinguish regulations pertaining to campaign on media from regulations pertaining to other forms of campaigning and general rules applicable to the campaign, while streamlining regulations pertaining to media coverage to distinguish those applicable to all media from those applicable to public media or only to private media.

3.5.2. Start of the Election Campaign and Campaign Silence

88. The legal framework lacks a uniform approach to defining the start date of the election campaign. Article 50.1 of the Election Law stipulates that *"**from the day of verifying the/a candidate list,** the candidate lists are entitled to coverage in public broadcast media".* Article 64a provides that "*the right of media coverage of the election campaign comes into force **on the day of verification of the candidate list of the participants** in the election campaign and ceases 24 hours prior to election day*". Both articles 50 and 64a refer to the start of the campaign in the media and do not mention other forms of campaign activities. Article 2 of the Law on Financing of Political Entities and Election Campaigns states that the *"election campaign is a set of activities of a political entity **from the day of opening the elections** until the day of publishing the final election results*".

89. Therefore, it is understood that political entities may start campaigning already from the call of elections, while a candidate list is entitled to election campaign media coverage once it is registered. In practice, in past elections, each list could obtain media coverage from the moment of its own registration. Thus, the legislation does not in practice ensure a level playing field for all contestants for the duration of the electoral period, as the regulations prescribing equal coverage of all contestants by broadcast media and the right to use public venues for campaign events in equal terms are linked to the registration of contestants.

90. The start of the campaign at a different time for each contestant, depending on the registration date of a list, gives an advantage to lists registered early and does not enable public media to fulfil their legal obligation to provide equal coverage nor private media to provide balanced coverage. However, delaying the start of media coverage until after all lists are registered may be open to abuse and is likely to give an undue advantage to incumbents, who generally receive media coverage in their official capacity.

91. Article 64a prescribes a 24-hour campaign silence ***in media***. Article 6.2, on the other hand, refers to a 24-hour campaign silence applying to ***media and public gatherings***. Neither provision explicitly mentions other forms of campaign activity (e.g., reaching out to voters by

distributing print campaign materials or contacting them on platforms which are not considered media), which undermines effective implementation of the campaign silence provisions.[80]

92. A period of campaign silence, generally 24 hours prior to election day, as prescribed by the Election Law, is a practice in many OSCE participating States, aiming to provide voters a time for reflection and to prevent major political statements too close to election day whereby other political actors may not have an opportunity to react to or rebut them.

93. However, the practice of a campaign silence period is becoming increasingly less effective and difficult to enforce in the digital era, which provides contestants and other actors ample opportunities to bypass the moratorium and continue outreach to voters. Namely, political advertisments and campaign content remain accessible on social media and social networks during the election campaign silence; algorithms continue to amplify previously posted political content; contestants can convey political messages to voters through third parties and influencers; international and foreign media available with or without subscription are not bound by national legislation; and group political messages are disseminated on messaging apps which are not considered media and are not subject to the regulation. Moreover, oversight is challenging as monitoring online posts in real time is not feasible and may result in selective and potentially arbitrary implementation.

94. In past elections in Montenegro, widespread dissemination of political messages during the campaign silence period, including on social media, foreign media and via massive text messages to voters, was conducted, thus circumventing the law, while opponents were not able to react and respond promptly.

RECOMMENDATION 19.

To review the regulation on campaign silence to clarify which forms of campaign activity beyond media and public gatherings are banned, such as physical, in-person campaigning and campaign events, as well as political advertising in traditional (broadcast and print) and online media.

95. Article 111h stipulates that opinion (exit) polls may be conducted after the voting process, following the SEC's approval of a request to conduct exit polls. Article 2 paragraphs 3 and 4 stipulate that opinion (exit) polls may be held after the end of voting, which appears more restrictive than the provisions of Article 111h, which could be interpreted as applicable to voting by individual voters. Moreover, Article 63 of the Election Law prohibits the media from publishing the results of opinion polls with estimations of election outcomes from 15 days prior to elections until the end of voting. Such an extensive prohibition raises concerns as to compliance with standards on the right to freedom of expression and access to information guaranteed under Article 19 of the ICCPR and Article 10 of the ECHR. The European Court of Human Rights has established in its case-law that "freedom of expression is one of the 'conditions' necessary to "ensure the free expression of the opinion of the people in the choice of the legislature" […] For this reason, it is particularly important in the period preceding an

[80] Articles 51a, 52, 53, 53a, 56, 58, 60 and 62 are all applicable "during the campaign period". However, it is unclear whether they refer to the period from the call of elections, from the registration of a candidate list, or the announcement of the consolidated candidate list. Article 64.a of the Election Law provides that the duration of the campaign is applicable not only to broadcast media but to all media, and in line with the Law on Media online media publications are included into the broad term of "media", which implies that the rules on campaign silence should also be applicable to online media.

election that opinions and information of all kinds are permitted to circulate freely".[81] With respect to opinion polls, Article 19 concluded that "bans of longer than 24 hours will rarely, outside of special circumstances, […] be able to be justified".[82] The 2020 Joint Urgent Opinion on the draft [Election Law] stated that "Extensive prohibitions on publication of opinion polls […] may not achieve their aims as it is not possible in practice to restrict access to the results of these polls through websites registered abroad".

RECOMMENDATION 20.

To reconsider the current prohibition in Article 63 of the Election Law on publishing opinion polls 15 days prior to elections and instead shorten the period from 24 hours before the election day to the end of voting. The legal provisions on opinion polls after voting (exit polls) should be streamlined and harmonized to ensure clarity and legal certainty.

3.5.3. Election Campaign Coverage by the Public Broadcast Media

96. A number of provisions under Section VII of the Election Law stipulate that registered lists are entitled to equal campaign conditions on the national public broadcaster (Radio and Television of Montenegro) and the local public broadcasters. The public broadcasters are required to provide all registered candidate lists with free-of-charge coverage on a daily basis, in equal duration, equally and at the same time, within their political newscasts and in precisely defined political marketing blocks which can be heard or seen in the entire territory of Montenegro. Public media are prohibited to offer any campaign coverage, free of charge or paid, outside the newscasts and political marketing blocks, which effectively prevents public media from offering any editorial coverage of the campaign.

97. The European Court of Human Rights established in its case law that, "[…] at election time the press assists the "free expression of the opinion of the people in the choice of the legislature". The "public watchdog" role of the press is no less pertinent at election time. This role is not limited to using the press as a medium of communication, for instance by way of political advertising, but also encompasses an independent exercise of freedom of the press by mass media outlets such as newspapers on the basis of free editorial choice aimed at imparting information and ideas on subjects of public interest. In particular, discussion of the candidates and their programmes contributes to the public's right to receive information and strengthens voters' ability to make informed choices between candidates for office".[83] The ECtHR also states that, considering the crucial importance of the freedom of expression in the realisation of

[81] See the ECtHR judgments on cases *Mathieu-Mohin and Clerfayt v. Belgium*, app. 9267/81, (Merits), 2 March 1987,, paras. 52 and 54; and *Bowman v. the United Kingdom* [GC], app. No 24839/94, (Merits and Just Satisfaction), 19 February 1998, para 43. See paragraph 8 of the Council of Europe Committee of Ministers' Recommendation CM/Rec(2007)15 On measures concerning media coverage of election campaigns that states: "any restriction on [...] publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights (ECHR), as interpreted by the European Court of Human Rights."

[82] Article 19, the Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls.

[83] See European Court of Human Rights, judgments on the cases *Jersild v. Denmark* [GC], app. 15890/89, Merits and Just Satisfaction, 23 September 1994, para 31; *De Haes and Gijsels v. Belgium*, app. 19983/92, Merits and Just Satisfaction, 24 February 1997, para 37; and *Bladet Tromsø and Stensaas v. Norway* [GC], app. 21980/93, (dec.) 26 May 1997, para. 58; *Orlovskaya Iskra v. Russia*, app. 42911/08, Merits and Just Satisfaction, 21 February 2017, para. 130.

the right to free elections, restrictions of the freedom of expression with respect to political debates on issues of public interest should only be subject to narrow interpretation.[84]

98. In paragraph 9.1 of the 1990 OSCE Copenhagen Document, the participating States guaranteed "everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority […]. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards".[85]

99. Thus, the restriction on editorial coverage of election campaigns by the public broadcaster is not in line with the ECHR and OSCE commitments. **It is recommended to amend the rules unduly limiting the editorial freedoms of the public media in the election campaign in line with prior long-standing ODIHR recommendations on providing measures to ensure the independence and editorial freedom of public broadcasters, including by developing a comprehensive legal basis that would encourage independent editorial content and by guaranteeing the financial independence of state and municipal public broadcasters.[86]**

3.5.4. Election Campaign Coverage by the Commercial Broadcast Media

100. Article 50.3 stipulates that commercial broadcasters shall enable paid advertising opportunities to registered candidate lists under equal conditions. Article 54 stipulates that paid advertising on commercial broadcasters should be labelled as such. Article 64 requires all broadcasters, including commercial ones, to adopt rules to ensure fair editorial coverage and equal presentation of the contestants and to publish these rules within ten days from the call of elections. The law does not clarify whether these rules are also applicable to the online platforms of the broadcasters. **The law should explicitly state that the rules applicable to commercial broadcasters regulating the coverage of election campaigns are also applicable to their online platforms.**

3.5.5. Oversight of the Election Campaign Coverage by the Media

101. Article 62 stipulates that all public and private media should publish statements of the authorities on violations of campaign-related provisions by a public media outlet. It is unclear why the provision refers only to violations committed by public media and it does not include also those committed by commercial media. Article 117.3 prescribes a fine for non-compliance. It is unclear whether the fine is imposed by a court of law and how this procedure shall be initiated. It is also known that court proceedings may take years, raising concerns about the effectiveness of this sanctioning and enforcement mechanism. **All public and private media should be required by law to publish statements of authorities on violations by either public or private media. The law should prescribe effective, proportionate and dissuasive sanctions for non-compliance and an effective and timely enforcement mechanism.**

102. Article 64b stipulates that an *ad hoc* parliamentary committee monitors the implementation of the provisions on media coverage of the election campaign. This committee was not established for the past five elections. The *ad hoc* parliamentary committee is political in nature rather than

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84 See, inter alia, the judgment on the case of *Lopes Gomes da Silva v. Portugal*, app. 37698/97, Merits and Just Satisfaction, 28 September 2000, para. 33.

85 See paragraph 9.1 of the 1990 OSCE Copenhagen Document.

86 Paragraph 25 of the 1999 OSCE Istanbul Document. ODIHR issued recommendations on ensuring editorial independence of public broadcasters inter alia in 2023, 2020, 2016.

an independent institution, which does not ensure its impartiality in conducting oversight, at odds with international standards.[87]

103. Article 64b mandates the Agency for Electronic Media (AEM) with authority to adjudicate media-related complaints but does not mandate it to oversee broadcasters' compliance with the Election Law.[88] Thus, there is no independent regulatory body mandated to oversee media conduct or to sanction violations, which weakens the enforcement of media-related provisions of the Election Law.

RECOMMENDATION 21.

To mandate the Agency for Electronic Media to oversee the compliance of broadcast media with election-related provisions, while providing it with sufficient sanctioning and enforcement powers, and prescribing in the law a graduated system of effective, proportionate and dissuasive sanctions for broadcasters breaching the law.

3.5.6. Misuse of State Resources in the Election Campaign

104. Article 50.4 states that assets and funds of state, public and local self-government institutions may not be used for the presentation of candidate lists. The Law on Financing of Political Entities and Election Campaign (LFPEEC) further contains comprehensive regulations and mandates the Agency for Prevention of Corruption (APC) with oversight. However, these regulations are circumvented during election periods, including by means of allocation of extraordinary welfare benefits, offering of temporary state employment contracts, providing incumbents with an undue advantage.[89]

RECOMMENDATION 22.

To consider introducing additional safeguards to prevent the misuse of state resources and abuse of office, including extending the ban on new hires to temporary employment contracts, publishing information on public expenditure in a user-friendly, searchable manner, educating public officials, candidates and voters on ethical standards, prescribing effective, promptly-enforceable sanctions, and strengthening the monitoring capacity of civil society, including by means of information and communication technologies.

105. Article 50a of the Election Law stipulates that public officials appointed or nominated by the government or elected or appointed by the local self-government and civil servants may not take part in the election campaign during working hours or while on duty. Thus, the ban does not explicitly include directly-elected public officials.

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87 See the UN HRC General Comment 34 on Article 19 of the ICCPR; see also Council of Europe Committee of Ministers Recommendation CM/Rec (2007)15 On measures concerning media coverage of election campaigns; the 2002 Venice Commission Code of Good Practice in Electoral Matters.

88 The Law on Electronic Media (LEM) mandate the Agency for Electronic Media (AEM) with elaborating election-related media regulations and monitoring the broadcasters' compliance with the LEM, with its regulations and with other bylaws.

89 See Section 1.3 and 1.4 of the 2016 ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes.

106. Article 51a explicitly states that "During the election campaign period, state officials and local self-government officials may make presentations as representatives of candidate lists and may, in their media presentations on public, commercial and non-profit electronic media promote election programmes and candidate lists in compliance with the legal requirements to campaigns". The law prohibits such officials "to misuse or use their media presentation in the role of the government or other public officials for advertising or indirect advertising of the candidate list and/or their election programme". This possibility of effective implementation of this provision is, however, limited, due to the public nature of such offices, which would inevitably entail association of the personality of the individual with their public office.

107. In line with Article 50a, civil and public servants are not allowed to campaign during working hours as this would constitute use of state resources to promote political interests. While this is a common practice in several OSCE participating States, limiting the prohibition to working hours does not prevent abuse of public office. Often, public officials participate in campaign events after working hours or abuse their power and their influence to promote political interests, including by putting pressure or offering incentives to public employees and beneficiaries of public services.

108. The Election Law does not require appointed high-level public officials to resign in order to stand as candidates, which can result in a conflict of interest and abuse of public office. International standards and ECtHR jurisprudence allow for States to limit the eligibility of certain civil servants as candidates without resigning, as a proportionate response to the requirement that the civil service be independent and avoid conflict of interest in the election campaign.[90]

109. In past elections, some elected public officials, including the president, took an active role in the campaign in parliamentary and municipal elections, despite not being candidates. Such an active role of high-ranking public officials blurs the line between state and party and gives an undue advantage of incumbency, contrary to OSCE commitments and international good practice.[91] The Election Law requires revision to ensure sufficient safeguards against misuse of office and administrative resources and to provide an efficient enforcement mechanism and dissuasive sanctions for violations.

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[90] Paragraph 16 of the UN HRC General Comment 25 to the ICCPR states: "If there are reasonable grounds for regarding certain elective offices as incompatible with tenure of specific positions (e.g. the judiciary, high ranking military office, public service) measures to avoid conflict of interest should not unduly limit the rights protected by paragraph b". In *Brike v. Latvia* (2000), the European Court of Human Rights (ECtHR) ruled that the candidate ineligibility of civil servants constituted a proportionate response to the requirement that the civil service be independent. In the case *Gitonas and Others v. Greece (1997)*, the ECtHR noted that: "Disqualification served a dual purpose that was essential for proper functioning and upholding of democratic regimes, namely ensuring that candidates of different political persuasions enjoyed equal means of influence and protecting the electorate from pressure from holders of public office." See also ECtHR case Ahmed and Others v. the United Kingdom (1998); Section 4.1 and 4.2 of the 2016 ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources During Electoral Processes.

[91] Paragraph 7.7 of the 1990 OSCE Copenhagen Document calles for "political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution". See paragraphs 4.2, B.1.1, B.1.2 and B.1.4 of the 2016 Venice Commission and ODIHR Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes; and 1-33 of the Venice Commission Report on Misuse of Administrative Resources during Electoral Processes. See the 2020 ODIHR Final Report on parliamentary elections in Montenegro, p.p. 11 and 12, and the 2023 ODIHR Final Report on early parliamentary elections in Montenegro, p. 14.

RECOMMENDATION 23.

To revise the Election Law to further elaborate what constitutes the misuse of administrative resources and public office to ensure sufficient safeguards against these practices and to provide an efficient enforcement mechanism and dissuasive sanctions for violations.

3.5.7. Freedom of Expression in the Election Campaign

110. Article 52 of the Election Law states that *"the campaign participants shall abide by the Constitution, the laws and codes of professional ethics and shall be bound by [the rules of] fair behaviour, which excludes insult and slander, violation of the rules of decency or offending public morals"*. This provision is vague and broad and requires revision to prevent any potential limitations on the freedom of expression.[92]

111. In addition, other laws contain provisions including on "*defamation of the reputation of Montenegro*", "*insult in public space*", which are sanctioned with fines and imprisonment, thus effectively criminalising defamation, at odds with international standards.[93] ODIHR has previously assessed that the regulations on dissemination of fake news, including the criminal sanctions for "*causing panic by the dissemination of false news*", are not regulated with sufficient precision, failing to safeguard the freedom of expression.[94]

RECOMMENDATION 24.

To fully decriminalize defamation while reviewing vague and broad legal provisions on the content of speech and on false information, to ensure legal certainty and foreseeability and to bring their scope in line with international standards.

3.5.8. Other Campaign Regulations

112. Article 56 stipulates that the national public broadcaster shall provide translation in sign language for the debates of candidate lists. No other provisions prescribe the provision of campaign information for persons with sensory impairments or intellectual disabilities.

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92 Article 25 of the UNHRC ICCPR, General Comment No. 34 on Freedoms of Expression and Opinion states that "a norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution".

93 Article 198 of the Criminal Code prescribes a fine or imprisonment of up to one year for "public mockery of Montenegro, its flag, coat of arms, or anthem"; article 398 of the Criminal Code imprisonment up to three years for "causing panic by the dissemination of false news"; article 7 of the Law on Public Order and Peace punishes "harsh insult in public space" with a fine of EUR 250-1,000 or imprisonment up to 30 days. See also Article 19 of the 1966 UN ICCPR and paragraph 9.1 of the 1990 OSCE Copenhagen Document, which states, *inter alia*, that "[t]he exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards".

99 See the 2023 ODIHR Final Report on early parliamentary elections in Montenegro, p. 20. Article 47 of the UNHRC ICCPR, General Comment No. 34 on Freedoms of Expression and Opinion stipulates: "States parties should consider the decriminalization of defamation, and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty." The 2017 UN, OSCE, OAS, ACHPR Joint declaration on freedom of expression and "fake news", disinformation and propaganda states " a. General prohibitions on the dissemination of information based on vague and ambiguous ideas, including "false news" or "non-objective information", are incompatible with international standards for restrictions on freedom of expression, as set out in paragraph 1(a), and should be abolished".

According to the 1991 OSCE Moscow Document, participating States should "take steps to ensure the equal opportunity of persons with disabilities to participate fully in the life of their society" and "to promote the appropriate participation of such persons in decision-making in fields concerning them".[95] In line with international standards and good practice, as well as prior ODIHR recommendations, the law should strive to ensure the accessibility of political information and campaign materials for persons with various types of disability, including via wider availability of election-related information in accessible formats, such as easy-to-read and easy-to-understand versions, with sign interpretation when required, subtitles for videos and Braille versions.[96] Political parties should take measures to ensure inclusive engagement of persons with disabilities in the election campaigns and political activities in general. For these aims, efforts could be made to adjust campaign and political information to ensure the materials are user-friendly and respond inclusively for a diversity of special requirements of persons with disabilities (including materials in Braille, accessible language, adjustments for online content to be adequate for persons with visual impairments). The information should be widely available without the need for proactive requests.

RECOMMENDATION 25.

To require by law that public institutions, political parties and media provide voter and campaign information in accessible formats.

113. Article 60 stipulates that contestants may display print campaign materials publicly, on locations designated by a responsible municipal body. In practice, in past elections, ODIHR noted that billboards were set up on billboard panels run by private advertising companies, which constitutes paid advertising, while private companies may exercise discretion in the allocation of the panels. Moreover, in past elections, the municipal authorities did not designate locations for print campaign materials, i.e., stands for posters, as required by law.

114. The law does not require print materials to bear imprints with information on the organisation that ordered and paid for them. During past elections, including the 2023 presidential and parliamentary elections, ODIHR noted publicly-displayed print campaign materials, including before the start of the campaign, which were not formally attributed to a contestant and were not accounted for in campaign finance reports. While some of these materials indirectly promoted a contestant, others contained negative rhetoric against specific contestants.[97] Campaign materials which do not indicate their sponsor undermine the transparency and accountability of campaign finances and interfere with the ability of voters to make informed voting choices. To enhance transparency and accountability, ODIHR has recommended obliging all campaign participants, including third-party campaigners, "to label their print campaign materials and online advertisements with information on who ordered and paid for the production and publication"; this recommendation remains unaddressed. **To ensure transparency and accountability, the law should require print campaign materials to bear**

[95] See paragraphs 41.2 and 41.3 of the 1991 OSCE Moscow Document. See the 1966 UN ICCPR, Article 25 in conjunction with Article 2. The 2017 ODIHR's Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities states that "the electoral campaign should be accessible for persons with all types of disabilities. Efforts should be made to ensure campaign events and electoral materials are available to all. Public media should ensure equal access to information and equal opportunities to deliver messages for persons with disabilities".

[96] See, inter alia, paragraph 7.4.2 of the 2017 Council of Europe Parliamentary Assembly Resolution No. 2155(2017) "The Political Rights of Persons with Disabilities: A Democratic Issue". See 2020 ODIHR Final Report on parliamentary elections, p. 21.

[97] See the 2023 ODIHR Final Report on presidential elections in Montenegro, p. 15.

information on the organizations which ordered, financed and produced them, the number of copies and the date of publication.

3.6. Election Observation

115. Article 111a permits accredited observers to observe the course of the election and the work of elections commissions, but does not explicitly state that accredited observers have access to all election-related processes, including signature verification, and documents.

116. Article 111b regulates the accreditation procedure for national observers but does not prescribe an appeal process in case applicants are denied observer accreditation. **It is recommended to provide an avenue for appeals against decisions related to the accreditation of observers.**

3.7. Election Day Procedures

3.7.1 Voting for Persons with Disabilities

117. The Election Law provides minimal measures related to the electoral participation of voters with disabilities. Articles 67 and 85 prescribe homebound voting for the elderly, persons with disabilities, and the sick. Articles 85 and 85a do not specify whether homebound voting must be conducted within the polling station area, the respective municipality, or anywhere in the country. Article 84 stipulates that persons with disabilities and illiterate persons may vote with assistance by a person of their choice, who may not be a PB member; that PBs must provide visually-impaired persons with an appropriate ballot template, and that they should record in the pollbook cases of assisted voting and of voting with a template. There is no explicit provision in the Election Law on the allocation of accessible premises for polling stations or any policies to ensure that chosen polling stations are rendered independently accessible by persons with physical disabilities or limited mobility.[98]

118. Positively, Article 68 stipulates that voting invitations should be sent to voters with disabilities in an accessible format. However, the law makes the delivery of such notifications conditional to a prior proactive request by the voter or their representatives. **The requirement of proactive actions from voters with disabilities to receive election-related information in accessible formats is at odds with international standards, and would benefit from review**.[99] **It is recommended to ensure wide availability of election-related information online in user-friendly format, that would ensure independent and easy, indiscriminate access.**

119. Article 9 of the CRPD requires that, "to enable persons with disabilities to live independently and participate fully in all aspects of life, States parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment […], facilities and services open or provided to the public, both in urban and in rural areas". Article 29 of the CRPD creates an obligation of "[p]rotecting the right of persons with disabilities to vote by secret ballot in elections and public referendums […], facilitating the use of assistive and new technologies where appropriate".[100] **The measures prescribed by law for facilitating the voting of persons with disabilities, including assisted and homebound**

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98 In 2017, the Constitutional Court repealed a provision regarding the obligation to ensure accessibility of polling stations for voters with disabilities on the premise that the provision fell short from the international and European human rights standards on independent voting. Therefore, the case law established the standard for the authorities obligations to ensure adequate facilities for independent voting by persons with disabilities (see Constitutional Court decision U-32/14 of 27 June 2017).

99 See Article 29 of the 2006 UN CRPD that requires states to "guarantee that "voting procedures, facilities and materials [shall be] appropriate, accessible and easy to understand and use". See also the 2017 ODIHR Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities, p.p. 46-48.

100 See Article 29 ii. of the 2006 UN CRPD.

voting, are not sufficient to ensure that persons with disabilities are able to exercise their voting rights independently, and require revision.

RECOMMENDATION 26.

To revise and supplement the provisions of the Election Law for facilitating the independent voting of persons with disabilities, including by eliminating requirements for proactive requests to receive user-friendly election-related materials and ensuring a wide availability of accessible election-related information, while requiring the responsible authorities to take steps to guarantee the accessibility of polling stations and the availability of assistive tools for voters.

3.7.2 Polling Board Dissolution due to Violations of Voting Procedure

120. Article 69 stipulates that if voting procedures are violated, the polling board may be dissolved and, in such a case, the voting shall be repeated. Article 69a stipulates that *"the polling board shall be dissolved and the voting shall be repeated in case the PB fails to arrange the polling station in a manner that ensures the secrecy of the vote (e.g. a voting booth)"*. In this case, the law requires repeated voting. The Election Law does not specify the scale of the violations or a prerequisite of irreversibility of the consequences of such violations, which raises a question of the proportionality of such a response. Repeat voting would constitute a disproportionate response, in case the irregularity **could be addressed by re-arranging the polling station or if needed appointing a new polling board and resuming voting on the same day.**

121. Repeat voting in case of violations committed by voters may be a disproportionate sanction and creates the potential for abuse by voters, if one is encouraged to commit violations with the intention to cause repeat voting. In case a PB fails to arrange a polling station in a manner that ensures the secrecy of the vote, consideration could be given to alternative effective measures such as an appeal to the competent MEC to address the irregularity and if needed appointment of a new polling board.

122. Article 72 paragraphs 1,2,3,4 stipulate that all polling board members or their deputies must be present at the polling station at opening and voting, each polling station shall have a special room where it shall be possible to ensure the secrecy of voting, the number of voters present at a polling station at the same time shall be equal to the number of voting booths, and that no unauthorized persons shall be present at the polling station. If any of these rules is violated, an appeal may be filed to the MEC which may decide to order a repeat voting at that polling station. **It is unclear whether the law refers exclusively to the absence of permanent PB members or if it also refers to temporary members (authorized representatives) nominated by contestants; the ambiguity requires clarification.**

123. Violations entailing dissolution of the PB under Article 69 include proxy and multiple voting, the casting of a non-certified ballot, a voter failing to sign the voter list, and an individual entering the polling station carrying arms or dangerous objects. While PB members disclosing the names of voters or their ordinal number - is a violation of voting procedures which does not entail dissolution of the PB, according to Article 69 paragraph 8. Furthermore, Article 72 paragraph 6 prohibits police officers from entering a polling station or voting while wearing their uniform, unless they are asked by the polling board Chair to prevent direct threats to public order and safety. In case of violation of Article 72 paragraph 6, the law does not prescribe an appeal to the MEC and possible PB dissolution, as prescribed for violations of paragraphs 1,2,3,4; the only applicable consequence in such a case is a sanction (a fine) under Article 116.

It is recommended to reconsider the causes leading to dissolution of polling boards and repeating the vote, to ensure the law respects the principle of proportionality.

124. **Moreover, the law does not explicitly prescribe a procedure for the dissolution of polling boards under Article 69 and 69a; the provisions require revision, to ensure legal certainty**.

125. Violations of the voting procedures by voters should be immediately investigated and acted upon by law enforcement agencies, while perpetrators should be held accountable by a court of law. Violations of voting procedures by polling board members should also be promptly addressed and could result in dismissal and replacement of the polling board members who violated the procedures or in criminal penalties. The annulment of voting and repeat voting should be reserved for serious matters that compromise the integrity of the vote.

126. Further, the law is ambiguous due to inconsistent terminology. While Articles 69 and 69a on the dissolution of PBs and invalidation of voting apply the term "repeated voting", Articles 102 and 103 describing the respective procedures apply the term "repeated election". The law therefore leaves a degree of uncertainty as to the adequacy of the choice of the applicable regulation triggered by Articles 69 and 69a. However, **the law does not explicitly regulate the consequences of the dissolution of the polling board for its members and whether the composition of the polling board is to be substituted, and does not stipulate the respective procedures. These gaps undermine legal certainty and require revision.**

127. The regulation on the dissolution of PBs and repeat voting has been subject to long-standing criticism by ODIHR and the Venice Commission, with an outstanding recommendation for amendment. ODIHR and the Venice Commission have highlighted that, formally, the regulation does not provide for due margin of appreciation of the election management bodies as to the assessment of the proportionality of irregularities to the need for repeat voting, nor any guidance to determine the scope of violations requiring invalidation.[101] In practice, this gap results in the recourse to wide discretionary powers by the election administration, to avoid implementing the requirement for invalidation of elections due to insignificant irregularities.[102] In line with international good practice, repeat polling should be clearly and comprehensively regulated, and should only be required in case of serious violations that may have partly or fully affected the outcome of the elections and the allocation of mandates, subject to an appeal. In principle, repeat elections should not be held due to minor electoral irregularities not bearing effect on the election outcome.[103]

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101 See, inter alia, See also Paragraph 49 of the 2010 ODIHR and Venice Commission Joint Opinion on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of Montenegro, and para 78 of the 2020 ODIHR and Venice Commission Urgent Joint Opinion on the Draft Law on Amendments to the Law on the Election of Councillors and Members of Parliament of Montenegro.

102 The case law of the European Court of Human Rights prescribes that "the decision-making process on […] contestation of election results [shall be] accompanied by criteria framed to prevent arbitrary decisions. […] the discretion enjoyed by the body concerned must not be exorbitantly wide; it must be circumscribed, with sufficient precision, by the provisions of domestic law" (see the ECtHR, *Ruza and Others v. Bulgaria* (apps. No 48555/10 and 48377/10), jud. (Merits and Just Satisfaction), 13 January 2016).

103 Paragraph II.3.3.e of the 2002 Venice Commission Code of Good Practice in Electoral Maters states that "The appeal body must have authority to annul elections where irregularities may have affected the outcome." See also item II.3.3, para.103 of the Explanatory Report. See also the 2013 ODIHR Guidelines for Reviewing a Legal Framework for Elections, p.p. 63-64. See also Paragraph 49 of the 2010 ODIHR and Venice Commission Joint Opinion on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of Montenegro.

RECOMMENDATION 27.

To prescribe effective, proportionate and dissuasive sanctions for breaches of the law in polling stations, and a mechanism for effective enforcement in a timely manner, while ensuring that polling board dissolution, annulment of voting and repeat voting remains reserved for significant violations or irregularities that may have impacted the results.

3.7.3 Insight in Election Materials

128. Article 77 states that contestants have the right of insight into the PB election materials at the SEC premises within seven days of the election day, and that the election materials are opened by the permanent MEC members. If the seven-day deadline has passed, insight and copying of the materials may be requested by parliamentary parties. The law does not ensure clarity as to whether insight in the election materials may enable stakeholders to verify the accuracy of the results, which may be better achieved by means of recounts.

129. Article 78a stipulates that each ballot paper should be stamped at the place determined for placing the stamp immediately before giving it to the voter. Not stamping the ballot papers at the opening of the polling station may create the possibility of ballots being taken out of the polling station and used for carousel (controlled) voting. However, international good practice recommends that *"the signing and stamping of ballot papers should not take place at the point when the ballot is presented to the voter, because the signatory or the person affixing the stamp might mark the paper so that the voter could be identified when it came to counting the votes, which would violate the secrecy of the ballot*".[104] Moreover, even if there is a specific designated spot for placing the stamp, thus reducing the discretion of the PB, the timing of stamping the ballot could allow the PB to intentionally leave ballots unstamped with the aim of invalidating them during the count.

3.8. Establishing and Announcing the Election Results

3.8.1. Determination of Results

130. Article 89 stipulates that voting in a PB shall be annulled and repeated if the number of ballot papers in the ballot box is higher than the number of voters who cast a ballot (signatures on the voter list) or higher than the number of control slips, or if there are two or more control slips with the same serial number or with a serial number that does not belong to the polling station in question.

131. The reconciliation of the numbers of ballot papers in the ballot box and signatures on the voter lists or control slips of ballots is a key test for the integrity of the voting. More ballot papers in the ballot box than signatures may indicate ballot-box stuffing, while fewer ballots may indicate that a voter signed for receiving a ballot but removed it from the polling station, potentially to use it for carousel voting. Control slips with serial numbers not belonging to the polling station are strong indications of violations. At the same time, these discrepancies may result from human error, including a voter failing to sign the voter list or a control slip misplaced. International good practice states: *"Human nature being what it is (and quite apart from any intention to defraud), it is difficult to achieve total congruity between the two measures*".[105] If the discrepancies are minimal, they could potentially be attributed to human error. On the other hand, setting an exact threshold (number) for discrepancies in the reconciliation to trigger an

[104] Paragraph 34 of the 2002 Venice Commission Code of Good Practice in Electoral Matters.
[105] Paragraph 32 of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

annulment of voting bears the risk of engineering intentional discrepancies with the aim to annul voting.

132. The law does not prescribe recounts nor an official procedure for amending the PB result protocols when the figures do not reconcile, which may be necessary before the annulment of voting. This gap undermines legal certainty and may affect the integrity and perceived integrity of the results. This regulatory gap has been subject to repeated criticism by ODIHR and Venice Commission, and the long-standing recommendations remain unaddressed.[106]

133. Overall, the law prescribes mandatory invalidation of polling station results for the following reasons: proxy and multiple voting (Article 69), voting with a non-certified ballot paper (Article 69), a voter failing to sign the voter list upon receipt of a ballot paper (Article 69), an individual entering the polling station with arms or dangerous weapons (Article 69a), campaign materials displayed within 100 meters from the polling station on election day (Article 69), the polling station layout not ensuring secrecy of the vote (Article 69a), failing of a polling station to be open non-stop on election day (Article 70), voters queing to vote at closing time not allowed to vote (Article 70), modification of a certified voter list (Article 83), the control sheet is not found in the ballot box (Article 79), if the number of ballots found in the ballot box exceeds the number of signatures in the voter list or control coupons (Article 89), if at least two control coupons have serial numbers which does not correspond to the particular polling station or have the same serial numbers (Article 89).

134. On appeal, international good practice recommends that the appeal bodies should have authority to annul voting in a polling station, if irregularities may have affected the outcome.[107] It is a matter of interpretation and contextual judgment whether the irregularities in a polling station were to such an extent that they may have impacted the voting results in the polling station itself and whether the results of that polling station had an impact on the outcome of the elections. In practice, the annulment of voting and repeat voting may be more meaningful and impactful and an effective remedy in cases of close election results whereby repeat voting may affect the outcome, including the distribution of seats, and in cases whereby there is an established pattern of irregularities across a constituency/municipality entailing annulment of results in multiple or all polling stations within the respective constituency. In some OSCE participating States, there were cases of intentional annulment of results in some polling stations followed by repeat voting, which had an impact on the results, as part of a strategy aiming to serve political interests rather than to enhance the integrity of the electoral process. The Venice Commission Code of Good Practice in Electoral Matters states that "[the general principle that the appeal body should be entitled to invalidate voting results in case serious violations affected the outcome] should be open to adjustment, i.e. annulment should not necessarily affect the whole country or constituency – indeed, it should be possible to annul the results of just one polling station. This makes it possible to avoid the two extremes – annulling an entire election, although irregularities affect a small area only, and refusing to annul, because the area affected is too small. In zones where the results have been annulled, the elections must be repeated".[108]

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106 See most prior ODIHR reports on elections in Montenegro, most recently in 2023, where ODIHR recommended "To ensure the integrity and accountability of tabulation, the law should prescribe an official procedure for amending the PB result protocols when the figures do not reconcile. In case of irreconcilable errors that affect election results, the MECs should be mandated to organize recounts in the presence of party representatives and observers. See also the 2010 and 2020 ODIHR and Venice Commission Joint Opinions on draft amendments to the election law".

107 Section 3.3.e. and Paragraph 100 of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

108 See para 3.3. of the Explanatory Report to the 2002 Venice Commission Code of Good Practice in Electoral Matters.

RECOMMENDATION 28.

To ensure the integrity and accountability of counting and of the voting results, the law should prescribe an official procedure for amending the Polling Boards' results protocols when the figures do not reconcile, while, in case of irreconcilable errors that affect election results, mandating the Municipal Election Commissions to organize recounts in the presence of party representatives and observers prior to annulling voting, in which case repeat voting should be held in the area concerned.

135. Article 91 stipulates that, within six hours of closing, the PB delivers to the corresponding MEC the election materials including the PB result protocols but it does not stipulate who is responsible for delivering them. To safeguard the integrity of the result transfer, international good practice states that "the polling station results can be conveyed to the electoral district (for instance) by the presiding officer of the polling station, accompanied by two other members of the polling station staff representing opposing parties, in some cases under the supervision of the security forces, who will carry the records of the proceedings, the ballot box, etc.".[109] Nowadays, information and communication technologies (ICT) are also used for the transmission of results in many OSCE participating States. If a decision is taken to use ICT for results transmission, the law should clearly stipulate basic safeguards: the system should be fully auditable, election stakholders should be able to observe it in a meaningful manner to verify its operation, the transmission system must ensure end-to-end security to protect it against unauthorized access, tampering and hacking, and the results should be digitally signed and encrypted.[110] **To safeguard the integrity of transferring the voting results, the law should stipulate that the Polling Board result protocols and election materials are delivered to the Municipal Election Commission by the Polling Board Chairperson and two members representing opposing parties, in line with international good practice. Information and Communication Technologies could also be used for the transmission of the voting results, in line with international standards and good practice.**

136. Article 92 requires MECs to establish the voting results in the polling stations within their respective area within 12 hours of the receipt of records from polling stations and to submit a report to the SEC. The law does not prescribe a tabulation procedure and does not prescribe a course of action in case PB protocols do not reconcile, such as recounts. ***The law should prescribe a tabulation procedure and a course of action in case PB protocols do not reconcile.***

137. Article 27 paragraph 2 stipulates that each MEC shall publish immediately on its own website, *inter alia*, the preliminary and final voting results for every polling station. The PB voting results may be challenged within 72 hours. However, in previous electoral cycles, as the SEC did not provide a standardized format for the MECs to publish results and some MECs published the tabulated results on their own websites in various formats and at different times, while other MECs did not publish them at all.[111]

138. Article 92 requires the SEC to establish the preliminary results within 12 hours of the delivery of the reports of the MEC. Therefore, the law does not explicitly require the SEC to publish any

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109 Paragraph 50 of the Guidelines to the 2002 Venice Commission Code of Good Practice in Electoral Matters.

110 See Council of Europe Committee of Ministers Recommendation 2017/5 On Standards for E-voting; Council of Europe Guidelines on the Use of ICTs in Electoral Processes.

111 For instance, during the first round of the 2023 presidential election, only 12 of the 25 MECs published the preliminary results disaggregated by polling stations on their websites and those that did so used various formats. An additional five MECs published scanned MEC protocols with aggregate results, while 8 MECs did not publish any information on the results. Following the second round, out of the 25 MECs, only 11 published on their websites the preliminary results disaggregated by polling station and again did so in different formats.

partial preliminary results as it receives the tabulated results from MECs, which limits the transparency and accountability of the election results. In past elections, ODIHR noted that the SEC announced only complete preliminary results of both rounds within the legal deadline of 30 hours from the closing of polling stations. Moreover, the law does not explicitly require the SEC to publish results disaggregated by polling station, which would enhance transparency and enable public scrutiny. **To encourage public confidence and allow for effective remedy, the law should require the publication of voting results disagregated per polling station in a standardized, uniform, user-friendly and searchable format, on the State Election Commission website. Consideration could be given to using information and communication technologies for the transmission and publication of results. To enhance transparency, the State Election Commission should be required to publish partial preliminary results disaggregated by polling stations as soon as the results are available to enable public scrutiny and the meaningful contestation of results.**

139. Article 92 stipulates that MECs issue a "special report on the preliminary election results" based on the voting results at all the polling stations within their corresponding area. Article 108 prescribes that complaints may be filed against decisions, acts or omissions of the PB and the MEC. ODIHR reports in past elections noted that the election administration does not consider the MEC special reports on the preliminary election results as MEC decisions and, thus, complaints may not be filed against them, at odds with international good practices.[112] Furthermore, the law does not provide for the MECs or the SEC to hold a session and to vote on final election results, which is consistently used as a formal ground to prevent disputes on the election results.

140. International good practice recommends that "*[t]he appeal body must have authority to annul elections where irregularities may have affected the outcome. It must be possible to annul the entire election or merely the results for one constituency or one polling station. In the event of annulment, a new election must be called in the area concerned. All candidates and all voters registered in a constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections*".[113]

RECOMMENDATION 29.

To provide in the Election Law the right for contestants and a quorum of voters to challenge the special reports on the preliminary election results. The appeal body should have the authority to annul elections where irregularities may have affected the outcome.

3.8.2. *Distribution of Seats*

141. Article 94 stipulates that candidate lists are eligible for seats if they obtain at least 3 per cent of the valid votes cast. Preferential rules apply for lists representing national minorities not exceeding 15 per cent of the total population.[114] If none of the lists representing the same national minority surpasses the 3 per cent threshold, the lists which have obtained each at least 0.7 per cent of the valid votes cast are jointly granted up to three seats, based on the sum of

[112] See, inter alia, ODIHR Final Reports on elections in Montenegro in 2013, 2016, 2018, 2023.

[113] See section 3.3.e and f. and paragraphs 92, 93, 94, 101 of the 2002 Venice Commission Code of Good Practice in Electoral Matters and its Explanatory Report.

[114] Namely, lists representing the Bosniaks, Albanians, Muslims and Roma. The Serbs exceed 15 per cent of the total population and therefore are not subject to the preferential terms.

their votes. The frontrunner among the Croat minority lists is granted a seat provided that it has obtained at least 0.35 per cent of the votes. [115]

142. These preferential terms constitute affirmative measures aimed at enhancing political participation and representation of national minorities. Such affirmative measures constitute positive discrimination in favour of national minorities and are in line with international standards, provided that these measures are necessary to ensure effective participation.[116] Namely, international standards state: "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved".[117]

143. Effective political participation is ensured when members of national minorities have equal voting rights without discrimination, an opportunity to elect representatives who reflect their interests and influence decision-making and the right and opportunity to run of office. Affirmative action is necessary when national minorities are discriminated, underrepresented or effectively excluded from decision-making. On the other hand, the functioning of political parties along ethnic lines may potentially, in the long term, enhance segregation, reinforcing ethnic divisions, rather than fostering integration. It may also create identity-based politics, focused on mobilizing voters along ethnic lines rather than based on political platforms and agendas addressing broader issues. ODIHR noted in past elections, positively, some mainstream political parties and candidate lists are multi-national and elect candidates who are members of national minorities.[118]

3.9. Election Dispute Resolution

144. Election-related complaints are decided by the MECs, the SEC, the Constitutional Court and the APC. The law provides for the expedited deadlines for lodging and deciding on complaints, with the former being in line with international good practice, while the latter are unduly short, allowing 24 hours to render a decision.[119] Voters, candidates, nominating political parties and groups of voters are entitled to file complaints to election management bodies. Voters' rights to file election-related complaints is limited to violations of individual rights, excluding the possibility to contest, *inter alia*, candidate registration and election results, contrary to

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115 Mainstream candidate lists need an average of 5,500 votes for a seat, lists representing Bosniaks, Albanians, Muslims and Roma may be granted a seat with 3,000 votes (0.7 per cent) while lists representing the Croat minority may be granted a seat with 1,500 votes (0.35 per cent). For instance, in the 2020 parliamentary elections the Albanian Forum obtained 5,671 votes or 1.88 per cent of the votes and the Albanian Alliance 4,520 votes or 1.5 per cent and both jointly received three seats. The Croatian Civic Initiative (HGI) obtained 2,231 votes (0.74 per cent) and 1 seat.

116 Article 4.2 of the 1992 UN Declaration on the Rights of Persons Belonging to National Minorities; paragraph 35 of the 1990 OSCE Copenhagen Document; 2013 OSCE Guidelines on Political Participation of National Minorities; articles 4 and 15 of the 1995 Council of Europe Framework Convention for the Protection of National Minorities (FCNM); Section I.2.4 of the 2002 Venice Commission Code of Good Practice in Electoral Matters.

117 Article 1.4 of the 1965 UN Convention on the Elimination of All Forms of Racial Discrimination (CERD).

118 There are no legal quotas or internal party mechanisms for including national minorities representatives on candidate lists. The coalitions led by DPS, ES, DPS, SD, URA informed the ODIHR EOM that they have members of national minorities on their candidate lists.

119 However, despite a long standing ODIHR recommendations, procedures related to electoral irregularities within the competence of the law enforcement do not stipulate expedited deadlines.

international good practice and prior ODIHR recommendations.[120] The scope of the review of EMB decisions is limited, and was repeatedly assessed as failing to provide for effective legal remedy, as required under paragraph 5.1 of the 1990 OSCE Copenhagen Document.[121]

RECOMMENDATION 30.

To consider extending the rights of voters to file complaints on all aspects of the electoral process, including the possibility to challenge election results with a reasonable quorum.

145. Article 108 stipulates that appeals may be filed against MEC and SEC actions, inactions and decisions rejecting or dismissing complaints. Article 109 prescribes the rule of positive silence, leading to an automatic affirmative decision on a complaint if the respective EMB failed to resolve the complaint within the prescribed dealdines. The law does not provide for the possibility to contest MEC and SEC decisions upholding complaints, which does not ensure legal certainty and foreseeability. Counter-complaints against election commission decisions upholding complaints may prolong dispute resolution, creating legal uncertainty and potentially prolonging the electoral process. However, it is uncommon that election commission decisions upholding complaints are excluded from legal remedies and judicial review.

146. Article 109 stipulates that if an election commission upholds an appeal, it shall annul the decision or act. It should be understood that the law refers to decisions and acts of lower-level election commissions, since decisions and acts of other authorities and stakeholders fall outside the purview of the election administration. While annulling a decision or act may in some cases result in a vacuum, the law does not stipulate whether the adjudicating election commission should substitute the lower-level commission by taking a decision or action, when necessary, or whether it should order the lower-level commission to take a new decision.[122] **In case of annulment of a decision or action of an election commission, the law should explicitly prescribe that the higher-level commission is competent to take or order a new decision or action, when necessary.**

147. The SEC does not maintain a centralised database for complaints, and there are no requirements for MECs to inform the SEC about complaints received or their decisions on them, which detracts from transparency and the accountability of dispute resolution. ODIHR has observed

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127 Paragraph II.3.3.f of the Code of Good Practice states that 'all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections'. The case-law of the European Court of Human Rights recognised that serious violations in the determination of election results amounted to violation of rights under Article 3 Protocol 1 to the 1950 European Convention for Human Rights and Fundamental Freedoms, including with respect to their active aspect (see ECtHR, *Davydov and others v Russia*, judgment (Merits and Just Satisfaction), 30 May 2017, application No. 75947/11, paras. 310-311. Paragraph 49 of the 2009 Venice Commission Report on the Cancellation of Election Results states that "[t]he right to vote and the right to be elected are guaranteed by the possibility to apply to the competent court. In case the elections are carried out unlawfully the individual constitutional right to vote or to be elected is violated. Such right should be protected by individual complaint, though it might not always lead to the cancellation of election results. The cancellation of election results is not necessary if the violations of electoral law are at small scale and do not influence the electoral results".

121 For example, decisions on registration of individual candidates, inactions by the SEC or upholding of complaints are exempt from review. Paragraph 5.10 of the 1990 OSCE Copenhagen Document stipulates the right of everyone to "effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity." See inter alia, the OSCE Final Reports on the 2020 and 2023 parliamentaty elections.

122 Article 33 of the Election Law provides that the SEC shall "take over responsibilities within the competence of the MEC in case the MEC fails to carry out its duties regarding the election of MPs in accordance with the [election] Law", however it is unclear whether this norm applies only to the scope of competences explicitly prescribed by the law, or should be considered applicable to formal decisions, e.g. on complaints. There is no such provision for the responsibility of the MEC to act on inactions by the polling boards.

that, in practice, the SEC abstained from addressing the lack of procedural regulation on election dispute resolution with subsidiary regulation, and failed to develop templates for complaints, which is considered good practice.[123] **To enhance the transparency and accountability of election dispute resolution and to strengthen the oversight role of the State Election Commission, consideration should be given to posting all complaints and decisions handled or issued by any election management body in a publicly displayed database.**

3.10. Sanctions and Penal Provisions

148. The Election Law does not provide a coherent regulation on sanctioning election-related violations. In particular, the law does not comprehensively define what consistitutes and offense for some violations it attempts to penalise, which renders the law unimplementable; moreover, the law establishes sanctions for felonies and misdemeanours, despite the respective regulation in the Criminal Code. Some of the violations defined in other sections of the Election Law are not developed in the section on penal provisions.[124]

149. The law does not establish a system of dissuasive and graduated sanctions for the violations it regulates (see comments above). For example, serious violations, such as candidacy registration in violation of the law, or disrupting the electoral process, entail fines ranging from EUR 500 to EUR 2,000, which cannot be assessed as dissuasive by design. At the same time, violations of campaign rules or of the rules on opinion polls entail considerably higher fines, up to EUR 20,000, which in some instances may appear disproportionately high, in particular from a comparative perspective.

150. The law does not prescribe any sanctions for members of election commissions in case they breach the law, including disciplinacy sanctions beyond the dissolution of PBs.

> **RECOMMENDATION 31.**
>
> To ensure that all violations of the Election Law are provided with graduated, dissuasive and proportionate sanctions and that the existing definitions of offenses encompass fully the scope of violations and possible perpetrators.

151. Article 2 paragraphs 2, 3 and 4 defines election-related wrongdoings, including voter intimidation, which fall beyond the jurisdiction and capacity of election commissions, and require prompt investigation by the law enforcement agencies and adjudication by a court of law, rather than resolution by an election commission. Article 117 prescribes sanctions for violations of Article 2.4 (exit polls) but not for 2.2 (voter intimidation). Moreover, Article 186 of the Criminal Code (Chapter 16) contains provisions on the criminal offence of voter intimidation prescribing fines and imprisonment.[125] While some sanctions are prescribed under the Section 'Penal Provisions', these do not cover all possible violations and may not be consistent with the Criminal Code.

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123 Paragraph 96 of the Explanatory Report to the 2002 Venice Commission Code of Good Practice in Electoral Matters states that "The procedure must also be simple, and providing voters with special appeal forms helps to make it so."

124 For example, the law does not define or establish individual responsibility for illegal use of electronic communication devices at polling stations; for holding voters accountable for identifying or keeping records of voters at polling stations; or the disciplinary responsibility of election administration, or responsibility for ensuring the security of election materials.

125 Namely, articles 184-194 of the Criminal Code (Section 16).

152. **In cases of voter intimidation during the election period and on election day, law enforcement agencies should be mandated to intervene immediately, while the law should prescribe proportionate, effective and dissuasive sanctions imposed by a court of law in a timely manner.**

153. Article 115 stipulates that *"the use of the military, law enforcement bodies, the judiciary and state resources, including assets and employees, for campaigning for or against a contestant is punished with imprisonment of up to three years and up to five years if committed by the president of Montenegro, the president of the parliament, the prime minister and members of the government, the president and members of the constitutional court and the chief state prosecutor"*. These breaches of the law entailing imprisonment constitute criminal offences and fall under the jurisdiction of the prosecutor. Moreover, MPs enjoy immunity which must be lifted by parliament while there are constitutional provisions prescribing a procedure on the impeachment of the president. In these cases, this provision is more symbolic rather than implementable. As regards misuse of state resources by actors other than the elected state officials, criminal proceedings are feasible, but these are lengthy and unlikely to provide a timely and effective remedy.

4. Specific Recommendations concerning The Law on the Election of the President of Montenegro

154. The Law on Election of the President of Montenegro (LEP) regulates some aspects of the presidential elections pertaining to the right to stand, candidate nomination and registration, the electoral system and the design of the ballot. In line with Article 9 of the LEP, the Election Law is applicable on all aspects of the electoral process which are not regulated by the LEP, including suffrage rights, the election administration and the voting procedures.

155. Article 1 of the LEP stipulates that the right to run for president is granted to citizens over 18 years of age who have had "*a place of permanent residence*" in Montenegro of at least 10 years in the last 15 years prior to the election. The term "a place of permanent residence" used in this legal provision appears to be inconsistent with the terms used in the Election Law and other laws which refer to "*permanent residence*". International standards and good practice recommend against a residence requirement in national elections, as it constitutes an unreasonable limitation of the right to stand for elections.[126] **Consideration should be given to removing the requirement of 10 years of permanent residence within the last 15 years for the right to stand as presidential candidate, in line with international standards.**

156. The LEP does not set out procedures for the second round of presidential elections. In the absence of a two-round system for parliamentary and municipal elections, the Election Law also does not contain any provisions which would be applicable in case of a second round in a presidential election, which undermines legal clarity and was observed to have affected the previous presidential election process. **The LEP should explicitly determine that the final result of a multiple-round contest is established when a single winner is elected**.

[126] Article 25 in conjunction with Article 2 of the 1966 UN ICCPR. Paragraph 15 of the UN HRC General Comment No 25 states that "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation".

RECOMMENDATION 32.

To supplement the LEP to define and regulate all aspects of the second round of presidential elections.

157. The LEP does not clarify whether the composition of election commissions remains the same in case of a second round, namely whether the authorized representatives of all first round candidates remain or whether only those nominated by the two frontrunners. In the 2023 presidential election, in absence of explicit regulation, the SEC determined that the location of polling stations, MEC and PB composition, including chairpersons and authorized representatives of all first round candidates, the format of the ballot and the numbers assigned to candidates on the ballot would remain unchanged.[127] **The LEP should explicitly state whether the mandate of Municipal Election Commission and Polling Board chairpersons and authorized representatives of all first-round contestants extends in case of a second round.**

158. Article 111c of the Election Law states that the election observation period starts on the day of calling of elections and finishes after the announcement of final election results. It is thus understood that the mandate of election observers expires with the announcement of final results. In 2023, the SEC determined that all previously accredited observers may continue to observe the second round and new observers from already accredited organizations may be accredited. **To ensure legal certainty, the LEP should explicitly state whether the mandate of election observers extends to the second round and whether new election observers may be accredited in case of a second round.**

159. The LEP does not explicitly stipulate when the campaign for the second round starts and whether the campaign regulations are applicable only to the two second-round contenders during the campaign for the second round. This is not so obvious as other first round contestants may endorse one or the other second-round condenders and may take active part in the campaign. Thus, there are several aspects of the second round campaign which would benefit from regulation. **The LEP should explicitly stipulate when the campaign for the second round starts and whether the campaign regulations, including the reporting requirements, are applicable only to the two second-round contenders or to all first-round contestants, should they choose to campaign as third parties.**

160. The LEP does not contain campaign finance regulations for the second round. Namely, the law does not prescribe whether the legally set expenditure ceiling is applicable for both rounds or whether it is extended; it does not prescribe whether the campaign finance reporting requirements are applicable only to the two contenders of the second round or to all first-round contenders and does not clarify the deadlines for such reports. In the 2023 presidential election, the Agency for the Prevention of Corruption (APC) determined that the established expenditure ceiling applied to both rounds, the donation reporting requirements were applicable to all first round candidates during the second round but no expenditure reports were due five days prior to the second round. **The LEP should explicitly stipulate whether the expenditure ceiling is applicable to both rounds or whether it is extended for the second round and clearly set out reporting requirements.**

[127] The law stipulates that the mandate of the authorized representatives of candidates expires when the final results are announced; In 2023, the SEC did not announce final results for the first round as this was not feasible on time for scheduling and holding the second round.

161. The media-related provisions of the Election Law are also applicable to presidential elections. However, the Election Law does not contain any explicit regulation on media coverage in case of a second round of a presidential election. The 2023 presidential election was the first election with a second round after the adoption of the Election Law in 1997. In absence of explicit provisions, the AEM considered that the campaign for the second round could start in the media from the moment the SEC announces the preliminary results of the first round. **The LEP should stipulate when the regulations on campaign coverage by the media become applicable in case of a second round and whether these refer only to the two second-round contenders.**

162. Article 17 of the LEP stipulates that if no candidate receives more than half of the valid votes cast, a second round shall be held in 14 days. Although the legal deadlines for challenges of the first-round PB results are in line with international good practice, they do not allow for the finalisation of the first-round results in time for the second round. In the 2023 presidential election, ODIHR noted that the SEC decided to consider the two rounds as a single electoral process and therefore only the second-round results as final, which enabled the SEC to hold the second round in 14 days as prescribed by law. **The LEP should stipulate that the second round should be held after the adjudication of complaints against the first-round results are completed, leaving sufficient time for the preparation and administration of the second round.**

5. RECOMMENDATIONS RELATED TO THE PROCESS OF AMENDING THE LEGAL FRAMEWORK

163. OSCE participating States have committed to ensure that legislation will be "*adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability*" (paragraph 5.8 of the 1990 OSCE Copenhagen Document).[128] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* (1991 Moscow Document, para. 18.1).[129] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) further elaborate the key principles that should be complied with at each stage of the lawmaking process, with particular emphasis on public consultation and the fact that the public should have a meaningful opportunity to provide input.[130]

164. Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.[131] Consultations on draft legislation and policies, in order to be effective, need to be inclusive and to provide relevant stakeholders with sufficient time to prepare and submit recommendations on draft legislation; the State should also provide for an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions.[132] To guarantee effective participation, consultation mechanisms should allow for input at an early stage, from the initial policymaking phase *and*

128 See the 1990 OSCE Copenhagen Document.
129 See the 1991 OSCE Moscow Document.
130 See 2024 ODIHR Guidelines on Democratic Lawmaking for Better Laws; See also the 2016 Venice Commission *Rule of Law Checklist*, Part II.A.5. The 2023 OSCE ODIHR Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan stated that "[p]ublic consultations should become a routine feature of the overall and a meaningful part of every stage of the legislative process, particularly in the Legislative Chamber".
131 See the 2015 *ODIHR Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), 2015.
132 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 7.

throughout the process,[133] meaning not only when the draft is being prepared but also when it is discussed before parliament, be it during public hearings or during the meetings of the parliamentary committees. Given the sensitivity and importance of such wide-ranging reform, it is fundamental that all voices are heard, even those that may be critical of the proposed initiatives with a view to address the issues being raised and achieve broad political consensus and public support within the country about such a reform. Ultimately, this tends to improve the implementation of laws once adopted, and enhance public trust in public institutions in general.

165. Given the potential impact of a broad electoral reform on the exercise of human rights and fundamental freedoms, an in-depth regulatory impact assessment, including on human rights compliance, is essential, which should contain a proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.[134]

166. In light of the above, the public authorities are encouraged to ensure that any amendments to the electoral legal framework in general are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before parliament. As a principle, accelerated legislative procedures should not be used to pass such types of legislation. As an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should also be put in place that would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[135]

[END OF TEXT]

6. LIST OF PRIORITY RECOMMENDATIONS

A. Regarding the legal framework and the electoral reform:

1. Regarding the legal framework: to consider consolidating all electoral legislation in one law that would regulate all types of elections and all aspects of the electoral process, while eliminating conflicting provisions and aligning the new election law with international standards and good practice pertaining to democratic elections, and addressing prior ODIHR recommendations;
2. Regarding the electoral system: To bring the Election Law closer in line with international good practice, it is recommended to change the rule on change of the number of seats in municipal assemblies prior to each municipal elections into a system with longer intervals between reallocations, which would allow to adequately reflect the demographic situation and balance it with the stability of the law;

B. Regarding the call for elections:

3. The constitutional and Election Law provisions regulating the dissolution of the parliament, the shortening of its mandate and the calling of early parliamentary elections should be reviewed to ensure clarity and provide legal certainty, including on what qualifies as "prolonged inactivity". The good-faith, consistent, and coherent implementation of the legislation in force is a key element of the rule of law with which Montenegro committed to

133 See ODIHR, *Guidelines on Democratic Lawmaking for Better Laws* (2024), Principle 7.
134 See e.g., ODIHR, *Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan* (11 December 2019), Recommendations L and M; and Venice Commission, *Rule of Law Checklist*, Part II.A.5.
135 See e.g., the 2010 OECD, *International Practices on Ex Post Evaluation*.

comply within the framework of the OSCE human dimension commitments, and should be ensured at all times. While acknowledging that such a change would require an amendment to the Constitution, such an option should be kept in mind should a constitutional reform be undertaken in the future;

4. To prescribe clear and objective criteria for the early dissolution of municipal assemblies and the holding of early municipal elections;
5. To consider synchronizing the timing of all regular municipal elections to be held simultaneously nationwide;

C. Regarding suffrage rights:

6. To ensure compliance with international standards on democratic elections, the legal two-year permanent residence requirement for the right to vote should be abolished from the legal framework for national elections. For any residence requirements remaining in place, clear and objective criteria for determining when a citizen has habitual residence in the country, such as submission of tax declarations or the ownership or renting of property, could be introduced;
7. Consideration should be given to further enhancing the temporary special measures to work towards achieving greater gender representation in legislative bodies in line with CEDAW recommendations;
8. To include in the laws a wider scope of measures aimed at promoting the political participation and parliamentary representation of women, including additional publicly-funded initiatives and incentives, capacity-building activities and awareness-raising programmes;
9. To provide in the election legislation clear and objective criteria for granting a candidate list the status of a national minority list, and to ensure objective assessment of eligibility and safeguard against misuse. It is recommended to stipulate in the Election Law that in case a list does not qualify for the status of national minority, it should be assessed as to its compliance with the registration criteria without the preferential terms;
10. To consider introducing measures facilitating access of persons with disabilities to political office and promoting their electoral chances, including financial, infrastructural, and in-kind measures facilitating visibility in electoral campaigns, as well as public outreach trainings and large-scale public awareness-raising campaigns;
11. To consider removing from Article 44 of the Election Law the restriction that a voter may sign in support of only one candidate list and introduce the possibility to support the nomination of multiple candidates lists for parliamentary and local elections, with a view to promote pluralism and bring the law in line with international good practice;

D. Regarding the election administration:

12. To revise the procedures of appointment of election management bodies in a manner that better facilitates balanced and impartial compositions. Consideration could be given to conducting inclusive consultations to weigh the benefits of a public merit-based competition and the appointment of the election administration by an independent and impartial body.
13. To consider introducing measures to ensure the participation of women and persons of disabilities in the work of the election administration, and to reinforce the requirement for the representation of national minorities in election management bodies;
14. To provide clear and objective criteria and a transparent procedure for the dismissal of election commissioners to ensure security of tenure and strengthen their independence;
15. To ensure accountability of the election administration by explicitly prescribing in the Election Law the supervisory function of the State Election Commission over the municipal electoral commissions;

16. To consider providing for a qualified majority instead of simple majority of votes for decision-making within election commissions to ensure their neutrality and align with international good practice;

E. Regarding election campaign regulation:

17. To provide a clear and uniform definition of the election campaign and its duration;
18. The campaign regulations under section VII of the Election Law should be restructured and streamlined to improve their coherence, consistency and clarity. To distinguish regulations pertaining to campaign on media from regulations pertaining to other forms of campaigning and general rules applicable to the campaign, while streamlining regulations pertaining to media coverage to distinguish those applicable to all media from those applicable to public media or only to private media;
19. To review the regulation on campaign silence to clarify which forms of campaign activity beyond media and public gatherings are banned, such as physical, in-person campaigning and campaign events, as well as political advertising in traditional (broadcast and print) and online media;
20. To reconsider the current prohibition in Article 63 of the Election Law on publishing opinion polls 15 days prior to elections and instead shorten the period from 24 hours before the election day to the end of voting. The legal provisions on opinion polls after voting (exit polls) should be streamlined and harmonized to ensure clarity and legal certainty;
21. To mandate the Agency for Electronic Media to oversee the compliance of broadcast media with election-related provisions, while providing it with sufficient sanctioning and enforcement powers, and prescribing in the lawa graduated system of effective, proportionate and dissuasive sanctions for broadcasters breaching the law;
22. To consider introducing additional safeguards to prevent the misuse of state resources and abuse of office, including extending the ban on new hires to temporary employment contracts, publishing information on public expenditure in a user-friendly, searchable manner, educating public officials, candidates and voters on ethical standards, prescribing effective, promptly-enforceable sanctions, and strengthening the monitoring capacity of civil society, including by means of information and communication technologies;
23. To revise the Election Law to further elaborate what constitutes the misuse of administrative resources and public office to ensure sufficient safeguards against these practices and to provide an efficient enforcement mechanism and dissuasive sanctions for violations;
24. To fully decriminalize defamation while reviewing vague and broad legal provisions on the content of speech and on false information, to ensure legal certainty and foreseeability and to bring their scope in line with international standards;
25. To require by law that public institutions, political parties and media to provide voter and campaign information in accessible formats;

F. Regarding the voting procedures:

26. To revise and supplement the provisions of the Election Law for facilitating the independent voting of persons with disabilities, including by eliminating requirements for proactive requests to receive user-friendly election-related materials and ensuring a wide availability of accessible election-related information, while requiring the responsible authorities to take steps to guarantee the accessibility of polling stations and the availability of assistive tools for voters;
27. To prescribe effective, proportionate and dissuasive sanctions for breaches of the law in the polling stations, and a mechanism for effective enforcement in a timely manner, while ensuring that polling board dissolution, annulment of voting and repeat voting remains reserved for significant violations or irregularities that may have impacted the results;

28. To ensure the integrity and accountability of counting and of the voting results, the law should prescribe an official procedure for amending the Polling Boards' results protocols when the figures do not reconcile, while, in case of irreconcilable errors that affect election results, mandating the Municipal Election Commissions to organize recounts in the presence of party representatives and observers prior to annulling voting, in which case repeat voting should be held in the area concerned;

29. To provide in the Election Law the right for contestants and a quorum of voters to challenge the special reports on the preliminary election results. The appeal body should have the authority to annul elections where irregularities may have affected the outcome;

G. Regarding electoral dispute resolution and the system of sanctions:

30. To consider extending the rights of voters to file complaints on all aspects of the electoral process, including the possibility to challenge election results with a reasonable quorum;

31. To ensure that all violations of the Election Law are provided with graduated, dissuasive and proportionate sanctions and that the existing definitions of offenses encompass fully the scope of violations and possible perpetrators;

H. Specific Recommendations concerning the Law on Election of the President:

32. To supplement the LEP to define and regulate all aspects of the second round of presidential elections.