



Office for Democratic Institutions and Human Rights

ITALY
PARLIAMENTARY ELECTIONS
9 - 10 April 2006

OSCE/ODIHR Election Assessment Mission Report



Warsaw
9 June 2006

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I. EXECUTIVE SUMMARY

In response to an invitation from the Italian Government, the Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR)¹ deployed an Election Assessment Mission (EAM) to the 9 - 10 April 2006 general election. The OSCE/ODIHR EAM met with the relevant authorities at both central and regional level, as well as representatives of political parties and the media, to get an overview of the election process and of specific legislative and media issues. Monitoring of campaign-related media was also undertaken.

Italy has a tradition of democratic elections, and the 9 - 10 April 2006 general election was conducted in overall keeping with this tradition. The registration process for parties, coalitions and their candidates facilitated the participation of a broad field of contestants in the election. The civil and political rights of voters and candidates were respected. Voters turned out in large numbers on election days to cast their ballots, following a competitive election campaign. The voter turnout was reported as 83.6 percent. In general, women made up 24 per cent of candidates for the Chamber, and 21 per cent for the Senate.

Campaigning took place in an open atmosphere in which the parties and candidates were able freely to present their views. The campaign was vigorous and often heated. The public focus was overwhelmingly on the two major coalition leaders, the then incumbent Prime-Minister Silvio Berlusconi and his center-right *Casa delle Libertà* ("House of Freedoms") and the main contender Romano Prodi and the center-left *L'Unione* ("Union"). While a focus on personalities was dominant, the parties did bring about discussions on issues such as the economy, taxes, education, immigration and family values. Two instances of violence, including a disturbance in Milan, marred the early days of the campaign.

Italy's press offered lively coverage of the election campaign and provided a diversity of views. Television has developed over time to become the main source of information for the Italian public². Legislation requires all broadcast media to provide equal coverage of the parties and candidates. The broadcasting media landscape in Italy is characterized by the so-called Italian "anomaly" related to the ownership of three influential private television channels (parts of the holding *Mediaset*) by Mr. Berlusconi who, by virtue of his official position prior to the 9 April election, was also able to exercise a measure of influence on the policy of the three public channels.

¹ Letter by Ambassador Francesco Bascone, Head of the Permanent Representation of the Republic of Italy to the OSCE, 15 February 2006.

² OSCE Representative on Freedom of the Media "The *Gasparri Law*" Report, 7 June 2005, page 2.

For election coverage, this meant that all six of the major TV stations were under a measure of influence from one of the candidates and coalition leaders, a situation which did not lend itself to equal treatment. A degree of imbalance was noted in the coverage of the election by the media monitored. Two of the public channels favored Mr. Berlusconi's *Casa delle Libertà* mainly by the tone of their coverage, while the third one favored the *Unione*. The *Mediaset* channels favored the *Casa delle Libertà* both by the quantity and tone of coverage. Two *Mediaset* channels were fined for violating campaign provisions, but the penalties fell short of correcting their editorial policies.

Nevertheless, the voters could receive exposure to a broad range of views, especially through the allocation of free airtime and through the print media, enabling them to make informed choices. In addition, many television debates among candidates took place, including two debates between Mr. Berlusconi and Mr. Prodi that drew large numbers of viewers.

The elections were conducted according to amended legislation that was adopted less than four months before the vote. Italy's election system of mixed representation, with a prevailing majority element, was replaced by a closed list proportional system for both chambers of parliament. The new system included a number of thresholds determining eligibility for participation in the allocation of seats and a bonus for the winner in case of a narrow victory.

The changes to the electoral system were adopted by a simple majority vote of the legislature, over the objections of the major opposition parties. Some within the opposition indicated that the late adoption of the election law necessitated changes in their campaign strategies, which were designed to correspond to the prevailing majority representation. There was a distinct impression among many that the changes may have been introduced with the perceived objective of advancing the prospects of the then parties in power. According to polling data, many voters were not aware that the system had changed.

Amendments to the election law resulted in other innovations. In a positive step to expand the franchise, Italian citizens resident abroad were able to vote by post for the first time. Six seats in the Senate and 12 seats in the Chamber of Deputies were designated to represent them. The new legislation and subsequent changes in the electoral system also resulted in changes to campaign financing rules, increasing the ceilings for anonymous donations and expenditures. A new provision that permitted international observation for these elections, and underscored OSCE commitments, was a welcome development.

The Ministry of Interior has a substantial role in the overall organization of the election and processing of preliminary results. Municipal offices have a leading role in the preparation of voter lists and organising the election within their jurisdiction. The election administration also includes a number of judicial bodies and offices established within them, which are responsible for tabulating official results and allocating seats. The election administration enjoys the confidence of voters, parties and candidates.

As the judiciary is intensively involved in the processing of the election results and determination of the election outcome, its role in resolving possible disputes over election results is limited. There would appear to be no possibility to appeal election results within the judiciary. Ultimate authority in disputes over election results rests with the newly elected legislature, rather than with the courts.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

At the invitation of the Italian Ministry for Foreign Affairs, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 9-10 April 2006 parliamentary elections. This was the first time the OSCE/ODIHR had been invited to observe elections in Italy.

The OSCE/ODIHR EAM was headed by Mr. Peter Eicher (United States of America) and included eight experts from eight OSCE participating States. The EAM opened its offices in Rome on 10 March and engaged in a broad range of meetings and discussions with national, regional and local officials, election administrators, political parties, candidates, representatives of the judiciary and the media, and other election experts and commentators. A media monitoring unit monitored Italy's six major television stations with country-wide coverage. In addition to meetings in Rome, the OSCE/ODIHR EAM had meetings in Bari, Bologna, Florence, Frascati, Genoa, Milan, Naples, Palermo and Perugia. On election days, OSCE/ODIHR EAM members visited a limited number of polling stations, but did not conduct a systematic and comprehensive observation of election day voting or counting.

The OSCE/ODIHR wishes to express its appreciation to the Ministry of Interior and the Ministry of Foreign Affairs, as well as other representatives of the Italian authorities, political parties and civil society, for their co-operation throughout the mission.

III. LEGISLATIVE FRAMEWORK

The legislative framework for Italian elections is comprised of the Constitution and over 60 different laws and decrees. These include the Consolidated Electoral Law Statute for the Chamber of Deputies, Consolidated Electoral Law Statute for the Senate, Provisions for the Right to Vote of Italians Resident Abroad; Law and regulations on *par condicio* (equal media treatment); Law on Electoral Campaign and Campaign Spending Limits; and the Consolidated Law on Active Electorate and Lists of Voters. This plethora of legislation creates a complex electoral framework but provides the basis for a well organized election administration that enjoys the confidence of citizens. Although the Ministry of Interior has compiled a substantial number of these statutes into a useful book, many party activists and candidates still appeared uncertain or misinformed about important aspects of the legal framework.

It could be useful for the legislature to adopt or have published a single, integrated and consolidated text of election legislation, which would enhance the accessibility of election related legislation for voters, candidates and the general public, and simplify implementation for election administrators³.

A. ELECTION SYSTEM

Italy has a bicameral parliament made up of a Chamber of Deputies with 630 members and a Senate with 315 elected members and 7 appointed for life by the President of the Republic.

³ Paragraph 5.8 of the OSCE Copenhagen Document recognizes that legislation should be accessible to citizens.

Major amendments to the electoral legislation were enacted on 21 December 2005. The electoral system was changed from a mixed system with a strong majoritarian component to a predominantly proportional system with closed lists and a “majority bonus⁴.” In addition, for the first time, about 2.8 million Italian citizens resident abroad were entitled to vote in a special out-of-country constituency.

For the Chamber of Deputies, the country is divided into 27 constituencies, generally corresponding to administrative regions, but with the most populous regions subdivided into two or three constituencies. For 617 of the Chamber seats, the number of seats per constituency is proportional to the number of the inhabitants according to the last census (2001). However, the Valle d’Aosta elects one deputy in a single mandate constituency. The remaining twelve deputies are elected from the designated out-of-country constituency.

For the Senate elections, Italy is divided into 20 constituencies which correspond to Italy’s 20 administrative regions. Most of these are multi-mandate constituencies with the number of seats proportional to the population. However, in five regions with special status, the number of Senate seats is fixed in accordance with Article 57(3) of the Constitution. In total, 301 Senate seats are distributed proportionally to the successful coalition and party lists in 18 regions. In addition, in the region of Trentino-Alto Adige, six senators are elected under a first-past-the-post system, while one senator is elected based on the votes cast for unsuccessful candidates in the single-mandate constituencies. In Valle d’Aosta, one senator is elected in a single mandate constituency. Finally, six senators are elected from the out-of-country constituency.

Seats are distributed among parties and coalitions using the “largest remainder” method. For the Chamber, the law provides for the proportional distribution of seats based on the number of votes a party receives nationally. There is a subsequent system of proportional distribution at constituency level, using an “averaging” procedure and a complicated adjustment procedure to determine the number of seats assigned to a party or coalition in each constituency. For the Senate, the distribution of seats is based on vote totals only within the respective regions.

The new system provides for a “majority bonus” intended to inject a degree of stability in the parliamentary majority should there be no party or coalition that wins at least 340 seats in the Chamber of Deputies. The party or coalition receiving the highest number of votes nationwide is awarded a minimum of 340 seats in the Chamber, guaranteeing it a majority of some 55 per cent of Chamber seats. The remaining seats are distributed to other parties and coalitions which meet threshold requirements. A similar bonus is provided for the Senate elections, but is applied in each region, rather than on the basis of the national vote. Since regional outcomes may differ from national outcomes, the system could produce different majorities in the Chamber of Deputies and the Senate, possibly contradicting the intended purpose of the “majority bonus in the Senate⁵.”

Parties and political groups competing in the multi-mandate constituencies must present candidate lists sufficient to fill at least one-third of the number of seats to be distributed in the constituency, but not exceeding the number of seats in the constituency. To participate in the

⁴ The mixed system with a strong majoritarian component was introduced in 1993 following a popular referendum to replace the previous proportional system.

⁵ The potential effect of the regional bonuses is to produce a narrower majority in the Senate, which could even differ politically from the majority in the Chamber. This could impact on the process of approval of a government since both the Chamber and the Senate must, according to the Constitution, support the government.

allocation of mandates, coalitions, parties within coalitions, and parties running individually must meet different threshold requirements⁶. For the Chamber, national thresholds apply, while thresholds for the Senate are applied at constituency level. Special thresholds apply for certain regions with a substantial linguistic minority population. The new system encourages pre-electoral coalition building and includes measures to minimize the number of votes that would not impact on the seat allocation (“lost” votes). Party lists are closed, i.e., voters must select an entire list of candidates in the order it is presented and cannot express candidate preferences within a list.

Providing citizens living outside of Italy with the opportunity to vote is a positive new element of the election system. The out-of-country constituency is divided into four geographical zones with a fixed number of seats for each zone. As is the case within Italy, the system is proportional, using the “largest remainder” method to distribute seats, except in zones with only one seat. Unlike the vote inside Italy, however, out-of-country voters can express two preferences from among the candidates on the party lists they select. In discussions with the EAM, many leading party officials from both the center-left and center-right expressed a desire to return to preference voting for all Italians.

The application of preference voting for out-of-country voters grants them somewhat broader rights than their compatriots inside Italy, and may need to be addressed by the new parliament.

B. ISSUES RELATED TO CHANGES TO THE ELECTORAL LEGISLATION

The amendments to the election legislation changing the election system were adopted in December 2005, less than four months before the elections. Additional legislation on other election issues was enacted in January 2006, just three months before the elections.

Most election administrators expressed the view that the late changes to the law did not affect their ability to fulfill their duties in the time available. However, a number of candidates and parties complained to the OSCE/ODIHR EAM that they were adversely affected since they had started organizing their electoral strategy based on the previous system. Some small parties asserted that they had a reduced and insufficient period of time to collect the required signature petitions, even though the number of required signatures was reduced in light of the shortened election timetable. Newspaper surveys indicated that a substantial proportion of voters were not aware of the changes in the law.

While the amendments to the law changing the election system were adopted by a majority in the parliament, this was done over the objections of the major opposition parties. Election legislation should enjoy broad support from the major political factions in order to build confidence in the system. The timing and manner in which the legislation was adopted left the distinct impression among interlocutors that the amendments were designed to further the prospects of the incumbent center-right coalition. The center-left, meanwhile, campaigned on the premise that if it won the election, it would change the law back to the former system. This raises a prospect of a possible pattern in which each election victor would alter the rules of the game for its own perceived benefit.

The new parliament should seek a broad consensus on any future changes to electoral legislation and should avoid making changes shortly before elections.

⁶ Details are available the OSCE/ODIHR Needs Assessment Mission report, at www.osce.org/odihr.

C. SUFFRAGE

The Constitution provides that all citizens who have reached the age of majority are entitled to vote, but it explicitly limits the right to vote for the Senate to citizens who are at least 25 years old, while citizens of 18 years of age or more are entitled to vote for the Chamber of Deputies.

In view of the authority of the Senate with regards to the approval of the government, the new parliament should consider the question of granting equal voting rights to all citizens who have reached the age of majority.

The right to stand for public office is limited under the Constitution to individuals at least 25 years old for the Chamber of Deputies and at least 40 years old for the Senate.

An amendment to the election law provided for the use of mobile ballot boxes for the first time, in order to enable citizens unable to leave their homes for medical reasons to vote. In practice, very few people applied to use the system. In all of Rome, for example, up to a week before the election, only 50 people had applied to use the mobile ballot boxes, and many of these were not approved. The number of applications in other cities was even lower, suggesting that only a tiny number of voters actually used the mobile ballot boxes.

D. CAMPAIGN FINANCE AND EXPENDITURES

The law sets limits on campaign contributions and expenditures by both parties and candidates. These limits were increased in January 2006. The permissible level of anonymous individual donations was raised from €6,500 to €20,000, diminishing the transparency of campaign financing. In addition to private contributions, parliamentary groups receive public funding, as do parties obtaining more than one per cent of votes at the last election.

Consideration could be given to removing the possibility of providing anonymous donations for political parties' activities, in order to enhance the transparency of donations.

The existing campaign spending limits were designed to apply to the former election system, limiting the amount that could be spent by a candidate in a constituency. As a consequence of the changed electoral system, under which individual candidacies in small constituencies have given way to party lists in multi-member districts, the ceilings on expenditures have risen to a level that according to many candidates is tantamount to no limits at all. At the same time, a surprising number of the EAM's political party interlocutors were unaware of the provisions of law regulating campaign financing.

Candidates must open a specific account for electoral campaign funding and must file a report of their expenses and contributions with the Regional Guarantee Committee (*Collegio Regionale di Garanzia Elettorale*), which is composed of a combination of judges of the Courts of Appeals and experts. The Committee has the power to impose fines of between €25,000 and €100,000 for failure to file reports. Ultimately, if a winning candidate fails to pay such fines, the Chamber of Deputies or the Senate may vote to cancel the member's mandate.

For political parties, there is a separate avenue for reporting. Parties report to the President of the Chamber of Deputies, who forwards the reports to the Court of Auditors (*Corte dei Conti*). This is a standing, independent body, whose mandate is to control public expenditures. For each

election, it establishes an *ad hoc* committee to review the campaign expense reports filed by the political parties. It has the power to levy fines from €25,000 to €100,000 for failure to file in a timely fashion and/or exceeding campaign spending limits. Fines can be appealed through the courts.

E. OBSERVERS

The law provides for each political party contesting the elections to appoint representatives to observe the work of each Regional and District Election Office, as well as polling stations in constituencies where it has registered a list of candidates. Party representatives are entitled to attend all meetings of election offices.

Domestic non-partisan observers are not contemplated in the law. The EAM did not meet or hear of any domestic non-partisan group that wished to observe the elections. In a positive initiative, a new law enacted on 3 January 2006 provided for the first time for international observers for the 2006 parliamentary elections only.

While the law to provide for international observers for the 2006 parliamentary election was a welcome development, it should be amended to allow for domestic non-partisan observers, and to extend permanently the provision for international observers in line with paragraph 8 of the 1990 OSCE Copenhagen Document.

IV. ELECTION ADMINISTRATION

The structure of the election administration is complex. It includes a number of judicial bodies and offices established within judicial structures, which are responsible for tabulating official results and distributing seats. The Ministry of Interior has a substantial role in the overall organization of the election, preparing and distributing election materials, and processing the preliminary unofficial results. Municipal offices have a leading role preparing voter lists and implementing the election process at local level. The election administration enjoys the confidence of voters, parties and candidates.

Despite the election administration's complexity and the number of institutions involved, the system functioned effectively. Official results are tallied through electoral offices established within the court system, with the National Central Electoral Office within the Court of Cassation responsible for tabulating results for the Chamber of Deputies, and Regional Electoral Offices within the regional Courts of Appeals responsible for tabulating the Senate results. The judiciary's role in election disputes is limited. Ultimate authority in disputes over election results rests with the newly elected legislature, rather than with the courts.

A. JUDICIAL AND QUASI-JUDICIAL BODIES

A National Central Election Office (NCEO) is established at the Court of Cassation, headed by a departmental chairman of the Court and four additional members of the Court, appointed by the Court's Chairman. The NCEO's primary role is to tabulate the official election results from the regions for the Chamber of Deputies, perform the seat allocation for the Chamber, and announce the official results. In addition, the NCEO has a limited role in election appeals⁷.

⁷ See Section VIII, Complaints and Appeals.

At constituency level, Regional Election Offices (REOs) are established for the Senate elections and District Election Offices (DEOs) are established for the elections to the Chamber of Deputies at the regional Court of Appeals or at the ordinary court with jurisdiction over the capital of the constituency. For the designated overseas constituency, an REO and DEO were established at the Rome Court of Appeals. REOs and DEOs are appointed by the chair of the relevant Court of Appeals and include a chairperson and two (DEOs) or four (REOs) members, who must be magistrates. Within their constituencies, DEOs and REOs are responsible for: registration of candidate lists; the lottery determining the order in which coalitions and parties within coalitions appear on the ballot; the printing of ballot papers (through the prefecture of the constituency capital city); the adjudication of certain contested ballots; the tabulation of results from the precinct-level protocols; and the proclamation of the elected deputies or senators. DEOs appoint the chairs of Polling Electoral Offices (PEOs, or polling stations). REOs allocate Senate seats for their constituency.

The NCEO, DEOs and REOs were appointed within the legally provided three-day period after the publication of the 11 February Decree of the President of the Republic calling for the elections on 9-10 April. The Chairs of the PEOs were appointed by the Chairmen of the relevant Courts of Appeals by 10 March, from lists of qualified persons maintained by the Courts. The appointment of PEO Chairs by the Court of Appeals appears to promote a line of independence of the polling station leadership from the central and local authorities.

B. MINISTRY OF INTERIOR

The Central Directorate for Elections within the Ministry of Interior is a permanent body that makes administrative arrangements for the elections, tabulates the unofficial results and prepares the first calculation for the seat allocation. The office is also responsible for registering political party logos. It ensures that ballots and other election materials are prepared in a timely and consistent manner throughout the country. It also prepared a manual for PEO Chairpersons. While the election law does not define the roles and relationship between the Ministry of Interior and the judicial electoral bodies, there is a developed practice and understanding of their separate responsibilities.

The Directorate acts in all parts of the country through electoral offices attached to the prefectures of each region, which report to it. These include standing offices established within provincial and municipal administrations. All election officials within this chain of command that the OSCE/ODIHR EAM met with in Rome and other cities displayed an excellent knowledge of the legal provisions and electoral procedures. All were helpful in providing detailed information on all issues of interest to the EAM.

C. MUNICIPAL BODIES

Municipal authorities have a variety of electoral tasks, the most important of which include maintaining the voter lists and appointing PEO members other than the Chairpersons. These tasks are performed or overseen by Municipal Election Commissions (MECs). MECs are permanent bodies chaired by the Mayor, with other members elected by the Municipal Council from among the popularly elected municipal councilors. At least one member of each MEC should come from the minority on the council.

PEO members, or polling station workers, are called “scrutineers.” Four are selected for each of Italy’s 60,000 polling stations. The scrutineers and the PEO Chairperson are responsible for the preparation of the polling station and for the conduct of polling and counting. The appointment of scrutineers for all of Italy’s polling stations was completed by 20 March, as required by law.

MECs maintain lists of volunteers to work as paid scrutineers. Previously, scrutineers were chosen by lot from the lists. Under the new law, scrutineers are chosen by the MECs by consensus or by voting if no consensus is possible. The new system of appointing scrutineers may disadvantage the minority parties, since usually there is only one MEC member from the opposition, thus introducing a political element in the formation of the PEOs. Moreover, the new system is difficult to apply in practice, since in some cities very large numbers of persons have applied for selection, e.g., 24,000 in Naples and 140,000 in Rome.

The selection process is decentralised, leaving each MEC to set its own criteria, e.g., by casting lots (Naples), name-by-name nomination with voting if necessary (Perugia), wholesale list approval (Rome), and through lists submitted by political parties (Florence). Political party representatives from across the political spectrum expressed their concerns to the OSCE/ODIHR with regard to the new system of scrutineer selection.

Consideration could be given to reviewing the new system of scrutineer selection by introducing a degree of consistency within the overall context of existing decentralisation.

The MECs were also responsible for allocating campaign poster space to the political parties. Space was generally allocated through a lottery system. Parties appeared satisfied with the system.

D. VOTER LISTS

Voter lists are maintained by the Municipal Electoral Offices, a part of the municipal administration that takes substantive direction from the Ministry of Interior, through the prefecture. Italy has a system of government-initiated (or “passive”) voter registration, under which electors’ names are automatically entered onto the voter lists based on the civil register. Separate lists are prepared for men and women, an apparent legacy of the late 1940’s when women won the right to vote.

The record of each elector contains the name, family name, his or her date and place of birth, the serial number of his/her birth certificate, as well as any additional information which may have an impact on eligibility to vote. While the voter lists are computerized at local level, paper copies of all documents related to a voter’s status are kept in dossiers for each voter in the archive of the Municipal Electoral Office. Voter lists are up-dated twice a year and before elections. A separate procedure is used for the compilation of the list of voters residing abroad. The system of updating the voters lists appears to be efficient. The OSCE/ODIHR EAM heard no concerns about the accuracy of the voter lists.

If a voter is mistakenly left off the list, he or she can obtain a certificate from the MEC enabling him/her to vote. Applications may be submitted to the MEC up to and through election days.

The pre-election revision of the voter lists was completed by 25 March. The total number of eligible voters was 47,258,305 (24,601,554 women and 22,656,751 men) for the Chamber of Deputies and 43,204,694 (22,620,340 women and 20,584,354 men) for the Senate, reflecting

that voters must be at least 25 years old to vote for the Senate. A copy of the extract of the voter list to be posted in the polling station was provided to each PEO, together with a copy for use on election days.

A safeguard against multiple voting is provided by issuing each voter with a voter card with information on his/her permanent residence, the municipality and the number and address of the polling station to which he/she is assigned. Voters must present their card together with another valid identification document in order to vote. A PEO member stamps the voter card when the ballot is handed to the voter. Lost voter cards may be replaced, even on election day.

E. REGISTRATION OF PARTIES AND CANDIDATES

Political groups operate freely in Italy; there is no requirement for parties to register with authorities. Parties wishing to contest a particular election, however, must register a logo with the Ministry of Interior. Registration of the logo may be denied if it is too similar to an already registered logo or if it contains religious or fascist symbols.

In addition to registering a logo, parties wishing to contest the election must present valid candidate lists to the REO (for the Senate) or DEO (for the Chamber of Deputies). A total of 51 parties registered candidate lists for the Senate elections and 37 parties registered lists for the Chamber. Many candidates appeared on multiple lists in different districts. Party leaders generally headed the lists in all districts.

Parties with representation in the parliament may register candidate lists without collecting supporting signatures from voters. The same is true for parties running in coalitions with two or more parliamentary parties or parties with a member of the European Parliament elected under the same logo. Other parties, however, must collect between 1,500 and 4,000⁸ signatures of electors residing in the constituency in order to register a list in that constituency. The actual number depends on the size of the constituency but never exceeds one per cent of registered voters. The party *Rosa nel Pugno* complained to the OSCE/ODIHR EAM that it had to collect support signatures despite holding 11 seats in the outgoing parliament, because it had changed its logo since the last election. Several small parties asserted to the EAM that the rules were designed to assist small parties within coalitions and discriminated against “independent” parties.

The law does not establish clear rules on the method of checking signatures. Nonetheless, electoral officials asserted that signatures on petitions were carefully verified. Officials in various cities told the OSCE/ODIHR EAM that *all* signatures were checked to verify eligibility to sign, place of residence, and correct authentication of the signatures by a notary or another designated official. Checking each signature in this manner is a huge undertaking, especially considering the large number of party lists and the 24 hour deadline between the final date for submission of lists and the ruling on the signatures.

Under the new election law, candidates could not run as individuals unaffiliated to party lists.

Consideration should be given to including in the relevant legislation provisions that allow for citizens unaffiliated with political parties to contest seats in parliament, in line with paragraph 7.9 of the 1990 OSCE Copenhagen Document.

⁸ 300 signatures for the single-mandate constituency of Valle d’Aosta.

F. PRE-ELECTION PREPARATIONS

In accordance with election legislation, the position of each party and coalition on the ballot, as well as the order of parties' logos within coalitions, was determined by drawing lots. All parties appeared satisfied with this procedure. In constituencies visited, the ballot design and the printing were completed on time.

Posters providing information on all lists and candidates, including logos, were printed by prefectures and delivered to municipalities for public posting within the legal deadline, 25 March. The posters also contained instructions on how to mark ballots and warnings that the indication of a candidate's name or any comments would invalidate the ballot. Similar information was contained on many parties' campaign material.

Election material (voting kits, ballots, protocols, etc.) were reportedly prepared and delivered in good time to the PEO chairs the morning of 8 April, and were kept in police custody overnight. All transfers of election material were reportedly documented at all stages. On the afternoon of 8 April, ballots were signed by the scrutineers and stamped by the PEO chair at the polling stations.

G. VOTER EDUCATION AND TRAINING OF ELECTION OFFICIALS

Official voter education activities were largely limited to the broadcast of public service messages during the month before the elections by public television and radio *RAI*, as required by the order of the Parliamentary Committee for General Guidance and Monitoring of Radio and Television Services. The messages, which briefly explained the electoral system and the voting procedures, were broadcast before and after the main evening news with simultaneous translation into sign language. The private *Mediaset* stations also produced and broadcast similar video-clips. Most of the political parties undertook some voter education efforts, at least to the extent of explaining to voters how to mark their ballots without invalidating them. Nevertheless, a poll released on 27 March suggested that more than one third of voters were unaware of the changes to the electoral system and that many were unaware of the election date.

There is no systematic training of election officials. A manual with detailed instructions for the operation of the PEOs was published by the Ministry of Interior, including all related legislative acts, and was distributed to each PEO Chair.

H. EXPERIMENTAL ELECTRONIC VOTE COUNTING

A law passed in January 2006 provided for a test of an experimental electronic vote counting system intended to speed up the reporting of preliminary election results through the Ministry of Interior. A smaller scale test had been used during the European Parliament and regional elections in 2004 and 2005. In the 9-10 April elections, the system was used in four regions, Lazio, Liguria, Puglia and Sardinia, amounting to 12,680 polling stations and 11 million voters.

A computer operator was sent to each of the 12,680 polling stations affected. As each ballot was announced and counted manually, the operator was to enter the same information into the computer. An additional computer screen enabled scrutineers and political party observers to see the data entered. At the end of the count, the software produced results for the polling station, which were then compared with the result obtained in the manual vote count. If the two results

differed, only the manual count was considered valid. The results obtained with the software were then downloaded on to a USB flash drive, transferred to a designated central location, and sent to the national processing center by modem.

The experiment drew criticism from a number of politicians and representatives of the media. There seemed to be a lack of general understanding among the public, and even among some election officials, that the system was experimental and unofficial, and that it dealt only with counting, not with electronic voting. Some critics also charged that the €35 million contract for the project was awarded without a public tender. Reportedly, one company began legal action because its software, which was being used for the test, had not been properly licensed.

The government responded to the criticism by creating a technical committee with multi-party representation to oversee implementation of the project. The OSCE/ODIHR EAM met with members of the committee shortly after the election, but they had not yet begun a formal evaluation of the electronic counting. Likewise, the Ministry of Interior had not yet issued its conclusions on the experimental electronic counting by the time the EAM was concluded.

The new electronic counting procedure could further enhance Italy's electoral process, provided it enjoys the confidence of the political parties and the electorate at-large. The system was not a problem for the 2006 elections since it was only a test and since it related only to preliminary, unofficial results.

Before officially introducing new elements, including electronic technologies, into polling station procedures, the authorities should conduct broad voter education activities in an effort to explain the accountability of the system. This would further enhance the confidence of political parties and the electorate.

V. THE ELECTORAL CAMPAIGN

The official election campaign began with the dissolution of the Parliament and the calling of the elections on 11 February and ended 24 hours before the opening of the polls. In practice, parties began their campaigns much earlier.

Two major coalitions of political parties contested the elections: the center-right *Casa delle Libertà* ("House of Freedoms") led by Prime Minister Silvio Berlusconi and the center-left *L'Unione* ("Union"), led by Romano Prodi, a former Prime Minister and European Commission President. The principal parties within *Casa delle Libertà* included *Forza Italia* (the Prime Minister's Party), *Allianza Nazionale*, *Unione di Centro*, and *Lega Nord*, as well as 13 smaller parties. *L'Unione's* major parties included *Democratici di Sinistra*, *La Margherita*, *Rifondazione Comunista*, *Comunisti Italiani* and *Federazione dei Verdi*, joined by 14 smaller parties. Both coalitions represented a diversity of political views across the spectrum of the political left and political right respectively. Because party lists are registered regionally, the size and composition of the coalitions varied somewhat from region to region. In addition to the coalitions, 21 small parties registered to run individually in one or more constituencies. Citizens were thus provided with a wide and genuine choice.

A new initiative of the pre-electoral period was the nation-wide primary election for the leader of *L'Unione*, held in October 2005. Mr. Prodi won the large majority of the 4.3 million votes

cast. The *Casa delle Liberta*, in contrast, decided to choose its candidate for Prime Minister based on the general election results, with the strongest party making the nomination.

A. CAMPAIGN ENVIRONMENT AND STRATEGIES

Generally, the campaign was characterized by vigorous discussion and visible information campaigns, with large numbers of citizens participating in rallies, attending meetings, handing out campaign literature, and volunteering at street stalls throughout the country. The two major coalitions were especially active in mobilizing their supporters and reaching out to undecided voters through the media, rallies and meetings. Party leaders and individual candidates toured Italy throughout the campaign. Candidates were able to campaign freely and citizens had access to a broad range of information on the parties and their respective positions. Civil and political rights were respected.

The tone of the campaign was at times antagonistic, and many politicians and political commentators asserted that the campaign was among the most acrimonious Italy has witnessed. The debate often lacked substantive discussion of policy issues, instead focusing on personalities and mutual recriminations. The focus on the two coalition leaders contributed to the widespread perception of the campaign as a presidential-style, bipartisan contest between Mr. Berlusconi and Mr. Prodi.

There were two televised debates between Mr. Berlusconi and Mr. Prodi, on 14 March and 3 April. Both drew large audiences. While the strictly regulated format of the debates drew some criticism, they did provide an important forum for the two main contestants to present their views and for voters to compare their performances and assess their positions.

The campaign grew more aggressive as the election neared. The rancorous tone of the campaign prompted President Ciampi to intervene with a plea to all parties to moderate their tone. During the second TV debate, the two leaders were asked to apologize for their language, to no avail. Party leaders attacked not only members of the opposing coalition, but also their own allies in order to draw more votes to their own parties. The media widely reported the dissensions and positions of the different coalitions on these issues. At least one incident also highlighted that the Catholic Church has an influence on the issues under discussion in an electoral campaign.

The campaign in the major cities was characterized by parties plastering their own posters over those of their opponents at a sometimes frantic rate. Parties commented to the OSCE/ODIHR EAM that in some places the average life of a poster was only ten minutes. Many smaller parties, having fewer volunteers and smaller budgets, complained to the OSCE/ODIHR EAM that penalties were inadequate for those violating poster space allocation.

B. ISSUES

Both sides released their manifestos early in February. The *Unione's* was a substantial document which emphasized issues including immigration, law and order, labor and economic reforms. The *Casa delle Liberta* released a shorter document which emphasized issues including fiscal reforms, job creation and immigration. Commentators often focused on the economy as the key issue in the campaign. Taxation was an increasing focus as election day approached, with both leaders explaining their positions. Mr. Berlusconi made last-minute pledges of tax reductions. Family and Christian values, in particular differences over civil partnerships for same-sex

couples, also drew considerable attention in the campaign. With the exception of immigration, minority issues did not play a significant role in the campaign.

C. ALLEGATIONS

At various points in the campaign, Mr. Berlusconi warned of possible attempts at fraud on election day. In follow-up to these allegations, the OSCE/ODIHR EAM raised the question of possible fraud in all of its discussions with political parties. Party representatives across the political spectrum dismissed the possibility of any significant fraud and expressed full confidence in the honesty and integrity of the election administration.

A number of the OSCE/ODIHR EAM's interlocutors asserted, however, that there had been problems with vote buying and other forms of fraud in some areas of the country in the past. Some also asserted that organized crime had played a role in prior campaigns in some regions and continued to have some political influence. Several political party contacts would not rule out that there might be isolated attempts at manipulation in 2006, but they dismissed these as insignificant. They said they would have their observers at polling stations to ensure that procedures were proper.

The media carried several reports expressing concern that allowing voters to carry mobile phones with built-in cameras into the voting booths could encourage vote-buying by enabling voters to photograph their marked ballots and thus prove how they voted. Signs prohibiting voters from taking their telephones into voting booths were displayed in at least some polling stations.

Early in the campaign period, Minister of Health Francesco Storace resigned amid allegations that in his former role as President of the Regional Assembly of Lazio, he and some members of his staff had been involved during the 2004 regional elections in eavesdropping on a political opponent, Alessandra Mussolini, and in planting false signatures on her candidate signature list. Although he resigned from the government, he continued to head the *Allianza Nazionale* list for the Senate in Lazio.

D. VIOLENT INCIDENTS

The campaign was generally peaceful, yet the beginning was marred by some violent incidents. In Milan on 12 March, 45 people were wounded, police cars set on fire, and shops vandalized after fights erupted between the police and participants in a demonstration protesting against an election rally of the extreme-right *Fiamma Tricolore* party. The *Casa delle Liberta* blamed the *Unione* for the violence since some demonstrators belonged to parties within the *Unione*, although Mr. Prodi condemned the violence. There was a smaller disturbance during Mr. Berlusconi's visit to Genoa on 21 March, when youths scuffled with police outside a theater where Berlusconi was leading a rally of his party supporters, and a young girl was hurt.

Earlier, on 16 October 2005, Francesco Fortugno, Deputy President of the Regional Assembly of Calabria and a member of the *Margherita* party, was shot dead inside a "polling station" during the *Unione* primary. The media reported that nine persons linked to organized crime were arrested on 21 March in connection with the killing. Although this case may not be directly related to the elections and it remains uncertain whether the motive was political or criminal, it is clearly an electoral concern when a locally prominent politician is assassinated at a polling station.

VI. WOMEN'S PARTICIPATION

In the outgoing legislature, women made up 9.8 per cent of the Chamber of Deputies and 7.7 per cent of the Senate. Italy ranked 69th in the Inter-Parliamentary Union's World Classification of Women in National Parliaments. Three of 24 cabinet ministers and six of 71 deputy ministers were women.

In the 2006 election, women won 109 seats in the Chamber (13 per cent) and 41 seats in the Senate (17.3 per cent) – an increase over the previous parliament.

The new proportional, closed list election system should have created conditions to increase the number of women elected. On average, women made up 24 per cent of candidates for the Chamber and 21 per cent for the Senate. In general, political parties could have placed more women in “winnable” positions on their lists as an opportunity to increase women's representation.

Political parties should consider further measures to increase the number of women elected.

The place of women in Italian politics did arise as a campaign issue. In the first TV debate, for example, Mr. Berlusconi pledged to give 30 per cent of cabinet posts to women if re-elected, and then revised the figure upwards to 33 per cent. During the second TV debate, Mr. Berlusconi promised to appoint a woman as Deputy Prime Minister, if elected. Mr. Prodi reacted by supporting the idea of quotas for women on party candidate lists. In general, women seemed to participate as actively as men in campaign meetings and rallies.

Relatively few women hold senior leadership positions in political parties. Only two women headed parties running in the elections, Alessandra Mussolini of *Alternative Sociale* and Emma Bonino of *Rosa nel Pugno*. A few parties have a policy of promoting women's participation at all levels of their organisation, although in practice these policies do not appear to have been fully effective.

Article 51 of the Constitution was amended in 2003 to allow for affirmative action. In the last round of amendments to the electoral law in December 2005, the parliament voted on whether to adopt a quota for women candidates. The bill passed on a public vote in the Senate but was defeated in a secret ballot in the Chamber of Deputies.

VII. MEDIA

A. BACKGROUND

Italy has an active and pluralistic media environment, with 12 national and about 600 regional and local TV companies, as well as some 2,000 print media. The print media offer a diverse range of views and opinions. Nevertheless, the media context in Italy during the election period was highly unusual in that Prime Minister Berlusconi was in a position to exert influence over all of the main national television stations, either by virtue of his office or through his ownership of the *Mediaset* broadcasting company. *Mediaset* and the public broadcaster *Radiotelevisione*

Italiana (RAI) taken together control as much as 90 per cent of the broadcast media market.⁹ This situation, sometimes referred as a “duopoly” or the “Italian anomaly,” was important in regard to the election campaign since television is by far the most important source of news and information. Several international bodies, including the Parliamentary Assembly of the Council of Europe, the OSCE Representative on Freedom of the Media and the European Parliament have expressed concerns over the near monopolization of the electronic media and possible abuse of broadcast media power in Italy.¹⁰

B. LEGAL AND REGULATORY FRAMEWORK FOR THE MEDIA

The *par condicio* (equal treatment) law was adopted in 2000 to provide for equal access of political parties and coalitions to the broadcast media during campaign periods. The provisions of the *par condicio* law are effective during the official campaign period that begins with the dissolution of the parliament, in this instance on 11 February. Between 11 February and the 6 March deadline for presentation of the candidate lists, the law required equal quantitative and qualitative coverage to all political parties represented in parliament. From 6 March until the beginning of the campaign silence period on 8 April, the law required equal treatment to all parties competing in the elections. The provisions of *par condicio* are overseen by two regulatory bodies – private broadcasters are regulated by the Guarantee Authority in the Field of Communications (AGCOM), and public broadcasters are regulated by the *RAI* Parliamentary Oversight Committee.

AGCOM, established in 1997, is an independent political body with nine members. The Chairman is appointed by the President based on advice from the Prime Minister and in agreement with the Minister of Telecommunications. The other eight members of AGCOM are appointed by the Chamber of Deputies and the Senate, each of which chooses four members. AGCOM is responsible for monitoring and enforcement of the provisions on programming, including the protection of pluralism in broadcasting and overseeing all broadcasters' compliance with the *par condicio* law. Although AGCOM undertook its duties seriously and issued some warnings to and fines against offending broadcasters, these were not sufficient to deter stations from continuing to provide imbalanced coverage.

The independence of AGCOM could be further enhanced by amending the appointment procedure of its members with a view to limiting possibilities for political influence on its decision making by incumbent majorities in both chambers of parliament.

The *RAI* Parliamentary Oversight Committee is composed of 40 members – 20 Deputies and 20 Senators – with a composition reflecting that of the parliament and a president selected by the minority. Under the *RAI* law (1975), the Committee oversees the public television to ensure its respect of the public broadcasting principles such as pluralism and fairness. To supplement the *par condicio* law, in early February 2006 both AGCOM and the *RAI* Parliamentary Oversight Committee issued very detailed and complex rules for broadcast media during the election period.

Overall, the broadcasting system in Italy is characterized by involvement of politicians, especially in the public broadcaster *RAI*. The system of appointment of the *RAI* executive posts

⁹ Guarantee Authority in the Field of Communications (AGCOM), Annual Report 2004.

¹⁰ Parliamentary Assembly of the Council of Europe resolution 1387 (2004); OSCE Representative on Freedom of the Media report “The Gaspari Law” (2005) ; European Parliament resolution 2003/2237.

is determined by the political parties, especially by the party in power. As such, independence of the newsrooms, especially during elections, remains in question.

Parliament should consider legislation to make RAI a truly independent broadcaster. The members of the RAI Board of Directors should be appointed based on their professional expertise and qualifications and should be independent from political or governmental influence or control. The RAI Board of Directors should be responsible for the appointment of the RAI General Director, without consultation with the Government. News directors should not be politically appointed.

C. MEDIA MONITORING

The OSCE/ODIHR EAM monitored three public TV channels (*RAI Uno*, *RAI Due* and *RAI Tre*) and three private broadcasters owned by *Mediaset* (*Rete Quattro*, *Canale Cinque* and *Italia Uno*), using a methodology of quantitative and qualitative analysis, from 13 March through 7 April. These stations covered the campaign extensively.

1. Free Airtime and Debates

RAI respected the legal provisions for free airtime. It broadcast free political party campaign messages in three time slots per day (each slot lasted a maximum of three minutes). One political party, *Rosa nel Pugno*, complained to the OSCE/ODIHR EAM that these time slots were broadcast outside of prime time. In addition, *RAI* allocated 30 minutes of free airtime for press conferences with leaders of all political parties participating in the elections. The party leaders were interviewed by three journalists, two chosen by *RAI* and one selected by lot from journalists nominated by the party.

RAI also broadcast daily televised debates among four party representatives (two from each coalition). The party *Movimento Repubblicani Europei* complained to AGCOM that representatives of six parties¹¹ had appeared twice in the debates while other parties appeared only once. The regulator told the OSCE/ODIHR EAM that it had not addressed this complaint since the complainant had failed to meet all required legal procedures in filing the complaint.

Two televised debates between Mr. Berlusconi and Mr. Prodi took place on *RAI Uno*. In addition, a number of televised debates and political talk shows with less strict formats took place on both the public and private TV channels. Mr. Prodi declined invitations to appear on *Mediaset* TV stations.

2. News and Current Affairs Programs

Between 13 March and 7 April, there were discernable differences in coverage of the candidates and parties on the three *RAI* channels. The OSCE/ODIHR EAM's media monitoring showed that *RAI Uno* gave approximately equal proportions of its prime-time news coverage to the principal candidates and parties. The main rivals each accounted for more than two hours of the channel's election and political prime time news coverage. The EAM evaluated that 25 per cent of Mr. Berlusconi's coverage was positive and 16 per cent negative in tone, while 19 per cent of Mr. Prodi's coverage was positive and 19 per cent negative. In addition, the channel's current

¹¹ *Forza Italia, Alleanza Nazionale, UDEUR, La Margherita, Nuova DC-Nuova PSI, and PSDI.*

affairs programs favored Mr. Berlusconi's center-right coalition in terms of the quality of coverage.

Of the other two public TV channels, *RAI Due*'s prime-time news programs were slightly tilted towards the center-right coalition. During the monitoring period, *RAI Due* devoted 54 per cent of its electoral and political prime time news coverage to the ruling coalition and the government. This coverage was mainly neutral in tone. By comparison, parties of the center-left coalition accounted for 46 per cent, which were mainly neutral or negative in tone. In contrast, *RAI Tre* prime-time newscasts tilted slightly to the center-left coalition. While both coalitions received approximately equal proportions of the channel's election and political prime-time news, coverage of the center-right *Casa delle Liberta* was more negative than that of the center-left *Unione*. On 22 March, AGCOM sent an official warning to *RAI Uno* and *RAI Due*, ordering them to comply with the *par condicio* law provisions and regulations in their news programs. In addition, responding to a complaint filed by the center-left party *Rosa nel Pugno*, AGCOM ordered *RAI* to rectify its previously unbalanced coverage of the party. *RAI* complied with this order.

The coverage of the campaign by the private *Mediaset* TV stations tilted towards Mr. Berlusconi and his coalition. Most notably, during the monitoring period, *Rete Quattro* devoted 52 per cent of its electoral and political prime-time news coverage to Mr. Berlusconi's *Forza Italia* party. This coverage was overwhelmingly positive or neutral in tone. By comparison, all the parties of the *Unione* received a combined total of 41 per cent, which was mainly negative or neutral in tone. Mr. Berlusconi received three hours and 34 minutes of *Rete Quattro*'s prime-time news coverage, 66 per cent of which was assessed as positive and 33 per cent as neutral. Conversely, Mr. Prodi received one hour and 47 minutes, of which 46 per cent was negative and 28 per cent neutral in tone. Another *Mediaset* channel, *Italia Uno*, adopted a similar, if somewhat more balanced, approach. On 16 March, *Rete Quattro* aired a 30-minute feature on the 20th anniversary of Mr. Berlusconi's presidency of the AC Milan soccer club, focusing on its achievements under his presidency in an exclusively positive light.

On 22 March, AGCOM fined *Rete Quattro* and *Italia Uno* €200,000 and €100,000, respectively, for violating the *par condicio* legislation. On 3 April, AGCOM fined *Rete Quattro* an additional €250,000. The fines, however, did not affect the unbalanced coverage. The main news presenter and director of *Rete Quattro* news programs continued to show clear support for Mr. Berlusconi.

The third *Mediaset* TV channel, *Canale Cinque*, provided more balanced coverage of the two main contestants than the two other *Mediaset* stations.

In sum, in their prime-time news and current affairs programs, the three public channels monitored covered the campaign in a manner that was largely balanced in quantitative terms. As for the tone of coverage, *Rai Uno* and *Due* mostly favored the centre-right coalition, while *Rai Tre* favoured the centre-left one. The private television channels gave the clear advantage, in both quantitative and qualitative terms, to Mr. Berlusconi and his party *Forza Italia*, demonstrating an imbalance in coverage. In addition, the main channels appeared in general to lack investigative and critical reporting that would offer the public an in-depth assessment of candidates and parties seeking elected office. Nevertheless, voters received exposure to a wide range of views thus enabling them to make informed choices at voting time.

D. OTHER MEDIA ISSUES

A number of the OSCE/ODIHR EAM's interlocutors expressed the view that the media environment during the electoral period was negatively affected by the cases of two prominent journalists who have remained off the air since 2002, allegedly following their public criticism of the Prime Minister. Purportedly, several other journalists or satirists from RAI were taken off the air or marginalized after voicing critical views to large audiences. On 29 March, during a press conference organized by the Federal Association of Italian Journalists, several journalists publicly commented that political pressure had prevented them from covering political and electoral stories freely. Several journalists made similar comments privately to the EAM.

Many of the OSCE/ODIHR EAM's interlocutors, including political party representatives and journalists, expressed the view that during the weeks prior to the start of the official media campaign period, Mr. Berlusconi, in particular, undertook a media blitz that challenged the principle of equal conditions. The Italian media-monitoring organization *Osservatorio di Pavia* produced data showing that during the month prior to the dissolution of Parliament, there was a significant imbalance, both in quantity and quality of coverage, in favor of Mr. Berlusconi's coalition on most of the main TV channels.

On 12 March, Mr. Berlusconi walked out of the analytical program "*In Mezzora*" on *RAI Tre*, following a dispute with the journalist hosting the program. AGCOM considered the case and ruled that the journalist had violated Article 5 of the *par condicio* law by "showing her political affiliation during the interview." Further, the regulator asked the *RAI* Board of Directors to "inform AGCOM on the internal disciplinary measures *RAI* would take against the journalist." While the *RAI* Board of Directors sent warning letters to both the journalist and the director of *RAI Tre* news programs, the program remained on the air.

Already in 1994, the Constitutional Court, in its judgment number 420, ruled that it is impermissible for one and the same entity to broadcast more than 20 per cent of the TV programs transmitted domestically on territorial frequencies. Nonetheless, *RAI* and *Mediaset* each continue to control three terrestrial analog television broadcasters with shares well beyond 20 per cent. The failure to implement the judgments of the Constitutional Court could constrain the ability of citizens to receive pluralistic information.

In 2004, the "Gasparri Law"¹² was adopted with the intention of resolving the high concentration in the television market, ending the "duopoly," complying with the Constitutional Court decision, and depoliticizing the *RAI*. This was to be accomplished by obliging broadcasters to switch to digital terrestrial transmission, which would allow for a proliferation of stations compared to analog broadcasting. It is anticipated that this process could be completed in four or five years.

The OSCE Representative on Freedom of the Media has assessed, however, that the Gasparri Law cannot correct Italy's television anomaly or bring about a de-monopolized television environment. He recommended a review of the law to ensure effective implementation of the Constitutional Court decision and to encourage de-politicized management of the *RAI*. Likewise, the Representative on Freedom of the Media expressed concern about the conflict of interests

¹² Law 3 of May 2004, no.112 : "Regulations and principles governing the set-up of the broadcasting system and the *RAI-Radiotelevisione Italiana S.p.a.*, authorizing the government to issue a consolidated broadcasting act."

involved in a public official being in command of news media and recommended more specific measures to alleviate this problem.¹³

In light of the impact both of these issues can have on the media's coverage of elections, the authorities should take steps to implement the recommendations of the OSCE Representative on Freedom of the Media.

VIII. COMPLAINTS AND APPEALS

There are a variety of procedures for complaints and appeals to different political and administrative bodies, as well as through the general legal system. Within the judicial system, under Italy's civil law system, different types of complaints may be dealt with by ordinary courts or administrative courts. Parties and candidates expressed confidence in the impartiality of the court system.

A. POLITICAL BODIES

Complaints in regard to election results or distribution of seats, as well as election day complaints, are adjudicated by the newly elected Chamber of Deputies or Senate. Their decisions are final, with no possibility of recourse to a court. Procedurally, committees are established within the Senate and the Chamber of Deputies to examine complaints.¹⁴ The Committees operate with specific rules, the possibility of public hearings and the right to legal counsel. The Chamber committee has up to 18 months from the elections to refer its recommendations to the Parliament for final decision.

The power of the legislature to settle electoral disputes finds its roots in the Italian interpretation of the separation of powers, and in particular in Article 66 of the Constitution, which states that each chamber of the parliament is responsible for determining the "electoral admissibility of its members as well as ineligibility and incompatibility."

For the winning parties in an election to act as the ultimate judges on election disputes is highly unusual and potentially problematic. The system could certainly call into question the impartiality of the adjudicating body and the effectiveness of the remedy available to complainants. Moreover, the extended timeframe for deciding disputes does not ensure a timely remedy.

The OSCE/ODIHR inventory of commitments and other principles for democratic elections states that election contestants must have the opportunity to submit complaints on all aspects of election operations to a relevant court.¹⁵ The Council of Europe's Commission for Democracy through Law, Code of Good Practice in Electoral Matters 2002, states: "the appeal body in electoral matters should either be an electoral commission or a court. For appeals to parliament, an appeal to a parliament may be provided for the first instance. In any case, final appeal to a court must be possible."¹⁶

¹³ Visit to Italy : The Gasparri Law – Observations and Recommendations, 5 June 2005.

¹⁴ For the Senate: Committee for Elections and Immunity (*Giunta della elezioni e della immunità*) and for the Chamber: Committee for the Elections (*Giunta della elezioni*).

¹⁵ Section 10.3, Existing Commitments for Democratic Elections in OSCE Participating States, 2003, p. 23.

¹⁶ Section 3.3(a).

Notwithstanding the constitutional basis for the existing complaint procedure, the new parliament should consider measures to provide for impartial and timely resolution of electoral disputes, including the possibility of an appeal to a court.

B. JUDICIAL ELECTORAL BODIES

As noted above (Section IV, Election Administration), a National Central Election Office (NCEO) is established at the Court of Cassation, while Regional Election Offices (REOs) and District Election Offices (DEOs) are established at the Regional and District Courts of Appeals. These judicial bodies have jurisdiction over a narrow range of electoral complaints and appeals.

The REOs (for the Senate) and the DEOs (for the Chamber of Deputies) adjudicate any individual ballots designated by Polling Electoral Offices (PEOs, or polling stations) as contested. The REOs and DEOs do not have authority to examine other ballots, such as blank or invalid ballots, or to alter PEO results. REOs and DEOs do not take decisions on other types of election day complaints.

The NCEO adjudicates appeals of Ministry of Interior decisions on registration of party logos; its decisions are final. The NCEO also makes final rulings on appeals of REO and DEO decisions on registration of candidate lists. A number of party lists were disallowed in different parts of the country because of problems with their signature lists. In Campania, for example, the REO rejected four of 29 lists. One party list was initially rejected because the party had been collecting signatures under a logo not approved by the Ministry of Interior; it was later registered by a decision of the NCEO under a changed logo. In Lombardy, eight of 32 lists for the Senate elections were rejected for an insufficient number of signatures or failure to nominate the minimum number of candidates. Upon appeal, the NCEO upheld the rejections. The NCEO also overturned the initial exclusion of Alessandra Mussolini's *Alternativa Sociale* list.

The NCEO, like the REOs and DEOs, does not take decisions on election day complaints.

C. ADMINISTRATIVE COURTS

Administrative courts, in particular the Regional Administrative Tribunals (TAR or *Tribunale Amministrativo Regionale*) have broad jurisdiction over election complaints for regional, district and local elections, but not for parliamentary elections. In the April 2006 elections, the TARs specifically declined jurisdiction for appeals from various decisions rendered by the NCEO in respect to decisions on the exclusion of party lists, for example in Lombardy and Puglia.

Nevertheless, the TARs may become involved in certain election-related disputes, even in parliamentary elections, as a result of their general jurisdiction over complaints against actions of the administration. For example, a party could appeal to a TAR if the police prohibited an election demonstration or if the party felt that municipal authorities did not provide it with equal space for its campaign posters. Decisions of the TAR can be appealed to the Council of State, whose decision is final.

In addition, the TAR of the Region of Lazio serves as the appeals body for decisions taken by the broadcast regulatory body AGCOM (see below, and Section VII, The Media). The Lazio TAR decisions may be appealed at Council of State, whose decision is final.

D. CRIMINAL COURTS

If a complaint arises against an individual for committing an electoral offence such as intimidating voters, stuffing ballot boxes, buying votes, etc., it is dealt with in the criminal court system. For election-related cases there is an expedited process. Lower court decisions can be appealed to the Courts of Appeals and ultimately to the Court of Cassation.

For complaints that posters have been torn down or defaced, liability is limited to individuals caught in the act. This results from a recent amendment to the law; previously, parties could be held responsible if their members tore down opposing posters. Such cases are treated as minor offences; municipal police can impose fines immediately. Appeals may be made to the ordinary courts, then to the Courts of Appeals and the Court of Cassation.

E. OTHER BODIES

Any complaints by citizens in regard to their inclusion on the voter lists are adjudicated by a Circumscriptorial Electoral Commission (*Commissione Elettorale Circondariale*). These Commissions are made up of a Chairperson appointed by the Prefect (who is an official of the Ministry of Interior) and three members named by the provincial council. Individuals may appeal decisions of the Commissions to the Court of Appeals and further to the Court of Cassation.

As noted above (Section VII, The Media), violations of the *par condicio* media regulations may be appealed to AGCOM, the regulatory authority for broadcast media. AGCOM may impose fines ranging from €25,822 to €103,291; this can increase to €250,000 should the violation of campaign rules occur in the last 20 days of the election campaign. AGCOM may issue orders to redress imbalanced media coverage. In case of non-compliance with its decisions, AGCOM may suspend the broadcasting license for a period of 11 to 30 days. During the campaign, AGCOM did issue fines and orders for redress but did not suspend broadcast licenses. As AGCOM is an administrative body, appeals from its decisions go the administrative court system. The TAR of the region of Lazio is designated as the court of first instance for all appeals of AGCOM decisions.

IX. ELECTION DAY AND POST-ELECTION DEVELOPMENTS

The OSCE/ODIHR EAM did not undertake a systematic or comprehensive observation of polling and counting on election days. EAM members did, however, visit about thirty polling stations in Florence, Genoa, Naples and Rome, and attended the vote counting process in a few polling stations.

Polling was conducted in 60,997 polling stations throughout the country. In addition, 896 PEOs were established to count votes from abroad. Most polling stations were established in schools, with buildings especially in urban areas accommodating several polling stations. Polling stations were open from 8:00 a.m. to 10:00 p.m. on 9 April, and from 7:00 a.m. to 3:00 p.m. on 10 April. There were two ballots, one for the Chamber of Deputies and one for the Senate. To vote, voters marked a cross through the logo of the political party of their choice. Voter turnout was 83.6 per cent, up from 81.4 per cent in 2001.

In the limited number of polling stations visited by OSCE/ODIHR EAM members on election days, voting was well organized and proceeded in an orderly fashion. All necessary material was present, and polling station staff appeared to be familiar with voting procedures. Women and youth were well represented among poll workers. Party representatives, who were present in most polling stations visited, generally expressed their confidence in the process and did not raise concerns about possible irregularities. In some cases, access to polling stations located above the ground floor was difficult for elderly and infirm voters. However, poll workers generally tried to help such voters by enabling them to vote on the ground floor, and in some cases special voting booths were provided for that purpose.

Votes were counted immediately after voting closed on 10 April, first those cast for the Senate, then those for the Chamber of Deputies. Party representatives were present for the vote count, enhancing the transparency of the process. In several polling stations in Rome and Genoa, OSCE/ODIHR EAM members could witness the experimental parallel electronic vote count. It would appear that this innovation was of limited use because votes were not read out and entered in tally sheets and computers one by one as the ballots were taken out of the ballot boxes. Instead, poll workers would pre-sort ballots by party lists, and the votes were entered in the software after the manual count.

Counting and tabulation continued into the morning of 11 April. As partial results came in, the *Unione* held a narrow and decreasing margin in the Chamber, while the *Casa delle Liberta* held an equally narrow margin in the Senate. By midday 11 April, the Ministry of Interior released unofficial preliminary results showing the *Unione* as the winner in the Chamber with 49.8 per cent of the vote, over 49.7 per cent for the *Casa delle Liberta*, with 25,000 votes out of 38 million separating the two sides. In the Senate, the results took somewhat longer to become clear since they depended on the out-of-country vote, which took longer to count. When the out-of-country preliminary results were finalized, the *Casa delle Liberta*'s earlier one-seat lead in the Senate had changed into a two-seat advantage to the *Unione*, with 158 to 156 seats. One Senator unaffiliated with any of the major contestants was also elected from the designated out-of-country constituency.

Initially, the Ministry of Interior announced that there were in total some 43,000 "unassigned contested ballots", i.e., ballots sent by polling stations to the District or Regional Election Offices for decision, on which the PEOs did not reach a decision. Within a few days, the Ministry of Interior corrected its earlier announcement, reducing the number of contested ballots to 2,121 for the Chamber and 3,135 for the Senate.

Preliminary unofficial election results were posted promptly on the Ministry of Interior website and released to the media. However, there was no breakdown by polling stations, and ministry officials told the OSCE/ODIHR EAM that there were no plans to release polling station results.

In order to further enhance the transparency of the tabulation process, the Ministry of Interior should publish preliminary election results by polling station as soon as they are received. Official results should be published by polling station once they have been validated.

On 19 April, the NCEO released the official results of the Chamber elections, confirming the preliminary results. Because of the "majority bonus" included in the amended election law, the *Unione* was awarded 348 seats in the Chamber, to 281 for the center-right.

Shortly after the election, the Berlusconi campaign submitted to the OSCE/ODIHR EAM preliminary information alleging irregularities. While the OSCE/ODIHR EAM reviewed this preliminary information, it underscored the importance that any such information be submitted through the official complaints and appeals mechanisms available to election contestants in Italy¹⁷.

While initially Mr. Berlusconi publicly declined to concede defeat, 19 days after election day he recognised the victory of the *Unione*. The newly elected parliament took office on 28 April. The new cabinet, with Mr. Prodi as Prime-Minister, was approved by both chambers of parliament on 23 May.

¹⁷ The Election Commissions at the Chamber of Deputies and at the Senate, respectively; please see Section VIII.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (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 Document).

The 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 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, and gender equality. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

Within the field of **tolerance** and **non-discrimination**, the ODIHR provides support to the participating States in implementing their OSCE commitments and in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The 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 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. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

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).