



Centar za građansko obrazovanje
Centre for Civic Education

Elections and Ethical Principles

proposal for the improvement of ethical approach of bodies
in charge of the conduct of elections in Montenegro



General overview

Following the provisions of Article 32 of Law on the election of councillors and MPs¹ and the adopted Strategy for the fight against corruption and organised crime for period 2010 – 2014, State Election Commission passed the *Code of Ethics of bodies in charge of the conduct of elections in Montenegro* (hereinafter referred to as: Code of Ethics), at its session held on 20 December 2010. Consequently, Code of Ethics gained the status of legal act following its official publication.²

Code of Ethics of bodies in charge of the conduct of elections was divided in four chapters: Chapter I – *General remarks defining the implementation, objective and content of the Code*; Chapter II – *Code principles which regulate the area of duties and prohibitions in relation to members of bodies in charge of the conduct of elections*; Chapter III – *Supervision over the implementation of Code*; Chapter IV – *Final provisions*.

The content of said Code of Ethics meets the European standards to the great extent. However, it is characterised by partial limitation in terms of the context, resulting with an insufficient elaboration of general postulates in some of the chapters, which underpin the professional pattern of conduct, standards and principles of work of State Election Commission of Montenegro (SEC), Municipal Election Commissions (MEC) and Polling Boards (PB). This deficiency is particularly visible in provisions related

to redefinition of Code of Ethics, introduction of principles and values, and complementation in the part of control over the implementation of Code.

Structure-wise, Code of Ethics is also, to the great extent, adequately and appropriately regulated, covering almost every area (implementation, objective and content, duties and prohibitions of members of bodies in charge of the conduct of elections, monitoring over the implementation of code, final provisions) for the purpose of creation of an efficient and effective mechanism of respect of rules of conduct prescribed with their competencies. However, almost identical as in terms of the contents, the structural context of Code of Ethics demonstrates certain gaps which should be filled with the introduction of new chapter which primarily relates to “obligations of studying the content of Code by all members of bodies who are about to take the office”.

Ultimately, the analysis of Code of Ethics essentially indicates that the election code of ethics is practical and reasonably founded in content and structural framework, consequently ensuring, for the most part, the specific and credible rules of conduct for members of bodies in charge of the conduct of elections. Nonetheless, there are certain structural deficiencies, conceptual and structural flaws that should be resolved in the upcoming period.

¹ Law on election of councillors and MPs, “Official Gazette of RMNE”, no. 4/98, 17/98, 14/00, 9/01, 41/02, 46/02, 48/06 and 56/06

² Official Gazette of Montenegro. 76/10



Analysis of Code of Ethics by chapters

By analysing the Code of Ethics in terms of the content, *First chapter (General remarks)*, Article 1, defines the general provisions related to application of rules of conduct. In this respect, Code of Ethics specifically defining persons to which this rule is applied exclusively, precisely defining the members of SEC, MEC and PB as subjects that have the ethical duty and obligation to submit and respect these norms. Hence, Article 1 points out: *“Code of Ethics is a set of principles, standards, and rules of conduct of members of State Election Commission, Municipal Election Commissions and Polling Boards (hereinafter referred to as: bodies in charge of the conduct of elections in Montenegro), especially during the election process.”*³ However, this article fails to emphasise the tenets (independence, responsibility, transparency of work, tolerance, respect of human rights and dignity), which derive the principles, standards and rules of conduct of members of bodies in charge of the conduct of elections that were not previously listed in the existing document.

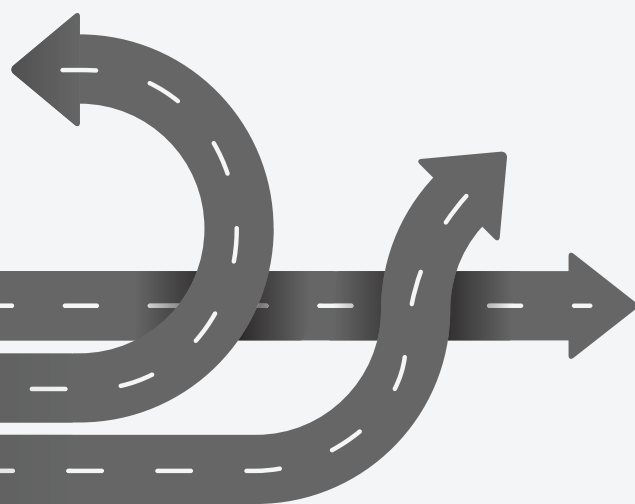
By analysing Article 2 one can get the impression that the objective of Code of Ethics was not defined appropriately, through the emphasis that Code’s objective is to *“promote the role and reputation of bodies in charge of the conduct of elections in the performance of activities from their competence”*.⁴ Just the opposite of the original definition, Code of Ethics presents a sort of a rule book, or a set of rules and ethical tenets on professional conduct which function is not to promote the role and reputation of

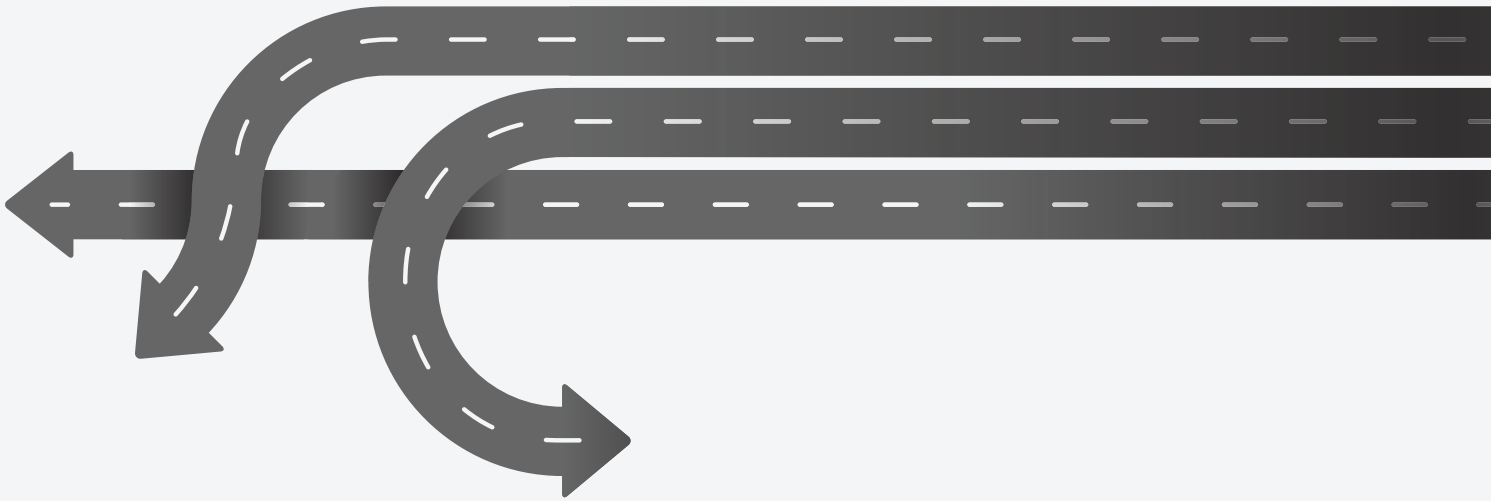
members of bodies in charge of the conduct of elections, but to define the standards of conduct which all members must adhere to in the performance of their duties. Also, though Article 2, paragraph 2, of Code of Ethics states that it *“contains the provisions on principles, standards and rules of conduct, obligation of studying the content of Code and monitoring over the implementation of Code”*, it is obvious that the same lacks specifically and adequately defined “standards of ethical behaviour”, as fundamental framework for the professional performance of prescribed duties. Additionally, the Code of Ethics lacks the “fundamental values” which underpin, i.e. which established the rules of conduct for bodies in charge of the conduct of elections, and relate to: responsibility, impartiality, respect, veracity, righteousness, respect and culture of dialogue and etc.

Second chapter (Code principles), based on Article 3 of Code of Ethics, clearly, specifically and practically defines the obligations of members in charge of the conduct of elections, thereby respecting the provisions from Code, by taking additional measures and actions for the sake of preserving the integrity of election body. Article 3 prescribes that members of bodies in charge of the conduct of elections are obliged to: *“consciously, professionally and responsibly perform the duties delegated to them; carry out the activities in an honest and efficient manner in line with professional standards; maintain the reputation of their respective body; be accurate, professional*

³ Article 1 of Code of ethics of bodies in charge of the conduct of elections in Montenegro

⁴ Article 2 of Code of ethics of bodies in charge of the conduct of elections in Montenegro





and precise in performing their legal obligations; develop collegial and concrete relations with other members of bodies in charge of the conduct of elections”, and etc.⁵

Furthermore, Code of Ethics prescribes, in a credible manner, the prohibitions to which the members of bodies in charge of the conduct of elections are subject, and ultimately relate to: use of property of bodies in charge of the conduct of elections for private purposes; favouring of certain categories of citizens in the realisation of their rights due to political, national, racial, religious, gender or other nationality; provision of statement or information that would harm the reputation of bodies in charge of the conduct of elections during the process of elections; misuse of position in bodies in charge of the conduct of elections for personal gain or for the benefit of some other political party which delegates them to membership; and etc.⁶ This ensures the appropriate rules of conduct with the aim of uninterrupted performance of professional, competent and responsible duties while preserving the integrity and reputation of respective bodies, primarily through the support or prohibition of certain activities that could violate or question the process of elections. Additionally, this chapter reveals certain deficiencies related to amendment and more detailed elaboration of paragraphs on duties and prohibitions of bodies in charge of the conduct of elections.⁷

Insight into *Third chapter* provides the answer to question: who performs the supervision over the implementation of code? In such a way, article 5 of Code of Ethics explicitly underlines that SEC is an institution which has the competence over the control of implementation of

code. President of SEC has a legitimate right, in relation to competent authority for the appointment, to launch a procedure for the dismissal of member in charge of the conduct of elections whose conduct is not in line with basic principles and rules of Code of Ethics. However, something is missing here which could be of crucial importance for the creation of quality and binding framework for the supervision over the implementation of code – filling the content gap in the provision related to control over the effective application of rules of conduct of bodies in charge of the conduct of elections. It would appear that authors were not interested in issues that are significant for the establishment of more purposeful and credible mechanism of control over the implementation of Code of Ethics, which relates to: more precise definition of every person who has the legal possibility to file a complaint and manner of filing the complaint to president of SEC, particularly in cases of unethical conduct of body in charge of the conduct of elections. Also, it is unclear in which time period the president of SEC has the legal possibility to launch the procedure of dismissal of member of body in charge of the conduct of elections with the competent body for appointment. Last, but not least important, it does not define the time interval during which it is important to notify the submitter of complaint on the outcome of same. Hence, these decisions are incomplete and unclear, because they do not prescribe explicitly who can file the complaint and in which manner, and what are the deadlines for the filing of the complaints, decision-making on the complaint and notification about the outcome.

⁵ Article 3 of Code of ethics of bodies in charge of the conduct of elections in Montenegro

⁶ Article 4 of Code of ethics of bodies in charge of the conduct of elections in Montenegro

⁷ On the introduction of new paragraphs in Article 3 and Article 4 (duties and prohibitions of members of bodies in charge of the conduct of elections

Comparative overview

Comparison with states of region aspiring to membership in EU (Bosnia and Herzegovina and Serbia), as well as with EU member states (Croatia, Greece, Slovakia, Germany), indicates that these do not have a code of ethics for their bodies in charge of the conduct of elections.

In the case of Bosnia and Herzegovina, though there is a Central Election Commission (CEC), in charge for the respect and implementation of election procedure, but the code of elections is not explicitly contained in any legal form. Hence, it could be concluded that the election code of ethics is absent on federal level.

The situation is identical in Serbia, where the work of Republic Election Commission (REC) is defined with the rulebook of REC, but without any election code of ethics, as a separate document.

In Croatia, State Election Commission (SEC) adopted the election code of ethics in 2013. However, this document dedicates marginal attention to standards and rules of conduct and control over the implementation of Code, especially when considering that the provisions of Code, for the most part, relate to conduct of participants on elections, issues of equality and equality in terms of the means of public financing, then in terms of the equality in possibilities of presentation within election campaign.⁸

In cases of Greece, Slovakia and Germany, election codes of ethics of bodies in charge of the conduct of elections are not identified in any form.

Conclusion is that Montenegro is the sole state that passed a Code of Ethics for the conduct of elections, thus positioning itself as one of the rare states which has an adopted legal act in this area.

⁸ Election code of ethics in Croatia



Conclusions and recommendations

Montenegro is one of the few countries in region, and beyond, who has a Code of Ethics for bodies in charge of the conduct of elections, that was adopted relatively quickly after it regained the independence. This document, content-wise, is practical for further use, reminding that it requires certain content and structural modifications in order to render the election process more comprehensive and efficient.

Therefore, it should form a working group for the audit of existing Code of ethics, and thereby consider the following content and structural modifications:

- ❖ In First chapter (General remarks), **Article 1, paragraph 1, after the indent 1**, a comma is added and follows with: *and that are based on the principles of independence, responsibility, transparency of work, tolerance, respect of human rights and dignity*. Last part of the provision of Code of ethics “*especially during the election process*” should be erased.

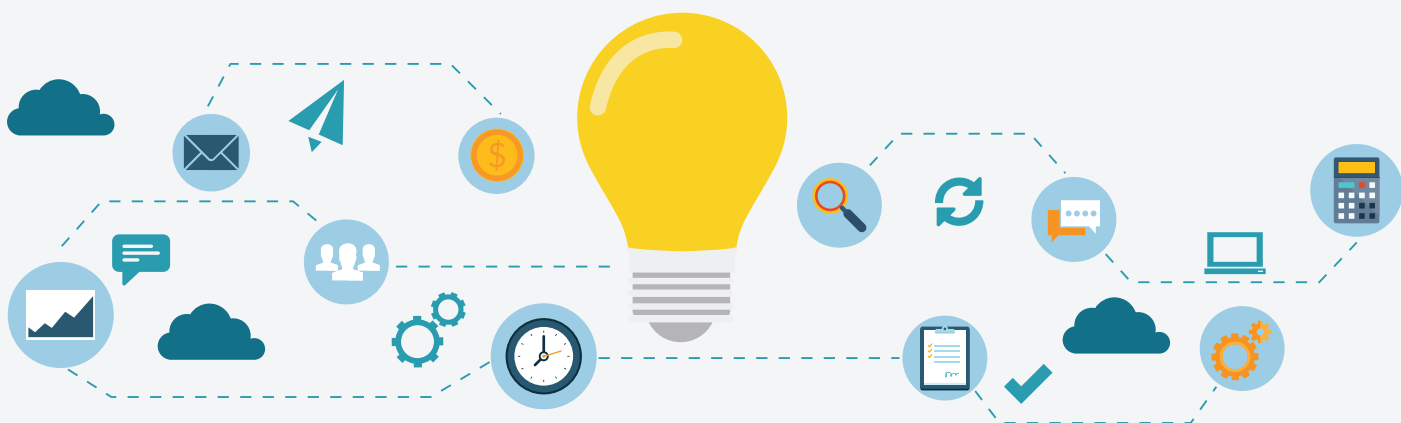
Explanation: Proposed amendment states the founding tenets which further derive the principles, standards and rules of conduct of members in charge of the conduct of elections, which were not previously listed in the existing document. Also, considering that Code of ethics is applied to every member of bodies in charge of the conduct of elections, thereby on State Election Commission, it is necessary to note the professional performing

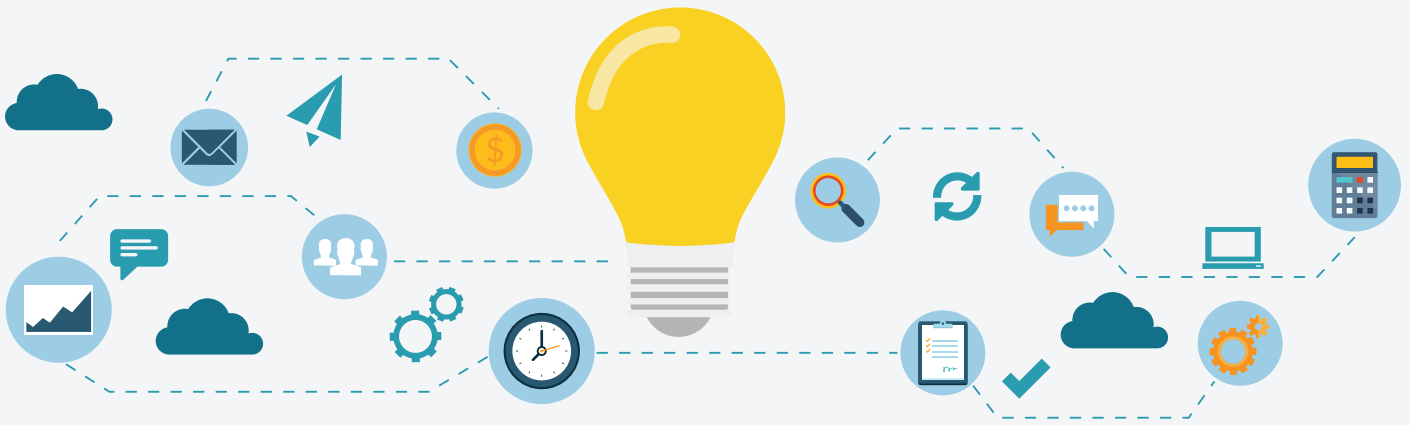
of function of president and secretary of this body and accordingly erase the provision which limits the duration of implementation of Code only for the period of election process.

- ❖ The same chapter (General remarks), **Article 2, paragraph 1 should be amended and state the following:** *Objective of Code is to define the standards of conduct of members of bodies for the conduct of elections, which would contribute to higher level of trust of citizens of Montenegro in bodies that are in charge of the conduct of elections, in the performance of duties which fall under their competence, simultaneously improving the role and reputation of these bodies.*

Explanation: Code is a rule book, or a set of rules and ethic tenets regarding the professional conduct and its function is not to promote the role and reputation of members of bodies in charge of the conduct of elections, but to define the standards of conduct to which every member should adhere in the performance of his/her duty.

- ❖ Second chapter (Code principles), part related to *Duties of members of bodies in charge of the conduct of elections*, **Article 3, paragraph 2, item 2 should be amended and state the following:** *2) prescribed duties should be performed in line with professional standards.*





- Also, **Article 3, paragraph 2, after item 2, item 3 is added and states:** 3) with their actions to ensure the transparency and timely availability of information to interested public. Based on the abovementioned, the numeration of items is changed.
- Part related to *Prohibition of duty of members of bodies in charge of the conduct of elections*, **Article 4, after item 1, item 2 is added and states:** 2) expression of views on subjects that participate on elections and individual candidates or any other form of influence on voters. **Article 4, according to the abovementioned, changes the numeration of other items.**
- ❖ **It is necessary to introduce new chapter III which would state: III – OBLIGATION OF STUDYING THE CONTENT OF CODE**

In such a way, **new Article 5** would be as follows:
On the day of taking the office, every member of bodies in charge of the conduct of elections signs the statement confirming that he/she is familiar with every provision of this Code, and that he/she will abide the same scrupulously

Explanation: Article 2, paragraph 2 of Code states that it contains the provisions on the obligation of studying the content, while further in the text this provision is not elaborated what so ever. Hence, for the purpose of elaboration of this provision, it is necessary to define a separate chapter and

prescribe the manner of studying the content of code and assuming the obligation of respecting the defined provisions. In this regard, **the numeration is changed, hence chapter III becomes chapter IV, and Article 5 becomes Article 6.**

- ❖ Within the newly formed Chapter IV – SUPERVISION OVER THE IMPLEMENTATION OF CODE, **after paragraph 1, paragraph 2 should be added which would state:** *Complaint about the unethical conduct of bodies in charge of the conduct of elections can be submitted by every physical or legal person in written form (in electronic version or via letter or fax archives) to president of State Election Commission.*
- ❖ **The existing paragraph 2 would become paragraph 3, and it would be necessary to erase the item at the end, and add a comma followed by:** *within 7 days of filing the complaint.*
- ❖ **Paragraph 4 would be added which would state:** *President of State Election Commission is obliged to inform the submitter of complaint about the outcome of same within 15 days of filing the complaint.*

Explanation: Decision defined with Code of ethics is incomplete and unclear. It does not prescribe who can file the complaint and in which manner, or the deadlines for the filing of complaints, decision-making and notification about the outcome.

Literature

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