



**Office for Democratic Institutions and Human Rights**

# **REPUBLIC OF TURKEY**

## **PARLIAMENTARY ELECTIONS**

**12 June 2011**

**OSCE/ODIHR Election Assessment Mission Report**



**Warsaw  
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**I. EXECUTIVE SUMMARY**

In line with OSCE commitments, the Turkish authorities invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 12 June 2011 parliamentary elections. Based on the recommendation of a Needs Assessment Mission, OSCE/ODIHR deployed an Election Assessment Mission for these elections.

The parliamentary elections demonstrated a broad commitment to hold democratic elections in Turkey. The level of participation from the side of the electorate was impressive both during the campaign and on election day. The existence of a solid framework and of experience in the conduct of democratic elections is clear. Certain issues, however, could stand to be further addressed. The Constitution and implementing legislation continue to unduly limit freedom of expression, freedom of association and electoral rights. There is also the need to ensure the equality of vote weight among constituencies, lifting certain existing restrictions on suffrage rights, and enhancing transparency in the complaints and appeals process.

The legal framework provides a comprehensive basis for the conduct of elections. A broad package of amendments to the Constitution aimed at further strengthening the guarantees of individual and human rights was adopted in a 2010 referendum. Significant changes were also introduced to election-related laws, with some amendments relating to previous OSCE/ODIHR recommendations, and improving the overall framework for the conduct of elections. The legal prohibition against using any language other than Turkish in political campaigning, which was regarded as problematic during previous elections, has been partially repealed.

In addition to the points noted above, the legal framework also lacks clarity and uniformity, which creates the potential for inconsistent application and arbitrary interpretation. Further, as pointed out in previous OSCE/ODIHR reports, the legislation does not provide for observation of the electoral process by international and domestic civil society organizations.

Following the 2010 referendum, the governing party announced plans to launch a process of drafting a new Constitution with the aim of bringing it in closer compliance with international standards. The need for a constitutional reform was emphasized during the campaign by the majority of political parties, signaling the interest from across the political spectrum and expectations for a broadly inclusive consultation process.

Elections were administered by a four-tier structure, comprising the Supreme Board of Elections (SBE), 81 Provincial Electoral Boards (PEBs), 1,054 District Electoral Boards (DEBs) and 199,207 Ballot Box Committees (BBCs). Electoral boards are predominantly composed of senior judges, but include non-voting political parties' representatives. Members of BBCs are mostly appointed by political parties. Representatives of the main political parties were generally confident in the impartiality and professionalism of the election administration, while smaller parties and civil society representatives expressed some reservations as to its performance. Several of the SBE's decisions during the electoral period

resulted in controversies and drew criticism, especially decisions regarding registration of independent candidates and voting abroad. Voters residing abroad were offered an opportunity of early voting at border crossing customs points.

Fifteen parties participated in these elections, fielding a total of 7,492 candidates. Two parties were rejected by the SBE for not submitting the required documentation and nine parties withdrew from the campaign after registration. Many of the smaller parties chose to support independent candidates instead of registering party lists as a way of circumventing the ten per cent electoral threshold for gaining representation in the parliament, although certain legal provisions may disadvantage independent candidates. In addition to party candidates, a total of 203 independent candidates ran in these elections.

The campaign was lively with numerous generally peaceful rallies drawing huge crowds. The campaign rhetoric was at times aggressive and confrontational, underscoring the polarization of political forces. A few violent campaign-related incidents occurred and a number of attacks on party offices were reported. Ongoing operations by Turkish security forces in certain parts of the country were seen by some stakeholders as having had a restraining effect on campaigning by pro-Kurdish candidates and political parties.

The media landscape in Turkey is diverse and lively. Concerns were, however, expressed with regard to the legislative limitations on freedom of expression, a high number of arrested and convicted journalists, and the alleged control by the government over some influential media. Domestic media experts opined that frequent defamation claims by politicians against journalists, as well as growing self-censorship and censorship by editors due to fears of repercussions, restrain journalists in their work and discourage investigative journalism. During the campaign, political parties contesting the elections received free airtime on the public broadcaster. In addition, for the first time in these elections, parties were permitted to purchase airtime provided by broadcasters on the same conditions to all contestants.

The representation of women in the parliament increased from 9.1 per cent in 2007 to 14 per cent in the new legislature. While still below the European average of 22.3 per cent, it nonetheless demonstrates a trend of improvement. Several parties voluntarily introduced measures to encourage involvement of women as candidates, including internal quotas and reduction of fees charged to women candidates.

In accordance with standard practice for EAMs, the OSCE/ODIHR mission did not observe election day proceedings in a systematic or comprehensive manner. However, mission members visited a few polling stations in 15 localities. In polling stations visited, voting, counting and result tabulation procedures were administered professionally, efficiently and in overall compliance with legal requirements. There was a considerable police presence inside and/or outside most of polling stations visited by the OSCE/ODIHR EAM.

The distribution of mandates to elected representatives that took place after the departure of the OSCE/ODIHR EAM resulted in some controversies. A number of elected candidates who were in pre-trial detention during the campaign were not released from detention pending trials and thus unable to take up their seats. A mandate from one elected independent candidate was withdrawn following his final conviction on terrorism-related charges days before election day.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

On 6 April 2011, the OSCE/ODIHR was invited by the Turkish authorities to observe the 12 June parliamentary elections. In anticipation of an invitation, OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Turkey from 30 March to 1 April 2011.<sup>1</sup> Based on its recommendations, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 23 May to 18 June 2011.

The OSCE/ODIHR EAM was led by Cayetana de Zulueta and consisted of 19 election experts from 13 OSCE participating States. In addition to experts based in Ankara, the OSCE/ODIHR EAM deployed teams to Istanbul, Diyarbakır and İzmir and also conducted visits to Bursa, Şanlıurfa, Mardin, Batman, Manisa, Adana, Mersin, Van and Trabzon.

The OSCE/ODIHR wishes to thank the Ministries of Foreign Affairs and Interior, representatives of the election administration, provincial and district authorities, political parties, media, civil society and resident diplomatic community for the co-operation and assistance extended to the OSCE/ODIHR EAM.

## III. BACKGROUND

On 3 March 2011, the Grand National Assembly of Turkey (the parliament) set the date for parliamentary elections for 12 June. In 2007, three political parties entered the parliament. The Justice and Development Party (AKP)<sup>2</sup> gained the largest number of mandates (341), allowing it to form a majority government. The Republican People's Party (CHP) obtained 99 seats and became the main opposition party, followed by the Nationalist Movement Party (MHP) with 70 seats. The rest of the seats were won by independent candidates. Twenty of the independent candidates elected were associated with the pro-Kurdish Democratic Society Party (DTP). However, the DTP was dissolved by a Constitutional Court decision in 2009 (see legal framework); most of the DTP-affiliated deputies subsequently joined its successor, the Peace and Democracy Party (BDP), and formed a parliamentary group.

Constitutional reform has long been at the forefront of the political agenda in Turkey. In October 2007, a constitutional referendum reduced the parliamentary term from five to four years and reformed the presidential election system.<sup>3</sup> In September 2010, another referendum took place and resulted in the adoption of a number of important constitutional changes.<sup>4</sup> The authorities presented the amendments as bringing the Constitution closer to the standards of the European Union, in which Turkey seeks membership, and enhancing guarantees of individual and human rights. Opponents of the referendum, including the main opposition

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<sup>1</sup> The OSCE/ODIHR NAM report is available at [www.osce.org/odihr/elections/76837](http://www.osce.org/odihr/elections/76837).

<sup>2</sup> The abbreviations used for political parties are based on their names in Turkish.

<sup>3</sup> The changes included a shift from an indirect to a direct election of the president, reduction of the presidential term from seven to five years, and allowance for a second presidential term.

<sup>4</sup> Some key amendments included: recognition that affirmative action measures for women and disabled are not a violation of the equality principle; repeal of a provision that deputies from dissolved parties lose their parliamentary seats; significant judicial reforms, including an increase in the number of Constitutional Court judges and the involvement of parliament in their appointment; introduction of a right of citizens to submit cases to the Constitutional Court on grounds that the European Convention on Human Rights (ECHR) has been violated; and a slight increase in the vote threshold at the Constitutional Court to dissolve political parties or to annul constitutional amendments.

parties, regarded the introduced changes as an attempt by the governing party to increase its authority, including over the judiciary. Following the 2010 referendum, the governing party announced its plans to launch a process of drafting a new democratically-oriented constitution after the 2011 parliamentary elections.

The political discourse in Turkey in the last two years has been dominated by the ongoing investigations of alleged *coup* plots. A growing number of arrests and detentions of people deemed associated with these cases, including army officials, members of the administration, and lawyers and journalists reporting on the matter, have raised concern both domestically and internationally.

In September 2009, the Turkish government launched an initiative referred to in the media as the “Kurdish opening”. This aimed at improving relations with the Kurdish population through a range of confidence-building measures. When announced, the initiative received broad welcome; however, criticism was subsequently raised that little concrete action had followed. The period leading up to the elections remained tense in the southeastern provinces of the country.

#### IV. LEGAL FRAMEWORK

Parliamentary elections are primarily regulated by the Constitution, the Law on Basic Provisions for Elections and Voter Registers (LBPEVR), the Law on Parliamentary Elections (LPE), and the Law on Political Parties (LPP).<sup>5</sup> Regulations and decisions of the SBE supplement the legal framework. The primary election-related laws were amended in recent years, with some amendments relating to previous OSCE/ODIHR recommendations. These included amendments related to voting abroad and the language in which campaign activities may be carried out (see below). Substantial changes were introduced to the LBPEVR in 2008 and 2010 and a number of amendments were introduced to the LPE and the LPP in 2010 and 2011, respectively.<sup>6</sup> Article 67 of the Constitution provides that amendments to election laws are not to be applied to elections held within one year of their adoption. On March 4, the SBE issued a decision that all amendments adopted in April 2010 would be applicable to the June 2011 elections.

The legal framework provides a comprehensive basis for the conduct of elections. However, a number of restrictions in the legislation (discussed below) deemed problematic in assessments of previous elections by the OSCE/ODIHR have not yet been reformed.<sup>7</sup> Further, the LBPEVR and the LPE lack overall clarity and include various ambiguities, inconsistencies

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<sup>5</sup> Other relevant legislation includes the Law on Assemblies and Marches, the Criminal Code, the Anti-Terrorism Law and various media-related laws.

<sup>6</sup> Amendments to the LBPEVR were related to voter registration, voting abroad, party representation in the SBE, campaigning rights and restrictions, security at polling stations, voting, counting and tabulation procedures, election day complaint procedures, and election offences and penalties. Changes to the LPE broadened the list of categories of civil servants who are required to resign to compete in elections, increased the election deposit for independent candidates, and amended the format of joint ballots. Amendments to the LPE were related to the reporting of income and expenses by political parties and candidates.

<sup>7</sup> See OSCE/ODIHR Final Reports on the 3 November 2002 and 22 July 2007 early parliamentary elections at [www.osce.org/odihr/elections/turkey](http://www.osce.org/odihr/elections/turkey).

and gaps.<sup>8</sup> Adding to this lack of clarity, the SBE issued decisions that contradicted or modified the legislation, potentially overstepping its authority as an administrative body.<sup>9</sup>

*Consideration could be given to amending the legal framework for elections in order to enhance its overall clarity, to address ambiguities, inconsistencies and gaps, and to harmonize various election-related laws with one another. The SBE should refrain from issuing decisions that conflict with the legislation.*

The Constitution, adopted in 1982 under military rule, contains a number of restrictions to fundamental civil and political rights, also affecting the election environment. These restrictions as well as implementing legislation unduly limit, among other rights, the freedom of expression, freedom of association and electoral rights. Some interlocutors of the OSCE/ODIHR EAM were uncertain as regards the governing party's intention to hold broad and inclusive public consultations on the draft of a new Constitution. In March 2011, the European Parliament (EP) highlighted the pressing need for an "overall constitutional reform to transform Turkey into a fully fledged pluralistic democracy with the protection of human rights and fundamental freedoms at its core" with the close involvement of all political parties and civil society in the reform process.<sup>10</sup>

*It is recommended that any new or amended elements of the Constitution impacting the electoral process be drafted in line with international human rights standards and in broad public consultation involving all major political forces and civil society.*

Provisions on the dissolution of political parties remain a continuing concern. The right to initiate dissolution lawsuits belongs solely to the Chief Public Prosecutor.<sup>11</sup> The grounds for dissolution provided by the Constitution and elaborated upon in the LPP exceed the acceptable restrictions on objectives and activities of political parties established in international law.<sup>12</sup> The provisions include broad and ambiguous prohibitions. They prohibit political party objectives and activities that: contradict the basic characteristics and the

<sup>8</sup> For example, provisions on the formation of BBCs (Article 23, LBPEVR) are ambiguous, provisions on the timing of voting at border crossing points (Article 94E, LBPEVR) and the completion of candidate registration (Article 24, LPE) are inconsistent with each other, references are made to a number of provisions in the repealed Criminal Code (Article 11, LPE), and provisions regulating the procedures and grounds for recounts and invalidation of results are absent.

<sup>9</sup> For instance, the 5 March SBE decision increased the maximum number of voters per polling station to 300, while Article 5 of the LBPEVR provides that the maximum number is 150 for towns and 200 for cities.

<sup>10</sup> See EP resolution of 9 March 2011 on Turkey's 2010 progress report; available at [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0090+0+DOC+XML+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0090+0+DOC+XML+V0//EN).

<sup>11</sup> The initial package of draft 2010 constitutional amendments envisaged the establishment of a special parliamentary committee composed of five members from each party to approve the initiation of dissolution lawsuits by the Public Prosecutor with a two-thirds vote. This measure, however, did not receive sufficient support in the parliament and was dropped from the final text of the draft amendments. In June 2009, the Constitutional Court annulled the LPP provision that allowed for the withdrawal of public funding from parties as a penalty for violations of the law, leaving dissolution as the only option.

<sup>12</sup> Article 22.2 of the UN International Covenant on Civil and Political Rights (ICCPR) states that "no restrictions shall be placed on the exercise of the [right to freedom of association] other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others." Article 11 of the European Convention on Human Rights (ECHR) has a similar reading. The *Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures* by the Venice Commission of the Council of Europe (10-11 December 1999) state that parties may be dissolved "only if it is necessary in a democratic society and if there is concrete evidence that a party is engaged in activities threatening democracy and fundamental freedoms. This could include any party that advocates violence in all forms as part of its political programme or any party aiming to overthrow the existing constitutional order through armed struggle, terrorism or the organization of any subversive activity."

territorial integrity of the state, general morals and ethics, or the reforms and principles of Atatürk; promote the idea of existence of national minorities or the use of minority languages; or are inconsistent with the principles of secularism.<sup>13</sup> Taken as a whole, it would seem that the legal framework can be invoked against almost any party program that would advocate changes to the constitutional model in the country, even if through peaceful democratic means.<sup>14</sup>

*It is recommended that the constitutional and legislative framework be reformed to align the procedure and grounds for closure of political parties with international standards. Consideration should be given to subjecting the authority of the Public Prosecutor to initiate closure lawsuits to some form of democratic control.*

In addition, Article 69(10) of the Constitution imposes a five-year ban on political activity and membership in political parties on the founders and members of dissolved parties whose actions or statements led to the dissolution of that political party. Similarly, Article 53 of the Criminal Code provides for the termination of political rights of felons, which includes the right to found and be a member of a party, until their sentence is fully served.

*It is recommended that the legal framework be amended to ensure that any restrictions on political association rights be proportional to the crime committed and be the result of a criminal conviction by a court of law.*

In the past, there have been numerous cases seeking the dissolution of political parties for carrying out activities prohibited under the Constitution and the LPP, with most cases having been against pro-Kurdish and anti-secular parties. However, the number of actual dissolutions has dropped to only a few in recent years and the Constitutional Court appears to be taking a more critical approach towards dissolution proposals.<sup>15</sup> In October 2008, the dissolution of the ruling AKP was considered by the Constitutional Court on charges that it had undertaken anti-secular activities. Noting that parties can only be dissolved under ‘exceptional conditions’ and that, under Article 90 of the Constitution, international human rights agreements have the force of law before domestic courts, the court instead decided to sanction the party by withdrawing half of its public funding for one year.

In December 2009, the Constitutional Court ruled to dissolve the DTP on grounds that it had become a “focus of activities against the indivisible integrity of the state” due to its separatist actions and links with the outlawed Kurdistan Workers’ Party (PKK). Thirty-seven of its party members were banned from political party activities for five years and its two co-founders lost their parliamentary seats.<sup>16</sup> In January 2010, the dissolved DTP and its banned

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<sup>13</sup> The relevant provisions are directly taken from Articles 68, 69 of the Constitution and Part IV of the LPP.

<sup>14</sup> See Venice Commission’s *Opinion on the Constitutional and Legal Provisions relevant to the Prohibition of Political Parties in Turkey*, 13 March 2009; available at [www.venice.coe.int](http://www.venice.coe.int).

<sup>15</sup> The President of the Constitutional Court informed the OSCE/ODIHR EAM that between 1990 and 2000, 19 dissolution cases were lodged resulting in 15 party closures. In January 2008, the Court dismissed a dissolution case against the Rights and Freedoms Party (HAK-PAR), noting, in reference to its pro-Kurdish activities, that political parties are indispensable elements of democratic political life and are free to determine policies and to suggest different solutions to society’s social, economic, and political problems.

<sup>16</sup> Following the repeal by the 2010 constitutional referendum of the provision for the withdrawal of seats from parliamentarians belonging to dissolved parties, the two former DTP parliamentarians made unsuccessful appeals to the parliament and the Constitutional Court to have their seats reinstated. The two, however, ran as independent candidates in the 2011 parliamentary elections and won seats.

founders and members filed appeals to the European Court of Human Rights (ECtHR); the cases are still pending.

In December 2010, the ECtHR ruled on an appeal challenging a 2003 Constitutional Court decision that had dissolved the pro-Kurdish HADEP party on grounds of activities aimed against the integrity of the state. The ECtHR found that there was a violation of Article 11 of the ECHR, as in this case the interference with the applicant's freedom of association had not been necessary in a democratic society.<sup>17</sup> In separate related cases, the ECtHR ruled that the legal basis for banning HADEP members from political party activities for five years due to the party's or members' alleged links with a terrorist organization was too wide to be considered proportionate to the legitimate aims pursued. It therefore found a violation of Article 3 of the ECHR Protocol No. 1.<sup>18</sup> According to the President of the Constitutional Court, the Court has not agreed to retry any cases on political party dissolution and termination of political rights that have been found to be in violation of international law by the ECtHR over the years, despite the fact that since 2003 the domestic law expressly provides for the retrial of such cases.<sup>19</sup>

*It is recommended that the authorities implement applicable ECtHR rulings by reversing relevant domestic court decisions and amending or adopting new relevant legislation. Consideration could also be given to setting up clear mechanisms, through legislation or otherwise, for the timely implementation of ECtHR's judgments.*

The legislation contains a number of undue restrictions on the right to vote and to stand for office. Article 67(5) of the Constitution disenfranchises military students, conscripts, as well as those serving sentences in penal institutions for non-negligent crimes, regardless of the nature or severity of the crime.<sup>20</sup> Article 13A of the Judicial Records Law provides a further restriction with regard to the latter category. It requires those convicted prior to 2005 to endure a minimum three-year waiting period after completing their sentences, as well as to undertake an application process and to prove they have "lived a good life" during the waiting period in order to regain the right to vote and other political rights.<sup>21</sup>

*It is recommended that the Constitution and laws be amended to provide voting rights to military students and conscripts (if necessary, provide for their early voting) and to ensure that any termination of voting rights be proportional to the crime committed and that voting rights of convicts be automatically restored upon completion of sentence to*

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<sup>17</sup> Judgment on *HADEP and Demir v. Turkey*, application no. 28003/03, 14 December 2010, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>18</sup> Judgement on *Kılıçgedik and Others v. Turkey*, applications no. 4517/04, 4527/04, 4985/04, 4999/04, 5115/04, 5333/04, 5340/04, 5343/04, 6434/04, 10467/04 and 43956/04, 14 December 2010, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>19</sup> See Civil Procedure Code, Article 445. On 26 January 2011, the Parliamentary Assembly of the Council of Europe (PACE), in Resolution 1787(2011), expressed concern with regard to the delayed implementation by Turkey of ECtHR decisions and pointed to 'major systemic deficiencies' that cause repeated violations of the ECHR (see at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1787.htm>). In its 9 March 2011 resolution, the EP called on Turkish authorities to comply with previous ECtHR decisions. See *op.cit.* EP resolution on Turkey's 2010 progress report. See also PACE resolution 1516 (2006) on the 'Implementation of judgments of the European Court of Human Rights' at: <http://assembly.coe.int/mainf.asp?Link=/documents/adoptedtext/ta06/eres1516.htm>.

<sup>20</sup> Article 7(3) of the LBPEVR disenfranchises convicts serving sentences but does not limit it to those convicted of non-negligent crimes as provided for in the Constitution.

<sup>21</sup> Under Article 53 of the Criminal Code, persons convicted after 2005 have automatic restitution of voting rights once "the punishment of imprisonment is fully executed".

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*promote universal suffrage in line with Article 67 of the Constitution and Paragraph 7.3 of the 1990 OSCE Copenhagen Document.*

Article 76(2) of the Constitution and Article 11 of the LPE provide that persons who have been, at any time, sentenced to more than one year of imprisonment for any non-negligent crime or were convicted of certain types of crimes<sup>22</sup> may not be elected to parliament, even if pardoned. Provisional Article 2 of the Judicial Records Law further stipulates that candidacy rights of individuals disqualified under Article 76 of the Constitution are not subject to restitution. Such limitation of candidacy rights is excessive and violates the principle of proportionality, recognized in Paragraph 24 of the OSCE Copenhagen Document.<sup>23</sup> On 14 April, the Constitutional Court published a decision annulling the prohibition in provisional Article 2 of the Judicial Records Law on the restitution of candidacy rights; however, this decision will not come into force until April 2012.

The above-noted legal and constitutional provisions were at the core of a controversy that arose around candidate registration. In mid-April 2011, overturning lower board decisions, the SBE made a decision not to register a number of independent candidates mostly of Kurdish origin on the basis of their old conviction records under Article 76 of the Constitution. Following widespread public protests, the SBE reversed its earlier decision and stated that such individuals may regain their candidacy rights provided a court on request decides to reconstitute their political rights. Many of the rejected candidates obtained papers from courts that confirmed the restoration of restitutable political rights and, although the right to be elected to parliament is currently not subject to restitution as discussed above, the SBE registered these individuals. While the solution implemented by the SBE demonstrated a more inclusive approach towards candidate registration, its decision-making on the matter was widely criticized by professionals in the field as contradicting the existing constitutional and legal provisions.<sup>24</sup>

Article 76 of the Constitution and Article 11 of the LPE also ban those persons who have not performed compulsory military service from being elected to parliament.<sup>25</sup> One political party, the Freedom and Solidarity Party, was denied registration for these elections due to the failure by a number of its candidates to submit proof of completion of military service. Such a

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<sup>22</sup> These crimes include, *inter alia*, “dishonorable offences”, not clearly and exhaustively defined, smuggling, offences related to disclosure of state secrets, and involvement in acts of terrorism. Article 11(4) of the LPE additionally bans for life from running for national office persons who have been convicted of certain non-violent political and ideological crimes, with references to the repealed Criminal Code.

<sup>23</sup> Paragraph 24 of the OSCE Copenhagen Document states: “Any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law”. Paragraph 7.5 obliges OSCE participating States to “respect the rights of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.” Paragraph 15 of the General Comment 25 to the ICCPR states that “Any restrictions on the right to stand for election [...] must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements [...]”

<sup>24</sup> See “*The First Decision of SBE, apart from its Political Effects, is Contradictive in its Legal Sense; However, it is not Easy to State that it is Entirely Wrong*” by Murat Sevinc, Ankara University, Faculty of Political Science, 24 April 2011, [www.radikal.com.tr](http://www.radikal.com.tr); “*A Guide for a Correct Understanding and Interpretation of the SBE Decision*,” by Kerem Altıparmak, Ankara University, Faculty of Political Science, 20 April 2011; and interview with Levent Gonenc, Ankara University, Faculty of Law, 5 June 2011, Express Magazine.

<sup>25</sup> In addition, under the LPE, a broad range of public servants, as well as army officers and non-commissioned officers, are prohibited from standing as candidates unless they resign. Military officers are not allowed to resume their office if not elected and public servants are not guaranteed return to their posts.

limitation is inconsistent with the non-discrimination principle<sup>26</sup> and infringes the right to conscientious objection to military service as recognized in international law.<sup>27</sup>

*It is recommended that Article 76 of the Constitution and Article 11 of the LPE be amended to remove the lifetime ban on candidacy rights of convicts and the ban on being elected for those who have not performed military service.*

The prohibition against using any language other than Turkish in political campaigning, which was regarded as problematic during previous elections,<sup>28</sup> has been partially repealed. Article 58 of the LBPEVR, which previously read that “it is strictly prohibited to use any language other than Turkish in campaign broadcasts in radio and television, and in other campaign activities now states that “it is fundamental to use Turkish in campaign activities.”<sup>29</sup> The new formulation is still unclear and can result in varying interpretations, especially in light of the retained prohibition on the use of other languages in campaign materials and activities in Article 81 of the LPP.<sup>30</sup>

*It is recommended that the wording of the laws be clarified to more clearly provide for the right to receive and impart information in other languages, especially in context of campaign materials and activities.*

## V. ELECTORAL SYSTEM

Turkey’s unicameral parliament consists of 550 members. They are elected for a four-year term under a proportional representation electoral system in 85 multi-member constituencies from among the lists of political parties and independent candidates. To qualify for seat allocation, political parties must clear the national electoral threshold of 10 per cent of valid votes cast. The seats are distributed using the d’Hondt formula; candidates receive mandates according to their order on party lists. Independent candidates may stand upon making a non-refundable electoral deposit.<sup>31</sup>

Political parties must meet extensive requirements in order to participate in elections. Parties without a parliamentary group have to prove that they have registered offices in at least half of the provinces and in one third of the districts in each of those provinces, as well as to hold

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<sup>26</sup> See Paragraphs 7.5 of the 1990 OSCE Copenhagen Document.

<sup>27</sup> On 30 July 1993, in General Comment 22, Paragraph 11, the United Nations Human Rights Committee clarified that Article 18 of the ICCPR includes the right to conscientious objection to military service as the “use of lethal force may seriously conflict with the freedom of conscience and the right to manifest one's religion or belief.”

<sup>28</sup> *Op.cit.* OSCE/ODIHR Final Report on 22 July 2007 early parliamentary elections, p.20.

<sup>29</sup> Six cases are currently pending with the ECtHR that challenge convictions of candidates in local and parliamentary elections held between 2002-2009 for violation of the former Article 58 due to campaigning in Kurdish.

<sup>30</sup> Concluding Document of the Vienna Meeting of 1989, paragraph 45, calls on OSCE participating States to “ensure in practice that persons belonging to...regional cultures on their territories can disseminate, have access to, and exchange information in their mother tongue.”

<sup>31</sup> The deposit has been increased from 446 Turkish lira (approximately 187 Euro) in the 2007 elections to 7,734 Turkish lira (approximately 3,236 Euro) in 2011.

a central congress at least six months prior to the elections. Parties must also present a full list of candidates in at least half of the provinces and joint candidate lists are not permitted.<sup>32</sup>

*It is recommended that consideration be given to relaxing the requirements for the registration of parties for elections and to allowing the formation of coalitions to further strengthen the freedom of association and pluralism.*

Voting in Turkey is compulsory and failure to exercise this civil duty entails a fine of 22 Turkish lira (approximately 10 Euro). However, the OSCE/ODIHR EAM was informed that this provision has not been enforced in all recent elections.<sup>33</sup>

The 10 per cent electoral threshold is the highest among the OSCE member states and affects the representativeness of the parliament. In the case of *Yumak and Sadak v. Turkey*, the ECtHR ruled that the threshold in force did not amount to a violation of the right to free elections; however, the Court considered the threshold “excessive” and noted that “it would be desirable for [it] ... to be lowered and/or for corrective counterbalances to be introduced to ensure optimal representation of the various political tendencies.”<sup>34</sup> The recommendation to consider lowering the threshold was also made by the OSCE/ODIHR, PACE and EP.<sup>35</sup>

The electoral threshold was introduced in 1983 to ensure stability of government. However, many OSCE/ODIHR EAM interlocutors stated that this goal has long been achieved and now the threshold only cements the political scene and prevents the representation of smaller parties, including parties representing ethnic communities.

The representativeness of the parliament is further affected by the way the parliamentary seats are distributed between constituencies. The country is divided into 81 provinces and each province is entitled to elect at least one member of parliament. The remaining seats (469) are distributed between the provinces by the SBE before each parliamentary elections in proportion to the number of citizens in each province. In most cases, the territory of one province constitutes one electoral constituency. In these elections, three provinces with the highest number of seats were divided into smaller constituencies – three in Istanbul and two each in Ankara and Izmir.<sup>36</sup>

While a considerable number of citizens reside in large population centers, mostly in western parts of the country, the eastern provinces are generally sparsely populated. Disproportions in the numbers of seats assigned to provinces are high. Half of the provinces elect five or fewer members of the parliament while the provinces that include the largest cities elect many more, for example 85 in Istanbul and 31 in Ankara. There are, however, considerable differences in

<sup>32</sup> Under paragraph 7.5 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to “respect the rights of citizens to seek political or public office...as representatives of political parties...without discrimination.”

<sup>33</sup> In February 2011, Law 6111 was adopted stipulating *inter alia* that administrative fines below 120 Turkish lira (approximately 50 Euro) which were imposed before 31 December 2010 would no longer be executable.

<sup>34</sup> Judgment on *Yumak and Sadak v. Turkey* case, application no. 10226/03, 30 January 2007, available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>35</sup> *Op.cit.* OSCE/ODIHR Final Report on 22 July 2007 early parliamentary elections; PACE Resolution 1380(2004), ‘Honoring of Obligations and Commitments of Turkey’, points 6 and 23.ii, available at <http://assembly.coe.int>; EP Resolution on Turkey’s 2007 Progress Report, 25 April 2008, available at [www.europarl.europa.eu](http://www.europarl.europa.eu).

<sup>36</sup> Article 4 of the LPE stipulates that provinces with up to 18 seats form one constituency, while those with 19-35 seats are divided into two and with more than 36 deputies are divided into three constituencies.

the number of voters one parliament deputy represents, ranging from some 28,800 voters in Tunceli constituency to some 112,500 voters in the Istanbul-1 constituency. The Venice Commission of the Council of Europe's Code of Good Practice in Electoral Matters stipulates that the differences in voting power of citizens between constituencies should not exceed 10 per cent or 15 percent in special circumstances.<sup>37</sup>

*The system for the allocation of seats to constituencies should be reviewed in order to guarantee the equality of the weight of each citizen's vote by providing for approximately the same ratio of citizens to elected representatives in each constituency.*

The high electoral threshold, combined with a small number of deputies elected in half of constituencies, have a potential to distort the principle of proportionality that the system espouses. Such elements, rather than leading to greater proportionality within a parliament may, instead, result in many votes being wasted.

*In order to increase the proportionality of parliamentary elections and the representativeness of the legislature, it is recommended that consideration be given to lowering the threshold for the representation of parties in the parliament.*

## VI. ELECTION ADMINISTRATION

Elections in Turkey are held under the supervision of the judiciary. These parliamentary elections were administered by a four-tier structure consisting of the SBE, 81 PEBs, 1,054 DEBs<sup>38</sup> and 199,207 BBCs.<sup>39</sup> Electoral boards are permanent bodies<sup>40</sup> and consist of or include senior judges. Political parties are entitled to appoint representatives with no voting right to electoral boards.<sup>41</sup> The BBCs are appointed ahead of each election. However, the LBPEVR does not clearly define their composition; it stipulates that BBCs should be

composed of representatives of five or fewer parties that gained the highest numbers of votes in the last parliamentary elections in the district. In practice, the number of BBC members ranged from five to seven, depending on the district. In preparation for these elections, DEBs trained BBC chairpersons on election day procedures, while members appointed by political parties were trained by the parties themselves using SBE-developed training tools.

Representatives of larger parties expressed general confidence in the impartiality and professionalism of the election administration. At the same time, some OSCE/ODIHR EAM interlocutors, including representatives of smaller parties and civil society organizations, stated that while the judiciary has a supervisory role in an electoral process, elections are *de*

<sup>37</sup> Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe, paragraph 2.2/iv, available at [www.venice.coe.int/docs/2002/CDL-AD%282002%29023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD%282002%29023-e.pdf).

<sup>38</sup> Turkey is divided into 957 administrative districts. However, the structure of DEBs follows the structure of local judicial institutions with some courts covering more than one district and some bigger districts divided between several local courts.

<sup>39</sup> In many cases more than one BBC was located in the same building; thus the actual number of polling locations was around 50,000. In addition to regular polling locations, voting was also organized in some 440 detention centers.

<sup>40</sup> The mandate of the SBE is six years and of PEBs and DEBs – two years.

<sup>41</sup> Following the 2010 amendments to the LBPEVR, four political parties that received the highest number of votes in the last parliamentary elections may appoint their representatives without voting right to the SBE.

*facto* organized by provincial and district authorities, as well as the Ministry of Interior. Indeed, in all districts visited by the OSCE/ODIHR EAM, local administration played a crucial role in logistical preparations for the elections, including the establishment of polling stations, printing of voter lists and the delivery and collection of voting equipment and ballots.<sup>42</sup> The OSCE/ODIHR EAM also noted that BBC chairpersons were often nominated by district administrations. Moreover, it appeared that judges working on election boards often retained their usual judicial functions, which limited the time they could allocate to the preparations of elections.

Meetings of electoral boards were not public – only members of boards and authorized political party representatives were allowed to attend.<sup>43</sup> The representatives of independent candidates could not observe the meetings of electoral boards.<sup>44</sup> Similarly, neither the OSCE/ODIHR EAM and domestic observers nor media had access to meetings of electoral boards.

*In order to enhance the transparency of the election administration, it is recommended that meetings of electoral boards be opened to representatives of independent candidates, observers and the media.*

The preparations for the 12 June parliamentary elections were administered efficiently and election officials met by the OSCE/ODIHR EAM appeared to be very experienced. While there were no major challenges with the organization of the electoral process inside the country, voting arrangements for citizens residing abroad resulted in a controversy. Following the 2008 amendments to the LBPEVR, the SBE is authorized to decide on the voting method for voters abroad upon consultation with the Ministry of Foreign Affairs and may choose between voting at border crossing customs gates, in polling stations at diplomatic representations and other locations abroad, or electronic voting depending “on the situation in the foreign country in question.”<sup>45</sup> These amendments were in line with a previous

OSCE/ODIHR recommendation to consider further ways of enfranchising voters abroad.<sup>46</sup> Although the SBE initially considered organizing polling abroad, it eventually decided in a split vote to drop the idea and to limit the possibility for voters residing abroad to vote in 25 designated border crossing points in Turkey. The SBE assessed that Turkish representations abroad were not prepared to organize voting uniformly, including because permissions to open polling stations were not obtained in time from all host countries.<sup>47</sup> The SBE’s decision drew considerable critical comments from across the political spectrum and civil society.

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<sup>42</sup> For example, the governor of Istanbul province established a special “Election Bureau” of five people to coordinate preparations for elections. Similar bureaus were established in all 39 districts of that province. In Altindag district of Ankara, some 80-100 local administration employees assisted in the organization of elections.

<sup>43</sup> A representative of a political party at the SBE informed the OSCE/ODIHR EAM that on several occasions party representatives were asked to leave the room before the SBE took a formal decision.

<sup>44</sup> This was reported as a particular issue of concern by interlocutors in Diyarbakir, where the role of independent candidates was particularly significant.

<sup>45</sup> The original amendment had also provided for postal voting; however, in May 2008, the Constitutional Court annulled the provision on grounds that postal voting cannot guarantee a secret ballot, as it leaves voters unprotected against unwanted influences from family members and social environment, thus violating the constitution.

<sup>46</sup> *Op.cit.* OSCE/ODIHR Final Report on 22 July 2007 early parliamentary elections, p. 5.

<sup>47</sup> The organization of voting in Germany would have represented a particular challenge. The enfranchisement of some 1,9 million of voters residing in Germany would have required the establishment of over 6,000 BBCs.

With no legal recourse to domestic courts against SBE decisions (see Complaints and Appeals section), on 22 March, the Union of European Turkish Democrats appealed the SBE decision to the ECtHR; the case is pending.<sup>48</sup>

*The SBE is encouraged to take timely steps ahead of the next elections to ensure that voters residing abroad have greater opportunities to exercise their right to vote in line with legal provisions.*

Voting at border crossing customs gates began on 10 May and finished on election day. With a few exceptions, the polling stations at border crossings worked around the clock and the BBCs worked in shifts. Voters casting ballots at border crossings were marked in an online register of citizens residing abroad and their passports were stamped to prevent multiple voting. The law allows these voters only to vote for political parties, not independent candidates. Votes cast at border crossings are added to the overall country results for establishing whether parties passed the 10 per cent threshold, and are subsequently added to the results in all 85 constituencies proportionally to the number of votes obtained by each political party in each constituency. In total, 129,283 votes were cast at border crossings, constituting just 5 per cent of eligible voters registered outside Turkey.<sup>49</sup>

*Provisions for voting at border crossings could be reviewed in order to ensure the equality of opportunities between political parties and independent candidates and to guarantee the equality of choice to voters inside and outside the country. Voters residing abroad should be able to vote both for political parties and independent candidates. This can be achieved in a number of ways, for example, by creating a special constituency for voters residing abroad or reconsidering the prohibition on voting by mail.*

## VII. VOTER REGISTRATION

In order to prepare the register of qualified voters, the SBE uses a central voter registration system (SECSYS), which is linked online to a civil and address registry (MERNIS), operated by the Ministry of Interior. During election periods, the SBE accesses MERNIS on a daily basis to download the most up-to-date information and also receives online information about ineligible citizens such as army conscripts or prisoners from the Ministry of Defence and the Ministry of Justice.

Both registration systems have been designed to ensure maximum accuracy. Since 2000, when the implementation of MERNIS began, each citizen registered in civil records kept by local/village administration<sup>50</sup> has been assigned a unique 11-digit personal identification number. The SBE representatives acknowledged that there may be a small number of deceased persons on the register if the families failed to report the death of their relatives in a

<sup>48</sup> The provision on voting rights for Turkish citizens in foreign countries has been in the Constitution, Article 67(2), since 1995 but has never been implemented. On 8 July 2010, the ECtHR ruled in *Sitaropoulous and Giakoumopoulos v. Greece*, application no. 42202/07, that a constitutional provision for out-of-country voting could not remain inapplicable indefinitely (in that case, 35 years) and that the state had breached the right to free elections guaranteed by Article 3 of Protocol No. 1 of the ECHR by not providing the opportunity to Greek citizens to vote at embassies abroad. Judgment is available at [www.echr.coe.int](http://www.echr.coe.int).

<sup>49</sup> According to the SBE, 2,568,979 Turkish voters reside abroad.

<sup>50</sup> Such civil records have been kept in Turkey since 1904.

timely manner. Changes of residence, as well as births and deaths, are reported to district administration offices, which are linked online to MERNIS. The civil registry also includes citizens residing abroad based on the information collected by consular offices.

Voter lists were printed by district administration offices from SECSYS and displayed publicly between 18 and 31 March. Some OSCE/ODIHR EAM interlocutors opined that the public scrutiny period was too short. Voters could also verify their data on the SBE website. Political parties were entitled to receive electronic copies of voter lists. After the public verification period, the voter registration was closed. According to the SBE, 52.8 million citizens were eligible to vote, including voters residing abroad.

*Consideration could be given to extending the period of public scrutiny of voter lists and to bringing the deadline for changes to voter lists closer to election day.*

The voter registration data published by the SBE raised some suspicions among opposition political parties and the media as the total number of voters in these elections was almost 10 million higher than in the previous parliamentary elections. The SBE addressed these concerns in an open manner. It explained in a public statement that the increase in the number of voters stemmed from the fact that the implementation of SECSYS system was completed only in 2008. In addition, the SBE stated that the population had increased by 3 million since 2007.

## **VIII. ELECTION CAMPAIGN**

### **A. POLITICAL PARTIES AND CANDIDATES**

Fifteen parties participated in these elections, fielding a total of 7,492 candidates. Two parties were rejected by the SBE for not submitting the required documentation. Nine parties withdrew from the elections after registration, many of them eventually choosing to support independent candidates instead. A total of 203 independent candidates stood in these elections.

Although the LPP recommends that parties select their candidates through primaries, only a few parties resorted to this procedure. In most cases, the candidates were chosen by the parties' executive committees with some input from district and provincial branches. Some parties also conducted local and regional polls to identify popular candidates.

*In order to strengthen internal party democracy and to increase the representativeness of the closed list system, political parties could be encouraged to be more transparent in their decision-making.*

### **B. ELECTION CAMPAIGN**

The pre-election period in Turkey is divided into two parts: an initial stage, which was set by the SBE to have started on 14 March, and a more tightly-regulated stage commencing 10 days before election day. During the last days of the campaign, specific regulations apply that are

aimed at ensuring equitable opportunities to electoral contestants. These include the provisions on the allocation of free airtime (see Coverage of Election Campaign section), the ban on the use of state resources for campaign purposes and the prohibition against electoral contestants organizing and contributing to events related to publicly funded services.

The campaign was both lively and hard-fought, with numerous generally peaceful rallies drawing huge crowds. Parties and candidates used a variety of campaign methods such as display of posters, billboards and flags, use of vehicles with loudspeakers, street canvassing, as well as opening of temporary offices in urban quarters and house meetings in rural areas. Public attention in the campaign was mainly focused on the three parties represented in the outgoing parliament and prominent independent candidates of Kurdish origin. Some smaller political parties considered this to be one of the consequences of the high electoral threshold.

The campaign of the governing AKP was professionally organized and received extensive coverage by the media. The prime minister was often shown addressing large rallies across the country. The party built the campaign around the achievements of AKP governments in the last eight years and put forward a comprehensive plan for the country's further development. AKP repeatedly emphasized the need for development instead of separatism. In the last days of the campaign, the prime minister called on voters to give AKP such support that would give the party a constitutional majority in the new parliament.

The main opposition party CHP went into these elections with a modernized social democratic platform. The CHP's new leader tried to distance the party, which was for decades seen as representing old Kemalist state elites, from the army and the party's former leadership. The party's program focused on social welfare and democratization, as well as decentralization aimed at addressing the problems in the southeast of the country. One of the key declared goals of the CHP's campaign was the mobilization of all opposition forces in order to prevent the formation of a single-party government.

The campaign of the smaller opposition party MHP was primarily focused on analyzing the work of the AKP government. The party criticized corruption and abuse of power, as well as artificial division of the country and of its people, and offered unity and patriotism as an alternative.

The pro-Kurdish BDP established and supported a network of 63 independent candidates thus *de facto* circumventing the high electoral threshold for political parties. The BDP-supported candidates were affiliated with different pro-Kurdish parties and leftist groups, as well as ethnic and religious groups from the country's southeast. Decentralization, education in the mother tongue and more rights to ethnic groups were the main campaign messages of the BDP-supported independent candidates.

Election campaigns in Turkey are commonly quite forceful. Still, this campaign was assessed by the representatives of the civil society and media as one of the more aggressive and negative ones. The release of a series of compromising videos involving different politicians in the period leading up to elections set the tone for the campaign. Ten members of the MHP leadership had to resign following the release of such videos. The campaign rhetoric often included verbal personal attacks on candidates, businessmen supporting electoral contestants, and media, including by the prime minister. In one instance, this has led to a lawsuit against the prime minister by the CHP leader for personal insult.

The campaign saw several outbursts of violence causing human and material damage. A number of attacks on party premises were reported.<sup>51</sup> AKP was the main target of these attacks. The campaign convoy of the prime minister was attacked twice. One police officer was killed and another wounded during one of the attacks. In June, a protest in the northeastern district of Hopa against the prime minister turned violent. This incident involved the death of an elderly protester after teargas and pepper spray were used by the police; the prime minister's bodyguard was seriously wounded in the incident.

The ongoing operations by the Turkish security forces against the PKK, as well as detentions related to the investigations of coup plots, were seen by some OSCE/ODIHR EAM interlocutors as having had a restraining effect on the campaign by pro-Kurdish candidates and political parties. Many pro-Kurdish activists were called for informational talks or detained in the last weeks of the campaign. BDP representatives criticized these operations as disguised attempts to prevent campaigning by the party-affiliated independent candidates. In a positive development, the campaign environment, in general, showed more tolerance to the discussion of the Kurdish issue, as evidenced in speeches of leading politicians and reactions to them and as assessed by OSCE/ODIHR observers.

### C. CAMPAIGN FINANCING

The legislation does not contain specific regulations on campaign financing. Political parties declare their campaign-related incomes and expenditures through annual party financial reports to the Constitutional Court. Individual expenditures of candidates standing on behalf of a party, as well as those of independent candidates, are not specifically regulated by the LPP.

The Constitutional Court informed the OSCE/ODIHR EAM that in the review of financial reports, it focuses primarily on checking their compliance with reporting requirements and with parties' internal regulations as reflected in their statutes. It does not, however, necessarily verify the submitted data and source documents or review them for undisclosed incomes and expenditures. The 2010 evaluation report by the Group of States Against Corruption (GRECO) of the Council of Europe on the transparency of party financing recommends, among other things, that more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities, be carried out and that independent auditing of party accounts by certified experts be introduced.<sup>52</sup>

*The previous recommendation to institute further regulation of campaign financing is reiterated. This could be achieved either through the adoption of a separate law or the inclusion of detailed regulations on campaign financing of both political parties and candidates in the existing legislation. Effective and transparent audit mechanisms should be introduced in order to ensure equitable conditions for all electoral contestants.*

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<sup>51</sup> The HRFT stated that 40 attacks on party premises took place during the campaign period: 24 on AKP, 8 on BDP, 4 on CHP, 2 on MHP and 2 on premises of other parties. See [www.tihv.org.tr](http://www.tihv.org.tr).

<sup>52</sup> GRECO Evaluation Report on Turkey on Transparency of Party Funding, Theme II, 26 March 2010; available at [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)5\\_Turkey\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)5_Turkey_One_EN.pdf).

A recent change in the legislation allowed professional and business associations, as well as trade unions to support political parties by various means, including financial donations. However, according to the Constitutional Court, a significant share of party funding in Turkey comes from the state budget. Political parties that pass the 10 per cent threshold in parliamentary elections qualify for the allocation of state funds, while more limited funding is also available to parties that received over 7 per cent of votes.<sup>53</sup> In election years, political parties that qualify for state support receive three times the normal funding. The rules for the allocation of state funding not only exclude smaller political parties, but also independent candidates, even if they are elected to the parliament.

A significant source of income for the conduct of a campaign by bigger parties and a particularity of the Turkish party system is the fee which applicants for candidate positions have to pay to the party in order to be included in the party list. The number of applicants and the fees are normally higher for parties that stand greater chances of winning seats, which gives bigger parties a further advantage in funding the campaign compared to the smaller parties and independent candidates.

*The threshold for the allocation of state funds could be lowered and special provisions on funding and/or reimbursements to elected independent candidates could be developed.*

## IX. THE MEDIA

### A FREEDOM OF EXPRESSION

Freedom of expression and press are enshrined in the Constitution. However, the Constitution and laws regulating media conduct include a number of restrictive provisions, many of which are vaguely formulated and may result in varying interpretations.<sup>54</sup> Violations may entail harsh sanctions ranging from high fines to lengthy prison sentences.

In a resolution adopted on 9 March 2011, the EP urged the Turkish government to review media-related legislation with the aim of upholding freedom of expression.<sup>55</sup> On 4 April 2011, the OSCE Representative on Freedom of the Media (RFoM) appealed to Turkish authorities to bring the country's media legislation in line with OSCE commitments on media freedom. This appeal followed the release by the OSCE RFoM of a report including information on 57 journalists imprisoned in Turkey. According to the report, most of these journalists were imprisoned based on articles of the Anti-Terrorism Law and the Criminal

<sup>53</sup> In March 2009, a case filed by the Liberal Democratic Party requesting annulment of the seven per cent threshold for state funding was dismissed by the Constitutional Court, ruling that the threshold is necessary to prevent party inflation, is proportionate and does not contravene the constitutional principle of equality.

<sup>54</sup> Article 26 of the Constitution allows for restrictions on freedom of expression for the purposes of *inter alia* protecting the basic characteristics of the republic and safeguarding the indivisible integrity of the state with its territory and nation. In addition, similarly to provisions restricting the activities of political parties, articles of the Criminal Code and the Anti-Terrorism Law put into question reporting that: challenges the integrity of the state; insults 'Turkishness', the republic and state bodies, national and moral values of the community, or principles of Atatürk; incites enmity; and promotes terrorist organizations. According to domestic and international human rights organizations, 25 articles of the Criminal Code alone can be used to constrain the freedom of expression. See <http://en.rsfo.org/turkey-time-to-break-out-of-legislative-01-12-2010.38933.html>.

<sup>55</sup> *Op.cit.* EP resolution of 9 March 2011 on Turkey's 2010 progress report.

Code prohibiting propaganda and support to terrorist organizations, as well as establishing or becoming a member of an armed organization with the aim of committing certain offences.<sup>56</sup> Domestic media experts expressed concerns that merely reporting on issues such as terrorism and anti-government activities is at times interpreted as a demonstration of support for these activities. In their assessment, the criminalization of reporting on these types of sensitive issues *de facto* constitutes the criminalization of speech and opinion and challenges the public's right to information.

On 2 May 2011, the Constitutional Court repealed the limitation in Article 26 of the Press Law, which stipulated that criminal lawsuits against journalists for articles in daily newspapers may not be brought after two months of publication.<sup>57</sup> OSCE/ODIHR EAM interlocutors opined that this decision will in effect allow prosecutors to file cases years after publication and may put journalists under permanent threat of criminal prosecution. In addition, serious concern was expressed over excessively long pre-trial detentions, up to three years in some cases, and long imprisonment sentences ordered by courts. Many regarded detentions, arrests and severe sentencing practices as forms of intimidation.

Furthermore, concerns were also expressed by domestic and international media organizations over the government's decision to introduce mandatory content filtering for all Internet users in Turkey.<sup>58</sup> Based on a regulation adopted by the Information Technologies and Communication Authority, as of 22 August 2011 Internet users will have to choose one out of four Internet filtering packages. All the packages will block certain websites and the filtering criteria will not be made public. On 1 June 2011, a group of international organizations, including the OSCE RFoM, issued a joint declaration stating, among other things, that content filtering systems that are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior-censorship and are not justifiable as a restriction on freedom of expression.<sup>59</sup> According to a domestic organization monitoring Internet censorship, thousands of websites are already blocked in Turkey.<sup>60</sup>

*The media legislation should be reviewed with a view to bringing it in line with international standards on freedom of expression. Restrictions of the freedom of expression should be clearly and narrowly defined. Restrictions should also serve a legitimate purpose and be proportionate to it. Decriminalization of offences involving freedom of expression is also recommended.*

## B. MEDIA ENVIRONMENT

Media ownership is concentrated, with four major media companies controlling a significant part of a well-developed electronic and print media market. There is a broad public perception that editorial policies of the main media outlets support the owners' business and political

<sup>56</sup> Press release by the OSCE Representative on Freedom of the Media, 4 April 2011; available at [www.osce.org/fom/76374](http://www.osce.org/fom/76374).

<sup>57</sup> The annulment will come into force one year after the adoption of the decision.

<sup>58</sup> More than 10,000 people took part in demonstrations on 15 May in Istanbul and some 30 other cities against online censorship.

<sup>59</sup> Joint Declaration on Freedom of Expression and the Internet, available at [www.osce.org/fom/78309](http://www.osce.org/fom/78309).

<sup>60</sup> According to the non-governmental organization "Engelli Web", access to over 13,000 websites is currently blocked in Turkey. See <http://engelliweb.com>.

interests, while smaller media outlets are able to provide more independent and versatile reporting.

A number of OSCE/ODIHR EAM interlocutors expressed concern about the alleged control by the government over influential media and the reported implicit pressure put on some media outlets, including financial pressure through the imposition of excessive fines.<sup>61</sup> Concerns were also expressed that frequent defamation claims by politicians against journalists,<sup>62</sup> as well as growing self-censorship and censorship by editors due to fear of repercussions, restrain journalists in their work and discourage investigative journalism. The work of journalists is reportedly further hampered by difficulties in receiving information from public institutions. However, OSCE/ODIHR EAM interlocutors in media outlets that are broadly considered as supporting the government denied any obstacles in the work of journalists and assessed the media as free. International reports on the critical media situation in Turkey were assessed by them as being based on false information.

### C. THE COVERAGE OF THE ELECTION CAMPAIGN<sup>63</sup>

The coverage of election campaigns in broadcast media is regulated by the Law on the Establishment of Radio and Television Enterprises and their Media Services (hereinafter, Law on Broadcasting), the LBPEVR, and SBE decisions. Among general principles for broadcasting, media are obliged to ensure accuracy, objectivity and impartiality of reporting. The legislation and SBE decisions, however, do not regulate the campaign coverage in sufficient detail and do not provide further guidance on the implementation of the impartiality requirement. The supervisory body for electronic media, the Radio and Television Supreme Council (RTÜK),<sup>64</sup> informed the OSCE/ODIHR EAM that it does not interpret the impartiality principle as requiring the equality of coverage of electoral contestants. In RTÜK's interpretation, the principle is complied with sufficiently if broadcasters cover more than one contestant; however, such an approach is not reflected in any written guidelines.

*Consideration could be given to developing supplementary guidelines on the implementation of the impartiality requirement to help the broadcasters fully understand and observe this principle.*

The LBPEVR grants political parties contesting the elections free airtime on the public broadcaster during the last seven days of the campaign. This entitlement does not apply to independent candidates. For the first time in these elections, the law allowed parties to purchase airtime provided by broadcasters on the same conditions as all contestants. The law does not set a limit on the amount of paid political advertising contestants can purchase; it is only constrained by a provision in the Law on Broadcasting which limits advertising to 20 per

<sup>61</sup> On 16 September 2009, the OSCE RFoM expressed concern over the multi-million lira penalties levied upon the Doğan Group for alleged tax irregularities and irregularities related to sales of shares, stating that the fines were unprecedented and endangering, in case of the Group's bankruptcy, media pluralism in Turkey. Press release available at [www.osce.org/fom/51313](http://www.osce.org/fom/51313).

<sup>62</sup> On 10 June 2011, the Kadıköy 2nd Criminal Court of First Instance in Istanbul started hearing a case lodged by the prime minister against the editor-in-chief of a daily Taraf newspaper for alleged insults. The claimant demanded 50,000 Turkish lira (approximately 25,000 Euro) in compensation.

<sup>63</sup> The OSCE/ODIHR EAM did not conduct comprehensive media monitoring for these elections.

<sup>64</sup> A nine-member authority appointed by the parliament.

cent per hour. According to the broadcasters the OSCE/ODIHR EAM met with, only three political parties contesting these elections purchased paid airtime.

RTÜK oversees compliance by the broadcasters with media regulations and monitors more than 80 television and radio broadcasters on a permanent basis. During election periods, RTÜK also carries out quantitative and qualitative content analysis of media coverage. Regrettably, neither the monitoring methodology nor the results of the monitoring by RTÜK are made public.<sup>65</sup>

*To enhance transparency, consideration could be given to periodically publishing the results of media monitoring by RTÜK, especially during election periods.*

Reports on revealed violations are submitted by RTÜK on a weekly basis to the SBE, which has the authority to impose sanctions.<sup>66</sup> Possible sanctions include warnings, suspension of the relevant program and, in case of repeated violations, closure of the broadcaster for a certain period of time. The legislation, however, does not stipulate deadlines for the imposition of sanctions and does not provide for remedies, which could have a more constructive and timely effect during an electoral campaign.

*Measures taken by the SBE in response to violations revealed by RTÜK should be aimed at providing remedies for aggrieved election contestants during the electoral period in order to restore a more level playing field.*

## X. COMPLAINTS AND APPEALS

The election dispute resolution process is primarily regulated by the LBPEVR. The procedures are comprehensive, although at the same time overly complex and difficult to understand, diminishing the ease of access to the dispute resolution process. Some interlocutors expressed their lack of trust in the election boards to handle election disputes in an impartial manner.

*It is recommended that the election dispute procedures in the LBPEVR be reviewed with the aim of providing a more simplified and understandable process.*

Complaints regarding violations of election-related legislation can be submitted to all electoral bodies. Decisions of each level of the election administration can be appealed to the next higher level,<sup>67</sup> while the SBE is the final instance for all appeals. Hence, no domestic judicial review of its decisions is available. While the Constitution establishes that elections are held under the general administration and supervision of the judiciary, the SBE and its lower boards are not courts although their members are judges. Electoral boards are administrative bodies that are established to carry out the task of administering elections, and in the context of election disputes, issue decisions of a quasi-judicial nature. Although Article 125 of the

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<sup>65</sup> Some opposition members of RTÜK criticized the Council's media monitoring methodology and questioned its independence.

<sup>66</sup> During this campaign, the SBE adopted decisions in 49 cases where violations were found to have occurred. 18 television channels were warned. In 30 cases, the broadcasting of a certain program was suspended. In one case, no sanctions were imposed.

<sup>67</sup> The exceptions are the PEB decisions on complaints related to the formation of DEBs and BBCs and DEB and PEB decisions on voter registration complaints, which are final and cannot be appealed.

Constitution guarantees recourse to judicial review against all actions and acts of the administration, Article 79 provides for this singular exception. The controversies that stemmed from some of the SBE's decisions during these elections highlighted the need for judicial review of its decisions. A number of OSCE/ODIHR EAM interlocutors, including the President of the Constitutional Court, expressed strong support for the introduction of judicial review of electoral board decisions.

*It is recommended that the legal framework provide for an appeal to a higher court against decisions and actions of the SBE and any last instance decisions of lower electoral boards.<sup>68</sup> Short timeframes for the submission and adjudication of appeals should be provided in the law to ensure timely decision-making.*

The election dispute resolution process lacks transparency. Complaint proceedings at electoral boards are not open to the public, non-partisan observers, or the media. With the exception of the right to defend a complaint in front of the SBE, complainants and respondents do not have a right to be present during hearings. Further, the SBE's decisions on complaints are not published on its website or otherwise publicly available.<sup>69</sup> In two cases, members of lower electoral boards denied the receipt of complaints that the OSCE/ODIHR EAM was already aware of or refused to provide the information and documentation on complaints.<sup>70</sup> One Diyarbakir PEC informed the OSCE/ODIHR EAM that the reasoning in support of its decisions is neither available to the public nor to the complainant or respondent.

*To enhance the transparency of the complaints and appeals process, it is recommended that the law provide for public complaint proceedings at all levels, as well as for public availability of complaint decisions, including on the SBE website. The SBE could also establish a mechanism for lower electoral boards to report on complaints handling.*

The SBE received over 170 complaints and appeals prior to election day. The majority of complaints were related to the registration of independent candidates, while others were related to the formation of electoral boards, voter lists, party and candidate registration, campaigning, and the media. Complaints received by the PEBs, DEBs and local prosecutor's offices were primarily related to posting of campaign materials in non-designated areas and other campaign-related violations. While the legislation provides reasonably short deadlines for the review of complaints by the lower electoral boards, the review of complaints and appeals by the SBE may take up to three months.

## **XI. DOMESTIC AND INTERNATIONAL ELECTION OBSERVATION**

In keeping with its OSCE commitments, Turkey has regularly invited OSCE/ODIHR to observe its elections. The legislation allows for observation of the electoral process by representatives of political parties and stipulates that the vote count is public. The legislation, however, does not contain specific provisions permitting observation by international and

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<sup>68</sup> According to Paragraph 5.10 of the 1990 OSCE Copenhagen Document "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity."

<sup>69</sup> The SBE does not monitor complaints handled by lower electoral boards or publish their decisions.

<sup>70</sup> PEC Batman and DEC Karsiyaka, respectively.

domestic civil society observers. It is therefore not fully compliant with paragraph 8 of the 1990 OSCE Copenhagen Document.<sup>71</sup>

The lack of legal provisions for election observation has resulted in delays in OSCE/ODIHR EAM gaining access to certain institutions and information. The SBE issued observer accreditations to the OSCE/ODIHR EAM valid only from 9 to 14 June 2011. The Ministry of Foreign Affairs was helpful in facilitating meetings at the central level with state institutions. Establishing working level contacts at the SBE itself, as well as with PEBs and DEBs, proved more challenging.<sup>72</sup> This could have possibly been eased if accreditations covered the entire duration of the observers' work in the country and explicitly granted access to all levels of the election administration and institutions.

Apart from the OSCE/ODIHR EAM, the OSCE Parliamentary Assembly (PA) and PACE deployed 70 observers. While these organizations reported that the observers were mostly granted access to all levels of election administration and polling stations on election day, they noted that "... it is desirable that the law specifically allow international observers access to national election proceedings."<sup>73</sup>

*In order to create the legal basis for the effective implementation of Paragraph 8 of the 1990 Copenhagen Document and to ensure full access to all stages of the electoral process to domestic and international observers, consideration should be given to introducing provisions for election observation, in particular setting out rights and responsibilities of observers as well as accreditation arrangements.*

The OSCE/ODIHR EAM held a series of meetings with civil society organizations, several of which expressed the wish to observe the electoral process. In April, the SBE denied a formal request from Equal Rights Association to observe election day proceedings in specified locations. Still, representatives of a number of civil society organizations, including the Human Rights Association, carried out observation activities on election day and were reportedly generally accepted by BBCs, as also witnessed by OSCE/ODIHR EAM teams.

## **XII. PARTICIPATION OF WOMEN**

Since the ratification by Turkey of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985, significant legal reforms have taken place. The legal framework has been reviewed, establishing rights and protections for women as individuals separate from their roles within the family unit. In addition, a five-year National Action Plan on Gender Equality was put in place in 2008. The Ministry of Women

<sup>71</sup> Paragraph 8 of the 1990 Copenhagen Document reads: "The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law."

<sup>72</sup> Most of PEBs and DEBs approached by the OSCE/ODIHR EAM refused to meet without a written request from the SBE. The OSCE/ODIHR EAM was requested to provide the Ministry of Foreign Affairs with a list of locations to be visited. While this could have been intended to facilitate the work of observers so that necessary access is granted, this generally contradicts the principle of independent observation. A team deployed to Izmir on 26 May was only able to meet with the election administration on 6 June despite repeated requests. Still, on 10 June, the same team was denied access by the PEB in Manisa and contact with the election administration in this province was not established.

<sup>73</sup> Joint OSCE PA and PACE post-election statement, available at [www.oscepa.org](http://www.oscepa.org).

and Family Affairs was established in 1990<sup>74</sup> and a parliamentary Committee on Equality of Opportunity for Women and Men started operating in 2009. Both institutions have been headed by women parliamentarians.

In spite of significant advances, serious gaps exist between what is required by law or defined in strategic planning documents, and the implementation. Representation of women in government remains low. Based on results of the 2009 local elections, women represent fewer than 1 per cent of mayors, while women hold only 4.2 per cent of the 31,789 city council seats and 3.3 per cent of the 3,379 provincial assembly seats.<sup>75</sup> None of the country's governors are women.<sup>76</sup>

The representation of women in the parliament increased from 9.1 per cent after the 2007 elections to 14 per cent. While Turkey is still somewhat behind the European average of 22.3 per cent,<sup>77</sup> the increase nonetheless demonstrates a trend of improvement in the second consecutive parliamentary elections.

The low representation of women on candidate lists does not appear to be based on a lack of interest among women in becoming candidates. Between AKP and CHP alone, 1,660 applications were received from women seeking to run for office; however, only 10.78 per cent of them were actually accepted as candidates.<sup>78</sup>

The legislation does not contain any quota or affirmative action provisions in order to achieve equity between genders represented on party lists. Nevertheless, several parties voluntarily made some accommodations such as reducing the fees charged to women candidates.<sup>79</sup> The BDP, which established an internal 40 per cent target for women's participation, stepped outside the legal restrictions imposed by the LPP and installed two party chairpersons at provincial and district levels, including a female chairperson selected by women members.

*To further promote the participation of women, consideration could be given to establishing a gender quota for the composition of party lists. While there are many options, an example of one such formulation requires that in each sequence of three candidates, one should be of the under-represented gender.*

Women's issues were virtually absent in the campaign. However, during the campaign period, a number of men in key political and government leadership positions resorted to insults when responding to differing views expressed by women. Women's opinions or expressions of dissent frequently garnered attacks involving slurs colored by sexual innuendo and challenges

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<sup>74</sup> Towards the end of the campaign, the prime minister announced that the Ministry of Women and Family Affairs was going to be eliminated and replaced with the Ministry of Family Affairs and Social Policy. This decision met some criticism based on concerns that the shift in emphasis would once again subordinate the rights of women to the protection of the family. See "[Turkey: Backward Step for Women's Rights. Abolishing Women's Ministry Harms Women's Rights Efforts](http://www.hrw.org/en/news/2011/06/09/turkey-backward-step-womens-rights)," Human Rights Watch, 9 June 2011, [www.hrw.org/en/news/2011/06/09/turkey-backward-step-womens-rights](http://www.hrw.org/en/news/2011/06/09/turkey-backward-step-womens-rights).

<sup>75</sup> *Women in Statistics 2010*, Turkish Statistical Institute, p.73.

<sup>76</sup> "Turkey Gains "0" Points on Gender Equality – Again," Istanbul - BIANewsCenter, 8 March 2011.

<sup>77</sup> *Women in National Parliaments*, Inter-Parliamentary Union, as of June 2011, available at [www.ipu.org/wmn-e/world.htm](http://www.ipu.org/wmn-e/world.htm).

<sup>78</sup> According to AKP, the number of applications the party received from women increased by 82 per cent compared to 2007, while the number of applications received from men increased by 46 per cent.

<sup>79</sup> The AKP reduced the application fee for women candidates by one half, while the CHP reduced their application fee by one third. The MHP charged women no fee at all.

to their morality or capacity as mothers.<sup>80</sup> Often, public rhetoric also reflected patriarchal attitudes that continue to shape public policy at both national and local levels.<sup>81</sup>

### XIII. PARTICIPATION OF ETHNIC AND OTHER GROUPS

The Constitution of Turkey makes no reference to minorities and states that everyone bound to the Turkish state through the bond of citizenship is a Turk. Turkey recognizes religious minorities, in line with its interpretation of the 1923 Treaty of Lausanne, and it grants this status only to its non-Muslim citizens, including Greeks, Armenians and Jews. Turkish citizens of Kurdish origin or other ethnic, linguistic or cultural minorities are not recognized as such under Turkish law. Official voter information materials are available in Turkish only.

Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities. With regard to the OSCE, Turkey has made the reservation that the term ‘national minorities’ used in key OSCE instruments for the protection of minority rights refers only to those minorities recognized under the Treaty of Lausanne.<sup>82</sup> Turkey is party to the UN International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights; however, its reservations regarding the rights of minorities and the right to education are mentioned as causes of concern in the European Commission’s Turkey 2010 Progress Report.<sup>83</sup>

The national population census does not include questions on ethnicity or language; thus, there are no official figures available in regard to ethnic and other groups. While unofficial estimates vary, there is a general understanding that apart from officially recognized minorities, there are a number of sizeable ethnic and other groups in Turkey.<sup>84</sup>

Concerns related to the campaign were expressed to the OSCE/ODIHR EAM by the representatives of the Alevi religious community, which is not officially recognized in Turkey. Members of the Alevi associations mentioned that they felt their religious beliefs were at times depicted in the campaign as inferior and that belonging to their religious group was used against some candidates.

Civil society organizations dealing with Roma issues carried out a campaign within the Roma community promoting participation in elections and contributed to the monitoring effort coordinated by the Equal Rights Association. On election day, some of these organizations helped elderly and illiterate members of their community by directing them to their designated polling locations.

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<sup>80</sup> “*There is Honey in the Market*,” *Hürriyet Daily News*, 6 June 2011; “*Women’s Support for Ümit Boyner and Christine Lagarde*,” *Hürriyet Daily News*, 1 June 2011.

<sup>81</sup> “*Do not walk around, sit in your homes*,” *Hürriyet Daily News*, 25 June 2011; “*Rize Mayor Apologizes For His Remarks About Polygamy*,” *Hürriyet Daily News*, 30 June 2011.

<sup>82</sup> The instruments include OSCE Commitments under the 1990 Copenhagen Document, in the particular Section IV, Paragraph 32, and the OSCE Hague, Oslo and Lund recommendations.

<sup>83</sup> European Commission’s Turkey 2010 Progress Report, 9 November 2010, p. 32; available at: [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/tr\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf).

<sup>84</sup> There is a broad public understanding that Turkish citizens of Kurdish origin form the largest group. Other groups include the Roma, the Laz, the Circassians and the Alevis. See Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey on 28 June-3 July 2009, Strasbourg, 1 October 2009, available at [www.coe.int](http://www.coe.int).

## XIV. VOTING, COUNTING AND ANNOUNCEMENT OF RESULTS

### A VOTING

In accordance with standard practice of EAMs, the OSCE/ODIHR mission did not observe election day proceedings in a systematic or comprehensive manner. However, mission members visited a few polling stations in 15 localities.

The voting process appeared to have been generally well administered. Polling officials appeared well trained and efficient and no major irregularities were noted. As a rule, only citizens included in the voter lists for a particular polling station could vote. However, in line with the legislation, members of parliament and candidates could vote at any polling station within a district upon receipt of a special certificate from DEBs. Their names were added to the voter lists on election day.<sup>85</sup>

Except for the eastern parts of the country, where some tensions were noted, the atmosphere was calm. There was a considerable police presence inside and/or outside most of polling stations visited by the OSCE/ODIHR EAM. Polling stations were frequently located in schools and access for people with disabilities was problematic in most locations visited.<sup>86</sup>

*Measures should be undertaken to ensure access for elderly people and people with disabilities to polling stations, particularly as there are no provisions for voting with a mobile ballot box.*

For the first time, transparent ballot boxes were used and voters' fingers were not inked. The OSCE/ODIHR EAM members noted that there was a problem with ballot design across the country. Political parties were presented on a ballot with logos and party names printed in an easily readable typeface. Independent candidates were not allowed to use logos<sup>87</sup> and their names were printed in a very small font, which was difficult to read even for people with good sight. Concerns were expressed that this challenged the equality of opportunities among electoral contestants.

*Consideration could be given to printing names of independent candidates in the same easily readable font as the names of political parties.*

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<sup>85</sup> In the past, police officers could also be added to the lists in polling stations where they served on election day. According to the SBE, for these elections, the names of all police officers on duty were included in the respective voter lists prior to election day.

<sup>86</sup> Article 29 of the United Nations Convention on the Rights of Persons with Disabilities require States Parties to "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: [...] (i) Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use..." The Convention was ratified by Turkey on 28 September 2009.

<sup>87</sup> On 16 April, in response to a request by an independent candidate to have a logo on the ballot the SBE issued a decision (No. 391) that it was not permitted by law.

## **B COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS**

Counting of votes was conducted by BBCs immediately after the closure of polls. The process was orderly and transparent in polling stations visited by the OSCE/ODIHR EAM. There was a noticeable presence of party and independent candidates' observers during the count. The BBC result protocols were generally not posted outside of polling stations, contradicting the requirement of the law. However, in a positive development, following a recent amendment to the LBPEVR, party representatives in BBCs were provided with copies of BBC protocols. The main parties organized parallel vote tabulation.

The intake and tabulation of results at the DEB level was well-organized despite long queues of BBC chairpersons waiting to submit protocols and voting materials. The result collection was monitored by the representatives of political parties in most DEBs visited. Preliminary results were announced by the SBE in the morning after election day. Final results were adopted by the SBE and published in the Official Gazette and the SBE website by 23 June. Turkey follows the good practice of announcing the results per BBC. This is done at a later stage by the State Statistics Bureau.

## **XV. POST-ELECTION DEVELOPMENTS**

The distribution of mandates to elected representatives that took place after the departure of the OSCE/ODIHR EAM on 18 June resulted in some controversies. A number of elected candidates, who were in pre-trial detention during the campaign, were not released from detention pending trials and thus unable to take up their seats.<sup>88</sup> In another case, a BDP-backed independent candidate, Hatip Dicle, who was in detention pending judgment during the campaign, was convicted on terrorism-related charges and sentenced to a prison term of one and a half years four days before the election. The candidate's name, however, remained on the ballot and he won the election in his constituency. Due to the conviction, the SBE made a post-election de-registration of the elected candidate and awarded his seat to the runner-up AKP candidate. Elected members from BDP and CHP boycotted the oath-taking ceremony in protest against the above controversies. Post-election withdrawal of a mandate from an elected member of parliament contravenes Paragraph 7.9 of the 1990 OSCE Copenhagen Document.<sup>89</sup>

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<sup>88</sup> At least 12 candidates in these elections were in detention during the pre-electoral period awaiting trials in connection with allegations of involvement in terrorist activities, conspiracy against the state, or similar offenses.

<sup>89</sup> Paragraph 7.9 requires that "candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures."

## ANNEX 1 – FINAL RESULTS

### Official Final Election Results including Early Voting at Customs Areas

Total number of registered voters	50,806,322
Total number of votes cast	43,914,948
Total number of valid votes	42,941,763
Total number of invalid votes	973,185
Turnout (percentage)	83.16

Turnout among the 2,568,979 registered voters residing outside Turkey was 5.03 per cent  
Turnout within Turkey (without early voting at customs areas) was 87.16 per cent

### Distribution of valid votes to political parties and percentages

Name of Party	Vote	Percentage
Justice and Development Party (AKP)	21,399,082	49.83
Democrat Party (DP)	279,480	0.65
Republican People's Party (CHP)	11,155,972	25.98
Labour Party (EMEP)	32,128	0.07
Nation's Party (MP)	60,716	0.14
Liberal Democrat Party (LDP)	15,222	0.04
Felicity Party (SP)	543,454	1.27
Party of Right and Equality (HEPAR)	124,415	0.29
Voice of the Nation Party (HAS)	329,723	0.77
Nationalist Movement Party (MHP)	5,585,513	13.03
True Path Party (DYP)	64,607	0.15
Turkish Communist Party (TKP)	64,006	0.15
Nationalist and Conservative Party (MMP)	36,188	0.08
Grand Unity Party (BBP)	323,251	0.75
Democratic Left Party (DSP)	108,089	0.25
Independent Candidates	2,819,917	6.57

### Allocation of Parliamentary Seats

AKP	327
CHP	135
MHP	53
Independents	35
TOTAL	550

Source: SBE decision 1070, 22 June 2011  
[www.ysk.gov.tr/ysk/docs/Kararlar/2011Pdf/2011-1070.pdf](http://www.ysk.gov.tr/ysk/docs/Kararlar/2011Pdf/2011-1070.pdf)

## ABOUT OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is 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.

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.

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, 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. OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

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**, 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. 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.

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

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

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