



Office for Democratic Institutions and Human Rights

THE NETHERLANDS

EARLY PARLIAMENTARY ELECTIONS

12 September 2012

OSCE/ODIHR ELECTION ASSESSMENT MISSION REPORT



Warsaw
16 November 2012

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OSCE/ODIHR Election Assessment Mission Report¹

I. EXECUTIVE SUMMARY

In response to an invitation from the Permanent Mission of the Kingdom of the Netherlands, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) to the Netherlands for the 12 September 2012 early parliamentary elections to the House of Representatives.

The early elections to the lower chamber of parliament were conducted in an open, pluralistic and transparent manner and voters enjoyed a wide choice of political options. The electoral process benefited from a high level of public confidence. The campaign was active and open, and was held with respect for fundamental freedoms of association, assembly, and expression. With the financial crisis dominating the news, economic recovery and the role of the European Union were prevalent in campaign and political speeches. The media covered the election campaign extensively, including through a number of televised debates.

While the legal framework provides a sound basis for the conduct of democratic elections, it could benefit from further elaboration, particularly on the conduct of the campaign, proxy voting, political finance, and the complaints and appeals processes. Discussions on electoral law reform are ongoing and a number of amendments to the legal framework are to be considered by the incoming parliament, including those aimed at enhancing the transparency and accountability of party funding. However, further improvements beyond those being discussed could still be made to bring legislation more fully in line with OSCE commitments and other international standards.

The OSCE/ODIHR EAM did not receive any specific allegations of proxy voting being used inappropriately in these elections. However, the scale of its use, including notable differences between different communities, and the challenges that it poses to the secrecy and equality of the vote are of concern. A decision by the authorities to tabulate the number of proxy votes cast is a welcome step in determining the exact extent to which proxy voting is used. Nevertheless, the unconditional use, in practice, of proxy voting challenges OSCE commitments.

The election management bodies were regarded as impartial and professional by the majority of stakeholders. Election administration is decentralized, with several national and local bodies responsible for different aspects of the process. There was general confidence in the quality of voter and residency data and in mechanisms of accountability on election day. Registration of party names and candidate lists was inclusive and transparent.

Media covered the election campaign extensively, providing citizens with access to various political views and the possibility to make an informed choice. In line with the legislation, the public broadcasting service granted free airtime to the political parties running in all electoral

¹ The English version of this report is the only official document. An unofficial translation is available in Dutch.

districts. The importance of widely followed televised debates organized by public and private broadcasters as the primary campaign method was highlighted by OSCE/ODIHR EAM interlocutors. However, non-parliamentary parties expressed their dissatisfaction with not being invited to key debates.

The current system of political finance is quite liberal with no donation or expenditure ceilings. Various OSCE/ODIHR EAM interlocutors expressed concern that this may disadvantage non-parliamentary parties that do not receive subsidies, thus potentially reducing pluralism and political debate. Several recommendations and proposals for amendments were made in recent years to enhance the transparency and accountability of political finance. A draft bill on Financing of Political Parties was adopted by the House but had not yet been adopted by the Senate at the time of writing.

OSCE/ODIHR EAM interlocutors expressed confidence in the work of bodies involved in the review on election-related disputes. However, a number of shortcomings in provisions related to the adjudication of complaints and appeals could benefit from a review. The absence of a possibility to appeal administrative decisions on all electoral issues to a judicial body, of formal mechanisms for the review of complaints by election commissions, and of clear deadlines for the submission and review of complaints and appeals reduced the effectiveness of the legal redress system.

In accordance with the OSCE/ODIHR's methodology, the EAM did not conduct a comprehensive and systematic observation of election day proceedings. Nonetheless, mission members visited a limited number of polling stations on election day and found the process orderly and transparent, although some minor issues, such as a lack of uniformity in the counting procedures, were noted.

A number of recommendations in this report set out ways in which the electoral process may be further improved. The OSCE/ODIHR stands ready to support the Dutch authorities in their efforts to address these recommendations.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

On 24 May 2012, the OSCE/ODIHR was invited by the Permanent Delegation of the Kingdom of the Netherlands to observe the 12 September early elections to the lower chamber of the Dutch parliament. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to the Netherlands from 20 to 22 June 2012. Based on its recommendation, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 30 August to 15 September 2012.²

The OSCE/ODIHR EAM was led by Ambassador Lubomir Kopaj and consisted of a team of five election experts from as many participating States. The EAM was based in The Hague and also visited Amsterdam, Utrecht, Hilversum, Delft, and Leiden.

The OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs, the parliament, the Ministry of Interior and Kingdom Relations (MoIKR), the Electoral Council (EC), the

² All OSCE/ODIHR reports on elections in the Netherlands are available at: <http://www.osce.org/odihr/elections/netherlands>.

Administrative Jurisdiction Division of the Council of State, the Equal Treatment Commission, the representatives of local state authorities, political parties, media, civil society organizations and other interlocutors for the co-operation and assistance extended to the OSCE/ODIHR EAM.

III. BACKGROUND

The Netherlands is a constitutional monarchy with a bicameral parliament (*Staten Generaal*). The Senate (*Eerste Kamer* or First Chamber) is comprised of 75 members indirectly elected for a four-year term by 12 provincial assemblies.³ The House of Representatives (*Tweede Kamer* or Second Chamber), consists of 150 members, directly elected for a four-year term through an open list, proportional representation system.

The Netherlands enjoys a high degree of political pluralism with ten political parties and a one-person, independent faction in the outgoing House. Governments have always been formed by coalitions, as no party ever obtained an absolute majority. The minority government formed after the 9 June 2010 early parliamentary elections consisted of the People's Party for Freedom and Democracy (*Volkspartij voor Vrijheid en Democratie*, VVD) and the Christian Democratic Appeal (*Christen-Democratisch Appèl*, CDA). These parties were supported by the Party for Freedom (*Partij voor de Vrijheid*, PVV).⁴

On 27 April 2012, the Council of Ministers called for early House elections to take place on 12 September, following the collapse of the minority government over proposed austerity measures. After seven weeks of negotiations between the three parties, the PVV leader stepped out of the negotiation process, withdrawing the support of his party for the minority coalition. Shortly after the collapse, VVD, CDA, GL, D66 and the CU agreed on a draft 2013 budget. The cabinet continued to govern in a caretaker capacity until a new government could be installed.

Traditionally, the monarch has had the initiative in forming the government by appointing a *rapporteur* on the matter. On 19 March 2012, the parliament passed a decision that it will assume the monarch's role in this regard in the future.⁵

For the first time, inhabitants of the Bonaire, Sint Eustatius and Saba islands were able to vote in parliamentary elections. This followed a referendum in which these islands chose to have closer ties with the Netherlands,⁶ after the Netherlands Antilles - a former country of the Kingdom of the Netherlands in the Caribbean - dissolved in October 2010.⁷

³ The last Senate elections took place on 23 May 2011.

⁴ VVD held 31 seats in the House, CDA 21 and PVV 23. Other parties in the outgoing house were: the Labour Party (*Partij van de Arbeid*, PvdA) with 30 seats, the Socialist Party (*Socialistische Partij*, SP) with 15 seats, the Democrats 66 (D66) with 10 seats, the Green Left (*Groen Links*, GL) with 10 seats, the Christian Union (*Christen Unie*, CU) with 5 seats, the Reformed Political Party (*Staatkundig Gereformeerde Partij*, SGP) with 2 seats, and the Party for Animals (*Partij voor de Dieren*, PvdD) with 2 seats. There was also one independent member of the House, following his withdrawal from the PVV group.

⁵ The parliament is to first debate the election results, then appoint a *rapporteur* to negotiate a possible coalition government among parties, who is to then report back to the parliament. The prime minister is still to be appointed by the monarch, with the possibility of a vote of no-confidence in the parliament upon its investiture.

⁶ As a result the islands were incorporated in a 20th district named Bonaire.

⁷ The Kingdom of the Netherlands consists of four countries: the Netherlands, Aruba, Curacao and Sint Maarten.

IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

A. ELECTORAL SYSTEM

The members of the House are directly elected through an open list, proportional representation system. Although the Netherlands is divided into 20 electoral districts for mainly administrative purposes, the country is treated as a single constituency. The seats are distributed at the national level among different lists that pass a natural threshold.⁸ Any remaining seats are then distributed according to the d'Hondt formula.

Once the total number of seats for each party has been determined, seats are then allocated among candidates according to the order in which they appeared on the list. Candidates who obtained at least 25 per cent of the electoral quotient - 0.1667 per cent of the valid votes - are declared elected automatically, regardless of their position on the list.⁹

B. LEGAL FRAMEWORK

The Constitution and the Charter for the Kingdom of the Netherlands guarantee basic rights and fundamental freedoms, including the principles of equal suffrage and the secrecy of the ballot. They also define the electoral system and eligibility conditions for suffrage. The rights to vote and stand and electoral processes are further governed by the “Act of 28 September 1989 Containing New Provisions Governing the Right to Vote and the Elections” (hereinafter, the Elections Act), as amended in 1998, 2005, 2009 and 2011. The electoral process is further regulated by the 1999 Political Parties Subsidization Act, the 2009 General Administrative Law Act, and the Criminal Code, organic laws on the court and procedural codes, and the 1989 Elections Decree that unifies election-related regulations.¹⁰

The Constitution formally integrates international laws into law. The Netherlands is party to a number of international treaties and conventions, namely the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the Convention on the Elimination of All Forms of Discrimination against Women. However, the Netherlands is yet to ratify the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and its Optional Protocol.

The legal framework is generally in line with OSCE commitments and other international standards for democratic elections. While stakeholders did not express particular concerns in this regard, some aspects could benefit from a review, including the provisions related to proxy voting, complaints and appeals mechanisms, and campaign finance regulations (see respective sections).

⁸ For these elections, the natural threshold was 62,829 votes. The quotient is calculated by dividing 100 per cent (representing the valid votes) by 150 (the number of seats).

⁹ In past elections, only a few relatively well-known candidates succeeded in obtaining seats by preferential vote. In these elections, two candidates obtained the required 15,708 preferential votes, but only one was awarded a seat as the party of the second candidate did not pass the natural threshold requirement.

¹⁰ These include the 2010 Model Regulation Elections Act and Elections Decree.

OSCE/ODIHR EAM interlocutors noted ongoing discussions on electoral law reform and a draft law on amendments to the Elections Act that is to be reviewed by the new legislature. A draft bill aiming to increase the transparency of donations and party funding, in general, was adopted by the House in April 2012 and was pending in the Senate at the time of writing. Neither draft law was applicable for the 2012 elections, which were conducted under the same legal framework as the 2010 elections.

C. SUFFRAGE RIGHTS

The legislation grants the right to vote in parliamentary elections to citizens over the age of 18, unless they have been deprived of their voting rights as a result of serving a criminal conviction. In particular, people convicted of certain felonies and sentenced to a term of over one year can have voting rights temporarily suspended upon a court's decision.

The Elections Act allows people with physical disabilities, including visual impairment, to request assistance in polling stations. This right, however, is not extended to voters with mental disabilities, who have to vote unassisted.¹¹ Illiterate voters or those who cannot read Dutch are also not allowed to vote with assistance.

With the view of facilitating participation of voters with mental disabilities, consideration could be given to amending the guidelines on providing assistance to mentally disabled voters.

To be able to stand, candidates have to be over the age of 18 or be reaching this age during the mandate. In the latter case, such elected candidates are placed on a 'reserve list' and are eligible to assume their seat upon reaching the age of 18.

The Elections Act contains extensive provisions facilitating universal franchise, providing for out-of- country voting, mobile voting, as well as voting for hospitalized voters.

D. PARTICIPATION OF WOMEN

For several years, a legal dispute has been ongoing between SGP and the Dutch state. This party did not allow women candidates on its lists.¹² Following a number of proceedings in different courts, the Supreme Court ruled on 9 April 2010 that SGP must allow women to stand for election and that the state has a duty to ensure that women can exercise this right, in practice.¹³

¹¹ Article 29 of the UNCRPD states that "States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to: (a) Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by: ... (iii) Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice." See at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#29>.

¹² Since its foundation in 1918, SGP's position has been not to allow women as members or on its lists of candidates standing for elected office. Since 1922, SGP consistently held one to three seats in the House. It received public subsidies, until the Hague District Court in 2005 decided that this should be stopped on the basis that women are not allowed to be members of the party. The SGP began accepting women as party members in 2006.

¹³ The Supreme Court concluded from Article 7 of the CEDAW and from Articles 2 and 25 of the ICCPR that the SGP position is unacceptable, regardless of the religious conviction on which it is based.

On 10 July 2012, the European Court of Human Rights (ECtHR) declared an application lodged by the SGP against the ruling of the Supreme Court inadmissible.¹⁴ The ECtHR also observed that no action has been taken to compel the SGP to admit women candidates and that in fact, the government has made public its decision to refrain from taking any such action. The ECtHR refrained from stating any view as to what, if anything, the government should do to put a stop to the present situation. The SGP informed the OSCE/ODIHR EAM that it is now considering filing an appeal before the ECtHR's Grand Chamber. According to the MoIKR, meetings with the SGP to discuss the matter started in August 2012.

In light of international commitments and the recent ECtHR decision, further efforts should be made by authorities to ensure the equal participation of women and men in the electoral process.

Nevertheless, the Netherlands enjoys a high level of female participation. In the outgoing parliament, 41 per cent of representatives were women, while 4 out of 12 ministers were women. In the incoming parliament, 39 per cent of representatives are women.

E. PROXY VOTING

The Elections Act states that a voter who is not able to vote in person may vote by proxy without providing justification. Voters who are imprisoned can vote only by proxy. A proxy nominated by a voter has to provide a photocopy of the voter's identification document and the voter's card at the polling station (see Voter Registration section). Voters can serve as proxies for a maximum of two other voters; they can also cast their own ballot at the same time as casting proxy votes.

As a longstanding practice, proxy voting is widely supported by political parties, the election administration and voters.¹⁵ Despite safeguards, several problems with proxy voting remain. The secrecy of the vote is compromised since the voter has to disclose his or her choice to the proxy and the equality of the vote is also undermined. The voter has no guarantee that the proxy will cast the vote in the way that s/he requested. Finally, the measure may inadvertently facilitate 'group' or 'family' voting, with the possibility that certain voters may be pressured or intimidated.

¹⁴ The SGP complained under Articles 9, 10 and 11 of the European Convention of Human Rights that the Supreme Court deprived it and its individual members of their right to freedom of religion, the right to freedom of expression and the right to freedom of assembly and association. In its ruling, the ECtHR stated that a political party may, under the European Convention of Human Rights, pursue its political aims on two conditions: firstly, the means used to those ends must be legal and democratic; secondly, the changes proposed must themselves be compatible with fundamental democratic principles. Provided that it satisfies these conditions, a political party animated by the moral values imposed by a religion cannot be regarded as intrinsically inimical to the fundamental principles of democracy, as set forth in the Convention. See the ECtHR ruling at: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{\"itemid\":\[\"001-112340\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112340#{\).

¹⁵ A 2011 study by Statistics Netherlands, an official state body, found that 84 per cent of citizens felt that proxy voting should be retained. See: <http://www.cbs.nl/en-GB/menu/themas/overheid-politiek/publicaties/artikelen/archief/2011/2011-3325-wm.htm>.

The OSCE/ODIHR EAM did not receive any specific allegations of proxy voting being used inappropriately in these elections. However, the scale to which it is apparently used,¹⁶ notable differences in its use between different communities,¹⁷ together with issues of vote secrecy and equality are of concern. This challenges paragraphs 7.3 and 7.4 of the 1990 OSCE Copenhagen Document, as well as international treaties that the Netherlands is party to.¹⁸

In a welcome step, the EC and MoIKR have established figures for proxy voting in these elections, including by municipality and polling station. This should allow electoral stakeholders to analyze the data and identify any areas where the system may be open to abuse.

Proxy voting should be further regulated in order to bring legislation more fully in line with OSCE commitments and other international standards for democratic elections. As a first step, consideration could be given to limiting the practice of proxy voting to the stated purpose in the law of facilitating the participation of voters who do not expect to be able to visit their polling station on election day; for instance, by requiring a written explanation or an in-person application prior to election day.

F. OUT-OF-COUNTRY VOTING

Voters residing outside the Netherlands can vote in-person, by mail or by proxy. In order to vote, they have to apply for a postal registration certificate from the mayor of The Hague no later than six weeks prior to elections. Voters who applied in previous elections automatically receive an invitation to apply once again. In these elections, of 48,374 applications, 35,898 people (88.7 per cent) chose to vote out-of country.¹⁹

Voters abroad could vote by mail or drop off their postal votes at 27 out-of-country locations (25 consular offices and 2 military bases) that counted the votes onsite. For the first time, voters could download the postal vote application form on-line and email it back signed and scanned. However, the postal registration certificate was still sent to voters abroad only by mail and a new certificate cannot be issued if it is lost. Ballots mailed by voters abroad had to arrive at the designated Principal Electoral Committee (PEC) in The Hague no later than 15:00 on election day.

V. ELECTION ADMINISTRATION

A. OVERVIEW

The electoral administration is decentralized among several national and local bodies. The EC is an independent body consisting of seven members (three women and four men) appointed

¹⁶ According to MoIKR, some [10.5 per cent of the voters voted by proxy](#).

¹⁷ The above-mentioned study of the 2006 elections estimated that 21 per cent of voters in “non-western communities” voted by proxy, double compared to the national average, and that up to 25 per cent of women with “non-western” background may have voted by proxy.

¹⁸ Paragraph 7.3 and 7.4 of the same document state that the participating States will “guarantee universal and equal suffrage to adult citizens” and will “ensure that votes are cast by secret ballot or by equivalent free voting procedure...” See also ICCPR (Article 25); General Comment to Article 25 (paragraphs 20-22); Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 (Article 3).

¹⁹ 40,493 citizens registered to vote by mail, 4,920 to vote in person and 2,961 to vote by proxy.

by the government. The official role of the EC during these elections was to register the names under which election contestants would be standing, establish the order of lists on the ballot and determine the final results. The MoIKR oversaw the administration of elections and was responsible for issuing relevant regulations, providing training materials for the lower-level commissions and conducting voter education. Political parties expressed a high level of confidence in the election administration.

At the regional level, 20 PECs, one in each electoral district, were responsible for registering candidate lists and tabulating the results in their municipalities. PECs consist of five members appointed by the MoIKR and are chaired by the mayor of the city or town where the PEC is located.

The 418 municipalities have significant responsibilities and independence in organizing elections. They are responsible for voter registration, determining the number and location of polling stations, and staffing and training approximately 10,000 polling station electoral committees (PSECs). The Elections Act requires that at least 25 per cent of polling stations must be accessible to people with disabilities. Although the MoIKR produced and distributed training materials, including interactive e-learning guides, municipalities were not obliged to use them and some supplemented these materials with their own.

While neither the MoIKR nor the EC technically have direct authority over lower-level election commissions, PECs and PSECs frequently consulted with them on technical and administrative issues. MoIKR and EC jointly ran an Information Centre that provided advice and information to election commissions and municipalities on all election-related issues.

The EC announces the election results and sends them for review to the Credentials Committee of the outgoing House. The EC has the right to request a full or partial recount. The Credentials Committee reviews all counting protocols, checking for any complaints. It also verifies that all elected candidates are eligible to become members of parliament.²⁰ The final election results are confirmed by the outgoing House, which accepts the new MPs based on the Credentials Committee's recommendations.

B. VOTER REGISTRATION

Municipal authorities are responsible for maintaining voter registers, which are based on information drawn from the population register. The list of eligible voters is automatically extracted and constantly updated. There were 12,689,810 voters registered for these elections.

At least two weeks before election day, municipalities send voter cards (*stempas*) to all eligible voters. Voter cards are personalized documents with security features and cannot be copied, although voters may request a replacement in case of loss. A voter can vote in any

²⁰ For a full list of these criteria, see "Law on incompatibilities States-General and European Parliament", available at http://wetten.overheid.nl/BWBR0006612/geldigheidsdatum_07-06-2010. The 2010 OSCE/ODIHR EAM recommended that "in order to ensure full compliance with Paragraph 7.9 of the 1990 OSCE Copenhagen Document, which calls on states to ensure that those "candidates who obtain the necessary number of votes required by law are duly installed in office", consideration could be given to reviewing the procedures for nomination of candidates with a view to ensuring that prospective candidates comply with the legal requirements to become members of the House before being placed on the ballot."

polling station of the municipality where s/he is registered, but may also request to vote at any other location in the country.²¹

In order to cast a ballot, a voter must present his or her voter card and a state-issued identification document²² to a member of the PSEC, who verifies that the voter card has not been invalidated.²³ There are no voter lists in polling stations and the accountability is ensured through the retention of voter cards.

There is general confidence in the quality of voter registration and the accountability for voter cards. However, some problems were reported. In one case, 58,000 voter cards were printed with an erroneous watermark.²⁴ The decision was made not to recall them since all other information was correct and the watermark was not easily visible. In another case, 961 voter cards were sent to incorrect addresses in Amsterdam; the municipality sent replacement cards, while those with errors were invalidated. Some election administration interlocutors stated to the OSCE/ODIHR EAM that such incidents are not uncommon and that the voter card system should be reconsidered.

C. REGISTRATION OF CANDIDATE LISTS

Political groupings wishing to contest elections can register their names with the EC up to 43 days before the deadline for candidate list nomination.²⁵ However, the registration of the name is not a prerequisite for the registration of a candidate list. Non-registered groupings and individuals are also allowed to compete under the law with the so-called 'white lists' (*blanco lijst*).

In order to register a candidate list, election contestants had to submit 30 support signatures from the specific electoral district where they intended to field candidates, a deposit of EUR 11,250, and written consent from all the candidates.²⁶ The signature and deposit requirements are waived for parliamentary parties. Contestants may register different candidate lists in each of the 20 electoral districts. In practice, however, most field the same or nearly the same list countrywide, in which case the list can be registered centrally with the PEC in The Hague.²⁷

There is no requirement for a minimum number of candidates on the list and parties can include independent candidates as well. Parties that have obtained at least 15 seats in the previous elections can include maximum 80 candidates on their lists, while others are limited to 50.

²¹ The request has to be made at least two weeks before election day, if submitted by mail, or at least five days before election day, if submitted in person.

²² As in the past elections, expired identification documents could also be used for voter identification.

²³ Municipalities invalidate all cards that have been declared as lost or printed with errors.

²⁴ The cards had printed 'Local Elections 2011' instead of 'Parliamentary Elections 2012'.

²⁵ The law does not refer to parties but rather to 'political groupings'.

²⁶ The deposit is returned if the party wins at least 75 per cent of the electoral quotient votes (i. e. 0.5 per cent of the total number of votes).

²⁷ Elections Act, Section H 2 states that the lists can be registered centrally "if the political grouping in question is taking part in all the electoral districts with lists of candidates containing over thirty names and the names are the same, except for not more than the last five, and are listed in the same order." For centralized list registration, 600 support signatures are required, 30 from each of the 20 electoral districts.

For these elections, 20 parties registered their lists centrally. Of these, four parties failed to collect the support signatures in the '20 Bonaire' electoral district and were therefore not on the respective ballot. One additional party registered only in the Amsterdam electoral district, thus bring the total to 21 parties on the ballot there.

The candidate lists had to be submitted on a single day, 31 July, between 09:00 and 15:00. However, The Hague PEC invited all the interested parties to review the documentation to be sure that all requirements were fulfilled three days before the deadline. Moreover, the PEC allowed three additional days after the deadline for the parties to submit any missing information.

There were 972 candidates on the lists of the 21 parties participating in the elections, including 303 women and 669 men. The registration of contestants was transparent and yielded a broad choice of political parties and candidates. The majority of political parties did not report any difficulties with the registration. In one case, The Hague PEC did not register the list of candidates from the 'IQ party' as it failed to submit the supporting signatures and the financial deposit. The party appealed this decision to the Administrative Division of the Council of State, which upheld the PEC's decision.

VI. ELECTION CAMPAIGN

The election campaign is largely unregulated. There is no official campaign period, but campaigning traditionally begins some four weeks in advance of election day and usually takes place up to and including election day. For these elections, the campaigning period was considerably shortened due to the summer holidays.

The campaign was highly competitive and visible and was characterized by respect for fundamental freedoms of association, assembly, and expression. Due to the economic crisis and proposed austerity measures, the campaign platforms focused on the question of European integration and the Euro zone. Health care and the housing market were two other popular campaign themes. The question about which parties could form a coalition after the elections, as well as considerations of leadership qualities of the potential candidates for the prime minister position also featured in the campaign.

All OSCE/ODIHR EAM interlocutors highlighted the importance of widely followed televised debates as the primary campaign method, with the most important on the eve of election day. Parties also used the billboard space provided by the municipalities, while the distribution of flyers and canvassing in public places were less visible.

Over the past years, election campaigning has increasingly shifted to electronic media. The internet became increasingly important for reaching voters, including through interactive social networking sites. The Dutch electorate made extensive use of internet vote adviser websites, such as the *StemWijzer* (Vote Adviser) and *Kieskompas* (Election Compass).²⁸

²⁸

See <http://www.stemwijzer.nl/> and <http://www.kieskompas.nl/>. By asking users to respond to 30 statements on a range of issues, these sites attempted to help users understand the extent to which the positions of different parties corresponded to their own views. Almost 4.8 million voters consulted the *StemWijzer* website during these elections.

Another website, the *Stembreker* (Vote Breaker), advised voters on how to vote in order for a desired coalition to be formed in the future parliament, conditional on all the participants agreeing to vote according to the scheme suggested by the website.²⁹ Although potentially controversial, none of the political parties expressed concerns with regard to this tool.

Different opinion polls proliferated during the campaign to the extent that their unregulated character were questioned by many OSCE/ODIHR EAM interlocutors. Some interlocutors opined that the law should be changed to limit the publication of opinion polls to a certain period before election day.

A particular but traditional feature of the campaign was the involvement of the CPB Netherlands Bureau for Economic Policy Analysis (CPB) in analysing the potential economic impact of political party programmes.³⁰ All parties registered for these elections presented their programmes to the CPB, except PvdD. Some political parties informed the OSCE/ODIHR EAM that the CPB's analysis played an important role in influencing the debate during the campaign and most parties identified it as a valuable addition to the campaign. Although the involvement of a state institution in determining the impact of political platforms could be potentially controversial, parties met by the EAM expressed their trust in the CPB's professionalism, except SP, which objected to certain aspects of the methodology used in preparation of the 2012 CPB report.

VII. PARTY AND CAMPAIGN FINANCING

The political finance system is mixed, whereby parties receive public funding and can also receive private donations. Under the 1999 Political Parties Subsidization Act, public funding is distributed to all parliamentary parties that have a minimum number of party members.³¹ Parties are free to use public subsidies for broadly defined activities.³² The total amount of public funding in 2012 was approximately EUR 16 million. Various OSCE/ODIHR EAM interlocutors expressed concern that the current system disadvantages non-parliamentary parties and may reduce pluralism and political debate.

Political parties can receive unlimited contributions from individuals and from legal entities, including private corporations. The legislation does not impose expenditure ceilings on either parties or candidates. Some OSCE/ODIHR EAM interlocutors estimated that each of the larger parties spent EUR 1 to 2 million on the 2012 campaign.

All parties receiving public funding are obliged to report to the MoIKR, which is vested with the oversight of political finance. Financial reports have to include amounts donated for all donors who are not individuals and have donated more than EUR 4,538 in a year. Such donations also have to be made public by the party. Names of donors can be omitted if so

²⁹ The website was organized by a newly formed foundation G500 (<http://www.g500.nl/>). According to the website, 251,565 voters accessed the *Stembreker* and 42,359 used it.

³⁰ CPB is part of the Ministry of Economic Affairs, Agriculture and Innovation, but is independent as far as the content of its work are concerned; see at: <http://www.cpb.nl/en/about-cpb>.

³¹ To receive state subsidies, the party must have at least 1,000 members with voting rights, who each pay an annual contribution of at least EUR 12.

³² Article 5 of the Political Parties Subsidization Act defines such activities as, among others, political education and training activities, provision of information and contacts with sister organizations outside the Netherlands, and campaigning.

requested. MoIKR does not fully audit political party accounts, but undertakes a limited review of the financing of the parliamentary parties. The law does not establish monetary penalties in case of infringement, but provides for reduction, suspension or withdrawal of state subsidies.

Several recommendations and proposals for amendments were made in recent years to enhance the transparency and accountability of political party finances, including a 2010 report by the Council of Europe's Group of States against Corruption (GRECO).³³ A draft bill on Financing of Political Parties was adopted by the House and had yet to be adopted by the Senate at the time of writing.

As detailed in the recommendation in the 2010 OSCE/ODIHR EAM report, the enactment of the draft 'Financing of Political Parties Act' could be a first step in improving accountability and transparency in campaign financing.

VIII. MEDIA

A. OVERVIEW

The media environment is dynamic and offers a pluralistic and diverse range of views. Television is considered to be the primary source of political information, followed by daily newspapers. The media is self-regulated, characterized by professionalism and high ethical standards.

There are some six hundred public and private television and radio stations, most of them operating at regional and local level. The main two private broadcasters are *RTL Netherlands*, with four national TV channels including *RTL4*, the most popular commercial channel in the country, and *SBS Broadcasting*, with three national TV channels. Although decreasing, the Netherlands still enjoys a high newspapers readership, with national daily newspapers widely distributed, especially via subscription. Paid daily newspapers' circulation is declining in favour of free papers: currently the daily newspaper with the highest distribution is the *De Telegraaf*, followed by the free dailies *Metro* and *Sp!ts*.³⁴ Internet has a high penetration and its role as source of information is growing;³⁵ however, it is mainly used by traditional media to offer their news content online and there is only one popular purely internet-based media outlet, the news website *Nu.nl*.

The Dutch public broadcasting is not run by a centralized media company, but it is rather entrusted to 21 broadcasting organizations gathered under the umbrella of NPO (*Nederlandse Publieke Omroep*). These broadcasting organizations provide editorial media content to three public television channels, six radio stations and a number of new media.³⁶ Within NPO, there are two main general broadcasting organizations: NOS (*Nederlandse Omroep Stichting*), and

³³ The 2010 Evaluation Report on the Netherlands on Transparency of Party Funding, available at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)5_Netherlands_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)5_Netherlands_EN.pdf), concluded that "insofar ... transparency of party funding is concerned, the overall picture is rather disappointing: no tangible progress has been made in respect of any of the recommendations".

³⁴ Other widely distributed paid national daily newspapers are *Algemeen Dagblad*, *De Volkskrant*, *NRC Handelsblad*, and *Trouw*.

³⁵ As of 31 December 2011, almost 90 per cent of the Dutch had access to internet; see at www.internetworldstats.com.

³⁶ The Dutch public broadcasting includes cable and digital television, radio stations, websites and services via mobile platforms.

NTR (uniting the former public broadcasters *Nederlandse Programma Stichting*, *Teleac* and *Radio Volks Universiteit*). Besides these two general broadcasting organizations there are 11 member-based organizations which represent a large part of the public media and 8 small organizations producing religious and belief programmes.³⁷

The public media system reflects the traditional Dutch system of ‘pillarization’, by which each confessional and ideological segment of the society maintains its singularity and has its own institutions, including its own media. This model results in a comprehensive and pluralistic public media service with a wide range of broadcasts.

B. LEGAL FRAMEWORK FOR THE MEDIA

The media system is largely based upon self-regulatory practices and institutions. The Constitution guarantees freedom of expression and freedom of speech. Detailed media-related regulations are laid down in the Media Act. A major change introduced in the new Act, as adopted in 2008,³⁸ was to include public digital television channels, websites and services offered via mobile platforms under the public media’s production and responsibility, along with the radio and cable television, so that the Act covers all contemporary media outlets.

The key media regulatory body is the Media Authority (*Commissariaat voor de Media*), a self-regulatory institution created on 1988 along with the adoption of the first Media Act.³⁹ The Media Authority upholds the rules set out in the Media Act and grants licenses to private broadcasters. It can process complaints related to the respect of the media law and has the power to impose sanctions if media outlets do not comply with the legislation.

The Press Council (*Raad voor de Journalistiek*) is a self-regulatory body that oversees compliance with journalistic ethics and good practice and it can comment on all media production.⁴⁰ It is possible to file a complaint with the Press Council, but only related to journalistic work. The Press Council has no power to impose sanctions or fines; however, its decisions do contribute to public opinion regarding journalistic conduct. The media seems increasingly aware of the benefits of publishing the Press Council’s decisions and complying with its recommendations. No complaints related to the journalists’ work during the 2012 election campaign were submitted to the Press Council.

C. MEDIA COVERAGE OF ELECTIONS

During these elections, the 20 political parties running in all electoral districts were considered eligible to receive airtime on public broadcasters. In order to facilitate their access to public media, the Media Authority in agreement with the Ministry of Education, Culture and Science and the MoIKR granted free airtime to all parties that registered lists in 19 mainland districts, not including the newly created district of Bonaire. The Ministry of Education, Culture and

³⁷ NOS, NTR and the religious and beliefs broadcasting associations receive an annual fixed amount of airtime stated in the Media Act, while the member-based organizations receive an annual amount of airtime that roughly corresponds to the number of their members.

³⁸ Media Act 2008 entered into force on 1 January 2009, replacing the 1988 Media Act.

³⁹ The Board can be composed by three or five members. Currently there are two members in charge, as the president’s position is vacant.

⁴⁰ The Press Council is funded by the Press Council Foundation, which is composed of major print and audiovisual media associations, as well as by professional media organizations.

Science decided to grant each party 18 minutes of airtime on television and 20 minutes on radio.⁴¹ The Media Authority drew lots to allocate time slots for the spots between 16:00 and midnight on television and between 06:00 and 23:00 on radio. Apart from free airtime, the legislation does not further specify the conduct of the campaign in public and private media.

All political parties meet with by the OSCE/ODIHR EAM were satisfied with the amount of television and radio free airtime received from NPO. From 20 August to 9 September, 19 of 20 eligible parties benefited.⁴² SGP did not take advantage of the free time.

Both broadcasting and print media covered the election campaign extensively, allowing citizens to have access to various political views and to potentially make an informed choice. The main parliamentary political parties' leaders received daily coverage in broadcasting media in a number of formats (news, electoral debates, current affairs programme and election talk shows). A number of OSCE/ODIHR EAM interlocutors criticized the extensive focus on the personal image of party leaders instead of focusing on the content of social problems and solutions.

In general, the election media coverage focused on television debates and interviews. The main electoral debates were organized by the public broadcaster NOS on 22 August and 11 September, and by the commercial broadcaster RTL on 26 August and 4 September. NOS invited all 10 political parties represented in the outgoing House, while RTL invited parties that according to opinion polls had the highest electoral ratings (top four for the first debate and top eight for the second).⁴³ Several parliamentary political parties informed the OSCE/ODIHR EAM that they received wide media coverage, to the point that it was almost excessive in the last two weeks of campaign, when they were overwhelmed with requests to participate in electoral debates.

On the other hand, non-parliamentary parties expressed their dissatisfaction with the lack of opportunity to address voters through public broadcasters.⁴⁴ However, on 10 September, an electoral debate with eight newly-established political parties was broadcast live by the *Politiek24*, a digital TV channel and website forming part of NOS. Some parliamentary parties saw the necessity to better ensure the equality of all contestants in campaigning.

NOS and RTL jointly commissioned an exit poll and broadcast the results following the closure of polling stations. They also organized a live election night programme to announce preliminary results and first reactions from political parties.

⁴¹ Every political party received six slots of three minutes each on television, one slot of 10 minutes, and 10 time slots of one minute each on radio.

⁴² Even though there is no provision for a silence period before and during the election day, the free airtime broadcasts stopped to be aired on 9 September, three days before the polls.

⁴³ VVD, PVV and SP refused, for different reasons, the invitation to participate in the first debate; the second debate was attended by all parties.

⁴⁴ The 50Plus, a party not represented in the lower chamber of the parliament, threatened to lodge a complaint against NOS for denied access and finally received one minute of airtime on the evening before election day on MAX, another publicly funded broadcaster targeting elderly viewers.

IX. COMPLAINTS AND APPEALS

The Elections Act includes provisions for complaints and appeals relating to specific aspects of elections. Complaints on voter registration and registration of political groupings or candidates can be submitted to the electoral or administrative body dealing with those issues. However, the Act does not provide the possibility to file formal complaints with the electoral administration on other issues. Instead, individuals attending meetings of different levels of the election administration can make oral objections. Voters present in polling stations may also register objections, which are included in the official report. In the absence of clear procedures, such objections were dealt with on an *ad hoc* basis, in a manner potentially unclear to electoral stakeholders. All the above could possibly limit the proportionate remedy to complainants and appellants.⁴⁵

Some OSCE/ODIHR EAM interlocutors argued that formal complaints on election-related decisions can be submitted by following the general administrative procedures as established in the General Administrative Act. However, others stated that the Elections Act, as the specialized law on elections, prevails over other more general laws. Citizens could also complain to the Parliamentary Ombudsman against actions of authorities, civil servants and other persons performing public tasks, including election-related matters. However, the Ombudsman is not mandated to prescribe corrective actions and can only issue opinions which can serve as guidance for future elections.

Election offences are detailed in the Elections Act and the Penal Code. These laws classify offences and specify appropriate sanctions. The criminal procedure is used to deal with these petitions.

Consideration could be given to establishing a formal mechanism and adopting relevant procedures for the review of complaints within the various levels of the electoral authorities.

The Administrative Jurisdiction Division of the Council of State has jurisdiction over appeals related to the registration of names of political groups, the registration of candidates' lists and the order of contestants on the ballot. Appeals on certain decisions related to voter registration, such as decisions of municipal executives on voter registration and amendments requests, are also heard by the same body. The appeals may be submitted by voters and interested parties. Decisions of the Administrative Jurisdiction Division of the Council of State are final. In compliance with international standards for election-related complaints, court fees are nominal (approximately EUR 250).

The Elections Act, however, does not specify the procedures for appeals on a number of other decisions by administrative bodies, including those related to the registration of out-of-country voters or the removal of entries from the voter registers. In addition, decisions related to voting and counting, and disputes arising from the announcement of election results and on the eligibility of elected candidates are not subject to appeal.⁴⁶

⁴⁵ See Article 2.3 of the ICCPR and Article 13 of the European Convention on Human Rights.

⁴⁶ Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

Consideration should be given to allowing all decisions pertaining to the electoral process to be appealed before a court.

Although the law establishes that the Administrative Jurisdiction Division of the Council of State should decide on appeals related to the validity of candidate lists within six days, it does not specify a timeline for the review of appeals regarding the registration of political groupings. By law, in case of matters where the Elections Act does not provide deadlines, the Administrative Jurisdiction Division of the Council of State is to decide on them expeditiously.

The election law should be amended to stipulate reasonable minimum timelines for the adjudication of election-related complaints.

OSCE/ODIHR EAM interlocutors expressed full confidence in the work of bodies involved in the review of election-related disputes. However, a number of above-mentioned shortcomings in provisions related to the adjudication of complaints and appeals would benefit from a review. The absence of a possibility to appeal against administrative decisions on all electoral issues, of formal mechanisms for the review of complaints by election commissions, and of clear deadlines for the submission and review of complaints reduce the effectiveness of the legal redress system, challenging principles laid out in the OSCE commitments and other international standards.⁴⁷

X. ELECTION DAY

In accordance with OSCE/ODIHR's methodology, the EAM did not conduct a comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations on election day in The Hague, Leiden, Delft and Hilversum. In these polling stations, voting was well organized and transparent. Polling stations were well-arranged and most had wheelchair access. As in previous elections, polling stations were set up also in train stations and shopping centres for the voters' convenience. Voting was generally conducted between 7:30 and 21:00, although municipalities had the flexibility to change the opening hours.

As voters are free to vote in any polling station in their municipality, this can potentially result in logistical problems, such as long queues and insufficient numbers of ballots. However, the municipalities were able to accurately estimate the number of voters per polling station based on previous elections and no serious problems regarding this issue were reported. Due to a large number of holiday makers who opted to vote there, the island of Terschelling in the north of the country ran out of ballot papers; the respective municipality sent additional supplies. The voter turnout countrywide was 74.6 per cent.

⁴⁷ Paragraph 5.7 of the 1990 OSCE Copenhagen Document states that "human rights and fundamental freedoms will be guaranteed by law and in accordance with their obligations under international law". Paragraph 5.10 of the same document states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Paragraph 18.4 of the 1991 OSCE Moscow Document states that "participating States will endeavor to provide for judicial review of such regulations and decisions". See also Article 2, paragraph 3 and Article 14, paragraph 1 of the ICCPR; General Comment 13 of the ICCPR, paragraph 2; Article 6, paragraph 1 of the 1950 Convention for Protection of Human Rights and Fundamental Freedoms; Council of Europe's Venice Commission "Code of Good Practice in Electoral Matters", Sections 92 and 94.

Due to the substantial number of contestants, the ballot paper was large (approximately 70x50 cm) and at times difficult to handle, particularly for elderly voters. It also made the counting process more difficult.

The size and layout of the ballot could be revised to make it more manageable and readable.

In the few polling stations observed, the count was transparent and orderly. However, it was evident that the counting procedures lacked uniformity across different polling stations. Although the MoIKR produced and distributed a manual, which outlined 10 steps for the counting process, this was not followed in all stations visited. According to the information from PSECs and PECs, the training methods varied from municipality to municipality and commissions in different locations may have received different training.

Consideration could be given to standardizing the training for polling station staff, particularly on counting procedures.

The Elections Act provides that voters have to mark ballots with red pencil only. In previous elections, this was usually interpreted literally by the election officials, leading to cases of invalidation of ballots marked with black or blue pencil, regardless of a voter's clear intention. The OSCE/ODIHR EAM has not established the scale of this practice during the 2012 elections. In one case, however, officials of the consular office in Canberra, Australia, invalidated the ballots marked with the red pen instead of a pencil; the EC overturned this decision and these ballots were eventually counted.

The election law should be amended to accept as valid any ballot where the intention of a voter is clear and unambiguous.

Despite the fact that any citizen can observe the electoral process, there was no systematic observation by political parties or civil society. Most OSCE/ODIHR EAM interlocutors stated that they did not see a need for observing election day proceedings given the high level of trust in the process.

ANNEX 1: OFFICIAL ELECTION RESULTS⁴⁸

Party Name	Percentage of Votes	Number of Votes	Number of Seats
People's Party for Freedom and Democracy (<i>Volkspartij voor Vrijheid en Democratie</i>)	26.58	2,504,948	41
Labour Party (<i>Partij van de Arbeid</i>)	24.84	2,340,750	38
Party for Freedom (<i>Partij voor de Vrijheid</i>)	10.08	950,263	15
Christian Democratic Appeal (<i>Christen-Democratisch Appèl</i>)	8.51	801,620	13
Socialist Party (<i>Socialistische Partij</i>)	9.65	909,853	15
Democrats 66	8.03	757,091	12
Green Left (<i>Groen Links</i>)	2.33	219,896	4
Christian Union (<i>Christen Unie</i>)	3.13	294,586	5
Reformed Political Party (<i>Staatkundig Gereformeerde Partij</i>)	2.09	196,780	3
Partij voor de Dieren (<i>Party for Animals</i>)	1.93	182,162	2
Partij voor Mens en Spirit (<i>Party for Human and Spirit</i>)	0.19	18,310	0
Piraten Partij (<i>Pirate Party</i>)	0.32	30,600	0
Nederland Lokaal (<i>Local Netherlands</i>)	0.03	2,842	0
Libertarische Partij (<i>Libertarian Party</i>)	0.04	4,163	0
Democratisch Politiek Keerpunt (<i>Democratic Political Turning point</i>)	0.08	7,363	0
50 Plus	1.88	177,631	2
Liberaal Democratische Partij (<i>Liberal Democratic Party</i>)	0.02	2,126	0
Anti Europa Partij (<i>Anti-Europe Party</i>)	0.02	2,013	0
SOPN	0.14	12,982	0
Partij van de Toekomst (<i>Party of the Future</i>)	0.09	8,194	0
Politieke Partij NXD	0.00	62	0

⁴⁸

According to EC information; see at:

<http://www.kiesraad.nl/sites/default/files/Official%20results%20of%20the%20House%20of%20Representatives%20elections%20-%20ANNEX%20-%20vertaling%20EN.pdf>.

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 programs 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.