

Office for Democratic Institutions and Human Rights

PRINCIPALITY OF ANDORRA

EARLY PARLIAMENTARY ELECTIONS 3 April 2011

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

21-23 March 2011



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PRINCIPALITY OF ANDORRA EARLY PARLIAMENTARY ELECTIONS 3 April 2011

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

On 21 February 2011, in accordance with OSCE commitments, the Permanent Mission of the Principality of Andorra to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 3 April early parliamentary elections. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Andorra from 21 to 23 March. The NAM included Armin Rabitsch, OSCE/ODIHR Senior Election Adviser, and Lusine Badalyan and Drew Hyslop, OSCE/ODIHR Election Advisers.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM was to recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, to determine what type of activity best meets the identified needs. Meetings were held with officials from the Ministry of Foreign Affairs and Institutional Relations, the Government, the Municipality of Andorra la Vella, the Electoral Board, the courts, as well as with representatives of political parties, the media and civil society. A list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Andorran Ministry of Foreign Affairs for their assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the mission and share their views.

II. EXECUTIVE SUMMARY

On 15 February 2011, Prime Minister Jaume Bartumeu requested the co-princes of the Principality of Andorra to dissolve the General Council and call early elections for 3 April.

Andorra has a unicameral General Council with 28 seats. While 14 are elected on a basis of proportional representation in a single national constituency, 2 seats are elected in each of the 7 parishes on the basis of a majoritarian system of party block voting.

The Electoral Board is the institution that supervises the elections and ensures that all candidates can compete with each other on an equal basis. It has a limited and advisory role in the administration of elections, dealing primarily with election-related complaints. The Board has a mixed composition: it consists of three members nominated by the High Council of Justice from among the judges of the first instance court, and three members appointed by the General Council based on the proposals of parliamentary groups.

Many aspects of the electoral process are dealt with by the Government, which is responsible for registering national candidate lists, producing ballot papers, receiving results protocols, and certifying the results. Seven polling stations, corresponding with the seven parishes, are formed by the local councils for the conduct of the elections. In polling

stations, one or more polling bureaus are established and headed by the mayor of the parish.

There are no articles in the law, or regulations of the Electoral Board, allowing for observation by international or domestic election observers. This is in contradiction to paragraph 8 of the OSCE Copenhagen Document of 1990.

Voters in Andorra can cast their ballot at their assigned polling station on election day or in advance. Advance voting, called judicial voting in Andorra, is administered by judges and is conducted at the premises of the court of first instance. Advance voting began on 21 March and finishes one day before election day. The OSCE/ODIHR NAM was informed that approximately 30 per cent of voters cast their ballots in advance.

The total population of Andorra comprises 85,015 inhabitants, of which only 32,962 are citizens of Andorra and 21,852 are registered as voters. The low number of citizens may be explained by the fact that only persons permanently residing in Andorra for 20 years can apply for citizenship. Long-term residents of voting age do not have the right to participate in national or local elections.

The number of eligible voters differs largely in each of the seven parishes, ranging from 794 in Canillo to 6,604 in Andorra la Vella. These variations affect the equality of the vote between the parishes, with the number of votes required to elect a councilor deviating by up to 400 per cent from the average.

Three coalitions and one party will compete for the nationwide contest while two lists are registered in each of the seven parish races. The registration of contestants did not raise any particular concerns for interlocutors met with by the OSCE/ODIHR NAM.

The 12-day campaign period started on 20 March and will end on 1 April. Due to the small constituencies campaigning is largely based on personal contact with voters, with candidates and supporters going door-to-door distributing material and speaking with constituents. The economy was highlighted by all parties met with by the OSCE/ODIHR NAM as the main issue in the upcoming elections.

Campaign financing is largely unregulated in Andorra. Campaign expenses are subject to public reimbursement, although some interlocutors viewed the reimbursement as insufficient. Campaign donations are limited to EUR 6,000 per individual and legal entities, and expenditures over EUR 6,000 must be justified. However, the provision of services and goods in kind are not recorded as income. The Court of Auditors reviews the accounts of the lists within four months after elections and provides a report to the General Council, but there is no public disclosure of income and expenditure before election day.

The media environment in Andorra is pluralistic with a wide variety of media outlets. The public service broadcaster, *Ràdio i Televisió d'Andorra* (RTVA), operates one TV channel, the only Andorran TV station, and two radio channels. Besides public radio, Andorra has four private radio stations. Andorrans can also receive dozens of radio and TV channels from its neighboring countries.

Judicial review is foreseen for all aspects of the election process. The Electoral Board is the body of first instance for most election-related complaints. Local councils hear complaints

on voter registration while polling stations receive complaints related to election day proceedings. Complaints on the results are made directly to the courts. Decisions of the Electoral Board and the local councils can be appealed to the Administrative Chamber of the High Court of Justice.

All interlocutors met by the OSCE/ODIHR NAM expressed confidence in the election administration and considered the voter lists to be accurate. Media outlets are generally viewed as acting fairly and equitably, and there exists an opportunity to appeal decisions to a judicial body. However, there remain aspects of the process that could be brought further in line with OSCE commitments and international standards for elections. These include the lack of legal provisions for election observation and the inequality of the vote between the parishes. Transparency in campaign financing could be enhanced including through disclosure requirement of campaign income and expenditure before election day.

The OSCE/ODIHR has never deployed an election-related activity in Andorra. In other circumstances OSCE/ODIHR NAM would recommend to deploy an Election Assessment Mission, but taking into consideration the time constraints and the resources already committed the OSCE/ODIHR is not in the position to undertake an election-related activity for the 2011 early parliamentary elections. However, the OSCE/ODIHR stands ready to assist the Principality of Andorra in the future in addressing some of the shortcomings highlighted in this report.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Andorra is a co-principality, ruled by the President of France and the Bishop of Urgell. The role of the co-princes is generally well regarded in Andorra, viewed as a link to earlier traditions dating as far back as the start of the second millennium. However, the Prime Minister is the head of government and in fact holds most executive powers.

On 15 February 2011, Prime Minister Jaume Bartumeu, in line with his authority under the Constitution, requested the co-princes of the Principality of Andorra to dissolve the General Council and call early elections for 3 April. The dissolution followed an almost two-year period of political stalemate, where the governing coalition led by the Social Democratic Party (*Partit Socialdemòcrata*, PS) held only 14 of the 28 seats in the General Council and was unable to pass legislation, including the budget. While the coalition Andorra for Change (*Andorra pel Canvi*, APC), with 3 seats, initially supported the PS it then moved to opposition with the Reformist Coalition (11 seats), which formed a new coalition *Demòcrates per Andorra* (DA) for these elections.

B. LEGAL FRAMEWORK AND ELECTION SYSTEM

The early parliamentary elections will be conducted under a relatively young legal framework, with Andorra's first Constitution adopted in 1993. The election law was also

The Constitution was signed by the co-princes in June 1993 after voters approved the text in a referendum in March 1993.

passed in 1993, and was amended several times since.² Elections are further regulated by the Law on Electoral Finance, the Law of the Public Radio and TV Broadcasting and the Creation of the Public Company RTVA, as well as regulations of the Electoral Board.

Andorra has a unicameral General Council comprised of 28 seats. According to the Constitution the General Council "expresses the mixed and apportioned representation of the national population and the seven parishes". The election law states that "half of... [the seats] are elected in an equal number for each of the seven parishes and the other half is elected in a national constituency." Thus, 14 seats are elected on a basis of proportional representation in single national constituency through closed lists while two seats are elected in each of the seven parishes through a majoritarian system of party block voting. 5

The number of eligible voters differs largely in each of the seven parishes, ranging from 794 in Canillo to 6,604 in Andorra la Vella. Since each parish elects two Councilors these variations affect the equality of the vote, with the number of votes required to be elected deviating by up to 400 per cent from the average quotient for a mandate. In only two municipalities is the deviation within the maximum 15 per cent range recommended by the Council of Europe's Code for Good Practice in Electoral Matters.

There are no articles in the law, or regulations of the Electoral Board, allowing for observation by international or domestic election observers, both from political parties and civil society organizations. This is in contradiction to paragraph 8 of the OSCE Copenhagen Document of 1990.⁸ All registered candidate lists have however the right to appoint representatives to polling stations.

C. ELECTION ADMINISTRATION

According to the election law, the Electoral Board is the institution that supervises the elections and ensures that all candidates can compete with each other on an equal basis. The Board consists of six members: three are nominated by the High Council of Justice from among the judges of the first instance court of Andorra (*Batllia*), and three are appointed by the parliament based on the proposals of parliamentary groups. The Electoral

⁴ Article 48, Law 28/2007, of November 22, amending the Law on the Electoral System and Referendum.

The average quotient for a mandate is 1,560 votes.

The Code of Good Practice in Electoral Matters, (Opinion 190/2002), recommends for equal suffrage that "the permissible departure from the norm should not be more than 10 per cent, and should certainly not exceed 15 per cent except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)."

Paragraph 8 of the 1990 OSCE Copenhagen Document states that "The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law."

Article 27 of the Law on the Electoral System and Referendum (Law 28/2007).

The election law was amended in 1999, 2000, 2005, 2007 and 2008. Law 28/2007 amended the Law on the Electoral System and Referendum.

Article 50, Constitution of the Principality of Andorra.

In party block voting, voters select one party, coalition or candidate list. The list receiving the most votes wins all seats in the constituency.

The High Council of Justice consists of five members nominated by co-princes, the Head of the Government, the Head of the General Council and judges.

Board serves for four years and is formed anew by each incoming parliament. The High Council of Justice appoints the Chairperson and Deputy of the Electoral Board from among the judicial appointments. The General Secretary of the parliament serves as the Secretary of the Electoral Board with an advisory role. The Electoral Board meets on an ad hoc basis; however, contrary to good practice, its meetings are closed to the public.

The Electoral Board has a limited and advisory role in the administration of elections, dealing primarily with election-related complaints. Many aspects of the electoral process are dealt with by the Government, which is responsible for registering national candidate lists, producing ballot papers and envelopes, conducting voter information, receiving results protocols, and certifying the election results.

Each of the seven parishes in Andorra operates one polling station on election day. In polling stations, one or more polling bureaus are established. The polling bureaus are composed of at least two members of the local council and representatives appointed by each of the candidate lists. The mayor acts as the chairperson of the polling bureau.

Voters in Andorra can cast their ballot at their assigned polling station on election day or in advance at a polling station established at the court of first instance, located in Andorra la Vella. Advance voting, also called judicial voting, ¹² started on 21 March and will end at 1 pm on the day before election day. Any Andorran citizen can cast the vote early; those who vote in advance are marked as such in the voter lists to avoid the possibility of multiple voting. The OSCE/ODIHR NAM was informed that approximately 30 per cent of voters cast their ballots in advance.

In parallel to advance voting, voters may also request to vote at home. A judge, accompanied by a secretary, travels to the requested locations with the necessary materials. No justification is needed for homebound voting. Voters in prisons and hospitals can also vote in this manner.

All interlocutors met with by the OSCE/ODIHR NAM expressed overall confidence in the election administration; no particular concerns were raised regarding the technical preparations and conduct of elections. However, some interlocutors questioned whether mayors, who represent one political party, should chair the polling stations. A number of OSCE/ODIHR interlocutors also mentioned that the introduction of postal voting could be beneficial, as many Andorran citizens work or study abroad.

D. VOTING RIGHTS AND VOTER REGISTRATION

Andorran citizens over the age of 18 on election day, and who are registered in a voter list, have the right to vote. The only exceptions are those who have been temporarily deprived of their right, or declared incapable, by a final court decision.¹³

In the biggest parish of Andorra la Vella, 6,604 voters are registered. Two bureaus, each serving more than 3,000 voters, have been established.

Early voting is referred to as judicial voting, since it takes place at the court of the first instance and is fully administered by the judiciary.

The OSCE/ODIHR NAM was informed no court decision has ever rescinded civil and political rights as part of a sentence.

The total population of Andorra comprises 85,015 inhabitants, of which only 32,962 are citizens of Andorra. 21,852 are registered as voters for the upcoming elections. Long-term residents of voting age do not have the right to participate in national or local elections. Only persons permanently residing in Andorra for 20 years may apply for Andorran citizenship; dual citizenship is not allowed.

Local councils are responsible for the compilation and maintenance of the voter lists. The permanent lists are revised and published twice a year, on 30 September and 30 March. In case of elections the voter lists should be published three days after the announcement of the election date. ¹⁵ After the publication of voter lists voters have eight days to request changes or inclusions. A voter can appeal the decision of a local council regarding his/her inclusion on the list to the court. All OSCE/ODIHR NAM interlocutors expressed confidence in the accuracy and inclusiveness of the voter lists.

E. CANDIDATE REGISTRATION

All Andorran citizens who are eligible to vote have the right to stand for elections. For the General Council elections, any association or group of citizens may nominate candidate lists at the national and parish levels. Candidate lists for the national level must consist of 14 candidates and 3 substitutes, while parish lists consist of 2 candidates and 3 substitutes. Candidate lists are submitted along with support signatures. Both national and parish lists must be supported by 0.5 per cent of registered voters; each voter can sign only for one parish and one national candidate list.

Candidate lists must be submitted within five working days after the announcement of the elections. The lists for the parish level elections are registered by the local councils and the national lists are registered by the Government. For the forthcoming elections four national candidate lists and two parish lists in each of seven parishes are registered. Some interlocutors noted that five days was a short timeframe for parties and coalitions to decide upon candidates and for the signatures to be collected.

Three coalitions and one party have registered national lists. The PS is running in coalition with smaller parties under the banner $Ara\ Futur$; the former liberal party and Reformist Coalition are competing in a new coalition called $Demòcrates\ per\ Andorra\ (DA)$; while APC is running in the same coalition as in 2009. The green party, $Verds\ d'Andorra$, has submitted its own list. Only two lists were registered in each of the seven parishes. $Ara\ Futur$ is running in all seven parishes and DA is running in six parishes, with a party formerly connected to those in the DA running in the seventh parish.

Citizenship is widely recognized as a reasonable and admissible restriction to the right to vote and to stand in elections. However, for local elections, there is an emerging trend over the last 15 years to grant these political rights to long-term residents who are not citizens. The UN Human Rights Committee in its General Comment 25 confirms the existence of an emerging trend to grant permanent residents the right to vote at local elections regardless of their citizenship, see: http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument. Furthermore, the Code of Good Practice in Electoral Matters of the Council of Europe states "it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence", see point 1.1.b.ii.:

www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf.

For these elections the voter lists were published on 18 February.

F. CAMPAIGN PERIOD AND CAMPAIGN FINANCING

A 12-day campaign period is defined in the decree dissolving the Council and announcing early elections. According to the decree, the campaign started at 9:00 on 20 March and will end at midnight on 1 April. There is a 24-hour silence period before the election.

Campaigning is regulated in the election law, with space for campaign posters limited to areas provided by the parishes. Due to the small constituencies, much of the campaign is based on personal contacts with voters, with candidates and supporters going door-to-door distributing material and speaking with constituents. While all coalitions also use advertising in private media, they also noted that budgets for the campaign are smaller than in previous years due to the financial crisis. The economy was highlighted by all parties met with by the OSCE/ODIHR NAM as the main issue in the upcoming elections.

Campaign financing is largely unregulated in Andorra. There is no specific legislation regulating political parties and the law on financing elections only lightly regulates income and expenditures during the campaign period. Campaign donations are limited to EUR 6,000 per individual or legal entity, ¹⁶ and expenditures over EUR 6,000 must be justified. However, the provision of services and goods in kind are not regulated as income. Sanctions for breaches of legislation are limited to withholding public reimbursement for campaign expenditures.

Public reimbursement for electoral expenses is based on votes received and mandates won. All lists are required to open an account through which donations and expenditures must pass. Details from the account of the candidate lists are sent to the Court of Auditors between 60 and 80 days after an election, which then confirms the expenditures in a report to the General Council four months after the election. Within two months after receiving the report, the Government reimburses candidate lists for campaign expenses, providing EUR 12.25 for every vote received and EUR 367.71 for each councilor elected. Some lists complained that the reimbursement for expenses was not significant enough to be meaningful and that the reimbursement is made only six months after the election process. There is no requirement for the disclosure of incomes and expenditures before election day.

G. MEDIA

Article 12 of the Andorran Constitution recognizes the freedoms of expression and information. The election law further stipulates that the Electoral Board should ensure that all candidates can compete with each other on an equal basis. According to the law, stateowned media have the obligation to provide equal access and equal free airtime to all contesting national lists.¹⁷

The media environment in Andorra is pluralistic with a wide variety of media outlets. Media representatives confirmed to the OSCE/ODIHR NAM that the media in Andorra work with a very high degree of freedom. The public service broadcaster, Ràdio i Televisió d'Andorra

However, foreign contributions are not permitted. Parish lists are regulated in a similar manner, with the additional requirement that they should not

receive more than one third of coverage of national lists.

(RTVA) operates one TV channel, the only Andorran TV station, and two radio stations. RTVA broadcasts in Catalan and has adopted its own code of journalistic ethics for news editing.

RTVA determined the allocation of national free airtime to registered lists through a public lottery. National lists received six three-minute spots on TV and radio while parish lists receive six one-minute spots. RTVA decided not to provide extra, paid airtime to contesting lists in order to ensure a level playing field. It also broadcasts a voter education spot twice daily highlighting voting procedures and encouraging people to vote.

For the campaign period RTVA established a schedule of equal campaign coverage for all 4 lists competing nationally and for the 14 lists competing in the 7 parishes. ¹⁹ Further, RTVA planed one live broadcast debate among the leaders of the four national lists and separate debates for each of the seven parishes.

Campaigning in private electronic and print media is largely unregulated. The election law provides only a general principle of non-discrimination in the advertising policy of private media. Although the legislation establishes an Audiovisual Council of Andorra, which includes representatives of all lists represented in General Council, it has reportedly not been active or published reports in the past years. There is no independent mechanism or authority monitoring and supervising the media broadcast.

Besides the public radio, Andorra has four private radio stations broadcasting from Andorra. Andorrans, however, can receive dozens of radio and TV channels from its neighboring countries.

Andorra has four private daily newspapers. *Diari d'Andorra* and *El Periòdic* distribute seven days a week, while *Diari Més* and *Bon Dia* distribute Monday through Friday and are free of charge. Additionally, several weekly newspapers circulate. The print media is self-regulated and has no restrictions during the campaign period.

H. PARTICIPATION OF WOMEN

Andorra ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. Women are relatively well represented in Andorran politics; 10 out of 28 seats in the outgoing General Council and 2 of the 7 ministerial posts are held by women. Two of the seven mayors in Andorra are also women. All four national lists have a strong percentage of female candidates, and the Green Party is led by a woman. However, except for the Green Party, women are often in slightly lower positions on the national lists, and thus less electable. This was, however, not raised by any interlocutors as an issue of concern.

The law on public radio and TV broadcasting and the creation of the public company RTVA SA (of 13 April 2000) states that public radio and television channels must observe cultural pluralism, equality and non-discrimination.

¹⁹ RTVA committed itself to provide an average coverage of 1 ½ minutes for national lists and 45 seconds for parish lists during the two main news blocs in the afternoon and at night.

I. COMPLAINTS AND APPEALS

Complaints and appeals are regulated in the election law, ensuring a right to judicial review for all aspects of the election process. The Electoral Board is the body of first instance for most election-related complaints, including candidate registration, campaigning and the use of the media. It is required by law to respond within a tight deadline. Exceptions to the role of the Electoral Board as the first instance complaint body include complaints regarding voter registration, which are made to local councils, complaints on election day, which are made to the polling station, and complaints about the results that are made directly to the courts. Decisions of the Electoral Board and the local councils can be appealed to the Administrative Chamber of the High Court of Justice. Should any aspects of the complaint relate to fundamental rights and freedoms, the decision of the High Court of Justice can be further appealed to the Constitutional Court.

As of 24 March, there had been four complaints made to the Electoral Board. The most reported complaint related to the issuance in one private daily newspaper of a list of the achievements of the Government. While it is against the law for the Government to use paid advertising during the campaign period, as the piece submitted was provided free of charge by the newspaper involved, the Electoral Board decided that the activity was not in contravention to the law. The coalition that submitted the complaint stated that they would not appeal, as it appeared the Government had not published any further such reports.

IV. CONCLUSIONS AND RECOMMENDATION

All interlocutors met by the OSCE/ODIHR NAM expressed confidence in the election administration and considered the voter lists to be accurate. Media outlets are generally viewed as acting fairly and equitably, and there exists an opportunity to appeal decisions to a judicial body. However, there remain aspects of the process that could be brought further in line with OSCE commitments and international standards for elections. These include the lack of legal provisions for election observation and the inequality of the vote between the parishes. Transparency in campaign financing could be enhanced including through disclosure requirement of campaign income and expenditure before election day.

The OSCE/ODIHR has never deployed an election-related activity in Andorra. In other circumstances OSCE/ODIHR NAM would recommend to deploy an Election Assessment Mission, but taking into consideration the time constraints and the resources already committed the OSCE/ODIHR is not in the position to undertake an election-related activity for the 2011 early parliamentary elections. However, the OSCE/ODIHR stands ready to assist the Principality of Andorra in the future in addressing some of the shortcomings highlighted in this report.

Complaints related to candidate registration are decided upon within three working days, whereas complaints relating to campaigning are decided upon in two working days.

It is noteworthy that none of the three judges on the High Court of Justice are Andorran nor do they live in Andorra. Two are Spanish and one is French.

ANNEX: LIST OF MEETINGS

Government

H.E. Mr. Xavier Espot, Minister of Foreign Affairs and Institutional Relations

Ms. Maria Ubach Font, Director of Multilateral Affairs and Co-operation of the Ministry of Foreign Affairs

Mr. Alexandre Cucurella, Secretary General of the Government

Mr. Valentí Martí, Secretary of the Electoral Board and Secretary General of the General Council

Ms. Rosa Ferrer, Mayor of Andorra la Vella

Mr. Jordi Xandri, Secretary General of Andorra la Vella

Courts

Mr. Carles de Unzueta Rullan, Judge on the Court of Auditors

Ms. Cristina Bea Rebés, Magistrate and Member of the Electoral Board

Political Parties

Mr. Joaquim Tomàs Cisa, Candidate of Andorra pel Canvi (APC)

Mr. Josep Vila and Ms. Maite Cano Local, Councilors of Andorra la Vella, *Partit Socialdemòcrata* (PS)

Mr. Esteve Vidal and Mr. Marc Vila, Representatives of the campaign office of *Demòcrates per Andorra* (DA)

Ms. Antònia Escoda, President, Mr. Josep Mas, Deputy President and Mrs. Isabel Lozano, *Verds d'Andorra* (VA)

Media Representatives

Mr. Francesc Ruano, Deputy Director, Ràdio i Televisió d'Andorra (RTVA)

Mr. Joan Ramon Baiges, Director, El Periòdic

Mr. Ricard Poy, Director, Diari d'Andorra

Mr. Emili Narváez, Editor-in-Chief, Diari Més

Mr. Marc Segalés, Director, Bon Dia

Ms. Marisol Fuentes, Director, Radio Station Ser

Civil Society

Mr. Rajou Manwani, Indira (Indian/Hindu Association)

Mr. David Borges, President, Portugal House

Ms. Elvira Geli and Ms. Regina Agramunt, Women's Association of Andorra

Mr. Salomón Bencluch, Representative of the Hebrew community