



The Union of the Blind
of Montenegro

RECOMMENDATIONS FOR IMPROVING ELECTORAL LEGISLATION WITH REGARD TO PERSONS WITH DISABILITIES

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LIST OF ABBREVIATIONS:

MEC – Municipal Election Commission
MoI – Ministry of the Interior
PB – Polling board
PS – Polling station
PWDs – Persons with disabilities
SEC – State Election Commission
UBM – The Union of the Blind of Montenegro
VIP – Visually impaired person
VWD – Voter with disability

INTRODUCTORY REMARKS – ELECTORAL LAW REFORM NEEDED

Persons with disabilities (PWDs) exercise their right to vote throughout Montenegro. But the question is whether their voting right can be exercised in compliance with fundamental international standards of voting and national legislation in the term of independent voting and the secrecy of the ballot?

Constitution of the Republic of Montenegro guarantees universal and equal suffrage for all Montenegrin citizens, as well as the secrecy of the ballot. The right to participation in public and political life of PWDs is regulated by numerous positive acts adopted or ratified by Montenegro, and it includes the right of PWDs to vote and the right to stand as a candidate.

PWDs as citizens of Montenegro do not sufficiently participate in the political life and are less frequently represented in it. With respect to the right to vote in Montenegro, adequate requirements for independent voting and the secrecy of the ballot for this group of population have yet to be ensured.

It is a long-standing tradition that PWDs are not independent during voting, since they often depend on other people or are not enable to exercise their voting rights at a polling station (PS), so there are still significant restrictions in terms of independent decision-making. PWDs rely on family members who often affect their will, thereby compromising the principles of independence and the secrecy of the ballot during the voting.

Although visually impaired persons (VIPs) do not sufficiently participate in the political and public life, they show a great deal of interest in the act of voting in elections. What prevents VIPs from participating more actively in the political scene are **societal prejudices, numerous physical and non – physical barriers that make them stay inside their homes.**

PWDs are not able to exercise their right to independent voting with dignity on an equal basis with other citizens. The Convention lays down that State Parties must **guarantee to PWDs political rights and the opportunity to enjoy them on an equal basis with others.** Since Montenegro ratified the Convention in 2009, it is obliged to provide and enable conditions that ensure the right of PWDs to vote and to be elected.¹ However, the actual situation shows that actors and institutions participating in electoral processes do not take any steps towards enabling PWDs to vote and to be elected.

Citizens can influence political processes by voting, joining a political party, and standing as candidates, but PWDs face a number of barriers when they aspire to do so. It is the inherent right of every PWD to effectively and fully participate in political and public life on an equal basis with others.

¹ Article 29 of the UNCRPD

When talking about PWDs, it is often highlighted that they are rather passive and that they live in a form of isolation inside their homes or institutions. Due to inaccessible environment, procedures and information, there are no ensured conditions for more active participation of PWDs in decision-making processes, election of representatives, discussions and other. In order to make and monitor their contribution in the field of human rights protection and in the EU accession process, PWDs must have accessible information, programmes and PSs. In that regard, it is required that all actors participate in the implementation of the already existing regulations and work on their improvement.

Until 2014, PWDs had mainly voted with assistance from a person of their own choice or by post from home. Since 2013, when **voting templates** were available for the first time in presidential election, VIPs had an opportunity to cast a vote using them. The fact that the use of the template for independent and secret vote by VIPs was specified in the Law on Election of Councillors and Members of Parliament (2014) is very commendable, as well as the application of the template. At the same time it is an advanced practice that is in line with legal standards and practice in developed countries.

However, during presidential elections held on April 15, 2018 the application of the ballot-voting template revealed serious shortcomings which required certain improvements.²

In accordance with the existing legislation and international commitments undertaken by Montenegro, and with the goal of improving conditions for independent, secret and dignified participation of PWDs in election process primarily through ensured accessibility at PS, procedures and voting material, the Association of Youth with Disabilities of Montenegro and the Union of the Blind of Montenegro (UBM) in co-operation with the OSCE Mission to Montenegro developed Guidelines.³ These Guidelines were used to initiate amendments to the by-laws of the State Election Commission (SEC), which are legally binding for all municipal election commissions (MEC) in all election cycles: local, presidential and parliamentary.

In spite of relatively adequate law regulations and initiatives that had constantly been launched prior to every election process, conditions for PWDs were not adequate even during presidential elections held on March 19, 2023. According to the reports presented by domestic and international observation missions, situation at PSs was generally unsatisfactory⁴ which reflects the fact that many PSs, although they were located in public facilities and premises for public purposes, were fully inaccessible (example: lack of parking places, entrance with steps, narrow entrance area, double-leaf door with one leaf closed). As for the interior of PSs, voting templates were not available at all PSs, although they were provided by the SEC. Furthermore, ballot boxes were not placed at lower height, which enabled some categories of PWDs to insert their ballot paper into the ballot box. In this way, the secrecy of the ballot was not ensured. At many PSs neither a low-level shelf inside the voting booth, nor carpet strips for independent movement of VIPs in PSs were provided.

² More detailed at: <https://ss-cg.org/?p=4028>.

³ <https://disabilityinfo.me/ljudska-prava/item/1354-smjernice-za-unapredjenje-pristupacnosti-izbornog-procesa-za-osobe-s-invaliditetom-osi>

⁴ More detailed at: <https://www.osce.org/odihr/elections/montenegro/537026>.

As a justification for this situation some members of polling boards (PBs) said there were no PWDs in the electoral register in their PS, that they mostly voted by letter and/or they would help them if PWDs showed up to vote at the PS. Since there was no central registry of PWDs, it was interesting how members of PBs had information which was not known at the national level.

During early parliamentary elections on June 11, 2023 the Union of the Blind for the first time conducted a **systematic observation** with regard to PSs accessibility in all three regions of Montenegro. **Fifty (50) mobile observers** visited **505 PS** in **20 municipalities** bearing in mind the main goal: collecting data on the accessibility at PSs and voting material for PWDs. Monitoring was carried out by taking into account **five categories**: PS surrounding area (parking), PS access route, PS entrance area, work of PB and manner in which PS were set up regarding physical accessibility and voting material. **The findings indicated that PWDs were not allowed to exercise their right to vote with dignity, independently and in secret.**⁵

Although the SEC⁶ adopted amendments which oblige all MECs to ensure independent voting and the secrecy of the ballot for PWDs, according to the observation findings, it did not occur.

Bearing in mind a significant number of PSs with no accessibility elements provided, such as properly installed carpet strips, voting templates placed on desks, information brochure in Braille, low-level shelf in voting booths, ballot boxes placed at lower height, it can be concluded that not even in this election process PWDs were allowed to vote independently and cast a secret ballot with dignity.⁷

A justification for developing recommendations lies in less prosperous situation citizens with disabilities are put in when compared to other citizens, in particular when it comes to exercising their rights to inclusive and open participation in election processes. In the context of PWDs, their right to vote comes as the first thought, and their right to stand as candidates is almost totally ignored. The Recommendations are aimed at improving the current situation and enabling PWDs to participate not only in reform processes but also in decision-making processes, and ultimately in the europeanization of our society.

Participatory democracy and enabling advocating for the interests of citizens are processes which are hard to imagine if they result in discrimination, inequality and inequity. Public policy monitoring and improvement, transparency, responsibility of authorities at state and local level do not allow PWDs to exercise their right to equal participation on an equal basis with other citizens. All of the aforementioned results in persisted feeling of dissatisfaction, inequality, and exclusion instead inclusion. Improvement of situation in the field of the electoral law is a prerequisite for exercising the rights and equal opportunities for PWDs to participate in all processes on an equal basis with others.

⁵ <https://ss-cg.org/?p=4343>

⁶ <https://dik.co.me/obezbijedeni-uslovi-za-samostalno-i-tajno-glasanje-osoba-s-invaliditetom/>

⁷ <https://ss-cg.org/>

LEGAL FRAMEWORK

The right of PWDs to participate in public and political life is regulated by numerous positive laws adopted or ratified by Montenegro, and it includes the right of PWDs to vote and stand as candidates.

According to the **Constitution of the Republic of Montenegro**, Montenegro is an independent and sovereign state, republic by the form of its government. Montenegro is a civil, democratic, ecological and the state of social justice, based on the rule of law.⁸ A citizen with Montenegrin citizenship is a bearer of sovereignty. Citizens shall exercise their sovereignty directly and through freely elected representatives.⁹

Montenegro shall guarantee and protect rights and freedoms which are inviolable, and everyone is obliged to respect the rights and freedoms of others.¹⁰ Any form of discrimination, direct or indirect, and on any ground shall be prohibited. Regulations and special measures aimed at creating conditions for the realization of national, gender and overall equality and protection of persons being in unequal position on any ground, shall not be considered discrimination.¹¹ Rights and freedoms shall be exercised on the basis of the Constitution and the confirmed international agreements. All shall be deemed equal before the law, regardless of any particularity or personal feature.¹² The right to elect and stand for elections shall be granted to the citizen of Montenegro who is 18 years of age or above with a minimum of two-year residence in Montenegro. Voting right is exercised in elections, it shall be general and equal. Elections shall be free and direct, by secret ballot.¹³

The European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁴ stipulates in **Article 14** that enjoyment of the rights and freedoms shall be secured without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. **Protocol No.12** to the European Convention for the Protection of Human Rights and Fundamental Freedoms specifies in Article 1 that no one shall be discriminated against by any public authority on any ground such as those earlier mentioned.

The United Nations Convention on the Rights of PWDs ratified by Montenegro in 2009¹⁵ deals with all aspects of life of PWDs. The Convention obliges State Parties to recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefits of the law. It also prohibits all discrimination on the basis of disability and guarantees to all PWDs equal and effective legal protection against discrimination on all grounds. In order to promote equality and eliminate discrimination, State Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.¹⁶

⁸Article 1 of the Constitution of Montenegro

⁹Ibidem, article 2

¹⁰Ibidem, article 6

¹¹Ibidem, article 8

¹²Ibidem, article 17

¹³Ibidem, article 45

¹⁴<https://www.ombudsman.co.me/Propisi.html>

¹⁵Law on Ratification of the UN Convention on the Rights of Persons with Disabilities with Optional Protocol "Official Gazette of the Montenegro" No. 02/09 of July, 27, 2009.

¹⁶Article 5 of the UNCRPD

The Convention lays down that State Parties, including Montenegro, shall **guarantee to PWDs political rights and the opportunity to enjoy them on an equal basis with others.**¹⁷ In accordance with that, Montenegro is obliged:

(a) to ensure that PWDs 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, inter alia, by:

(i) ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

(ii) protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, 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 when appropriate;

(iii) guaranting the free expression of the will of persons with disabilities as electors, allowing assistance in voting by a person of their own choice;

(b) to actively promote the “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, including:

(i) participation in non-governmental organizations and associations concerned with the public and political life of the country, as well as in the activities and management of political parties;

(ii) Forming and joining organizations of PWDs to represent PWDs at international, national, regional and local levels.

UN Committee on the Rights of PWDs expressed concerns in its Concluding observations of the Initial Report of Montenegro on the implementation of the Convention implementation¹⁸ since it was noted that there were **still certain physical and information barriers regarding voting process.** The Committee recommended Montenegro to amend the electoral laws and rules of procedures in order to: **(a) Provide all PWDs with an opportunity to vote and stand for elections;** and **(b) Ensure barrier – free access to voting,** provide mechanisms to ensure **the secrecy of the ballot regardless of the type of disability** and accessibility of other voting material such as information in accessible formats in accordance to the General Comment No. 2 on accessibility.

The **Organization for Security and Cooperation in Europe (OSCE)** participating States committed themselves to take steps to ensure equal opportunities for PWDs to participate fully in the life of their society, and to promote participation of PWDs in decision-making in fields concerning them. These commitments are enshrined in **Moscow 1991 Document.**¹⁹

¹⁷ *Ibidem*, article 29

¹⁸ *Concluding observations of the Committee – translated by the UMHCG*

¹⁹ *DOCUMENT (osce.org)*

The Law on Prohibition of Discrimination²⁰ prohibits any form of discrimination on any ground. The Law defines discrimination as any legal or actual distinction or unequal treatment, or failure to treat a person or a group of persons in comparison to other persons, as well as exclusion, restriction or preferential treatment of a person in comparison to other persons, based on any personal feature, including **disability**.²¹

Lex specialis, the Law on Prohibition of Discrimination of Persons with Disabilities²² considers to be discrimination based on disability in the area of political and public life:

1. denying, limiting or impeding exercise of the right to vote of a voter or a group of voters with disabilities in terms of provisions regulating the election of councillors and members of parliament;
2. denying the right of a voter or a group of voters with disabilities to independent voting or voting with the help of an assistance of a person designated by a voter or a group of voters with disabilities and at their request;
3. preventing, limiting or hindering access, movement, stay and work in the premises of political parties;
4. denying or limiting the right of a person with disability to stand as a candidate, to be elected and appointed to particular public office if the same rights of other persons are not denied or limited;
5. failure to take measures and implement regulations referred to in Article 5 of this Law that aim at ensuring that persons with disabilities can fully and effectively participate in holding public office;
6. denying the request of a person or a group of persons with disabilities to join a non-governmental organization or refusal to establish special conditions for their membership in such organization; and
7. denying or limiting the right to elect and be elected to the management bodies of public institutions, non-governmental organizations and other institutions, as well as to efficiently perform public functions at all levels of power with the help of technologies for support to persons with disabilities.²³

The Law on Election of Councillors and Members of Parliament²⁴ most extensively covers electoral rights, and the content of created Recommendations refer to the content of this Law.

²⁰“Official Gazette of Montenegro” No.46/2010, 18/2014 and 042/17

²¹Article 2 of the Law on Prohibition of Discrimination

²²“Official Gazette of Montenegro” No. 035/15, 044/15

²³Article 25 of the Law on Prohibition of Persons with Disabilities

²⁴“Official Gazette of Montenegro” No. 004/98, 005/98, 017/98, 014/00, 018/00, “Official Gazette of the Federal Republic of Yugoslavia” No. 073/00, 009/01, 041/02, 046/02, 045/04, 048/06, 056/06, “Official Gazette of Montenegro” No. 046/11, 014/14, 047/14, 012/16, 060/17, 010/18, 109/20

Accessibility standards that apply to public facilities are defined in the **Law on Spatial Planning and Construction of Structures** and in more detail in the **Rulebook on detailed conditions and methods of adapting facilities for access and movement of persons with reduced mobility and persons with disabilities**.²⁵ The above-mentioned Rulebook prescribes that **ramps**, inter alia, **shall have maximum slope of 5%, minimum width of 120 cm** in external area or minimum width of 90cm in internal area, solid surface with anti-sliding finishing and guardrail with handrails.²⁶ **Elevators** shall have minimum internal dimensions of **110 x 140 cm**, handrails placed at height of 90 cm, sound announcement and control panel with information in **Braille**.²⁷ **Entrance area** of the facility shall have single wing door with minimum width of useful area of 110/210 cm or double wing door with minimum width of useful area of 2 x 90/210 cm, door opening outwards or sliding door, **and thresholds** not higher than 2 cm.²⁸ **Corridors** shall have minimum width of 150 cm, and all passable surfaces shall be at the same level.²⁹

The Rulebook specifically addresses the arrangements of **voting booths**. **Voting booth for wheelchair users** shall have the upper panel put up at **maximum height of 85 cm**, ensured minimum free area inside the booth with a radius of 150 cm, voting booth shall be located near the entrance and/or the room where voters cast their ballots.³⁰ Tactile leading line with a minimum width of 40 cm and with grooving in leading directions shall be placed from entrance door to the **voting booth for VIPs**. If there are three or more voting booths of the same type within the facility, one of them must meet accessibility requirements.³¹

Parking space shall be placed in the immediate vicinity of the accessible building entrance, it shall have a size of 370 x 500 cm for one vehicle, and size of 590 x 500 cm for two vehicles.³² In public parking lots and garages as well as parking belonging to facilities, 5% of the total number of parking spaces shall be designated for use by PWDs (at least one parking space).³³

The SEC considered and adopted initiatives proposed by the UBM and the Association of the Youth of Disabilities at the session held on March 23, 2022.³⁴ It amended **Rules on designation and organization of PSs and measures for ensuring the secrecy of the ballot**³⁵ and **Rules on uniformed standards for election material**.³⁶ Then the SEC sent an act to all MECs directing them to pay special attention to amended provisions and the necessity of their application in order to ensure conditions for independent voting and the secrecy of the ballot for PWDs.

²⁵ <https://www.gov.me/dokumenta/85a0d4a1-c6f9-438b-8257-00a6493d49ce>

²⁶ *Article 11 of the Rulebook on detailed conditions and methods of adapting facilities for access and movement of persons with reduced mobility and persons with disabilities*

²⁷ *Ibidem*, article 13

²⁸ *Ibidem*, article 17

²⁹ *Ibidem*, article 18

³⁰ *Ibidem*, article 27

³¹ *Ibidem*

³² *Ibidem*, article 40

³³ *Ibidem*, article 51

³⁴ <https://dik.co.me/novine-u-izbornom-procesu-koje-se-odnose-na-osobe-sa-invaliditetom/>

³⁵ "Official Gazette of Montenegro", No. 011/16, 076/17 and 033/22

³⁶ "Official Gazette of Montenegro", No. 015/14, 005/22 and 033/22

In accordance with these Rules, the most significant amendments concern the following issues:

1. **The voting template** must be made of **appropriate material in dark blue**, it must be true to the form and appearance of the ballot paper and have **metal rings** so the secrecy of the ballot can be ensured. The voting template used so far was true to the appearance of the ballot paper but did not have metal rings, only openings. There have been complaints regarding pen traces on the voting template which led to the breach of the secrecy of the ballot. The **breach of the secrecy of the ballot** must be **eliminated** by introducing new voting templates with metal rings.
2. There must be **2 ballot papers in Braille** at each PS, so VIPs may become familiar with the exact **content of the ballot paper**. These two ballots must be a part of voting material for information purposes. Although the members of the SEC were aware of the fact that there was no official standardization for Braille in the legal system of Montenegro, they expressed the view that it was necessary to take step further with the aim of improving the rights of PWDs in this field.
3. **The ballot box** must be placed on a **flat surface with a height not exceeding 40 cm** so that a person of short stature or wheelchair users may **independently** insert their ballot paper into the box. Up to now, the members of PBs have lowered the ballot box during the vote by persons of short stature or wheelchair users, which resulted in the breach of the secrecy of the ballot. The SEC concluded that polling PSs must be set up in such manner to enable all members of PBs to have an unobstructed view of the ballot box.
4. In accordance with its respective responsibilities, the SEC has issued precise instructions to MECs on matters related to **organizing of PSs**. To comply with the instructions given, **dark red carpet strips** intended for directing of movement of VIPs strips must be installed inside the PSs. They must direct them to a desk where they are given a ballot paper, further to the voting booth, then to the ballot box and finally to the exit point of the PS. Other than that, the MECs are required to designate PSs bearing in mind that facilities must be adapted to PWDs.

Legal framework in Montenegro guarantees barrier-free exercise of voting rights of PWDs to a large extent. The Law on Election of Councillors and Members of Parliament contains several standards related to requirements for full exercise of right to vote such as: obtaining information concerning PSs in required accessible format, voting with the assistant designated by themselves, postal voting and the opportunity to cast vote with the appropriate voting template. The Law does not prescribe the appearance of the voting template nor the material it must be made of in order to ensure the absolute secrecy of the ballot. That is prescribed by bylaws. However, neither the Law nor the bylaws adopted by the SEC prescribe obligation to make PSs accessible for all PWDs, which would encompass the obligation to make PS access route and entrance area accessible, as well as the obligation to ensure barrier-free movement inside of PSs. The adequate standards, however, have not been consistently implemented by the election administration in the last 10 years. That is something that requires extra work.

The Law does not provide for professionalization of election administration, which is of crucial importance. In order to put a special emphasis on improvement of election process, members of the SEC and MECs must be professionals, not representatives of political parties. The Law also does not make provision for any penalty in connection to non-performing, i.e. failure to apply legal standards, introduction of which would contribute to raising the awareness of all actors in election process.

ELECTION MANAGEMENT BODIES

Election management bodies are: SEC, 25 MECs (each local government unit, Administrative Capital's election commission, Historic Royal Capital's election commission) and PBs. In accordance with the applicable Law, descriptions and competences of these bodies are specified as follows:

The SEC operates in permanent and extended composition. Permanent composition of the SEC shall be composed of: the chairperson and ten members and one empowered representative of each candidate list submitting entity.

The SEC chairperson shall be appointed by the Parliament after conducted open competition. The current chairperson of the SEC is not a representative of a political party. It is a **competence** of the SEC³⁷ to take care of lawful election administration and uniformed enforcement of provisions of the Law, coordinate work of MECs, supervise their work, and lay down uniformed standards for election materials. The SEC has its website³⁸ for publishing acts and information relevant to election administration, as well as interim and final voting results at each PS. This website is not fully accessible for users with disabilities. With regard to performing electoral actions, the SEC shall be responsible for procurement and distribution of election materials to MECs. In this context, we particularly highlight voting templates and information brochure in Braille.

The permanent composition of the **MEC** shall be appointed by the assembly in accordance with the rules established.³⁹ The permanent composition of the MEC includes a **chairperson and four members** and one empowered representative of each candidate list submitting entity. MECs shall take care of a lawful election administration and organizing technical preparations for election administration. In addition to that, they shall designate PSs for election of counillors and members of parliament, form PB and appoint the presiding officers and members of PB, as well as provide and organize trainings on PB work procedures.⁴⁰ MECs use the SEC's website.

³⁷ Article 32 of the Law on Election of Councillors and Members of Parliament

³⁸ <https://dik.co.me/>

³⁹ *Ibidem*, article 23

⁴⁰ *Ibidem*, article 27

Permanent composition of PBs shall include **the presiding officer and four members**, as well as one empowered representative of each candidate list submitting entity.⁴¹ Each political party represented in the relevant assembly shall be entitled to the number of PB presiding officers proportionate to the proportional representation of councillor seats in the assembly, while the PS, at which individual parties would propose representatives for PB presiding officers, shall be determined by drawing lots by MEC. PBs shall be appointed for each PS, **at the latest 10 days before** the Election Day. As an exception, at the substantiated request, the PB composition may also be changed after the expiry of this term, and at the latest **12 hours before the PSs are open**. PB presiding officer and members, as well as empowered representatives of candidate list submitting entities, in the case of their absence or inability to work, shall be replaced by their deputies who shall perform PB activities and tasks. PBs shall directly administer voting at PSs, and attend to the maintenance of order at PSs during the voting. They shall designate, from among its members, four members in charge of voting outside PSs.⁴² More detailed rules concerning the work of PBs are laid down by the SEC.

RECOMMENDATIONS FOR IMPROVING ELECTORAL LEGISLATION WITH REGARD TO PERSONS WITH DISABILITIES

The following Recommendations have been created in accordance with the applicable Law on Election of Councillors and Members of Parliament, reports made by international⁴³ and domestic organizations⁴⁴, legal framework analysis and experience of VWDs.⁴⁵

1. BASIC PROVISIONS

ACCESSIBILITY OF ELECTIONS FOR PWDs MUST BE REGULATED BY THE LAW.

Article 1 of the Law on Election of Councillors and Members of Parliament prescribes exactly that what this Law is dealing with. Accessibility of elections is something that the Law does not mention, although the Law states “... and other matters of significance for election organization and administration”.

⁴¹ *Ibidem*, article 35

⁴² *Ibidem*, article 37

⁴³ ODIHR reports

⁴⁴ Reports made by the Union of the Blind of Montenegro and the Association of Youth with Disabilities of Montenegro

⁴⁵ Reports made by the OSCE Mission to Montenegro, conclusions of the focus groups

It is crucial to emphasize that this Law must regulate the accessibility of elections for PWDs as well, and make it mandatory for everyone this Law applies to. At the same time, accessibility as human right and the principle defined in the UN Convention, covers accessibility of physical environment and facilities, information and communications, including accessibility of information and communications technologies and systems, transportation and services.

VOTERS HAVE RIGHT TO BE INFORMED VIA MEDIA ON ELECTORAL PROGRAMMES AND ACTIVITIES OF CANDIDATES LIST SUBMITTING ENTITIES, AS WELL ON CANDIDATES FROM CANDIDATE LISTS. ALL INFORMATION MUST BE IN FORMATS ACCESSIBLE TO PWDs.

The current situation indicates that persons with different types of disabilities are not informed on electoral programmes due to inaccessibility of available information. Sign language interpreters have not been provided, and audio description, easy-to-understand format, subtitles and transcripts are also not available. All the above-mentioned denies the right of VWDs to obtain accurate information in a timely manner and to make a decision based on the information available like other voters and citizens of Montenegro.

2. SUFFRAGE

THE LAW MUST REGULATE AFFIRMATIVE ACTION FOR PASSIVE SUFFRAGE OF PWDs.

Provision in force concerning the suffrage does not prevent PWDs to run as candidates and to be elected. However, the basic provision is not sufficient to provide them with an opportunity to stand as a candidate and does not encourage them to do so, because PWDs are not in the same position as candidates without disabilities, so the basic provision cannot ensure their participation on an equal basis with others. It is therefore necessary to prescribe an affirmative action in respect of standing for elections for PWDs, which is in accordance with the Constitution of the Republic of Montenegro.

3. ELECTION MANAGEMENT BODIES

WEBSITES OF ALL ELECTION COMMISSIONS MUST COMPLY WITH E-ACCESSIBILITY STANDARDS.

When it comes to the work of election management bodies, it is necessary to specify the obligations concerning information accessibility, i.e. providing accessible formats for PWDs, which refer to adapted websites of the SEC and MECs. This is important in order to ensure equality for PWDs with regard to information accessibility.

Websites of election commissions must comply with e-accessibility standards: international technical standard ISO/IEC 40500:2012 – Web Content Accessibility Guidelines 2.0 - WCAG 2.1), which has been developed by the World Wide Web Consortium within the Web Accessibility Initiative (W3C WAI – Web Accessibility Initiatives), as well as with the existing Recommendations developed by the Ministry of Public Administration in cooperation with the UBM and the Rulebook on accessibility standards published by the Ministry of Public Administration.⁴⁶ The Rulebook clearly sets out the obligation that all interface components shall be easy to navigate and interact with, in particular by PWDs. It is also necessary to provide them with the possibility to access the content of the e-government service by using assistive technologies.

Implementation of web accessibility standards is the obligation allowing users with disabilities to find, read and share website content with others. The content refers to the website, news, as well as to the e-documents published on the website.

SIGN LANGUAGE INTERPRETATION MUST BE PROVIDED DURING SESSIONS OF THE SEC.

It is required to provide sign language interpretation during the sessions of the SEC, so the persons with hearing impairments could access and obtain session information directly and on time.

MECs MUST BE COMPETENT TO DESIGNATE POLLING STATIONS FOR ELECTION OF COUNCILLORS AND MEMBERS OF PARLIAMENT THAT ARE ACCESSIBLE FOR PWDs.

Besides the competences of MECs stated above which are prescribed by the Law, they must have additional responsibility regarding designation of PSs. That responsibility would make representatives of MECs obliged to designate PSs accessible to PWDs while launching preparatory election-related activities, which would eliminate presently existing discrimination against PWDs. Experience acquired during previous electoral cycles indicates that the closer cooperation between the Ministry of the Interior (MoI) and MECs in the process of proposing and designation of accessible PSs is crucial, because the practice confirms passivity in this field.

⁴⁶ Official Gazette of Montenegro” No. 105/2020 of October 29, 2020

MECs MUST RESPOND TO THE SEC FOR DISRESPECT OF LEGALLY PROVIDED NORMS.

MECs must be accountable to the SEC for any non-compliance with legal standards concerning performing their work and activities.

THE SEC MUST TAKE OVER RESPONSIBILITIES AND COMPETENCES THROUGHOUT ALL ELECTORAL CYCLES.

The competence of the SEC must additionally include the possibility to take over the responsibilities of MECs not only in the case of presidential and parliamentary elections but also in the case of municipal/local elections.

The SEC takes over the competences regarding municipal elections when the MECs do not conduct electoral activities in line with legal standards.

PRIORITIZE DEPOLITICIZATION OF ELECTION ADMINISTRATION AT ALL LEVELS AND ENABLE ELECTION MANAGEMENT BODIES TO ADEQUATELY CONDUCT ELECTION PROCESS.

With regard to composition of the SEC and MECs, it is necessary to professionalize these bodies, i.e. to choose professionals by means of references, meaning that the appointed members of PBs would be qualified for the work they should perform, and that they would be able to continuously monitor the election process. Experience gained so far, which included frequent changes in the composition of election commissions, led to inability to introduce the innovations concerning PWDs in election process, given that the election commissions held their meetings only during election processes, and that the members of commission were not informed or interested in the rights of PWDs during election process (since they were political candidates representing the interests of the parties they were members of). Political entities should be given the option of appointing the members to their extended composition, but with no right to vote.

The SEC should consist of professionals, i.e. experts on election process, and they should be appointed by the Parliament on the basis of a public competition. MECs shall be composed of 3 members who have already gained experience in election process. In order to improve their ability to work independently, the term of office of the members shall last 5-7 years. By doing so, the overlapping of terms of office of the SEC's members and members of parliament will be avoided.

POLLING BOARD MUST BE PROFESSIONALIZED.

With regard to the PB composition, the possibility of the (semi)professionalization of PBs must be considered in such a way to provide the opportunity to choose at least some PB members from representatives of public administration and local self-governments. In addition to that, it is necessary to revise the timeframe regarding the PB composition change. In accordance with the applicable law, the PB composition may be changed at the latest 12 hours before the PSs are opened. This timeframe shall be extended to 7 days prior to the Election Day. MECs shall take into account the reasons for changing the composition of PBs given the objective reasons for change.

PB MEMBERS MUST BE OBLIGED TO HAVE THE CERTIFICATE IN CONDUCTING ELECTIONS.

Obligation of PB members to attend training courses must be prescribed by the Law. After successfully completed training course, they will receive a certificate confirming they are able to conduct elections. The aim is to raise knowledge among PB members related to the election process in general, as well as regarding the rights of PWDs. According to the current situation, even persons who have not attended education courses and without required knowledge and skills may be appointed as members of PBs. Most irregularities on Election Day refer exactly to the work of PB members.⁴⁷

Bearing in mind that the objective in this field is to provide the uniform training, it is essential to put the education of PB members under authority of the SEC. Only in this way it will be possible to ensure the uniform and timely education.

4. PROPOSING AND VALIDATION OF CANDIDATE LISTS

PERSONS WITH DISABILITIES MUST BE REPRESENTED IN CANDIDATE LISTS.

In order to promote equality for PWSs, it is necessary to foresee representation of PWDs in candidate lists. There must be 5% of candidates with disabilities on the candidate list, with respect to the existing standards referring to candidates of the underrepresented gender. Situation would look like this: There must be at least one person with disabilities among 10 candidates on candidate lists until defined quota has been met.

⁴⁷ The Union of the Blind of Montenegro – Final report on the early parliamentary elections observation on June 23, 2023, <https://ss-cg.org/>

CONSOLIDATED CANDIDATE LIST MUST BE PUBLISHED ON THE WEBSITE OF THE SEC IN FORMATS ACCESSIBLE TO ALL PWDs.

The law must specify that consolidated candidate list must be published on the website of the SEC, and that the published document must comply with e-accessibility requirements.

5. REPRESENTING CANDIDATE LIST SUBMITTING ENTITIES AND CANDIDATES FROM CANDIDATE LISTS

CANDIDATE LIST SUBMITTING ENTITIES AND CANDIDATES FROM CANDIDATE LISTS MUST COMMIT TO INFORM CITIZENS IN LINE WITH ACCESSIBILITY STANDARDS.

The law must prescribe that candidate list submitting entities and election candidates are obliged to inform citizens during election campaign in line with accessibility standards. The foregoing implies that it is required to provide subtitles for all pre-recorded video content, make information contained within graphs and images available as text, as well as to adapt messages directed at public by using easy-to-understand language.

PARTICIPANTS IN PRE-ELECTION CAMPAIGN ARE REQUIRED TO PROTECT HUMAN RIGHTS AND PROMOTE RESPECT FOR THEIR INHERENT DIGNITY.

During the pre-election campaign, inadequate approach to PWDs has been noticeable, and many offensive terms calling into question dignity of PWDs have been used. In this regard, it is necessary to introduce a new standard which would oblige participants in the pre-election campaign to protect human rights, and to promote and respect for their inherent dignity and human diversity.

6. CONDUCT OF ELECTIONS

DESIGNATION OF PSs MUST BE THE RESPONSIBILITY OF MECs ALONG WITH MANDATORY CONSULTATIONS WITH THE ORGANIZATIONS OF PWDs.

The law must provide the responsibility of MECs for designation of PSs. Furthermore, while designating PSs, MECs are obliged to carry out consultations with the organizations of PWDs that conduct activities in the electoral field. This is to ensure the meaningful participation of organizations of PWDs in accordance with the provisions and the spirit of the UN Convention on the Rights of Persons with Disabilities.

PSs MUST COMPLY WITH ACCESSIBILITY STANDARDS REGARDING PWDs.

PSs must meet all accessibility standards regarding PWDs in accordance with the provisions referred to spatial planning and construction of structures in order to ensure independent movement of PWDs. Accessibility standards apply to:

- Surrounding: adequate parking provision;
- Access route: appropriate sidewalk height, adequate curb height, without obstacles such as pillars and the like;
- Entrance area: existence of a ramp with properly designed slope, door width, corridor width;
- Interior design: properly installed carpet strips, the height at which a ballot box is placed at, low-level shelf inside the voting booth, lighting.

PS MUST BE DESIGNED IN SUCH WAY TO ENSURE ENOUGH ROOM FOR EVERYONE.

Provision regarding ensuring enough space within PSs must be added to Article 65. This provision would aim at ensuring enough room for barrier-free access to ballot boxes and voting material not only for PB members but also for all voters.

PWDs MUST BE ALLOWED TO SIGN THE EXTRACT FROM THE ELECTORAL REGISTER BY FACSIMILE.

Voters must confirm receipt of ballot papers by placing their signature on the extract from the electoral register. Unfortunately, in Montenegro, the Law on the Use of Facsimile Signature, which would allow PWDs to use facsimile, has not been adopted yet. Solutions that have been developed so far violate dignity of PWDs, because PWDs are sometimes required by PB members to use their fingerprints as a signature instead of signing by facsimile. It is therefore necessary to provide PWDs with a possibility to sign the extract by facsimile.

ACCESSIBLE ROOM IS TO BE PROVIDED FOR EACH POLLING STATION.

According to Article 72, a special accessible room for each PS will be ensured, and in this room it will be possible to ensure the secrecy of the ballot.

PROVISIONS CONCERNING VOTING WITH AN ASSISTANT MUST BE DEFINED WITH RESPECT TO HUMAN RIGHTS, WITHOUT EMPHASIZING ANY PERSONAL FEATURES OF VOTERS.

Applicable provision set out in paragraph 1 of Article 84 must be reformulated in order to avoid putting emphasis on personal features or the reasons explaining why the assistance of another person is necessary, because it is the right of PWDs to have the assistance of another person. In this respect, the applicable provision must be so reformulated so that it lays down the right of a voter who needs technical assistance of another person to vote with the assistance of an aid designated by him, meaning that the designated person will mark the ballot, that is, cast the vote as instructed by the voter.

BALLOT PAPER TEMPLATE MUST ENSURE THE SECRECY OF VOTING.

In addition to the form and appearance of the ballot/voting template, the Law must also prescribe the color and material the ballot/voting template is made of. It must be made of a solid material in dark blue, and with metal rings so the secrecy of the ballot can be ensured.

PB members are required to put voting templates on the desk the PB is sitting at, so that VWDs can have voting template with the ballot paper immediately upon arrival. PB members are obliged to insert the ballot paper into the voting template so that the numbers of electoral lists are visible in the openings.

INFORMATION AT PSs ON ELECTION DAY MUST BE IN AN ACCESSIBLE FORMAT.

The Law must specify that final candidate list, with all names of electoral lists and candidates must be displayed at each PS during voting. The upper edge shall not exceed 160 cm. The content of the list must be printed in some of the best suited fonts (Arial, Calibri, Tahoma, Verdana, Times New Roman) and large print – at least 18 points, with larger spacing between lines, as well as in Braille.

7. ASCERTAINING AND PUBLISHING ELECTION RESULTS

RECORD OF WORK OF POLLING BOARD MUST BE IN AN ACCESSIBLE FORMAT.

Since PBs, after the voting is completed, begin to ascertain voting results at the PS ⁴⁸ and prepare a record of work of the PB, it is recommended to create the record in an accessible digital format, in order to make it available to all members or observers.

REPORTS OF MECs MUST BE IN AN ACCESSIBLE DIGITAL FORMAT.

It is recommendable to compile reports of MECs on the results of election of members of parliament and councilors – which are submitted to the SEC – in an accessible digital format. Since MECs submit their reports with records of their work after Election Day, it is advisable to compile the reports in an accessible digital format.

FORMS FOR LODGING AN OBJECTION MUST BE IN AN ACCESSIBLE DIGITAL FORMAT.

The Law must prescribe the obligation to create forms for lodging objections in an accessible digital format, given that by now PWDs have not had the opportunity to lodge an objection precisely because there were no accessible formats provided. This fact clearly indicates that PWDs are discriminated against compared to other citizens.

ELECTION RESULTS MUST BE PUBLISHED IN ACCESSIBLE FORMATS.

Interim and final election results must be published in formats that are accessible to PWDs: digital and audio format, Braille, large print, easy-to-understand language.

⁴⁸ Article 89 of the Law on Election of Councillors and Members of Parliament

8. PROTECTION OF VOTING RIGHTS

BODIES AND INSTITUTIONS IN CHARGE OF ELECTIONS MUST BE OBLIGED TO PUBLISH ALL INFORMATION IN FORMATS ACCESSIBLE TO PWDs.

It is necessary for the Law to prescribe that election management bodies, which are bound to inform voters during electoral procedures of their voting rights and the manner to protect those rights (pursuant to Article 106 of the current Law), must do that in a timely manner and in a format accessible to PWDs.⁴⁹

Competent institutions must have responsibility to adapt the manifestos of their programmes, election manifestos and other information relevant to exercise and protection of voting rights, as well as online presentations, to PWDs by using accessible formats.

OBJECTION AND RESPOND TO OBJECTION MUST BE IN AN ACCESSIBLE FORMAT.

It is necessary to foresee by the Law that the objection that each voter, candidate and candidate list submitting entity is entitled to lodge to the competent election commission due to a voting right breach during the election process, must be in a format accessible for PWDs.⁵⁰ The objection against the decision, action or omission made by the PB that must be submitted to the SEC, must also be in an accessible format. A decision made by the competent election commission within 24 hours of the hour of receipt of the objection, must also be issued in an accessible format.

9. ELECTION OBSERVERS

APPLICATION FORM MUST BE IN AN ACCESSIBLE FORMAT.

The obligation to provide application form (which is submitted to the SEC by domestic non-governmental institutions interested in election monitoring) must be foreseen by the Law. Official authorizations or decisions rejecting to issue the authorization must be in formats accessible to PWDs as well. The same recommendation must apply to filling in forms by international election monitoring organizations, which are submitted to the Ministry of Foreign Affairs that issues ID card (it must be in accessible format).

⁴⁹ Pursuant to article 106 of the Law on Election of Councillors and Members of Parliament, election management bodies are obliged to inform voters during electoral procedures of their voting rights and manner to protect those rights

⁵⁰ Pursuant to article 107 each voter, candidate and candidate list submitting entity is entitled to lodge a complaint to the competent election commission due to a voting right breach during the election process

10. PENAL PROVISIONS

ENFORCE PENAL PROVISIONS FOR NOT COMPLYING WITH ACCESSIBILITY STANDARDS.

A fine must be imposed on legal entities if they:

1. deny, restrict or hinder the voting process at the PS in which the PWD is registered in the electoral register, or if they affect the way and form of voting of their choice (independently, with the assistance of another person or by using the ballot paper template);
2. do not provide PWDs with the opportunity to vote by post/letter.

CONCLUSION

There is a clear need for electoral reform in Montenegro. After the new convocation of the Assembly has been constituted, the electoral reform must be prioritized, as well as the work on the new Law which will cover everything learnt so far.

Recommendations which are before you have been created based on past experience and practices. These recommendations aim to ensure that PWDs can fully participate in political and public life by achieving the highest degree of election process accessibility and opportunity for PWDs to vote and stand as candidates in elections.

By using these Recommendations the UBM will try to achieve the expected outcomes, ensure meaningful participation of organizations of PWDs in electoral reform, and eliminate all forms of discrimination against VWDs.

Therefore we once again call on all organizations and institutions to implement the above-mentioned recommendations in cooperation with the Union and other civil society organizations as part of electoral and other indispensable reforms, in order to enable exercise of all rights of PWDs guaranteed by the Constitution.

ABOUT THE UNION OF THE BLIND OF MONTENEGRO

The Union of the Blind of Montenegro is a non-governmental, non-profit organization that gathers about 1000 visually impaired and blind persons, who are members of eight local organizations of the blind. Local organizations cover the territory of all municipalities in our country. The Union was founded on April 11, 1947 in Cetinje, and the current headquarters is located in Podgorica. Since it was founded, our seven and a half decades long activities have included launching many legislative initiatives aimed at improving, protecting and consistent encouraging the implementation of a wide range of rights of visually impaired persons. The Union has also undertaken activities aimed at developing different types of programmes and services which serve to promote raising of awareness of the wider social community. Through these activities, PWDs should also become more aware of their needs, possibilities, potential, independent movement and living, education and employment, right to equality and human dignity, right to be an equal member of a society, their electoral rights, etc.

Future vision of the Union of the Blind of Montenegro is to have visually impaired persons that are empowered and included in the society.

Mission of the Union of the Blind of Montenegro is inclusion of visually impaired persons through promotion and implementation of activities that highlight their capacities and improve their personalities.

Further information on the Union of the Blind You can find at <https://ss-cg.org/>.

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The content of this document is the sole responsibility of the Union of the Blind and does not necessarily reflect the attitude of the CGO, European Union or the Ministry of Public Administration.

