

OSCE/ODIHR Submission of Information about an OSCE Participating State under Consideration in the Universal Periodic Review Process

Participating State: Montenegro

UPR Working Group Session and Date of Review: 43rd Session, February 2023

Background

1. Montenegro has been a participating State (pS) in the Organization for Security and Co-operation in Europe (OSCE) since 2006, and has thus undertaken and recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE Documents.¹
2. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE pSs, including Montenegro, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti.
3. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Montenegro and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Montenegro.

Legislation reviewed by ODIHR

4. Upon request by authorities of an OSCE pS, an OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE pSs on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards.² In 2017-2022, the following legal opinions (on topics other than elections) were issued on legislation or draft legislation of Montenegro:

Opinion on the Law on Prevention of Corruption³

5. On 20 July 2018, the OSCE Mission to Montenegro forwarded a request by the President of the Anti-Corruption Committee of the Parliament to ODIHR for a legal review of the Law on Prevention of Corruption (“the Law”).
6. In its review, ODIHR emphasized that even if the Law generally adheres to international standards it could benefit from some clarifications. Additionally, to ensure the autonomy and independence of the Agency for Prevention of Corruption it is crucial to adequately protect whistleblowers and to ensure that definitions throughout the Law do not leave gaps

¹ OSCE ODIHR, *Compendium of OSCE Human Dimension Commitments: Volume 1, Thematic Compilation (third edition)*, and *Volume 2, Chronological Compilation (third edition)*, 2011; OSCE *Astana Commemorative Declaration: Toward a Security Community*, 3 December 2010.

² The legal reviews and opinions, often produced in co-operation with the Council of Europe’s Commission for Democracy through Law (Venice Commission), are available at <http://www.legislationline.org>.

³ *Opinion on the Law on Prevention of Corruption of Montenegro*, 29 October 2018

which could end up weakening the entire anti-corruption legislative framework.

7. Additionally, several concrete recommendations were provided:

- To complement the definition of “conflict of interest” in order for it to also apply to an appearance of a conflict of interest and to prohibit sponsorships or donations which appear to affect the legality, objectivity and impartiality of work of the authority. Sudden appearance of conflict of interests should also be mandatory to declare;
- To include any object, right, benefit or service acquired without adequate compensation and loans granted at advantageous conditions or for free within the definition of “gift”;
- To remove from the Law, the authority of the Anti-Corruption Ministry to prescribe internal rules and procedures to the Agency for Prevention of Corruption, to ensure that the Agency has full operational independence;
- To explicitly include lobbying as an activity for which a cooling-off period is prescribed;
- To ensure that reports from whistleblowers, which do not indicate corruption but point to other forms of unethical/illegal activities or behaviour, are referred by the Agency for Prevention of Corruption to the responsible public bodies;
- To provide a Council Member or Director (in the Agency for Prevention of Corruption) faced with a dismissal the possibility to appeal this decision in an administrative procedure.

Election-related activities

8. In the reporting period, ODIHR observed the following elections upon invitation from Montenegro.

Presidential election, 15 April 2018

9. ODIHR deployed an Election Observation Mission (EOM) to observe the presidential election. The EOM assessed these elections for their compliance with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. The EOM concluded that *“fundamental freedoms were respected in the 15 April presidential election, although the candidate nominated by the governing party held an institutional advantage. Candidates campaigned freely, and the media provided the contestants with a platform to present their views. The lack of analytical reporting and the absence of the frontrunner in the televised debates reduced voters’ opportunity to make an informed choice. The technical aspects of the election were adequately managed, although the transparency and professionalism of the State Election Commission (SEC) remain issues of concern. Election day proceeded in an orderly manner despite a few procedural irregularities observed.”*

10. A boycott initiated by the opposition parties refusing to accept the results of the 2016 parliamentary elections blocked the political dialogue. In December 2017, this prevented the adoption of several amendments to the electoral framework and failed to address

several prior ODIHR recommendations.⁴ These included the lack of regulations on verification of supporting signatures and sanctions for violations, the liability of candidates and their proxies for the veracity of campaign-related documentation, dispute resolution procedures, tabulation of results, and deficiencies in campaign finance law.

11. The Final Report published on 28 June 2018 included 22 recommendations to further improve the electoral process related to legislation and its implementation.⁵ Among these are the following eight priority recommendations:⁶

- Comprehensive and inclusive review of the electoral legal framework should be considered to regulate all key aspects of the election process, address omissions and to harmonize provisions from different election laws to avoid legal collision. All amendments should be adopted in broad and inclusive public consultation well in advance of the next election.
- The authorities should promptly and thoroughly investigate all allegations of electoral violations and, in conjunction with the political parties, should undertake measures to discourage vote-buying and to prevent pressure on citizens to participate in the campaign events or to influence their vote.
- To increase transparency and earn public trust, the State Election Commission (SEC) should allow media access to all its meetings. The SEC and the Municipal Election Commissions should publish all relevant documents and decisions on their websites in a timely manner.
- Election administration and judiciary should ensure meaningful, substantive and impartial consideration of complaints in line with clear and transparent legal procedures. Institutions dealing with dispute resolution should be sufficiently empowered to implement necessary control over the electoral process in accordance with clearly defined jurisdiction rules.
- The law should be amended to include clear instructions for signature verification, a reasonable timeframe for the review of signatures and adequate sanctions for violations.
- The SEC could consider revising Election-Day procedures and developing clear tabulation procedures to enhance consistency in the reporting of results and ensure the transparency and accountability of the process.
- To foster the independence of the *Radio Televizija Crne Gore* and the Agency for Electronic Media (AEM), the council's members should be protected from undue influence from politics, and early dismissals should be permitted only in limited circumstances.

⁴ ODIHR recommendations database.

⁵ Final Report.

⁶ 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".

- Authorities should firmly condemn any attacks against journalists and foster measures to protect journalists and prevent impunity, including independent, speedy, effective investigations and detailed and systematic data collection on threats against journalists.

Parliamentary elections, 30 August 2020

12. Following an invitation from the authorities of Montenegro and in accordance with its mandate, ODIHR established a Limited Election Observation Mission (LEOM) to observe the 30 August 2020 parliamentary elections.
13. The mission assessed the compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, and national legislation. It concluded that *“the elections were competitive and took place in an environment highly polarized over issues of church and national identity. Contestants were able to convey their messages, but the ruling party gained an undue advantage through the misuse of office and state resources and dominant media coverage. The lack of independent campaign coverage by the media further undermined the quality of information available to voters. The law provides basic regulations for the conduct of democratic elections but gaps and ambiguities allow for circumvention, particularly in campaign finance. The elections were run overall transparently and efficiently, although the State Election Commission (SEC) did not properly fulfil its regulatory role. COVID-related restrictions limited physical campaign opportunities and increased online outreach but did not prevent voters from turning out in high numbers. Election day was orderly, and the process was generally transparent and well administered, while health protocols were not implemented consistently.”*
14. The election law has remained largely unchanged since the last parliamentary elections, except for provisions on campaign finance. Before elections, a parliamentary Committee for a Comprehensive Reform of Electoral and Other Legislation functioned from 2018 until 2019 with limited participation of the opposition. The draft election law prepared by the committee considered some ODIHR recommendations but was not put to the vote in parliament. Several prior ODIHR recommendations remain unaddressed, including conducting an audit of the voter register, harmonizing election-related legislation, reconsidering the length of residence and legal competency requirements for suffrage rights, enhancing the measures against misuse of state resources and improving the regulations for candidate registration and electoral dispute resolution.
15. The Final Report published on 11 December 2020 included 23 recommendations, of which 6 were priority recommendations:⁷
 - Consideration should be given to undertaking a comprehensive reform to harmonize the electoral legal framework and regulate all key aspects of the elections. In line with international commitments, the reform process should be inclusive, ensure public discussion, and be completed well before the next elections.
 - The SEC should address emerging challenges and aspects of the process that are not sufficiently regulated by the statutory law by promulgating clear, consistent, timely and fully implementable instructions and decisions within its mandate.
 - To allow for broader electoral participation on an equal basis, the legal capacity and residency requirements for voting and standing for election should be reviewed in line with international standards and good practice.

⁷ Final Report.

- To ensure transparency, accountability and integrity of campaign finance, the law should be amended to prescribe effective, proportionate and dissuasive sanctions and to provide for an explicit obligation of the oversight body to identify and publish the information on inaccuracies, including unreported incomes and expenditures.
- To prevent arbitrary application and ensure effective remedy, the provisions on challenging and invalidation of election results established by the polling boards should be reviewed. The law should be amended to prescribe that the decisions on preliminary results may be appealed, including up to the highest-level courts.
- Authorities should consider additional measures to achieve a balanced representation of women and men holding publicly elected positions. Political parties could consider internal measures to promote women to senior positions within the party structure and increase female candidates' visibility during election campaigns.

Tolerance and non-discrimination issues

16. OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and ODIHR supports states in their implementation of those commitments.⁸ In this context, ODIHR produces an annual report on hate crime⁹ to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR also helps participating States design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.
17. In respect of the 2020 Hate Crime Report and ODIHR's key recommendations are,¹⁰
- Provide information and statistics on hate crimes; and
 - Raise the awareness and build the capacity of criminal justice officials about hate crimes.
18. With regard to support for hate crime victims ODIHR observes that Montenegro offers support to victims of hate crime as part of its general victim support system. The general victim support system focuses mostly on victims of domestic violence, trafficking and child victims. Specialized services for hate crime victims are mostly delivered by civil society organizations (CSOs). It is, however, recommended to fully integrate these services into the general victim support system, and co-operation with state institutions is not always formalized.¹¹

⁸ OSCE participating States have committed to strongly condemn racial and ethnic hatred, xenophobia, discrimination, anti-Semitism and intolerance against Muslims, Christians and other religions, and have committed to address these phenomena in all their forms (Copenhagen Document, 1990). Since 2003, the OSCE participating States have established a normative framework of OSCE Ministerial Council (MC) decisions to reflect their commitments to address these phenomena: MC Decisions 4/03, 12/04, 10/05, 13/06, 10/07 and 9/09. Additionally, a number of OSCE human dimension commitments recognize the vital importance of participating States' realization of their binding human rights obligations under international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

⁹ <http://hatecrime.osce.org>.

¹⁰ Findings on the information available to ODIHR on hate crimes in a particular participating State in relation to OSCE commitments are presented as Key Observations. There are, in total, 13 Key Observations linked to OSCE participating States' commitments in the area of addressing hate crime. <https://hatecrime.osce.org/our-methodology>. This methodology has been in place since the 2020 Hate Crime Report.

¹¹ <https://hatecrime.osce.org/national-frameworks-montenegro#victimSupport>

19. ODIHR's 2020 publication "OSCE Human Dimension Commitments and State Responses to the COVID-19 Pandemic"¹² noted that in some participating States, including Montenegro, people infected or suspected to be infected with the virus, in general, were targeted by intolerance and discrimination, and threatened and/or physically assaulted. This included social workers and medical professionals, due to their presumed contact with infected people.
20. ODIHR's recommendations to Montenegro on this basis of this publication include:
- Respond swiftly to hate crimes, including those motivated by gender or sex, to record and investigate them so that the perpetrators can be brought to justice and adequate penalties imposed. Support victims as they report their experiences, and ensure the availability of all necessary psychological, social and legal support for victims, including through close co-operation with civil society. Relevant authorities should also publicly condemn any such acts and ensure that perpetrators are brought to justice.
 - Consider, where states have not done so, providing the possibility to report hate crimes online and allowing third-party reporting to police by civil society groups and equality bodies.
 - Assess and improve relevant mechanisms for hate crime recording and data collection, including gender disaggregated data and assess the existing current victim support systems.
 - Ensure that the consequences of the current pandemic, including the economic crisis, do not affect states' capacities to provide support to victims of hate including through appropriate funding to non-state actors and civil society organizations.
 - Build law enforcement and justice sector capacities to recognize and effectively investigate hate crimes and to ensure that specialized training, focused on hate crime victims and their needs, is provided for officials and civil society organizations within the victim support structures. Enact policies, through inter-agency co-operation, to address hate crimes in a comprehensive manner.

¹² Organization for Security and Co-operation in Europe, *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, Warsaw, 17 July 2020.