



Office for Democratic Institutions and Human Rights

# PORTUGAL

## PARLIAMENTARY ELECTIONS

27 September 2009

OSCE/ODIHR Election Assessment Mission Report



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**I. EXECUTIVE SUMMARY**

In response to an invitation from the Permanent Mission of Portugal to the Organization for Security and Co-operation in Europe, and based on the recommendation of a Needs Assessment Mission carried out from 24 to 26 June, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 27 September 2009 parliamentary elections.

The elections were conducted in a manner which reflected Portugal's established democratic tradition, respect for political pluralism and fundamental freedoms as well as a high level of public confidence in the overall process. Voters enjoyed a wide and genuine choice of political parties. Some aspects of the political system may nevertheless merit review.

The legal framework facilitates political participation and generally provides for equitable treatment of election contestants. It is rather complex, however, and could benefit from consolidation and updating of some provisions. Independent candidates are not permitted to contest elections in contravention of OSCE commitments, and members of parliament who change parties lose their mandate. Other aspects of the legal framework that could warrant amendments include *inter alia* the equality of representation among constituencies and elements of the complaints and appeals system.

These elections were administered efficiently by a variety of actors, the most important being the Ministry of Internal Affairs and the National Election Commission (NEC). At the lower levels local authorities are involved in organizing the polling process. Political party representatives are included in the NEC and in polling stations commissions. In addition they can also follow the electoral process through delegates, providing for a high level of transparency. There is high degree of trust in the impartiality of all parts of the electoral administration.

Voter lists are generally considered to contain many names of deceased persons, as well as of Portuguese citizens living abroad permanently. The election administration expects that the introduction of a new identity card will make the voter lists more accurate over time.

The official campaign took place during a 13-day period, although in practice campaigning began much earlier and overlapped with campaigning for the 11 October local elections. Candidates mainly campaigned through media and by means of election rallies. The leading candidates traveled across the country for well-covered campaign events. Political parties could freely impart their messages to voters. The campaign offered voters access to a wide range of political views.

The pluralistic media offered extensive and informative coverage of the campaign in its election-related programming. Televised debates were held among leaders of all parliamentary parties and also, separately, among leaders of parties without parliamentary representation. These debates together with regular discussion programmes, talk shows and

news offered the electorate the opportunity to compare parties and coalitions, thus enabling voters to make an informed choice. The law provides political parties with free airtime and space in public and private media and foresees equal treatment of all election contestants. The bulk of the coverage was focused on the main contestants, prompting some smaller parties to complain about unequal treatment by the media.

After the previous parliamentary elections in 2005, a law on equality was adopted, which has resulted in an increase in the number of women elected to parliament. Notably, Portugal has extended the right to vote to Brazilians residing in the country based on a reciprocal agreement between Portugal and Brazil, although in practice their participation is limited.

While candidates and party observers have the right to be present at all stages of the voting and counting there is no legal provision for international or domestic non-partisan observation. This is not fully in line with Portugal's OSCE commitments. Despite this lack of legal provisions, the OSCE/ODIHR EAM had full access to all stages of the process.

In line with standard practice for an OSCE/ODIHR EAM, there was no comprehensive or systematic observation of election day procedures. Members of the OSCE/ODIHR EAM visited a number of polling stations throughout the country on election day. In the polling stations visited voting and counting procedures went smoothly overall, though all procedures were not always strictly followed. Most were run by experienced poll workers.

## II. INTRODUCTION

On 27 June 2009, the President of the Republic called for parliamentary elections to take place on 27 September 2009. On 3 July 2009 the Permanent Mission of Portugal to the OSCE invited the OSCE/ODIHR to observe the elections, in line with Portugal's commitments under the 1990 Copenhagen Document. Based on the recommendations of a Needs Assessment Mission conducted from 24 to 26 June, the OSCE/ODIHR decided to deploy an Election Assessment Mission (EAM).<sup>1</sup>

The OSCE/ODIHR EAM was deployed from 14 September to 30 September 2009. The mission was led by Mr. Jean-Pierre Kingsley and consisted of 12 election experts from 11 OSCE participating States. In addition to experts based in Lisbon, teams were deployed to the Azores and Madeira, as well as Braga, Bragança, Castelo Branco, Faro, Leiria, Porto and Setubal.

The OSCE/ODIHR wishes to express its appreciation to the Ministry of Foreign Affairs, the Ministry of Internal Affairs, the NEC, the Constitutional Court and the Entity for Political Financing for their assistance and support, as well as to other election officials, representatives of official bodies, political parties, media organizations, non-governmental organizations and independent analysts for their co-operation.

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<sup>1</sup> The report of the OSCE/ODIHR Needs Assessment Mission is available at [www.osce.org/documents/odihr-el/2009/07/38973\\_en.pdf](http://www.osce.org/documents/odihr-el/2009/07/38973_en.pdf).

### III. BACKGROUND

Portugal is a unitary state with two autonomous regions: the island groups of Madeira and Azores. The political system is usually described as semi-presidential. The President is directly elected and has a number of significant powers, e.g. to dissolve parliament and to veto legislation. The President's veto can only be overruled by a qualified majority in parliament. The parliament (Assembleia da República) is a unicameral body with 230 deputies elected for four-year terms. According to the constitution, a deputy represents the whole country and not a particular electoral district.

The central government is represented in the 18 districts of the mainland by civil governors, appointed by the Prime Minister. The two autonomous regions of Madeira and Azores have directly elected assemblies with the central government being represented by a 'Minister of the Republic.' Local self-government is exercised by 308 municipalities (*municípios*), which are sub-divided in 4,260 civil parishes (*freguesias*);<sup>2</sup> both levels have directly elected assemblies and mayors.

The political landscape is dominated by two major parties, the centre-left Socialist Party (PS) (the party of the Prime Minister) and the centre-right Social Democratic Party (PSD) (the party of the President). Other parliamentary parties include the Communist Party, which has a long-standing coalition with the Green Party. A more recently formed leftist party is the Left Bloc. Another party represented in parliament is the Popular Party, a traditional Christian Democrat Party. There are 18 registered political parties in Portugal.

### IV. LEGAL FRAMEWORK

#### A. OVERVIEW

Parliamentary elections in Portugal are regulated by a wide range of legal acts, including the 1976 Constitution, the 1979 election law, and 14 additional laws addressing voter registration, political parties, media, as well as campaigning and the financing of political parties.<sup>3</sup> Other relevant legal norms include the NEC's rules of procedures and some parts of the administrative and penal legislation.

The Constitution stipulates that the people exercise political power through universal, equal, direct, secret and periodic elections.<sup>4</sup> The Constitution also guarantees essential political rights: freedom of expression, assembly and association as well as the right to free communication and exchange of information. The election law provides detailed legal provisions for the conduct of the elections.

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<sup>2</sup> Henceforth referred to as parishes.

<sup>3</sup> The 1999 Law on Voter Registration, the 2003 Law on Political Parties, the 2003 Law on Political Parties' and Campaign Financing, the 2005 Law on the Organization and Functioning of the Entity for Accounting and Financing of Political Parties, the 1978 Law on the National Election Commission, the 1982 Law on the Functioning and Procedures of the Constitutional Court, the 1976 Law on Out-of-Country Voting, the 2006 Law on Equality, the 1975 Law on Media Coverage of elections, the 1988 Law on Political Campaigning, the 2000 Law on Opinion Polls, the 1974 Law on the Right of Assembly, the 1999 Law on Campaign Publicity, Neutrality and Impartiality of Public Institutions during Elections and the 1998 Law governing the Rights of Opposition.

<sup>4</sup> Article 10 paragraph 1.

The legislation adequately covers the essential aspects of the election process, although some of the references in the law are outdated.<sup>5</sup> Moreover, its fragmentation into many different legal acts could make it difficult to get a complete overview of all relevant election legislation, in particular for smaller parties with limited resources and for the general public, whereas more consolidated election legislation would increase transparency.<sup>6</sup>

*To enhance accessibility and transparency the election legislation could be consolidated into fewer laws, allowing it to be updated at the same time.*

## **B. THE ELECTORAL SYSTEM**

The parliament is comprised of 230 members, elected from 22 electoral districts. Two electoral districts with two seats each represent the out-of-country voters: one for European countries, the other for the rest of the world. The number of seats in each district varies from two to a maximum of 46 seats.

According to the Constitution the number of seats per district should be proportional to the number of voters, which is in line with the OSCE commitment regarding equal suffrage.<sup>7</sup> The election law determines that seats be allocated to electoral districts before elections. For the 2009 elections this resulted in a significant under-representation of four sparsely populated electoral districts. In four districts (Bragança, Castelo Branco, Evora, and Portalegre) the voter/seat ratio is more than 15 per cent below the average ratio. The Council of Europe's Venice Commission 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)."<sup>8</sup> In international practice, exceptions to strict equality are considered acceptable to give more representation to such regions. In this case, however, sparsely populated districts are disfavored, rather than over-represented.

*Consideration should be given to remedying the imbalance in representation so as to more fully ensure the equality of the vote.*

There is no formal threshold for parties to obtain seats in parliament, although "natural thresholds"<sup>9</sup> apply depending on the number of seats elected in multi-member constituencies. In the numerous districts with few seats, small parties have little chance to win a seat because the natural threshold is high. Thus the electoral system has favored the emergence of two main parties.

The 2006 Law on Equality introduced a requirement that each gender should be represented by at least one-third of all names on a candidate list and that there should not be more than

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<sup>5</sup> Currently laws include references to the former Portuguese territory of Macau and the previous currency escudo. Some laws also repeat identical or almost identical provisions from other laws.

<sup>6</sup> See OSCE/ODIHR Guidelines for the Legal Framework for Elections (2001, Warsaw): "The legal framework should be structured so that it is readily accessible to the public, transparent, and addresses all the components of an electoral system necessary to ensure democratic elections."

<sup>7</sup> Paragraph 7.3 of the Copenhagen Document of 1990.

<sup>8</sup> Council of Europe, Commission for Democracy through Law (Venice Commission), "Code of Good Practice in Electoral Matters", Point 2.2, 2002, available at [www.venice.coe.int/docs/2002/CDL-EL\(2002\)005-e.asp#\\_ftnref41](http://www.venice.coe.int/docs/2002/CDL-EL(2002)005-e.asp#_ftnref41).

<sup>9</sup> Natural threshold is also referred to as mathematical threshold, which is usually determined by dividing the total number of valid votes by the number of available seats.

two consecutive candidates of the same gender in any list. Non-compliance with these rules results in financial sanctions.

### C. MANDATE OF ELECTED OFFICIALS

The Constitution stipulates that a member of parliament who joins a party other than the one from whose list he or she was elected, loses his or her mandate.<sup>10</sup> However, a deputy can choose to become an independent without losing his or her mandate, as long as the deputy does not join another party. The loss of a mandate by law for changing party affiliation appears to conflict with the concept of a personal mandate as expressed in the OSCE Copenhagen commitments: “candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures”.<sup>11</sup> The Venice Commission of the Council of Europe has concluded that “losing the condition of representative because of crossing the floor or switching party is *contrary to the principle of a free and independent mandate*” (emphasis original).<sup>12</sup>

*In view of the personal character of a parliamentary mandate, consideration should be given to permitting deputies who change their party affiliation to maintain their mandates.*

### D. REGISTRATION OF POLITICAL PARTIES AND CANDIDATES

To register a political party, 7,500 supporting signatures are required. The Constitutional Court is responsible for the registration of political parties. It can under certain conditions dissolve a political party upon a request from the public prosecutor.

The Constitution guarantees political pluralism and the freedom of association but requires that political parties respect the unitary character of Portugal and prohibits parties from having a religious name or using religious symbols. It also bans parties from having a regional name or platform. This is not a major issue of public debate, and denial of party registration on these grounds is in practice rare.<sup>13</sup> Nevertheless, these restrictions may conflict with the freedom of association.<sup>14</sup>

<sup>10</sup> Article 160 1.c.) of the Constitution, repeated in Article 8.1.c.) of the Statute of Deputies of the Assembly of the Republic.

<sup>11</sup> Article 7.9 of the 1990 OSCE Copenhagen document.

<sup>12</sup> “Report on the Imperative Mandate and Similar Practices”, CDL-AD(2009)027, para 36, available at [www.venice.coe.int/docs/2009/CDL-AD\(2009\)027-e.asp#\\_ftnref14](http://www.venice.coe.int/docs/2009/CDL-AD(2009)027-e.asp#_ftnref14).

<sup>13</sup> The only rejection of a registration request from a political party based on religion dates from 1995 when the Constitutional Court rejected the registration of a party with the name “Social Christian party” and the symbol of a fish. The political party was eventually registered under a different name and symbol (*Partido da Gente* - with the symbol of a red broom).

<sup>14</sup> See point F. of the Venice Commission’s Guidelines on Legislation on Political Parties (2004): “Although such concern as the unity of the country can be taken into consideration, Member States should not impose unnecessary restrictions on the establishment and activities of political unions and associations on regional and local levels.” See also Article 11 of the European Convention on Human Rights (ECHR): (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful

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*Although the prohibition against political parties having a regional name or platform, or religious name or symbol is not presently contested by domestic stakeholders, it could be appropriate to review whether these restrictions are still necessary, in light of the provisions of the European Convention on Human Rights.*

Political parties must abstain from any racist or fascist ideology and be regulated by rules that provide for a democratic and inclusive functioning and organization, including gender balance. On 13 July 2009 the Constitutional Court rejected the registration of one political party (*Partido da Liberdade*) because it considered its statutes to be racist. After the reformulation of its statutes the party appealed to the Constitutional Court in order to be registered. The appeal was dismissed as the Court considered that the amendments of the statutes were not sufficient to meet the constitutional requirements.

All eligible voters are at the same time eligible to be candidates in elections, except some high officials, such as civil governors and members of the National Election Commission. Candidates are elected on the basis of closed party lists in each electoral district. Only political parties and coalitions of parties can register candidate lists. There are no support signature, residency or deposit requirements for candidates. The registration has to be made with a designated judge in the capital of the respective electoral district.<sup>15</sup> The judge decides the order of the appearance of parties or coalitions on the ballot by drawing a lot in the presence of party representatives.

There is no provision for independent candidatures. Most interlocutors met by the OSCE/ODIHR EAM expressed their reservation against opening the system to independent candidates, even in the form of lists of independent candidates. Some interlocutors indicated that the law allows independent candidates to compete for parliament by means of inclusion on party lists. However, such arrangements leave full control to the parties, while the OSCE commitments provide that the rights of citizens to seek political office individually should be respected.<sup>16</sup>

*The legislation should be amended in order to give an opportunity to individual citizens to run as independent candidates, in accordance with paragraph 7.5 of the 1990 OSCE Copenhagen Document.*

## **E. POLITICAL PARTY AND CAMPAIGN FINANCING**

The legislation contains detailed rules for the public and private financing of political parties and electoral campaigns.<sup>17</sup> The 'Entity for Political Financing' (*Entidade das Contas e*

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restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

<sup>15</sup> In the case of Lisbon and Porto with a judge of the respective civil district, while in the case of the out-of-country electoral districts, a judge of a Lisbon civil court.

<sup>16</sup> Paragraph 7.5 of the 1990 Copenhagen Document. Also, General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (ICCPR) adopted in 1996 by the Human Rights Committee, paragraph 16, stipulates that "the right of persons to stand for elections should not be limited unreasonably by requiring candidates to be members of parties or specific parties." While the legislation does not explicitly require candidates to be members of any parties, an independent candidate will have to negotiate his or her inclusion in a candidate list with a political party.

<sup>17</sup> Law 19/2003 on Political Party and Campaign Financing and law 2/2005 on the Entity for Political Financing.



*Financiamentos Políticos* – ECFP), is in charge of controlling the campaign and political parties, together with the Constitutional Court, to which it is linked.

Before the elections the ECFP issued recommendations for political parties on campaign financing, providing extensive guidelines and templates for reporting, as well as indicating the official national monthly minimum wage (426 Euro), which is used as a reference for various expenditure limits.

The public financing system has two pillars: a fund for continuous party activities, and a specific electoral fund for campaign expenses.

### **1. Continuous Financing of Political Parties**

Public funding for continuous activities is only provided to parties with representation in parliament or to parties which received more than 50,000 votes in the most recent parliamentary elections. It is distributed annually on the basis of the votes obtained in the previous parliamentary elections.<sup>18</sup> In addition, political parties enjoy indirect public funding through tax exemptions on real estate and income.

The sources of private funding are mainly contributions from members, other donations, as well as revenue from investments and property. Donations are limited to a maximum of 25 times the minimum salary (10,650 Euro). Donations in kind should be evaluated at market price and should respect this limit. Contributions must be done either by cheque or bank transfer, which enhances transparency and facilitates control. Anonymous donations and donations in kind and in money from national or foreign legal persons are prohibited. Donations from foreign natural persons are not forbidden.

The Law on Parties' and Campaign Financing requires that political parties keep records of all revenue and expenditure, and submit an annual financial report to the Constitutional Court. The Constitutional Court is responsible for receiving the political parties' accounts, which are then audited by the ECFP. The Constitutional Court must establish within six months after receiving the annual financial reports and based on the ECFP audit, whether the political parties have complied with the law. It must publish its decision. The Constitutional Court may impose financial sanctions on any party found to have breached the financing rules.

### **2. Campaign Financing**

Political parties or coalitions must appoint a financial proxy and open a special bank account for campaign purposes where all incomes and expenditures should be recorded. Campaign expenditure not exceeding 426 Euro can be paid in cash while traceable transactions must be used for sums above it.

Political parties or coalitions are required to provide the Constitutional Court with their campaign budget by the deadline for submission of candidate lists, but there are no sanctions if they fail to do so. The campaign budgets are to be submitted electronically in a format pre-determined by the ECFP and are posted on the Constitutional Court website,

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<sup>18</sup> It is calculated as 1/135 of the minimum salary, which amounted to 3.16 Euro per vote after the 2005 parliamentary elections.

which enhances transparency. Electoral campaigns can be financed either by public funding, contributions from political parties' general budgets, or by donations.

Political parties or coalitions which contested at least 51 per cent of the seats in parliament and won at least one seat are entitled to receive public funding to cover parts of their campaign expenses after the elections. The system thus favours parties with representation in parliament. For the parliamentary elections, the total amount of available public funding is equivalent to 20,000 times the minimum salary (in 2009, 8,520,000 Euro). Twenty per cent of this amount is equally allocated among the political parties represented in parliament, while the remaining 80 per cent is distributed proportionally to the votes obtained in the election. In addition political parties and coalitions enjoy indirect public funding in the form of free airtime provided by public media.

Campaign accounts can be established six months before elections. Campaign expenditure per party is capped at 60 times the minimum salary per candidate, including supplementary candidates.<sup>19</sup> Parties are required to submit their campaign accounts to the Constitutional Court within 90 days after the publication of the official results. The ECFP has 35 days to audit the campaign accounts and the parties have ten days to respond to questions asked by the ECFP. After receiving the auditing reports from the ECFP, the Constitutional Court decides whether the electoral accounts are in compliance with the law or not. The parties may be asked for clarification once more before the Court takes a final decision. Any delays experienced in the recent past regarding this final decision are likely to be remedied with increased experience of implementing the current financial reporting procedures. Sanctions for violations of the law include fines and imprisonment for up to three years.

*To enhance transparency, consideration could be given to publishing any decisions taken by the Constitutional Court as regards the compliance with campaign financing rules in a timely manner on the internet.*

## **V. ELECTION ADMINISTRATION**

### **A. ELECTION MANAGEMENT BODIES**

The elections are administered by several institutions. The Ministry of Internal Affairs manages most parts of the process in co-ordination with bodies of the local administration. The National Election Commission (NEC) has a broad supervisory role during the electoral process.<sup>20</sup> At the sub-national level, there are 22 Tabulation Centre Commissions (TCCs), one in each of the 18 districts, one in each of the two autonomous regions, and one for each of the out-of-country electoral districts. In these elections there were 11,876 Polling Station Commissions (PSCs). By law there should be one polling centre per parish.<sup>21</sup> However, given the significant size of many parishes, in practice there are often several polling stations per parish. All interlocutors met by the OSCE/ODIHR EAM considered the electoral bodies to be competent, efficient and impartial.

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<sup>19</sup> Supplementary candidates are those on the party list that exceed the available seats for the constituency. They obtain seats if, for example, persons elected higher on the list go into government.

<sup>20</sup> 1978 Law on the National Election Commission, Article 5.

<sup>21</sup> 1979 election law, Article 40.1.

## 1. Ministry of Internal Affairs (MoIA)

The Directorate-General for Internal Affairs (DGIA) of the MoIA is the main body responsible for the registration of voters and for logistical aspects of the election process. It is also responsible for providing public information regarding the electoral system and other electoral processes; providing technical recommendations to the lower-level election administration and other electoral actors on voter registration and election processes; organizing training for political party agents and local technical staff of the electoral administration and for the tabulation and publication of the election results.

For these elections the DGIA ran information campaigns by placing posters and stickers on buses and ATM machines, calling on voters to verify their voter registration and polling station location through the internet or by free SMS. DGIA also provided information for young voters as well as background information about the candidates on the internet.<sup>22</sup> DGIA did not organize training for polling station staff, but an online video was available for the commissions, as well as a handbook.

## 2. National Election Commission (NEC)

The NEC (*Comissão Nacional de Eleições*) is chaired by a judge from the Supreme Court (*Supremo Tribunal de Justiça*), appointed by the Supreme Council of Magistrates. Each parliamentary group appoints one member to the NEC, to be approved by the parliament.<sup>23</sup> The MoIA, Ministry of Foreign Affairs and the Ministry for Parliamentary Affairs<sup>24</sup> each appoint one additional member. The NEC members are nominated within 30 days after the start of each parliamentary term and are sworn in within the following 30 days. Their mandates are valid until a new Commission has been sworn in.

According to the Law on the National Election Commission, the NEC is an independent body. Its tasks are partly executive,<sup>25</sup> partly of a supervisory nature<sup>26</sup> and partly remedial.<sup>27</sup> The law also provides that the NEC has the competency to “assure the equality of treatment of citizens in all acts of voter registration and the electoral campaign.”<sup>28</sup> The NEC has interpreted this broad provision as a general right to hear and decide on complaints about the electoral process (see Section XII on Election Dispute Resolution). Within its area of responsibility, the NEC has the power to instruct administrative bodies or public or private institutions.

The NEC meetings are not open to the public. According to the NEC’s internal procedures, its decisions are to be published in the Parliamentary Gazette, but according to officials of the Ministry of Internal Affairs, this is not always done.

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<sup>22</sup> [www.portaldoeleitor.pt](http://www.portaldoeleitor.pt).

<sup>23</sup> Therefore the number of NEC members is not fixed but depends on the number of political parties represented in parliament.

<sup>24</sup> The Law on the National Election Commission indicates that the government’s department for social communication should designate one member of the NEC. Currently the function of social communication is the responsibility of the Ministry for Parliamentary Affairs.

<sup>25</sup> Such as registration of electoral coalitions; publishing election results; allocation of airtime on TV and radio for candidates, and voter education.

<sup>26</sup> Such as ensuring equal opportunities for all parties during the campaign.

<sup>27</sup> Such as hearing and adjudicating complaints, related to the use of public spaces by political parties for campaigning purposes.

<sup>28</sup> Article 5 paragraph 1. b.) of the law on the National Election Commission.

*The NEC may wish to consider meeting in sessions that are open to the public. Any decisions taken by the NEC should be published in a timely manner in the Parliamentary Gazette and for increased accessibility also on the internet.*

### **3. Tabulation Centre Commissions (TCCs)**

The TCCs are chaired by the judge of the district court of the electoral district's capital.<sup>29</sup> In addition, there are 11 members: two jurists selected by the chairperson; two mathematicians appointed by the Ministry of Education and Culture (or in the autonomous regions, by the Minister of the Republic); six chairpersons of polling station commissions pointed by the civil governor (or in the autonomous regions, by the Minister of the Republic); a chief legal clerk of the head of the electoral district, selected by the chairperson, who serves as secretary without the right to vote on TCC decisions.

The election law does not indicate the criteria for selecting the six Polling Station Commissions (PSC) chairpersons who are to serve as TCC members in an equal capacity. In the regions visited, the OSCE/ODIHR EAM was told of different practices. Some members were appointed based on the size of the polling stations, others based on the physical proximity to the tabulation centre.

TCCs are temporary election administration bodies responsible for checking, and where necessary correcting, the counting results of PSCs. TCCs also decide on contested ballots, aggregate the election results at electoral district level and determine which candidates have won seats in the electoral district in question. Sessions of TCCs can be attended by candidates and representatives of candidate lists.

### **4. Polling Station Commissions (PSCs)**

PSCs are comprised of a chairperson, a deputy and three members (one secretary and two clerks). If nominated, it is compulsory for any voter registered within the respective parish to act as a PSC member, with some exceptions, such as voters who are illiterate or over 65 years of age.

Contesting political parties can nominate PSC members and submit their names to the parish mayor up to 18 days before election day.<sup>30</sup> The parish mayor calls a meeting 17 days before election day with the representatives of the candidates' lists in order to select PSC members. If no agreement is reached, each party can propose to the municipal mayor any two citizens of their choice for each unfilled position. The selection of citizens is random, through a drawing of lots within 24 hours. In case the parties do not propose sufficient candidates, the municipal mayor simply appoints PSC members of his or her choice, as long as the basic qualifications are fulfilled. The list of PSC members is published within 48 hours. Any voter has the right to file a complaint against any mayoral appointments within the following two days, regardless of how the list of PSC members was compiled. The complaint is addressed and decided on by the municipal mayor or administrative commission within 24 hours, and, if upheld, results in a new random selection.

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<sup>29</sup> In Lisbon and Porto a judge of the first civil court.

<sup>30</sup> About administrative division into municipalities and parishes, see Section III on "Background."

The PSC composition is finalized up to five days before election day, when the municipal mayor informs the civil governor as well as the respective parishes about the composition. Since there is no civil governor in the autonomous regions, the municipal mayor informs the Minister of the Republic.

In the parishes visited by the OSCE/ODIHR EAM, the PSC members seemed to be generally chosen by consensus, but in a few parishes, the parish mayors had appointed the PSCs without previously consulting the parties, contrary to what is required by law.<sup>31</sup> In some others, and also contrary to the law, only the parties represented in the parliament could nominate candidates, instead of all parties that had submitted candidate lists. In addition, the procedure for appointing a PSC chairperson and secretary is not regulated by the law.

## **B. VOTER REGISTRATION**

Portuguese citizens who are 18 years of age or older on election day are eligible to vote, regardless of location of residency, except “those well-known as mentally ill, even if not under judicial disability imposed by a sentence, when interned in a psychiatric establishment or declared mentally disabled by two doctors” (article 2 b of the election law). This is not in line with international standards, according to which the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.<sup>32</sup> Moreover, Portugal has ratified the UN Convention on the Rights of Persons with Disabilities.<sup>33</sup> Its article 29 explicitly confirms the right of persons with disabilities, including mentally impaired ones, to vote in elections.

*Consideration should be given to providing that only courts of law can decide to suspend political rights on the basis of mental incapacity.*

In addition, the right to vote is extended to Brazilian citizens residing in Portugal. The inclusion of non-Portuguese citizens in parliamentary elections is unusual and a positive measure of enfranchisement. It follows from a treaty signed between Portugal and Brazil in 2001.<sup>34</sup> In practice however, this inclusion is not yet very effective given that there are almost 107,000 Brazilians registered as residing in Portugal, but only some 1,300 of them are on the voter list.<sup>35</sup> According to *Casa do Brasil*, an association for Brazilians in Portugal, the reason for the limited interest is that Brazilians who register themselves in the Portuguese voter list face administrative difficulties with the Electoral Tribunal of Brazil.<sup>36</sup>

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<sup>31</sup> Article 47.1 of the election law. In Bragança a representative of a party told the OSCE/ODIHR EAM that the parish mayor had not invited its representatives to the meeting where the composition of PSCs was decided.

Another party made a similar complaint in Braga.

<sup>32</sup> See point 1.1 of the Council of Europe Venice Commission Code of Good Practice in Electoral Matters.

<sup>33</sup> The purpose of this convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity – see [www.un.org/disabilities/convention/conventionfull.shtml](http://www.un.org/disabilities/convention/conventionfull.shtml).

<sup>34</sup> Treaty of Friendship, Co-operation and Consultation.

<sup>35</sup> Number for 2008 from the Agency for Foreigners and Borders, see: [www.sef.pt](http://www.sef.pt).

<sup>36</sup> They may be taken off the voter list in Brazil, which may have administrative consequences beyond voting rights.

The data on voters is maintained in a national central database (*Base de dados do recenseamento eleitoral - BDRE*) administered by the DGIA. The DGIA is also responsible for co-ordination with other institutions with a view to making sure that the voter database is kept updated (i.e. information related to births, deaths or the acquisition or withdrawal of citizenship) and for the elimination of duplicate entries. The *ex-officio* update of the BDRE is continuous and only suspended from 60 days prior to election day until election day. Based on a 2008 change (Law no. 47) to the 1999 Law on Voter Registration, youth turning 17 years are registered automatically in the BDRE, without the need for active registration, which was the case in the past.

Each February, the DGIA delivers electronic copies of the voter lists to the registration commissions. The registration commissions are formed by members of the parish boards and a representative of each political party with representation in parliament. The main responsibilities of the registration commissions are the registration of voters omitted from the voter register and who apply for inclusion, issuing voter certificates, printing final voter lists, and receiving and handling complaints related to the voter register.

The voter lists are displayed in March of each year for public scrutiny. In an election year, the voter lists are also displayed in the registration commissions' offices and on the internet as soon as the lists have been updated. Political parties can receive copies of the voter lists; voters can check the voter lists; and anyone can apply for corrections to be made. Voter lists cannot be changed after the cut-off date, 15 days prior to election day. Before these parliamentary elections, DGIA removed around 200,000 names from the voter lists, due to incomplete data. Excerpts of the list of deleted names were to be provided to polling stations, in order to verify cases in which somebody who should be allowed to vote may have been erroneously deleted (see Section XI on Election Day).

All interlocutors agreed that the voter lists contain the names of a significant number of people who are actually residing abroad permanently but remain registered in their parishes in Portugal, which results in an understated turnout. However, this is not an issue of major political controversy. According to the Portuguese National Statistics Institute, at the end of 2008 Portugal had an estimated 10,627,250 residents,<sup>37</sup> of which 8,664,632 (81.5 per cent) were 18 years old or older. However, the voter list contained 9,347,315 voters before the elections, almost 700,000 above the estimate of voting-age citizens. All interlocutors agreed that the voter lists also contain names of deceased people, because in the past parishes did not always report deaths accurately.

The government expects that the voter lists will become more accurate in the next three or four years, with the introduction of a new identity card with enhanced functions, i.e. also containing information from what have until now been different health, tax and social security cards. The distribution of these new cards started in December 2008 and is scheduled to be completed by 2012. According to the DGIA, by September 2009, some 1,800,000 citizens had replaced their IDs. The new card is foreseen to replace the voter registration card as well, once the election legislation has been amended accordingly. Given that citizens usually need to use one of these cards regularly, notably health and social security, the government maintains that the new system will eventually cover all Portuguese citizens residing in Portugal, thus allowing the deletion of those who may be deceased or have moved permanently from the country.

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[www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_indicadores&indOcorrCod=0000611&selTab=tab0](http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0000611&selTab=tab0)

### C. OUT-OF-COUNTRY-VOTING

Out-of-country voting is organized through co-operation between the DGIA and the Commission for the Electoral Registration of the Portuguese Abroad (*Comissão Organizadora do Recenseamento Eleitoral dos Portugueses no Estrangeiro* - COREPE), under the Ministry of Foreign Affairs. However, for the parliamentary elections, COREPE is responsible only for informing the Portuguese embassies and consulates of the relevant legislation and timelines.

Though it is not in itself compulsory for Portuguese citizens residing abroad to register at Portuguese diplomatic missions, they need to do it if they wish to vote from abroad. Only then can they request to be registered as out-of-country voters. The DGIA receives the voters' data from the diplomatic missions, and publishes them online; these voter lists are also closed 15 days prior to election day. The embassies and consulates publish the lists as well. Voters who are registered as out-of-country voters are taken off the voter lists of their former electoral districts in Portugal and are voting in the electoral districts for out-of-country voting.

The DGIA sends a registered letter to each voter, containing the ballot, one green envelope and one white envelope (for the green envelope to be put into) and a copy of the voter's registration card, as well as information on how to return the ballot and on the deadlines. Voters send the envelopes back to DGIA at their own cost by registered mail. The ballot must be mailed by post on or before election day.

According to the DGIA, as of 31 December 2008 some 207,000 Portuguese were registered as living abroad (99,496 in Europe and 107,509 overseas).<sup>38</sup> Between 1 and 7 September the DGIA mailed ballots to 166,007 of these persons. The DGIA does not send ballots to voters who have not received or collected their registered mail for two consecutive elections.

The out-of-country votes are counted on the tenth day after election day, at the Ministry of Internal Affairs, by special 'Votes Collecting and Counting Commissions', composed of nominees of political parties (or of NEC nominees in case of an insufficient number of proposals). The results are then tabulated by a Tabulation Commission, which is chaired by a NEC member and composed of a judge designated by the Ministry of Justice; two legal experts designated by the chairperson; two 'Votes Collecting and Counting Commission' presidents designated by the chairperson; and a secretary of the Appeal Court, who serves as an assistant without voting right in the commission.

In the September 2009 elections, 25,472 ballots were received from abroad, equaling a turnout of 14.7 per cent of the Portuguese registered as voters abroad.<sup>39</sup>

### D. EARLY VOTING

Specific categories of registered voters can vote before election day, including the military, poll workers, prisoners, the homebound and the hospitalized. In applicable cases, voters have to inform the parish in which they are temporarily staying. The parish informs the home parish of the voter in order to have the ballot mailed to the voter, in the case of the

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<sup>38</sup> [www.DGIA.mai.gov.pt/cms/files/conteudos/file/administracao\\_eleitoral/Publicacao\\_DR\\_2009.pdf](http://www.DGIA.mai.gov.pt/cms/files/conteudos/file/administracao_eleitoral/Publicacao_DR_2009.pdf).

<sup>39</sup> Measured against the 166,007 ballots mailed to voters.

hospitalized, homebound and prisoners. For the other categories, the parish where the voter is present organizes the voting in its premises. Marked ballots are put in a white envelope, which is then inserted into a blue envelope with documentation proving the impediment to vote. The blue envelope is mailed to the appropriate civil parish, which sends it on to the corresponding polling station.

There are only a few categories of voters who are allowed to vote early. In combination with an apparently low level of awareness of the possibility of early voting, its use remains limited. For instance, in the whole of Lisbon only six hospitalized people voted.

## **VI. THE CAMPAIGN**

The official campaign started on 14 September, two weeks prior to election day, and ended at midnight the day before election day. There were 16 political parties and coalitions contesting the 2009 elections.

The campaign was generally calm with the economic crisis being the major campaign issue. While the Socialist party, led by Prime Minister Jose Socrates, promised large public work projects in order to overcome the crisis, the PSD, under the leadership of Manuela Ferreira Leite, urged fiscal discipline. The last days of the campaign were dominated by the dismissal by President Cavaco Silva of his press advisor, in the context of allegations that the advisor had planted a false story in the media accusing the government of placing listening devices in the President's office.

The parties and candidates could campaign freely and convey their electoral platforms to a wide audience. Candidates mainly campaigned through media and by means of election rallies. The leading candidates traveled across the country for well-covered campaign events. Campaigning also took place through the internet, e.g. on social networking sites.

The campaign for the parliamentary elections overlapped with that for the local elections, which were held on 11 October. Much of party advertising was generic, neither specifically aimed at the local, nor the national elections.

## **VII. MEDIA**

### **A. MEDIA LANDSCAPE**

Portugal has a diverse media environment, which facilitates freedom of expression and offers voters a wide range of political views. Citizens are served by more than 3,000 publications, some 340 national, regional and local TV and radio stations, and a widespread network of cable operators. However, some interlocutors considered the increased concentration of media ownership to be a potential threat to media diversity.

Although radio and newspapers play an important role, television is the main source of political information. The Portuguese public service broadcaster *Radiotelevisão Portuguesa* (RTP) consists of two TV stations (RTP1 and RTP2) and three radio channels, all with country-wide coverage. In addition, RTP has two cable and two satellite channels, and two regional services for the Azores and Madeira respectively. RTP is financed from three



different sources,<sup>40</sup> but the bulk of the public service broadcaster's financing comes from the State budget through allocations.

There are also two private TV channels with nationwide coverage, TVI and SIC. Together with RTP, TVI and SIC are the most influential TV stations, with TVI enjoying the highest number of viewers<sup>41</sup>. In addition, there are three nationwide private radio stations: TSF, Radio Renascença and Radio Comercial. There are four daily and two weekly national newspapers which constitute the most read print media in Portugal.

In the run-up to the elections, a controversy broke out following a decision of TVI to cancel its widely watched weekly news programme, prompting its presenter and senior editors to resign. The programme reported on long-standing allegations of corruption involving the incumbent Prime Minister in the context of the construction of a shopping centre in 2002. The Regulatory Entity for the Media (*Entidade Reguladora para a Comunicação Social - ERC*), which is the key regulatory body for the media, regretted the fact that TVI cancelled the programme during an election period and launched its own investigation into the TVI's owners' decision to terminate the programme. In a public decision of 13 October 2009, the ERC declared that the owners' decision to terminate the programme had been an unlawful interference in the work of the TVI's editorial board, in violation of Portuguese legislation about editorial autonomy and professional rights of journalists.<sup>42</sup> While most OSCE/ODIHR EAM interlocutors were critical of the programme, alleging that it did not respect some basic journalistic principles, they at the same time questioned the right of TVI owners to interfere with the editorial independence of the TVI's news director, who was against the decision to terminate the programme.

## **B. LEGAL FRAMEWORK FOR THE MEDIA**

The Constitution guarantees freedom of speech and of the press and prohibits censorship.<sup>43</sup> It also stipulates that during elections, candidates shall have the right to regular and equitable broadcasting time on radio and television stations with national or regional coverage.

The election law further regulates the media and stipulates that free airtime provided by nationwide public and private TV and radio broadcasters is to be divided among the political parties and coalitions which have put forward candidates for at least 25 per cent of the available seats and which are competing in at least 25 per cent of the total number of electoral districts, including the autonomous regions and districts for out-of-country votes. In addition, the election law provides that contestants have the right to equal treatment by public and private media. Even daily and weekly print publications are under legal

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<sup>40</sup> These three sources of financing are the license fees paid by taxpayers, allocations from the State budget and commercial revenue from advertising.

<sup>41</sup> Information provided by the Department for the Media of the Ministry for Parliamentary Affairs (*Gabinete para os Meios de Comunicação Social*).

<sup>42</sup> The Television Law 27/2007 of 30 July 2007 and the Press Law 2/99 of 13 January 1999, as amended by Law 18/2003 of 11 June 2003. At the time of publication of the present Assessment Report, the ERC had not yet decided whether the 13 October decision would be followed by a fine or not. At the same time, the ERC was extending its investigation to establish whether there had been political influences leading to the termination of the programme.

<sup>43</sup> Articles 37 and 38 of the Constitution.

obligation to provide non-discriminatory coverage of all contestants.<sup>44</sup> Paid advertisement in the media is prohibited.

The ERC, consisting of five members, has the responsibility to oversee the work of press agencies, periodicals, radio and TV operators. It is responsible for granting broadcasting licenses, revoking them in case of serious and repeated infringements, and levying administrative fines or issuing directives and recommendations. The ERC's objective is *inter alia* to promote and guarantee cultural pluralism and expression of different views through mass media, and also to guarantee that information provided by editorial service providers complies with journalistic standards. While the ERC has a central role in monitoring the print and broadcast media to ensure political pluralism outside election periods, the NEC is in charge of overseeing the media's compliance with the equal treatment provisions during elections. The NEC does not have any systematic media monitoring mechanism.

*Given that the ERC conducts media monitoring outside elections, consideration could be given to granting it a formal role in monitoring the coverage of elections by the media and the implementation of media-related provisions of the election law, in co-operation with the NEC.*

*Consideration could also be given to exempting the private print media from the obligation to provide non-discriminatory coverage of all contestants since print media unlike broadcast media do not benefit from limited public commodities such as frequencies which would justify an obligation to be balanced in their coverage of candidates and political parties.*

### **C. MEDIA COVERAGE OF THE ELECTIONS**

The media offered extensive and informative coverage of the campaign in its election-related programming, providing voters with a wide range of views. Regular discussion programmes, talk shows and news offered the electorate the opportunity to compare parties and coalitions, enabling voters to make an informed choice. Newspapers ran detailed overviews of political platforms and offered in-depth interviews with candidates.

Free airtime was allocated to all contestants in the form of campaign broadcasts which were aired during the two-week long campaign on a daily basis (between 7 p.m. and 10 p.m.), with public and private TV channels allocating 15 minutes in total per day for contestants' slots from Monday to Friday, and 30 minutes on Saturdays and Sundays. The public radio (RDP) allocated one hour every day in three different time slots and private radio channels were required to allocate 30 minutes per day. Air time was distributed proportionally, based on the number of candidates registered by each political party or coalition. The NEC held a lottery to determine the order in which contestant's slots appeared. Each broadcaster receives compensation from the state for the allocated airtime after the elections.

Prior to the official start of the campaign, RTP aired ten debates between the leaders of the five major parties. A debate between the leaders of the PS and the PSD was broadcast one

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<sup>44</sup> Article 64 of the election law and ERC Directive 2/2009. More detailed guidance on what is to be considered non-discriminatory coverage is provided in Law n. 85-D/75 of 26 February 1975.

day before the official start of the campaign. While RTP also aired two debates between representatives of non-parliamentary parties, the bulk of its election-related coverage was focused on the five contesting political parties already represented in parliament. Private broadcasters adopted a similar approach. This prompted smaller parties to complain about unequal treatment by the media.

Both the NEC and the ERC issued non-binding recommendations to the media, providing their interpretation of the campaign coverage provisions.<sup>45</sup> The NEC highlighted the necessity to guarantee equality and non-discriminatory treatment of all contestants, including in debates, where even “one simple absence of one contestant could prompt the audience to believe the contestant does not run in the elections.” The ERC stressed the need for equal conditions for access to media for all contestants. In that context, it recommended that broadcast and print media should cease their co-operation with columnists and political commentators who at the same time ran as candidates in the elections, as this would grant them an undue advantage over their opponents.

Several media outlets and professional media associations, including the National Union of Journalists (*Sindicato Nacional dos Jornalistas*) criticized the ERC recommendation claiming that it was not possible to offer equal access to all contestants. The Union considered the selection of columnists and commentators to be within the editorial independence and responsibility of each media outlet. The Union stated that instead of issuing a recommendation which defended “formal pluralism”, the ERC should have promoted an open debate on the necessity of guaranteeing pluralism and diversity of views permanently. Several journalists expressed concerns to the OSCE/ODIHR EAM about the potential effects on the quality of their media content if the ERC recommendation were to be implemented to the letter.

The NEC received nine complaints regarding the conduct of the media in the run-up to election day. Most of these complaints alleged unfair treatment of political subjects by the media and were filed mainly by the smaller parties. However, the election legislation stipulates that during the electoral campaign, no sanction can be applied to media companies or their employees for violations that occur during the campaign. Such violations could only be addressed after the elections<sup>46</sup> and the complaint process therefore does not provide for a timely remedy.

*The current process of dealing with media-related complaints does not always provide a timely remedy. The election law could be amended to allow media-related complaints to be heard before election day thereby providing their timely resolution that is integral to the broader principle of effective means of redress included in paragraph 5.10 of the OSCE Copenhagen Document.*<sup>47</sup>

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<sup>45</sup> The NEC issued its recommendation on 7 July and the ERC its directive on 12 August.

<sup>46</sup> Article 58 paragraph 2 of the election law.

<sup>47</sup> Paragraph 5.10 of the 1990 Copenhagen Document provides that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. The Venice Commission’s Code of Good Practice in Electoral Matters, paragraph 95, emphasizes the importance of having appeals about pre-election matters resolved in a timely manner before election day.

## VIII. PARTICIPATION OF WOMEN

The 2006 Law on Equality stipulates that each gender should be represented by at least 33 per cent of the candidates and that there should not be more than two consecutive candidates of the same gender on any candidate list.

The law does not make respect for these provisions a condition of candidate list registration, but it provides for sanctions for political parties which fail to comply with these requirements. Sanctions include a deduction of public funding received for campaign purposes proportional to the degree of non-compliance.<sup>48</sup> In these elections 27 lists in various electoral districts did not comply with the provisions of the Law on Equality.

For these elections, out of 3,125 candidates on 288 lists of 15 political parties, 41.5 per cent were female, with 54 of them leading the lists (18.8 per cent). Nineteen lists did not respect the 33 per cent requirement, while eight had more than two consecutive candidates of the same gender.

The number of women elected to parliament increased from 49 (21.3 per cent) in 2005 to 62 (27.4 per cent) in these elections. In this context it is worth mentioning that parliament's composition changes during its term, due to deputies joining the government as well as for other reasons. At the end of the outgoing parliament's mandate period there were 66 female members of parliament (28.7 per cent).

## IX. PARTICIPATION OF MINORITIES

While the concept of 'national minorities' is not defined in the legislation, the government recognizes Roma (*ciganos*) as an ethnic minority.<sup>49</sup> An estimated 40,000 - 50,000<sup>50</sup> citizens are Roma, but the exact number is not known due to the prohibition against classifying citizens by ethnicity. The economic situation of many Roma is precarious with traditional sources of income, such as selling goods in markets, under competitive pressure. According to OSCE/ODIHR EAM interlocutors, Roma do not participate significantly in political life, neither as voters, nor as candidates. Given that Roma live across the country, there is no strong incentive for political parties to compete for their fragmented vote in an electoral system with 22 electoral districts.

The Portuguese High Commissioner for Immigration and Inter-cultural Dialogue is engaged in improving the situation of Roma; however, voter participation is not a major focus.<sup>51</sup>

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<sup>48</sup> The deduction of public funding is proportional to the degree of non-compliance with the quota requirement on a sliding scale of 50 per cent of the public funding if the share of the minority gender is less than 20 per cent, and 25 per cent of the public funding if the percentage of the minority gender is between 20 and 33 per cent. If the non-compliance refers to the alternation (position in the list) requirement, the reduction is 50 per cent.

<sup>49</sup> See the Second Report submitted by Portugal pursuant to Article 25 paragraph 1 of the Framework Convention for the Protection of National Minorities of the Council of Europe, 14 January 2009: <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>. Information provided to the OSCE/ODIHR EAM by interlocutors from the Portuguese Office of the High Commissioner for Immigration and Inter-Cultural Dialogue.

<sup>51</sup> Ibid.

## X. ELECTION OBSERVATION

The election law grants the candidates and party observers the right to be present at all stages of election day procedures, including opening of polling stations, voting and counting. This right to observe was widely exercised and contributed to transparency and the high level of public confidence. Candidates and party observers are also entitled to lodge complaints.

There is no provision in the law for international or domestic non-partisan observation. The MoIA provided the OSCE/ODIHR EAM with a supporting letter and the mission was given access to all polling stations by the respective PSC chairpersons. All levels of the election administration were co-operative and provided all information requested by the OSCE/ODIHR EAM. The co-operation received by the OSCE/ODIHR EAM was most appreciated and allowed the mission to have full access to the electoral process.

*To eliminate any uncertainty in regard to observers and to bring the law into full compliance with OSCE commitments,<sup>52</sup> the authorities should adopt specific legal provisions permitting both non-partisan domestic observers and international observers to observe elections.*

## XI. ELECTION DAY: VOTING AND COUNTING

In line with the standard OSCE/ODIHR practice for assessment missions, the EAM did not observe election day proceedings in a systematic or comprehensive manner. However, OSCE/ODIHR EAM members visited a number of polling stations on election day in the districts of Lisbon, Bragança, Azores and Madeira.

### A. VOTING

On 27 September, voting took place in 11,876 polling stations, between 8 a.m. and 7 p.m. Only paper ballots are used in parliamentary elections in Portugal. According to the law the ballots contain only the names, abbreviations and symbols of the parties and coalitions running in the elections, without candidates' names.<sup>53</sup>

In the polling stations visited, polling took place in a well-organized manner, with the political party representatives present expressing full confidence in the process. Women and youth were well represented in the PSCs visited. One parish board representative was present in each group of polling stations<sup>54</sup> visited, to provide support in logistical issues and to help any voters to identify their polling stations in case they were in the wrong location.

The voter lists are organized in the order of the voter registration numbers. Consequently polling stations are organized according to voters' numbers, not names.<sup>55</sup> Voters have to prove their identity by identity card or any other official document with a photo, or by two

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<sup>52</sup> Paragraph 8, Copenhagen Document, 1990.

<sup>53</sup> Article 95.2. of the election law.

<sup>54</sup> Several polling stations were usually grouped together, e.g. in schools.

<sup>55</sup> Given that Portuguese usually have many family names, it is not always clear which is to be considered the main family name.

voters who certify the person's identity under oath, or otherwise by unanimous recognition by the PSC members. Although not required by law, most voters brought their voter registration cards. If a voter did not have the card, he or she could enquire with the parish board representative who checked online to obtain the voter's registration number.

Not all the polling stations visited were in possession of the list of deleted names of voters, which was to be circulated for verification purposes. Moreover, some polling stations had different interpretations of the purpose of the lists of deleted voters, assuming that it meant that such voters could not vote, even if they came to the polling station.

## **B. COUNTING**

After the end of voting at 7 p.m. ballots are counted in the polling stations. In case of doubts or objections, the party lists' delegates can request clarification or file complaints to the PSC chairperson. If the complaint is rejected, the respective ballot is counted, but it is separated and the reason for the complaint or protest is written on the reverse, along with the PSC decision. Such ballots, along with the invalid ones, are sent to the TCC.

The valid ballots are sealed and safeguarded by the district judge and are to be destroyed when the time limit for the filing of judicial appeals expires or when such cases are settled.

The PSC secretaries are responsible for writing the minutes of the voting and counting procedures, which must include all relevant information, including the names of the political party representatives who were present, the decisions made by the PSC, the total number of registered voters and voters who cast their ballots, the registration number of the early voters, the number of votes obtained by each list, the number of invalid and blank votes and the number of ballots that were subject to complaints.

Within 24 hours, the PSC chairperson must deliver the material in person or send it by registered mail to the TCC, including the minutes, the voter lists and the invalid and contested ballots. The counting processes in the polling stations visited were swift and efficient, although not all procedures were followed to the letter, such as announcing each vote aloud or counting spoiled ballots first.

## **C. TABULATION**

The tabulation of results based on the polling station minutes starts at 9 a.m. on the second day following the polls and must finish within eight days. At the start of the tabulation, the TCC decides on the ballots that were subject to complaints and corrects the count of the respective polling stations, should that be required. TCC members also review the invalid ballots and correct the count of each PSC if necessary.

The tabulation results for each constituency include the total number of registered voters and voters in that constituency; the number of votes obtained by each list; the number of blank votes and the number of invalid votes; the distribution of the seats between the different lists; the determination of the candidates elected on each list. These results are to be posted at each tabulation centre. The law does not require the publication of results by polling station although the results of the counting in the polling stations are posted at each polling station.

The TCC minutes, including the tabulation results and the complaints are then sent by post or brought in person to the NEC. One copy of the results, as well as the election materials, is sent to the civil governor, or in the autonomous regions, to the Minister of the Republic. After the close of polls, DGIA published the preliminary results on its website, broken down to parish level results. The preliminary results were received by telephone or e-mail from the parishes.

In the eight days following the reception of the tabulated results of all the electoral districts, the NEC publishes in the national gazette a chart with the result of the elections, by constituency and in total, including the number of registered voters, invalid votes, blank votes, the number of votes attributed to each party or coalition (also expressed in percentage), the number of seats attributed to each party or coalition, and the names of the members of parliament elected.

According to preliminary results there were 78.023 invalid ballots (1.37 per cent). Different factors may have contributed to this figure. Voters may have invalidated ballots as a protest, or they may have marked them improperly by mistake. The OSCE/ODIHR EAM noted that the PSCs visited did not always follow the same rules for invalidating ballots. Some considered only a cross as a valid mark, while others also accepted a tick or a dot.<sup>56</sup> In the polling stations visited there was no information material, such as posters, explaining how to fill in the ballot. There was also a significant number of blank ballots (1.74 per cent) that are also considered invalid.

*Consideration could be given to clarifying the law in this respect and to stipulate that a ballot is valid provided that the intent of the voter is clear.*

## **XII. ELECTION DISPUTE RESOLUTION**

### **A. COMPLAINTS AND APPEALS**

The rules on complaints and appeals are dispersed among different laws and regulations. The procedures and the institutions handling them differ depending on the subject matter. In general, the procedures are detailed and include important procedural safeguards, guaranteeing due process of law; however, some aspects of the process lack procedural detail.

The law provides for the possibility of complaints to the NEC about decisions by the civil governors concerning the use of public spaces for campaign purposes, but it does not explicitly provide the NEC with the competence to also address other complaints and appeals. However, the NEC has established in its rules of procedures the right for any citizen or political party to lodge a complaint before it. The NEC will then decide whether the complaint is eligible and whether further action or decisions are necessary. Decisions by the NEC can be appealed to the Constitutional Court.

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<sup>56</sup> The election law appears to require a cross as a valid mark (Article 96 paragraph 4 and Article 98 paragraph 3), although some articles only mention 'marking' (Article 95 paragraph 3 and Article 98 paragraph 2).

The NEC reported that only a small number of official complaints were lodged with them, the majority of which related to the nomination of polling staff, media coverage, destruction of campaign posters, and allocation of spaces for campaigning.<sup>57</sup> The NEC addressed most of these cases by requesting the competent authorities to take action or by calling on the candidates and parties to respect the rules. Most complaints were addressed and resolved in an informal manner by involving political parties, election officials and local authorities.

Complaints related to registration of voters can be lodged before the Registration Commissions or the MoIA. The MoIA's decisions can be appealed to the first instance courts, and their decisions can in turn be appealed to the Constitutional Court.

Complaints regarding the registration of candidate lists can be brought to the respective judge in charge of registering candidate lists. His or her decisions can be appealed to the Constitutional Court. There were five appeals to the Constitutional Court concerning decisions regarding candidate lists. All of them were rejected on the grounds that the parties did not submit the candidate lists to the respective judges within the legal deadlines.

The laws establish relatively short timeframes for lodging and adjudicating election-related complaints and appeals (between one and five days). For example, appeals regarding the submission of candidate lists must be lodged before the Constitutional Court within two days from the date of their posting "at the door of the Court".<sup>58</sup>

Out-of-country voters can submit any complaint to the diplomatic mission in their country of residence, which forwards them to the appropriate authority in Portugal.

## **B. ELECTORAL OFFENCES**

Provisions about electoral offences are contained in the election law and in the penal code. While the election law only has provisions regarding offences which occur during election day, the penal code includes some offences related to the voter registration process. The electoral offences include certain illegal acts in the electoral process (e.g. impersonation, vote buying, intimidation, violation of the secrecy of vote, ballot stuffing and falsification of election documentation). Possible sanctions are fines or imprisonment.<sup>59</sup>

## **C. CHALLENGES TO ELECTION RESULTS**

Complaints about voting, counting and aggregation processes are made with the bodies in charge (PSCs, TCCs). Any such complaints and subsequent decisions by these bodies are mentioned in their minutes. Appeals of these decisions can be made to the Constitutional Court within 24 hours of the proclamation of official results of a given electoral district. The Court can annul the elections of the entire district or specific polling stations if the irregularities found "can influence the overall results."

It appears to be restrictive to limit appeals against results to cases which have been registered in the minutes of electoral bodies. For example a party which may not have delegates in all polling stations, could discover on the basis of the published results that

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<sup>57</sup> According to the NEC, they received 68 complaints and appeals before election day.

<sup>58</sup> Articles 29 and 30 of the election law.

<sup>59</sup> Some fines, being as low as 2,50 Euro, appear outdated.



votes were wrongly aggregated. Since voters are not permitted to attend the counting and aggregation of votes under this provision they cannot challenge the election results.

*Consideration could be given to amending the legislation in order to allow appeals of election results by voters or parties, even if they did not register complaints at the moment of counting and aggregating results.*

**ANNEX: ELECTION RESULTS**

**Final Results, Parliamentary Elections in Portugal, 27 September 2009**

<b>Party</b>	<b>Votes</b>	<b>Vote share (%)</b>	<b>Seats</b>
PS	2.077.238	36,56	97
PPD/PSD	1.654.777	29,11	81
CDS-PP	592.997	10,43	21
B.E.	558.062	9,82	16
PCP-PEV	446.994	7,86	15
PCTP/MRPP	52.784	0,93	
MEP	25.475	0,45	
PND	21.476	0,38	
MMS	16.616	0,29	
PPM	15.090	0,27	
MPT-P.H.	12.307	0,22	
P.N.R.	11.628	0,2	
PPV	8.533	0,15	
PTP	4.789	0,08	
POUS	4.320	0,08	
MPT	3.240	0,06	
Blank votes	99.161	1,74	
Invalid	78.023	1,37	
<b>TOTAL</b>	<b>5.683.967</b>		<b>230</b>

Registered voters	9.514.322
Votes	5.683.967
Turnout	59,74%

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).