



Office for Democratic Institutions and Human Rights

CZECH REPUBLIC

PRESIDENTIAL ELECTION

11 and 12 January 2013

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

22-24 October 2012



Warsaw
26 November 2012

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I. INTRODUCTION

In line with its methodology, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Prague from 22 to 24 October 2012 in anticipation of an official invitation to observe the presidential election scheduled for 11 and 12 January 2013. The NAM included Ms. Tatyana Bogussevich, Senior Election Adviser, and Mr. Raul Mureşan, Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-election environment and the preparations for the election. Based on this assessment, the mission should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with state institutions, the election administration, as well as with representatives of political parties and the media. A list of meetings is included as an annex to this report.

The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs (MFA) for its assistance and co-operation in organizing the visit. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the mission.

II. EXECUTIVE SUMMARY

In February 2012, the parliament adopted constitutional amendments that handed over to the electorate the power to directly elect the country's president. The decision followed years of debate on this topic, fuelled by allegations that the voting was tainted by corrupt practices and behind-the-scene deals, in particular during the 2008 presidential election. The first direct presidential election will be held on 11 and 12 January 2013. The president will be elected for a five-year term in a majoritarian two-round system.

Elections are administered by a number of state institutions, local governments and election commissions, which are responsible for various aspects of the electoral process. The State Election Commission (SEC) is a permanent body in charge of the overall organization of elections. The SEC's meetings, their agenda and minutes are not public, limiting the transparency of its work. Approximately 15,000 polling stations will be established to administer the electoral process on election day. Members of Polling Station Commissions (PSC) are appointed by parties and candidates, a provision that was regarded by many as an important oversight and confidence-building element.

There is no centralized electronic voter register. Voter lists are prepared by the municipal authorities on the basis of preliminary voter lists extracted from the population register administered by the Ministry of Interior (MoI). Citizens not on the voter list but who can prove their right to vote can be added to the list on election days. The law also provides for voting with absentee voting certificates, out-of-country in-person voting, as well as homebound voting. While OSCE/ODIHR NAM interlocutors did not express any concerns as regards the

quality of voter lists, it is unclear whether mayoral offices apply uniform procedures during the lists' updates.

Candidates can be nominated by a group of at least 20 deputies or 10 senators, or through a petition signed by at least 50,000 eligible voters. The registration process was ongoing at the time of the OSCE/ODIHR NAM visit. Some political party representatives met by the OSCE/ODIHR NAM opined that signature verification procedures are overly complex and shared uncertainty as to how the respective provisions would be applied in practice.

The official election campaign period starts 16 days before election day and finishes 48 hours before the opening of polls. The main topics of the campaign, considering the limited presidential powers, are expected to be national security, anti-corruption measures, accession to the euro zone, appointment of Constitutional Court judges, and presidential pardons of convicts. A number of billboards featuring potential candidates were already erected at the time of the OSCE/ODIHR NAM.

While the legislation sets a campaign expenditure limit, candidates may receive unlimited donations from any person or entity. Candidates are required to submit campaign finance reports to the parliament 60 days after the announcement of official results. There are no sanctions for incomplete reporting or failure to present a report. Potential candidates can campaign prior to their registration, and the funds used during this period are not subject to campaign finance regulations. Some political party interlocutors acknowledged shortcomings in campaign finance regulation, including insufficient transparency requirements.

The media environment is pluralistic with a variety of commercial and public electronic and print media at national, regional and local levels. Five hours of free airtime on public television and radio each are equally divided between all registered candidates. Public broadcasters are planning to cover the electoral campaign through a variety of formats, including debates. Paid political advertising is prohibited in the electronic media, both public and private, but is allowed in print media.

The Council for Radio and Television Broadcasting (CRTB) regulates broadcasting. In the context of elections, the CRTB monitors news coverage and election-related programs. It has no authority, however, to act on any election-related violations observed before the official campaign period, when potential candidates may actively campaign in the media. Its monitoring results are published several weeks after the elections. The Council of Czech Television and the Council of Czech Radio can also resolve complaints against the respective public broadcasters. According to OSCE/ODIHR NAM interlocutors, the distinction between these councils and CRTB in dealing with complaints, including election-related ones, is unclear.

OSCE/ODIHR NAM interlocutors expressed confidence in the professionalism and impartiality of the election administration, and expressed no concerns with regard to election day proceedings. Interlocutors underscored that the democratic institutions are well established and are capable of self-regulating and addressing issues if such arise. This indicates that limited added value is likely to be brought by a significant presence of the OSCE/ODIHR on election day. At the same time, a number of interlocutors shared uncertainty as to how some of the new legal provisions would be applied in practice.

Based on the feedback provided by its interlocutors, the OSCE/ODIHR NAM considers that the implementation of the new legal framework, voter list preparation, application of campaign

finance regulations and the work of the media could benefit from review. The OSCE/ODIHR NAM therefore recommends the deployment of an Election Assessment Mission for the upcoming presidential election.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Up to 2012, the president was elected by the parliament for a five-year term and could serve a maximum of two consecutive terms. On 8 February 2012, the constitution was amended to provide for direct presidential election. The decision came after years of debate on this topic, fuelled by allegations that the voting was tainted by corrupt practices and behind-the-scene deals, in particular during the last presidential election held in 2008. At the same time, the presidential powers remained the same, as there was no political agreement on whether and how they should be changed. The incumbent president Václav Klaus, whose second term expires on 6 March 2013, is ineligible for re-election.

The bicameral parliament is composed of an 81-member Senate, elected for a six-year term, and a 200-member Chamber of Deputies, elected for four years. After the October 2012 elections for one-third of its composition, the Senate is composed of: Czech Social Democratic Party (CSSD) with 48 seats, Civic Democratic Party (ODS) with 15 seats, Christian and Democratic Union (KDU-ČSL) and TOP 09 - Mayors and Independents with 4 seats each, Communist Party of Bohemia and Moravia (KSČM) and Northern Bohemians with 2 seats each, Czech Pirate Party (KDUSZPir), Green Party (SZ) and *Ostravak* Movement with 1 seat each, and 3 independents.

The Chamber of Deputies elected in 2010 included CSSD with 56 seats, ODS with 53, TOP09 with 41, KSČM with 26, and Public Affairs (VV) with 24 seats.

The OSCE/ODIHR observed the parliamentary elections in the Czech Republic in 1998 and 2002.¹ The 2002 OSCE/ODIHR election observation mission concluded that the parliamentary elections met international standards and OSCE commitments for democratic elections. At the same time, the mission provided a number of recommendations that set out ways in which the election process could be further improved.

B. LEGISLATIVE FRAMEWORK AND ELECTORAL SYSTEM

The legal framework governing the presidential election is comprised of the constitution, adopted in December 1992 and amended last in 2012, the Law on the Election of the President (hereinafter, election law) adopted in July 2012, and a number of regulations adopted by the MoI. A number of OSCE/ODIHR NAM interlocutors opined that the election law does not provide sufficient and detailed regulation on all of the aspects of the electoral process, namely in the areas of campaign finance, support signature collection and verification, and handling of media-related complaints. At the same time, unlike the law on parliamentary elections, the new law allows for the presence of international observers.

¹ For previous OSCE/ODIHR reports on Czech Republic, see <http://www.osce.org/odihr/elections/czech-republic>.

The president is elected for a five-year term in a national popular vote through a majoritarian two-round system. In case no candidate receives more than half of the valid votes in the first round, the second round is held 14 days after the start of the first round with the two top-scoring candidates from the first round.

C. ELECTION ADMINISTRATION

Elections are administered by a number of state institutions, local governments and election commissions. The SEC is a permanent body established to “coordinate the preparation, organization, process and implementation” of elections. It includes 10 representatives from state institutions responsible for the organization of certain parts of the electoral process. These include the MoI, which is the central administrative authority in the organization of elections; the MFA, responsible for out-of-country voting; and the Czech Statistical Office (CSO), which tabulates the results.

The SEC is headed by the Minister of Interior. Its meetings as well as their agenda and minutes are not public, thus limiting the transparency of the SEC’s work. However, according to the MoI, the agenda and minutes can be provided upon request.

Approximately 15,000 polling stations are established by mayors. Candidates, parliamentary parties and parties represented in the respective regional councils may nominate one member and one substitute to each PSC, which administer the electoral process at a polling station level. In case of insufficient nominations, mayors appoint members for the vacant positions.²

To tabulate election results, the CSO establishes about 500 result-collection points across the country.³ These points are set up and equipped by the municipalities, and the CSO provides their staff and computer software. After the closure of polls and the completion of the count in polling stations, two PSC members deliver a copy of the results protocol to a collection point, where the results are verified and entered into an electronic system for immediate publication on the internet. In case any mathematical errors are revealed, PSC members return to the polling station for a recount and have to provide a corrected protocol. The final election results can be appealed within seven days from their publication.

OSCE/ODIHR NAM interlocutors expressed full confidence in the professionalism and impartiality of the election administration. The involvement of political party and candidate nominees as members of PSCs is regarded as a confidence-building element and an important oversight mechanism. At the same time, a few interlocutors expressed concerns with cases of alleged vote buying during previous elections among vulnerable groups in certain areas of the country. They opined, however, that such practices would not take place during the presidential election.

D. VOTER REGISTRATION

Citizens over the age of 18 on election day are eligible to vote, except those deprived of legal capacity. There are approximately 8.4 million registered voters.

² A PSC is composed of a minimum of five members if it services more than 300 registered voters, or of a minimum of four members if it services fewer voters.

³ Each point is responsible for about 30 polling stations.

There is no centralized electronic voter register. Based on mayors' decisions on the number and locations of polling stations, the MoI transmits the respective preliminary voter lists to the mayors. These lists are extracted from the population register administered by the MoI. Municipal offices check the lists and update them for any recent deaths and changes of addresses or civil status. The voter lists are closed two days before election day at 16:00. The voter register is not posted for public scrutiny under the Law on Protection of Personal Data; however, each voter has the possibility to check his/her data in the register. While OSCE/ODIHR NAM interlocutors did not express any concerns with regard to the quality of voter lists, it is unclear whether mayoral offices apply uniform procedures during the lists' updates.

Municipalities are also responsible to compile special voter lists to include people in hospitals, detention centres and prisons. Citizens whose names are not on the voter list, but who can prove their right to vote in the respective polling station, can be added to the voter list on election days. Up to seven days before elections, a voter who will not be able to vote in his or her district may apply for an absentee voting certificate, which will enable him or her to vote at any polling station. The law also provides for homebound voting granted for health reasons.

According to the MFA, out-of-country citizens can vote at 92 Czech embassies and general consulates. In order to be able to vote, out-of-country voters have to register on a special voter list with a diplomatic representation 40 days before elections. The list is sent to the MFA and eventually to the MoI and municipalities to ensure that voters are not included in more than one list.

E. CANDIDATE REGISTRATION

A presidential candidate must be a Czech citizen who is at least 40 years old on the second day of the election and has not been deprived of legal capacity. Candidates can be nominated by a group of at least 20 deputies or 10 senators, or by a citizen who has reached the age of 18 years. In the latter case, the nomination is to be supported by a petition signed by at least 50,000 citizens entitled to vote. A total of 20 applications were submitted for registration before the 6 November deadline.

The MoI verifies candidate support signatures. The election law provides that, as the first step, the signature lists are scanned and checked that they include all the required information. The names, dates of birth and addresses from a random sample of 8,500 signatories are then checked against the data in the Register of Residents. If less than three per cent of the sample is found invalid, this percentage is deducted from the total number of signatures. The candidate is considered registered if the number of valid signatures after the deduction remains above the required minimum of 50,000 signatures. If more than three per cent of sample is found invalid, a second sampling and verification is conducted. Some political party representatives met with by the OSCE/ODIHR NAM opined that these verification procedures are overly complex and shared uncertainty as to how they would be applied in practice.

F. CAMPAIGN AND CAMPAIGN FINANCE

The official election campaign period starts 16 days before election day and finishes 48 hours before opening of the polls. The election law requires that "the election campaign must be conducted fairly and honestly, and, in particular, no false information about the candidates may be published". Campaigning in polling stations and their vicinities on election days is

prohibited and there is a ban on publishing opinion polls starting three days before an election and finishing with the closure of polling stations.

Some OSCE/ODIHR NAM interlocutors were of the opinion that the limited presidential powers influence the range of substantive topics that candidates could address in their campaigns. According to them, the main topics are expected to be national security, anti-corruption measures, accession to the euro zone, appointment of Constitutional Court judges, and presidential pardons of convicts. A number of billboards featuring potential candidates were already erected at the time of the NAM.

The election law provides that all campaign-related financial transactions of registered candidates have to go through a special bank account. The campaign expenditure is limited to CZK 40 million (about EUR 1.6 million). Candidates, however, may receive unlimited donations from any person or entity. Unspent funds at the end of the campaign period are automatically transferred to a “publicly beneficial purpose”. Candidates are required to submit a campaign finance report to the parliament 60 days after the announcement of official results. There is no reporting on campaign financing during or immediately after election days. There are also no sanctions for incomplete reporting or failure to present a report.

Some political party interlocutors of the OSCE/ODIHR NAM acknowledged shortcomings in campaign finance regulation and insufficient transparency requirements.⁴ In particular, potential candidates can campaign prior to their candidate registration, and the funds used in this period are not subject to campaign finance regulations. Some parties stated that their candidates would voluntarily publish information on donations to and expenses for their campaigns.

G. MEDIA

The media environment is pluralistic with a variety of commercial and public broadcasters, print and electronic media at national, regional and local levels.

The main television broadcasters are the public *Česká Televize* (with channels CT1, CT2, CT Sports and the news CT 24) and the private broadcasters *TV Nova* and *Prima*. The Czech public radio, *Český Rozhlas*, is the largest radio broadcaster and includes seven national stations and a regional network of 14 stations. In addition, there are numerous private television and radio stations broadcasting at the national, regional and local levels. There is also a diversity of print media, with the main newspapers being *Blesk*, *Mladá Fronta Dnes* and *Právo*.

The Council for Radio and Television Broadcasting (CRTB) is an independent body responsible for supervising adherence to the law by the broadcasters. Its members are appointed by the parliament. It monitors the public broadcasters and, due to its limited resources, a reduced number of private ones. It can issue warnings and impose financial sanctions; its decisions can be appealed in court. According to the CRTB, it receives a substantial number of media-related complaints annually. It also considers complaints related to journalistic ethics, which are lodged with the CRTB in the absence of functioning journalist associations.

⁴ See the 2011 Evaluation Report on Transparency of Party Funding of the Group of States against Corruption of the Council of Europe, available at [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)10_CzechRep_Two_E_N.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)10_CzechRep_Two_E_N.pdf).

In the context of elections, the CRTB monitors the news coverage and election-related programs of public and selected private broadcasters during the 14-day official campaign period. It has no authority, however, to act on any election-related violations observed before the official campaign period, when potential candidates may actively campaign in the media. Its monitoring results are published several weeks after the elections.

Other regulatory bodies are the Council of Czech Television and the Council of Czech Radio, which oversee the operations of public broadcasters and can also review complaints. According to OSCE/ODIHR NAM interlocutors, the distinction between these councils and CRTB in dealing with complaints, including election-related ones, is unclear.

The legal framework regulating the activities of media during the electoral campaign is composed of several laws, including the election law, the Broadcasting Act, Electronic Communications Act, Czech Television Act, and Czech Radio Act.

Five hours of free airtime on public television and radio each are equally divided among all registered candidates. Candidates are responsible for producing their campaign spots, but the broadcasters pre-screen them for any abusive content. Paid political advertising is prohibited in electronic media, both public and private, but is allowed in print media.

The public broadcasters informed the OSCE/ODIHR NAM that they would cover the election campaign through debates, interviews and news, as well as special election and voter information programs. Some political party representatives complained of insufficient coverage of their activities by *Česká Televize* and alleged that its broadcasts indicate certain political preferences. These accusations were rejected by the public television representative met with by the OSCE/ODIHR NAM.

IV. CONCLUSIONS AND RECOMMENDATION

OSCE/ODIHR NAM interlocutors expressed confidence in the professionalism and impartiality of the election administration. While a few interlocutors expressed concerns with cases of alleged vote buying during previous elections, they did not anticipate such issues to arise during the presidential election. In general, interlocutors underscored that the democratic institutions are well-established and are capable of self-regulating and addressing issues if such arise. There were no concerns expressed with regard to election day proceedings. This indicates that limited added value is likely to be brought by a significant presence of the OSCE/ODIHR on election day. At the same time, a number of interlocutors shared uncertainty as to how some of the new legal provisions would be applied.

Based on the feedback provided by its interlocutors, the OSCE/ODIHR NAM considers that the implementation of the new legal framework, voter list preparation, application of campaign finance regulations and the work of the media could benefit from review. The OSCE/ODIHR NAM therefore recommends the deployment of an Election Assessment Mission for the upcoming presidential election.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Mr. Mr. Viktor Dvořák, Director of Security Policy Department
Mr. Ladislav Nový, Desk Officer, Consular Department
Mr. Karel Tesař, Head of OSCE Desk

Ministry of Interior

Mr. Václav Henych, Director Department of General Administration, SEC Member
Ms. Eva Černá, Election Expert

Czech Statistical Office

Mr. Stanislav Drápal, Deputy Head
Mr. Jiří Prox, Head of Unit for Processing of Election Results

Civic Democratic Party (ODS)

Mr. Jaroslav Plachý, MP
Mr. Jan Bauer, MP

Communist Party of Bohemia and Moravia (KSČM)

Mr. Pavel Hojda, MP
Mr. Pavel Kováčik, MP

Czech Socialist Democratic Party (CSSD)

Mr. Jan Hamáček, MP

LIDEM – Liberal Democrats (LIDEM)

Mr. Viktor Paggio, MP

Public Affairs Party (VV)

Mrs. Jana Drastichová, MP

TOP09

Mr. Václav Kubata, MP

Council for Radio and Television Broadcasting

Ms. Kateřina Kalistová, Chairperson
Mr. Milan Bouška, Vice-chairperson
Ms. Vilma Hušková, Head of Department for Linear TV Services
Mr. Zdeněk Malach, Head of Licensing Division

Czech Public Radio

Mr. Tomáš Pancir, Director of News and Current Affairs

Czech Public Television

Mr. Petr Mrzena, Editor in Chief
Mr. Zdeněk Šámal, Director of News Desk