



Office for Democratic Institutions and Human Rights

# REPUBLIC OF FRANCE

## PARLIAMENTARY ELECTIONS

10 and 17 June 2012

### OSCE/ODIHR Election Assessment Mission Final Report



Warsaw  
10 September 2012

## TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>II. INTRODUCTION AND AKNOWLEDGMENTS .....</b>	<b>2</b>
<b>III. BACKGROUND.....</b>	<b>3</b>
<b>IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM .....</b>	<b>3</b>
A. DELIMITATION OF CONSTITUENCIES.....	4
<b>V. ELECTION ADMINISTRATION.....</b>	<b>5</b>
A. OVERVIEW .....	5
B. PROXY VOTING.....	6
<b>VI. VOTER REGISTRATION.....</b>	<b>7</b>
A. GENS DU VOYAGE.....	8
<b>VII. INTERNET VOTING .....</b>	<b>9</b>
A. BACKGROUND AND LEGAL FRAMEWORK .....	9
B. INTERNET VOTING SYSTEM, IMPLEMENTATION AND TRANSPARENCY .....	10
C. CERTIFICATION AND AUDITS .....	12
<b>VIII. CANDIDATE REGISTRATION.....</b>	<b>13</b>
<b>IX. ELECTION CAMPAIGN.....</b>	<b>14</b>
<b>X. POLITICAL FINANCE .....</b>	<b>15</b>
A. FUNDING AND SPENDING REGULATIONS.....	15
B. REPORTING AND SUPERVISION.....	16
<b>XI. MEDIA .....</b>	<b>17</b>
A. LEGAL FRAMEWORK FOR FREEDOM OF EXPRESSION .....	17
B. THE COVERAGE OF ELECTIONS .....	18
<b>XII. COMPLAINTS AND APPEALS .....</b>	<b>20</b>
<b>XIII. ELECTION DAY .....</b>	<b>21</b>
A. VOTING.....	21
B. COUNTING AND TABULATION OF RESULTS .....	22
<b>XIV. ANNOUNCEMENT OF FINAL RESULTS.....</b>	<b>22</b>
<b>ANNEX: OFFICIAL RESULTS .....</b>	<b>23</b>
<b>ABOUT THE OSCE/ODIHR .....</b>	<b>25</b>

## **REPUBLIC OF FRANCE**

### **PARLIAMENTARY ELECTIONS 10 and 17 June 2012**

#### **OSCE/ODIHR Election Assessment Mission Final Report<sup>1</sup>**

##### **I. EXECUTIVE SUMMARY**

Following an invitation from the Permanent Representation of France to the OSCE and based on the recommendation of a Needs Assessment Mission conducted from 10 to 11 May, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed on 30 May an Election Assessment Mission (EAM) for the parliamentary elections conducted in two rounds on 10 and 17 June 2012.

The elections to the National Assembly provided voters with a wide degree of choice among diverse political options. The legal framework provides a sound basis for the conduct of democratic elections, although some of its elements are not fully compatible with OSCE commitments and other international standards, as has been noted in previous recommendations of the OSCE/ODIHR.

The election administration enjoys a high level of public confidence. It performed its duties in an impartial and transparent manner, ensured efficiency of the process, and complied with national legislation. The process of redistricting the constituencies was considered by some EAM interlocutors as politicized and the role of an Independent Commission that was constituted for the task was only consultative.

Procedures of proxy voting have been further simplified, although OSCE/ODIHR has previously recommended that the secrecy and equality of the vote be ensured. Given that no special polling stations are established in prisons, hospitals or care homes, and that there are no provisions for absentee voting, proxy voting is the only option available for a number of eligible voters to cast their ballots.

The candidate registration process was inclusive. During the election campaign, freedoms of expression and assembly appeared to be generally respected. All political parties were provided with the opportunity to campaign freely in a competitive environment.

The legal framework governing the media guarantees freedom of speech and provides for pluralism in the media landscape and political pluralism in broadcasting. Public and commercial broadcasters are legally bound to ensure political impartiality by providing equitable coverage to candidates or political parties contesting the elections.

The Electoral Code provides many avenues for adjudicating electoral disputes, depending on their nature. Although any registered voter or candidate standing in that constituency can challenge the validity of the elections at the Constitutional Council, there is no possibility to challenge specific alleged violations in the conduct of elections or in the electoral campaign

---

<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in French.

until the election is over. The current legislation does not provide for electoral recounts and a few departments still use electronic voting machines without a paper audit trail.

For the first time in a national election, internet voting was available to all French citizens living abroad, in parallel with voting by mail and voting at consulates. Various aspects of internet voting, including preparation, certification, and audits, lacked detail in the legal framework. Due to security concerns, key information related to the procurement and audits was not publicly disclosed, affecting transparency and raising certain concerns.

France has a well-developed legal and institutional political finance framework. Recent amendments to the political finance legal framework included the introduction of new sanctions for non-compliance with campaign finance rules and heavier penalties for parties that do not follow gender balance rules for candidate lists.

In line with standard practice for assessment missions, the EAM did not observe election day procedures in a systematic or comprehensive manner. Nonetheless, the EAM visited a limited number of polling stations in eleven municipalities on election day. The voting process was very well organized in the polling stations visited, and procedures were followed in a generally uniform manner. Polling stations were generally accessible for disabled people, but no special means were provided for visually impaired voters who could thus not vote in secrecy. The counting of votes was conducted in an efficient and transparent manner. Disaggregated results were publicly available shortly after the close of polls. Final results were announced within the legal deadline.

## II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Permanent Representation of France to the OSCE and based on the recommendation of a Needs Assessment Mission conducted from 10 to 11 May,<sup>2</sup> the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed on 30 May an Election Assessment Mission (EAM) for the parliamentary elections conducted in two rounds on 10 and 17 June. The OSCE/ODIHR EAM was headed by Cayetana de Zulueta and consisted of six experts from six OSCE participating States. The OSCE/ODIHR EAM was based in Paris and visited Aix-en-Provence, Chartres, Hénin-Beaumont, Marseille, Strasbourg, Troyes, and several municipalities surrounding Paris. In the course of its work, the EAM met with official bodies responsible for administering and overseeing the elections, with candidates and political parties, the media, and with civil society organizations.

In line with standard practice for assessment missions, the EAM did not observe election day procedures in a systematic or comprehensive manner. Nonetheless, the EAM visited a limited number of polling stations in eleven municipalities on election day.

The OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs, Ministry of Interior, Constitutional Council, as well as representatives of political parties, media, civil society organizations, academics and other interlocutors who took their time to meet with the EAM.

---

<sup>2</sup> All previous OSCE/ODIHR reports with regard to France can be found at: [www.osce.org/odihr/elections/france](http://www.osce.org/odihr/elections/france).

### III. BACKGROUND

France is a presidential republic with a parliament comprising two chambers – a directly elected lower house of 577 deputies, the National Assembly, and an upper house, the Senate, composed of 348 indirectly elected senators. In these parliamentary elections, voters directly elected the 14<sup>th</sup> National Assembly. These elections came a month after President François Hollande of the Socialist Party (PS) won the presidential election.<sup>3</sup> Following the last parliamentary elections in 2007, parliamentary groups formed around two major parties, the Union for Popular Movement (UMP) and the PS. Smaller center-left and center-right political parties continued to play a role, although the traditional two-party system continued.

The OSCE/ODIHR previously deployed EAMs for the presidential elections in 2002 and 2007. In 2007, OSCE/ODIHR concluded that the presidential election was held “in a competitive environment which provided overall equitable conditions for the candidates” and underscored that “the process enjoyed a high level of public confidence”. Among other issues, the EAM recommended that the practice of proxy voting be reviewed, establishing a means of voting in secret by eligible prison inmates, that transparency and accountability of electronic voting machines be improved, and that rules for media coverage of candidates be simplified. The 2012 EAM was the first OSCE/ODIHR activity with regards to parliamentary elections in France.

### IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Legislative elections are primarily regulated by the 1958 Constitution (last amended in 2008) and the 1964 Electoral Code (last amended in March 2012). Specific aspects of the elections are further regulated by the Laws on Freedom of Press, Public Meetings, Financial Transparency of Political Life, Audiovisual Communication, and the Penal Code, as well as by regulations, decrees, government orders and instructions.<sup>4</sup> The legal framework provides a sound basis for the conduct of democratic elections. Despite previous recommendations of the OSCE/ODIHR in line with Paragraph 8 of the 1990 OSCE Copenhagen Document, however, legislation continues not to explicitly provide for international or domestic election observation.

*Legislation should be amended to provide for international and domestic election observation, in line with the OSCE commitments.*

According to the Constitution and the Electoral Code, members of the National Assembly are elected in 577 single-member constituencies, according to a two-round majority system. To be elected in the first round, a candidate should obtain an absolute majority of votes cast by at least a quarter of the registered voters. The second round, where needed, is held between the candidates who received a number of votes amounting to at least 12.5 percent of number

---

<sup>3</sup> Mr. François Hollande obtained 51.64 per cent of the votes in the second round, while his opponent, Mr. Nicolas Sarkozy, received 48.36 per cent.

<sup>4</sup> Since 1980, France is also a party to the International Covenant on Civil and Political Rights (ICCPR). It has been party to the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) since 1983 and the UN Convention on the Rights of Persons with Disabilities (CRPD) since 2010.

of registered voters. The last amendments to the Constitution introduced the principle of equal access to elected offices and posts for men and women. Constitutional amendments from 2008 also mandated that 11 deputies are to be elected in 11 special single-member constituencies by French citizens residing abroad, while preserving the total number of deputies, which were implemented for the first time in these elections.<sup>5</sup>

#### A. DELIMITATION OF CONSTITUENCIES

Together with demographic shifts, the change in the number of mandates to be distributed in mainland France resulted in a redistricting process from 2009 to 2010. This was the first redistricting to take place since 1986, despite provisions of the Electoral Code mandating redistricting after each second national census, repeated warnings from the Constitutional Council, and international good practice.<sup>6</sup> As the national census was done away with in 2002, the Electoral Code no longer provides for fixed redistricting.

*Legislation should be amended to provide for periodic reviews of constituency boundaries to reflect relevant changes in population.*

The government, through the Ministry of Interior, initiated the process through a draft order proposing a new delimitation of constituencies. This proposition was submitted to an Independent Commission mandated to deliver its opinion regarding the draft order along with recommendations and suggestions.<sup>7</sup> The final government order to redistrict constituencies was ratified by the parliament. Some OSCE/ODIHR EAM interlocutors thought the process of redistricting politicized, leaving room for ‘gerrymandering’ since the government controlled the process and the role of the Independent Commission was strictly consultative.

On two occasions, at least 60 members of the parliament contested the constitutionality of the redistricting process before the Constitutional Council. The first referral brought to the Constitutional Council in December 2008 concerned the Law on the Independent Commission and the Election of the Members of Parliament. It was alleged that the composition of the Commission did not guarantee its independence as it did not provide for the representation of opposition parties. Furthermore, the criterion imposing a minimum of two deputies per department was contested. The Constitutional Council dismissed the allegation of partiality of the Commission but declared the minimum number of two deputies unconstitutional.<sup>8</sup>

---

<sup>5</sup> Constitutional Law No. 2008-724 from 23 July 2008.

<sup>6</sup> In its Observations Related to the Legislative Elections of 2002 and 2007, released on 15 May 2003 and 29 May 2008 respectively, the Constitutional Council stated that it was urgent to proceed with the re-districting of the constituencies in order to respect the constitutional principle of equality of representation. International good practice stipulates that “seats should be redistributed at least every ten years.” Venice Commission Code of Good Practice in the Electoral Matters, CDL-AD (2002) 23rev., p. 17-18, available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

<sup>7</sup> The Independent Commission is established by Article 25 of the Constitution. It is composed of six members serving six-year, non-renewable terms who are nominated by the President of the Republic, the President of the National Assembly, and the President of the Senate from among the members of the State Council, Court of Cassation and Court of Auditors.

<sup>8</sup> Decision no. 2008-573 DC, 8 January 2009.

The second referral contested the constitutionality of the law ratifying the government order related to the redistricting of the constituencies, adopted in July 2009.<sup>9</sup> According to the complainants, the Independent Commission should have been consulted on the final government order after the amendments introduced by the government to its draft order. Moreover, members of parliament contested the methodology used to determine the number of deputies per department<sup>10</sup> as well as the result of the redistricting in 28 departments, alleging that the principle of the equality of vote was not respected. The Constitutional Council upheld the constitutionality of the process and the criteria defined in the law,<sup>11</sup> thus allowing the possibility for constituencies to diverge by up to 20 per cent from the average population of the constituency in a department, contrary to international good practice.<sup>12</sup>

*Consideration could be given to enhance the authority of the Independent Commission, as well as to ensure better respect for the equality of voting power in line with international good practice.*

## V. ELECTION ADMINISTRATION

### A. OVERVIEW

The election administration is characterized by its decentralization, with responsibility for administering the elections shared among state bodies at the national and local levels. The Constitutional Council oversees the conduct of national elections, approves a variety of documents used, and provides information to voters. The Ministry of Interior, Overseas, Local Authorities and Immigration (MoI) is responsible for all technical and logistical preparations for the elections at the national level. Some 67,000 polling stations in France and some 800 abroad were established for these elections. The election administration enjoys a high level of public confidence. It performed its duties in an impartial and transparent manner, ensured efficiency of the process, and complied with national legislation.

The MoI issued operational instructions on legal and organizational matters to the *préfectures* which are responsible for candidate registration, tabulation of results and transmittal of them to the MoI. In accordance with the law, each *préfecture* also created three commissions to supervise the electoral process at the level of the department or constituency. Campaign commissions (*commissions de propagande*) ensured that electoral campaign documents were distributed in each constituency,<sup>13</sup> commissions for the oversight of voting

---

<sup>9</sup> Law no. 2009-935.

<sup>10</sup> One constituency is granted for every 125,000 inhabitants.

<sup>11</sup> Decision no. 2010-602 DC, 18 February 2010.

<sup>12</sup> According to the international good practice, “The maximum admissible departure from the distribution criterion adopted ... should seldom exceed 10% and never 15%, except in really exceptional circumstances.” See Venice Commission Code of Good Practice in Electoral Matters, CDL-AD (2002) 23 rev., p.17-18, available at [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

<sup>13</sup> See Articles L.166 and R.31 of the Electoral Code. A campaign commission is composed of a judge designated by the president of the Appeals Court to chair the commission, a civil servant designated by the *préfet*, a civil servant designated by the director of the public finance department, and a representative of the post office.

operations verified the regularity of the voting process,<sup>14</sup> and census commissions issued the final protocol for each constituency and proclaimed the official results.<sup>15</sup> In case of mathematical errors in the protocols of *communes* or *mairies* (city councils), census commissions could make corrections, which were then to be reported to the MoI by the *préfectures*. The Electoral Code does not provide for the recounting of ballots. Only cancelled ballots are recounted and verified by the census commission, which can re-incorporate ballots that have mistakenly been invalidated.<sup>16</sup>

*The authorities could consider introducing provisions for recounts and audits of polling station protocols to increase transparency and to avoid potential complaints against final results.*

To establish the number and location of polling stations, the *préfectures* co-ordinated the work of the *mairies*, who were responsible for this task. The municipalities appointed four members to polling boards in each polling station, including the chairpersons. Each candidate or political party could designate one additional polling board member. In some polling stations visited, candidates and political parties did not propose any members, but candidates' proxies were able to check the activities of the boards.

The Ministry of Foreign and European Affairs (MFEA) was responsible for organizing the elections for citizens residing abroad. Consulates were tasked to inform French citizens registered abroad about the voting procedures, the candidates, and location of the polling stations.

Organization of elections for voters living in the overseas French departments and 'collectivities' was carried out by the respective *préfectures* and *mairies*, overseen by the Secretary of State in charge of overseas at the MoI. Due to time differences, elections in some overseas territories were organized one day earlier.<sup>17</sup>

## **B. PROXY VOTING**

In parliamentary elections, all voters have the possibility of casting their ballots by proxy. The law allows any voter who will be out of the municipality where s/he is registered or who is unable to reach his/her polling station to vote by proxy. Contrary to previous OSCE/ODIHR recommendations, procedures have been further simplified to facilitate proxy voting. Thus, a voter is no longer asked to prove that s/he will not be able to vote at his/her polling station and a declaration of honour suffices. Additionally, the MoI, through its website and posters, actively invited voters who could not vote in their polling stations to

---

<sup>14</sup> According to Articles L. 85-1 and R. 93-1 to R. 93-3 of the Electoral Code, commissions for the control of the voting operations are created in every town of more than 20,000 inhabitants. The commission is composed of a magistrate, acting as a president of the commission, a member designated from among the magistrates or former magistrates of the department, and a civil servant, designated by the *préfet*.

<sup>15</sup> See Article R. 107 of Electoral Code. A census commission is composed of a judge designated by the president of the Appeal Court or the president of the Superior Court of Appeal to chair the commission, two judges designated by the same authorities, a member of the General Council and a civil servant from departmental services designated by the *préfet*.

<sup>16</sup> The valid ballots are not considered sensitive material and are not attached to the protocol.

<sup>17</sup> Guadeloupe, Guyane and Martinique – see Article L. 173 of the Electoral Code.

vote by proxy. Some political parties offered to help voters complete the formalities and even find a proxy on their websites.<sup>18</sup>

Although proxy voting is a longstanding practice in France that enjoys broad support and is considered to ensure universal suffrage, the OSCE commitments and other international standards for democratic elections require ensuring the secrecy and equality of the vote and respect for voters' choices.<sup>19</sup>

*Consideration should be given to abolishing proxy voting and to exploring alternative voting methods for those unable to vote in their precinct on election day, to bring legislation more fully in line with OSCE commitments and other international standards for democratic elections.*

Given that no special polling stations were established in prisons, hospitals or care homes, and that there are no provisions for absentee voting, proxy voting was the only option available to a number of eligible voters to cast their ballots.

Those in pre-trial detention and sentenced to prison terms could exercise their right to vote either through proxy voting or using a temporary absence authorization.<sup>20</sup> The number of prisoners who benefited from a temporary absence authorization was limited, and the rest of those incarcerated were only able to vote by proxy.<sup>21</sup> To do so, a prisoner has to identify a registered voter in the same *commune* to act as a proxy, which may be difficult when a prisoner is incarcerated outside his/her commune of residence.

*Consideration should be given to establishing alternative voting that would guarantee these categories of voters the right to vote in secret.*

## VI. VOTER REGISTRATION

All citizens over the age of 18 are eligible to vote, unless this right is suspended by a final court decision for reasons of legal incapacity or sentencing. According to official MoI data, 46,082,104 voters were registered for the first round of the elections. The Penal Code identifies a number of infringements, misdemeanour offences, and crimes that can lead to the loss of electoral rights for a period of up to 10 years depending on the severity of the crime.<sup>22</sup>

---

<sup>18</sup> See, for example, [www.procurations2012.fr](http://www.procurations2012.fr), [www.procurations.frondegauche.fr](http://www.procurations.frondegauche.fr), [www.frontnational.com/procurations](http://www.frontnational.com/procurations).

<sup>19</sup> Article 3 of the 1958 Constitution provides for the secret and equal suffrage. See paragraphs 5.1, 7.3 and 7.4 of the 1990 OSCE Copenhagen Document; Article 25 of the ICCPR; General Comment to Article 25, paragraphs 20-22; the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, Article 3.

<sup>20</sup> According to the Ministry of Justice, at the end of 2010 the number of detainees amounted to 66,975 people, see [http://www.justice.gouv.fr/art\\_pix/stat\\_annuaire\\_2011-2012.pdf](http://www.justice.gouv.fr/art_pix/stat_annuaire_2011-2012.pdf). According to Article D.143 of the Code of Criminal Procedures, modified by the Decree No. 2007-1627 from 16 November 2007, those sentenced to a term of imprisonment less or equal to five years and those sentenced to more than 10 years, when they have served half of the term of their sentence, can ask for a temporary absence authorization of one day to exercise their right to vote.

<sup>21</sup> According to the Ministry of Justice, during these elections, 751 prisoners voted by proxy and 334 obtained temporary absence authorizations.

<sup>22</sup> In these elections, 1,643 prisoners were barred from voting.

There is no centralized voter register at the national level. Voter registers are compiled at the level of the municipality and updated every year. Voter lists maintained by the *mairies* are considered official and are used on election days. According to the law, voter registration is mandatory,<sup>23</sup> although no sanctions are envisaged for non-compliance. In order to be registered on a voter list, a citizen should fulfil the criteria established by the Electoral Code.<sup>24</sup> Voters may choose to be registered on the electoral roll of their official domicile, of a *commune* where they have been paying local taxes for the last five years, of a place of residence if the residence has been actual and continuous for the last six months, or of a *commune* where civil servants/military personnel have been mandatorily posted.

Applications for registration are received by the *mairies* throughout the year until 31 December of the year preceding the elections. Starting from 1 September of each year, voter lists are reviewed and updated. The final voter lists are released on 1 March and can be checked by voters upon request. Citizens who reach the age of 18 between the final closure of voter lists and election day are automatically registered. Registration requests presented after the close of the prescribed period on December 31 are processed in September of the following year, except for certain categories of citizens.<sup>25</sup>

The elections department of each *mairie* is mandated to regularly communicate voter lists changes to INSEE. INSEE is then in charge of verifying possible multiple registrations and notifying *mairies* of these discrepancies, enabling them to remove duplicate voters from voter lists. INSEE also serves as an intermediary in the registration of citizens living abroad. According to INSEE, the number of voters in the lists kept by the municipalities exceeds that in the INSEE database by approximately 500,000, which is attributed to not being informed regularly by the *mairies* about changes to the voter lists.

*Further efforts could be taken to enhance the accuracy and inclusiveness of voter registration with a view to greater universality and equality of suffrage.*

#### A. GENS DU VOYAGE

The term *gens du voyage* (travelers) describes a general category of people who perform itinerant labor. The law requires travelers to have an attachment to a *commune* of at least three years to be registered on a voter list there.<sup>26</sup> Some interlocutors informed the OSCE/ODIHR EAM that there is a political consensus regarding the necessity to amend the legislation concerning the civic rights of the travelers. In particular, the authorities expressed

---

<sup>23</sup> Article L.9 of the Electoral Code.

<sup>24</sup> Articles L.9-15 of the Electoral Code.

<sup>25</sup> Articles L-30 to L-35 of the Electoral Code allow for the following categories of citizens to register outside the prescribed period: civil servants transferred or allowed to claim their right to retire as well as family members living with them on the date of transfer or release for retirement; soldiers sent home after fulfilling their legal obligations; voters who establish domicile in another municipality for a business reason as well as their family members residing with them at the date of change of address; people who have acquired French nationality by declaration of free will and were naturalized after the closing date for registration; citizens who had regained the right to vote which they had been deprived of by a court.

<sup>26</sup> See Article 10 of the Law No. 69-3 from 3 January 1969. The three-year period is calculated from the date when the attachment decision is taken by the *préfet*.

their readiness to modernize the legal provisions concerning the rights of travelers.<sup>27</sup> In the past year, two legislative initiatives concerning the travelers were registered with the Senate, but did not pass the first reading.<sup>28</sup>

A number of commissions recommended repealing the three-year attachment requirement and applying common law provisions that require a six-month attachment to a *commune* to register to the travelers.<sup>29</sup> According to the MoI, common law provisions regarding registration of homeless people can also be applied to travelers. However, several interlocutors informed the OSCE/ODIHR EAM that there were a number of cases where travelers faced difficulties in registering under these provisions and also considered them discriminatory. Thus, despite previous OSCE/ODIHR recommendations and stated intentions to improve the status of travelers, these provisions remain to be addressed.<sup>30</sup>

*Authorities should consider amending the legislation in order to guarantee universal suffrage for all citizens regardless of their legal status, including the gens du voyage.*

## VII. INTERNET VOTING

### A. BACKGROUND AND LEGAL FRAMEWORK

For the first time in national elections, internet voting was available to all citizens residing abroad, parallel to the options of voting by mail, voting by proxy, and voting at consulates.<sup>31</sup> Internet voting started with a project piloted by the city of Issy-les-Moulineaux during the 2002 municipal council elections. Subsequently, three pilot projects were carried out by the MFEA during the 2003, 2006, and 2009 elections to the Assembly of French Citizens Abroad.

As established by law, the highest authority responsible for internet voting is the Electronic Vote Board (EVB), composed of seven members.<sup>32</sup> The EVB oversees all operations related

<sup>27</sup> See “Gens du Voyage: pour une Statut Proche du Droit Commun”, Annex 1, available at <http://www.agv35.fr/wp-content/uploads/2012/02/Rapport-GdV-P-HERISSON-juillet-2011-Version-finale.pdf>.

<sup>28</sup> <http://www.senat.fr/leg/pp11-587.html> and <http://www.senat.fr/leg/pp110-597.html>.

<sup>29</sup> See: the report of the National Consultative Commission for the *Gens du Voyage* at <http://www.agv35.fr/wp-content/uploads/2012/02/Rapport-GdV-P-HERISSON-juillet-2011-Version-finale.pdf>, of the National Consultative Commission for Human Rights at [http://www.cncdh.fr/IMG/pdf/08.02.07\\_Etude\\_et\\_propositions\\_sur\\_la\\_situation\\_des\\_Roms\\_et\\_des\\_gens\\_du\\_voyage\\_en\\_France-2.pdf](http://www.cncdh.fr/IMG/pdf/08.02.07_Etude_et_propositions_sur_la_situation_des_Roms_et_des_gens_du_voyage_en_France-2.pdf) and of the High Authority Against Discrimination and for Equality at [http://www.fnasat.asso.fr/halde/HALDE%20-%20Deliberation%20060409%20-%20suivi%20rapport%20et%20avis%20171207%20\(2\).pdf](http://www.fnasat.asso.fr/halde/HALDE%20-%20Deliberation%20060409%20-%20suivi%20rapport%20et%20avis%20171207%20(2).pdf).

<sup>30</sup> See Article 21 of the Universal Declaration of Human Rights, Article 25 of the ICCPR, Paragraph 7.3 of the 1990 OSCE Copenhagen Document.

<sup>31</sup> On the basis of amendments to the Electoral Code in 2009. See Ordinance No. 2009-36 from 29 July 2009 <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000020915533&dateTexte>. This provision was applicable to some 1,000,000 citizens.

<sup>32</sup> The EVB is led by a president appointed by the State Council and includes one representative each of the MoI, the Director of the Division of French citizens abroad, the French Network and Information Security Agency (ANSSI), as well as three members from the Assembly of French Citizens Abroad. Art. R176-3-1, Decree No. 2011-843 from 15 July 2011.

to internet voting and could invalidate results if it considers the security of the vote compromised. The Electoral Code, with specific amendments for these elections, regulates the EVB, the time period for internet voting, and voter authentication. Additional regulations and operational guidelines issued by a number of government agencies supplement this framework.

*The OSCE/ODIHR recommends that legal provisions with regards to all stages of internet voting are further detailed and consolidated in the law.*

## **B. INTERNET VOTING SYSTEM, IMPLEMENTATION AND TRANSPARENCY**

Voters could cast their ballots via internet from 23 to 29 May for the first round, and from 6 to 12 June for the second round. An interval between internet and in-person voting was intended to make it possible for voters to cast their ballots in person at the diplomatic representations if substantial problems were encountered with the internet voting.

On 18 May, the cryptographic keys used for encrypting and decrypting the votes were generated and handed over to members of the EVB. The key signature ceremony was public with some party delegates, mainly from the Pirate Party, present.<sup>33</sup>

Some 210,000 citizens residing abroad fulfilled the criteria for this option by submitted their e-mail addresses and mobile phone numbers to consulates. They then received instructions on how to vote via the internet and the login to use during the first and second rounds by regular mail two weeks before the first round.<sup>34</sup> This enabled voters' authentication during the internet voting. Additionally, each of them received two different passwords via e-mail, one for each round.<sup>35</sup> Great efforts were undertaken to make all instructions sent to the voters clear and easy to understand. Some OSCE/ODIHR EAM interlocutors, however, voiced concerns that the constraints of internet connection and postal services in some locations could potentially affect the timely reception of all needed materials.

Once a secured connection was established to the voting portal through a browser, a Java-based internet voting application was loaded on the user's computer. The user was able to authenticate him or herself with the login and password provided. The application listed all the candidates in the corresponding constituency. Once the voter cast his/her vote, it could not be changed even if cast by mistake or under pressure.

*Consideration could be given to introducing measures to permit voters to recast their votes in case of error and to limit possibilities of voter intimidation.*

A 'receipt' with a validation code was displayed on the screen in a printable format, enabling the voter to confirm the correct casting of his/her vote. This confirmation, however, did not ensure individual end-to-end verifiability as it could not provide the voter with a proof that the vote was cast as intended, recorded as cast, and counted as recorded.

---

<sup>33</sup> The Pirate Party was founded in 2006 as an issue-based party addressing the Law on Copyright and Related Rights in the Information Society. See also <https://partipirate.org/blog/>.

<sup>34</sup> Voter information was also made available on the internet, see <http://www.diplomatie.gouv.fr/fr/les-francais-a-l-etranger/elections-2012-votez-a-l-etranger/>.

<sup>35</sup> Voters could recover lost passwords by receiving a text message on their registered mobile phone.

*The OSCE/ODIHR recommends that the authorities consider the use of a verifiable internet voting scheme or an equally reliable mechanism for voters to check whether or not their votes were cast as intended.*

A total of 126,947 votes were cast during the first round and 117,676 during the second round. Technical support was available to the voters throughout the whole period of internet voting, either by phone or e-mail or through submission of an electronic form.

Two different issues arose during the first and the second round. Firstly, Java Virtual Machine (JVM) was updated around the time that the internet voting was available for the first round, which made it incompatible with the voting application. Although this was beyond the control of the EVB, it resulted in several voters being unable to cast their vote. Once the problem was detected, an applet capable of reviewing the computer's configuration and rolling back to the adequate version of JVM was published on the website. The second issue observed during the official counting of the second-round results was related to a one-vote disparity in one constituency. The digital certificate of one vote was corrupted and hence not counted by the solution. In both cases, the OSCE/ODIHR EAM observed that pre-established protocols were adhered to in the decision-making process; all members of the EVB participated in the decision-making, while all decisions and transactions were recorded in the minutes.

All server components were kept until the end of the elections. The EVB informed the OSCE/ODHIR EAM that, as provided for by the legal framework, the data will be destroyed on 17 October.

Operational management was handled by a team of five people within the Division of French Citizens Abroad (DFAE) in the MFEA. A Steering Committee comprised of representatives of all parties involved in internet voting implementation was responsible for the risk assessment study of the project before the procurement.<sup>36</sup> The public tender document was not made available to the OSCE/ODHIR EAM and reportedly no public consultations took place during the tendering process.

*It is recommended that any procurement process for internet voting systems be conducted in the most transparent way possible, including tender documentation, and that feedback from political parties and the public be incorporated in future procurement documents for the internet voting system.*

Meetings held by the EVB could be attended by candidates, proxies, and citizens from the 11 constituencies abroad. All relevant actions and decisions taken by the EVB were recorded in the minutes to which the OSCE/ODIHR EAM was granted access. Only after a lengthy process did voters and proxies gained the same access.

---

<sup>36</sup> The Steering Committee included representatives of the MoI, the Commission on Information Technologies and Liberties (CNIL), the ANSSI, the Network and Information Security Division of the MFEA (responsible for the assessment, evaluation and audit of all security measures implemented), the internet voting software provider, the IT and telecommunications provider, the provider in charge of the generation and distribution of mail containing the voter's user ID, the independent third-party auditors, and the provider in charge of generating and distributing the SMS containing the passwords for each electoral round.

Shortly before the first round of voting, the Pirate Party and a civil society organization, “*ordinateur du vote*”, raised concerns related to the transparency and security of the internet voting system. Such claims quoted a press report indicating possible weaknesses of the system facing ‘man-in-the-middle’ type attacks,<sup>37</sup> as well as the lack of access to the content of the public tender. In general, there tended to be a lack of public information regarding the process of adoption of internet voting.

*It is recommended that a strategic voter education project is launched in order to enhance and promote citizen participation in the evaluation, organization, control, and adoption of new voting technologies.*

### C. CERTIFICATION AND AUDITS

There is no official certification process for internet voting in France. The system is evaluated according to guidelines and regulations issued by the corresponding agencies. Firstly, general guidelines regarding minimal privacy, secrecy and security requirements for any internet voting were provided by the Commission on Information Technologies and Liberties (CNIL) in 2003.<sup>38</sup> As pointed out to the OSCE/ODIHR EAM by CNIL, subsequent updates of these guidelines in 2010 included input from an independent third-party audit company, engaged after regular public tender proceedings. The same company was then also selected as the third-party independent auditor.

Secondly, the General Security Regulatory Framework (RGS) is established by the ANSSI<sup>39</sup> to regulate all electronic exchanges of information among government agencies and between government entities and citizens. Any internet voting system has to comply with specific and explicit minimal RGS requirements with regard to electronic certificates, encryption levels, and authentication mechanisms.

*It could be considered to establish by law clear, formal certification requirements, timelines as well as specifying procedural and operational aspects of such a certification process.*

Following the selection of a consortium of two private companies to provide the internet voting system,<sup>40</sup> the Steering Committee conducted an extensive and thorough evaluation aiming to assess and treat procedural, operational, implementation-related and other potential risks related to information systems security.<sup>41</sup> The final document, containing all findings, was endorsed by both the Network and Information Security Division of the MFEA and ANSSI, the latter giving an official authorization to the MFEA for the use of internet voting. The Steering Committee used results of this analysis to introduce required improvements and modifications to eliminate or mitigate identified risks. All residual risks were evaluated after all modifications were introduced. All actions and decisions taken by the Steering Committee were recorded in the minutes. The OSCE/ODIHR EAM had access to the study and could

---

<sup>37</sup> In this type of attack, communication between two systems is intercepted by a malicious actor.

<sup>38</sup> See “Recommendation on the use of the Internet Voting Systems” at <http://www.cnil.fr/en-savoir-plus/deliberations/deliberation/delib/12/>.

<sup>39</sup> See ordinance No 2005-1516 from 8 December 2005 and decree No 2010-112 from 2 February 2010.

<sup>40</sup> ATHOS Origin and SCYTL.

<sup>41</sup> See <http://www.ssi.gouv.fr/en/the-anssi/publications-109/methods-to-achieve-iss/ebios-2010-expression-of-needs-and-identification-of-security-objectives.html> for the detailed description of the EBIOS method.

review its scope. The document was, nonetheless, not accessible to the media, political parties or the public. The final version of software was digitally signed in April 2012.

Several interlocutors informed the OSCE/ODHIR EAM about various audits of the internet voting by a third-party independent auditor and a team of ANSII specialists that covered source code at different stages of the project, a full-sized functional pilot, procedures, and data destruction. No official documents were provided to the OSCE/ODHIR EAM as they were considered restricted. Neither were these documents available to the media, political parties or general public, contrary to international good practice.<sup>42</sup>

*It is recommended that the internet voting security requirements, as well as the methodology and results of security assessments, audit protocols, results of all audits performed, the analyzed source code, and minutes of all proceedings be made available to the general public to enhance confidence in the internet voting process.*

Although there was a unified documentation of operation-level commands, which could serve as basis for an audit and proper observation of all procedures, starting from the key signing ceremony until the counting of votes after the second round, it was not made available to the OSCE/ODIHR EAM or any of the domestic actors.

*With a view of enhancing accountability of the internet voting process, a unified document containing all command-level procedural and operational details could be published in good time before elections.*

## VIII. CANDIDATE REGISTRATION

In the parliamentary elections, candidates stand together with an alternate who would take the seat of the elected deputy if the latter dies while in office. To be registered by the *préfecture*, a prospective candidate or his/her alternate should submit a declaration of the candidate's registration in the voter list of any constituency, the written acceptance of the alternate, and proof that a financial representative has been or will be designated.

Any citizen 18 years or older may stand as a candidate or an alternate, unless deprived of such rights by legal procedure. Those whose sentence includes limitations of such rights or individuals performing a function that is determined by law to conflict with elected office are also ineligible, as are adults who have not complied with national service obligations and adults under two forms of guardianship (tutorship or curatorship).<sup>43</sup>

---

<sup>42</sup> See pp.3 and 6 of the Council of Europe "Guidelines on Transparency of E-enabled Elections."

<sup>43</sup> See Articles LO-129 and LO-131 of the Electoral Code. Assignment of these categories is determined by judicial discretion on a case by case basis in introducing such limitation. Certain public positions are considered by law to be incompatible with serving in the National Assembly, the Senate or the European Parliament. The restriction is posed as preventing public office holders from "influencing voters" (see Handbook for candidates, issued by the MoI, February 2012, p.6). Nevertheless, mayors may stand and some OSCE/ODIHR EAM interlocutors questioned the compatibility of these two offices. Tutorship and curatorship are legal states declared by a court to wholly or partially protect incapacitated persons.

The Constitutional Council may declare a person found guilty of electoral fraud, failure to submit campaign accounts or exceeding the campaign expenditure limit ineligible to stand for public office for a maximum of three years.<sup>44</sup> Prefects are ineligible in any constituency where they have exercised official functions for less than three years. The same rule applies, for one year, to judges, officials occupying high-ranking functions in the public administration,<sup>45</sup> members of the military and police personnel serving at a command level, among others.<sup>46</sup>

For the first round of these elections, candidate registration commenced on 14 April and ended on 18 May. In total, 6,611 candidates were registered (3,975 men and 2,646 women), with 10 candidacies rejected.<sup>47</sup> For the second round, candidates had to register before 18:00 on 12 June. Registration documents submitted for the first round remained valid and the alternates could not be changed. For the second round, 1,101 candidates were registered (851 men and 350 women). In 16 of those constituencies where only two candidates remained, the second candidate withdrew from the race, leaving the remaining candidate unopposed.

## IX. ELECTION CAMPAIGN

During the election campaign, freedoms of expression and assembly appeared to be generally respected and voters enjoyed a wide degree of choice between diverse political options. All political parties were given the opportunity to campaign freely in a competitive environment.

The election campaign was dominated by the calls from the PS to give the newly-elected president and his government “a double mandate” in order to enable them to implement their agenda and to avoid ‘cohabitation’. Many OSCE/ODIHR EAM interlocutors as well as the media described these elections as the “third round” of the presidential race.

The themes of the campaign included economic and employment-related issues, immigration and security, voting rights of foreigners living in France, political transparency and ethics, as well as a possible renegotiation of an EU stability pact.

The official campaign period commenced on 21 May. For the second round, the campaign reopened following the official publication of the first round results on 11 June. Each candidate was allocated billboard space outside every polling station to display campaign posters. Campaign methods also included door-to-door canvassing, distribution of campaign materials in letter boxes and in public places. During the pre-election period, paid political advertising is prohibited in all media, including the internet.<sup>48</sup>

Several debates among candidates were broadcast by regional television (TV) stations before both rounds. There is a campaign silence in force in the 24 hours prior to the elections.

---

<sup>44</sup> See Articles LO-128, 135-1, and 136-1 to 136-3 of the Electoral Code. Following the 2007 legislative elections, the Constitutional Council declared 495 candidates ineligible, including 2 elected members of the National Assembly which resulted in them losing their mandates.

<sup>45</sup> Such as deputy prefects, general secretaries of *préfectures*, directors of public finances in the regions and departments.

<sup>46</sup> See Article LO-132 of the Electoral Code for a full list of such positions.

<sup>47</sup> Six due to incomplete registration materials, three due to incompatibilities, and one due to ineligibility.

<sup>48</sup> Article L52-1 of the Electoral Code.

## X. POLITICAL FINANCE

France has a well-developed legal and institutional political finance framework. The Electoral Code regulates campaign finance, while the Law on Financial Transparency in Political Life regulates political party funding; both laws were last amended in 2011. Recent amendments include the introduction of new sanctions for non-compliance with campaign finance rules and heftier penalties for parties that do not follow gender balance rules for candidate lists.<sup>49</sup>

### A. FUNDING AND SPENDING REGULATIONS

During the campaign each candidate must appoint a financial representative, who manages a single bank account in which all election-related transactions have to be recorded. Campaigns can be funded by three main sources: candidate's own funds, donations, and party contribution. There are no legal limits for the use of own money or transfers from political parties to the candidates' accounts. OSCE/ODIHR EAM was informed that candidates' personal funds are predominantly used for campaign financing.

The law establishes limits on donations: each individual can donate a total of up to EUR 4,600 to one or more candidates, donations to parties are limited to EUR 7,500 per party, with no limitation on the number of parties receiving a donation. Several interlocutors alleged that, in the past, small parties were established with the goal of collecting money eventually used by major parties. Donations are tax deductible and can also be made by foreign individuals.<sup>50</sup> While anonymous donations are possible below EUR 150, the law only requires the disclosure of the name and address of the party or candidate agent issuing receipts for donations above EUR 3,000.<sup>51</sup> Domestic and foreign legal entities may not make donations or provide goods or services for free or with a discount to candidates or parties.

*With a view to increasing the transparency of political finance, consideration could be given to fixing the amount above which a donor's identity would be publicly disclosed.*

---

<sup>49</sup> See Law No. 2011-412 from 14 April 2011, available at: <http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023877131&categorieLien=id>. These amendments addressed some of the previous recommendations contained in the 2008 evaluation report of GRECO, see:

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)5\\_France\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_Two_EN.pdf)

<sup>50</sup> See, however, Paragraph 5 of the Venice Commission Guidelines on Political Party Financing, available at [http://www.venice.coe.int/docs/2000/CDL-PP\(2000\)006-e.pdf](http://www.venice.coe.int/docs/2000/CDL-PP(2000)006-e.pdf) that recommends forbidding foreign donations.

<sup>51</sup> The 2008 evaluation report of GRECO recommended that France should examine "ways of laying down an appropriate threshold above which the identity of the donor must be disclosed", [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)5\\_France\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_Two_EN.pdf). The 2011 GRECO compliance report noted that this "has clearly not received any attention", see [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)1\\_France\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)1_France_EN.pdf).

Parties can decide freely on how much to spend on elections and how to allocate their funds among candidates. The campaign expenditure ceiling applies to all expenditures incurred in the last year before the elections and, depending on a given district's population, ranges from EUR 49,029 to 86,061. To be eligible for reimbursement, candidates must obtain five per cent of votes cast. The reimbursement cannot exceed the actual expenditures incurred or the total sum of funds contributed by a candidate personally or 47.5 per cent of the upper limit for each constituency.

Parties that receive at least 1 percent of the vote in at least 50 constituencies receive public funding. The amount of funds a party receives depends on the number of votes received, number of seats obtained, and shares of male and female candidates. If the difference in the number of party's male and female candidates exceeds two per cent, payments are reduced. According to the data of the National Commission for Control of Electoral Accounts and Political Finance (CNCCFP), between 2007 and 2012, subventions to political parties were decreased by almost EUR 5 million for violating the rules on gender balance.

Third parties can run independent parallel campaigns as long as they comply with campaign regulations and are not endorsed by a candidate. If, however, a campaign is conducted in agreement with a candidate, expenditures should be reflected in his/her campaign account. If campaigning is done by a legal person and in agreement with the candidate, it is considered an illegal donation.<sup>52</sup>

## **B. REPORTING AND SUPERVISION**

Supervision over political finance is entrusted to a nine-member CNCCFP, which both checks candidates' campaign accounts and supervises political parties' compliance with accounting and financial obligations.

While there is no campaign finance supervision during the campaign or until the accounts are submitted, candidates' reports on incomes and expenditures have to be submitted within two months of the elections, which is unduly long in view of international good practice.<sup>53</sup> The CNCCFP has six months to approve, reject, or revise these reports. If the commission notes tax-related breaches of legislation, it is required to inform the tax authorities and also has to report any act possibly constituting a criminal offence to the public prosecutor. CNCCFP does not have investigative powers and cannot impose fines in case of irregularities, but can reduce the amount of reimbursement candidates receive. Moreover, breaches of political finance regulations can result in candidates being declared ineligible by a court for up to three years. In such cases, elections in the constituency are annulled and repeated.

*The period for candidates to submit their campaign finance reports could be shortened to at most one month after the elections to be consistent with international good practice.*

---

<sup>52</sup> In a highly-publicized case following the 2007 elections, one candidate lost her parliamentary seat after the Constitutional Council ruled that a negative campaign, run against another candidate, was done with her agreement. See Françoise Vallet case, Constitutional Council decision 2008-4509 from 26 June 2008, see <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/cc20084509.pdf>.

<sup>53</sup> Paragraph 200 of the OSCE/ODIHR and VC/CoE Guidelines on Political Party Regulation stipulates that "report on campaign financing should be turned into the proper authorities within a period of no more than 30 days after the elections."

Political parties have to submit annual financial reports to the CNCCFP by 30 June every year. Only summaries of political party accounts are published, while full party accounts are not publicly available, which is contrary to international good practice.<sup>54</sup>

*Further measures could be undertaken to ensure that more complete financial statements by political parties are made available to the public, in line with international good practice.*

## XI. MEDIA

### A. LEGAL FRAMEWORK FOR FREEDOM OF EXPRESSION

The 1789 Declaration of the Rights of Man and of the Citizen guarantees freedom of speech to the French citizens. The Press Law of 1881, as amended, guarantees freedom of the press,<sup>55</sup> subject to several exceptions, including defamation, which remains a criminal offence. Additionally, the Press Law grants special protection to a number of public figures and entities and limits the possibilities for a defendant to establish the truth in certain cases of alleged defamation.<sup>56</sup> The OSCE Representative on Freedom of the Media and the Parliamentary Assembly of the Council of Europe called on France to decriminalize defamation and repeal abovementioned provisions.<sup>57</sup>

*Authorities could consider decriminalizing defamation and revising the Press Law in order to bring it in line with international good practice on freedom of expression.*

A number of OSCE/ODIHR EAM interlocutors, including a national media NGO,<sup>58</sup> expressed concerns over whether the 2010 Law on the Protection of Secrecy of Journalistic Sources provides sufficient guarantees for unhindered investigative journalism.<sup>59</sup> In particular, it is questionable whether a provision in the law which sets exceptions if there is

---

<sup>54</sup> According to Article 7 of the VC/CoE Guidelines for Financing of Political Parties CDL-INF(2001)8, “each political party should make public the annual accounts of the previous year, which should incorporate a list of all donations other than membership fees”, available at [http://www.venice.coe.int/docs/2000/CDL-PP\(2000\)006-e.pdf](http://www.venice.coe.int/docs/2000/CDL-PP(2000)006-e.pdf). Additionally, according to Article 3.b.i of the Council of Europe Recommendation (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns, “donations to political parties should be made public, in particular, donations exceeding a fixed ceiling.”, available at <https://wcd.coe.int/ViewDoc.jsp?id=2183>.

<sup>55</sup> In 1984, the Constitutional Council acknowledged the constitutional value of press freedom and its necessary role in a democracy.

<sup>56</sup> See Articles 26, 30 and 31 of the Press Law for the list of public figures and entities subject to special protection. See Article 35 of the Press Law for the account of limitations applicable in certain defamation cases.

<sup>57</sup> See <http://www.osce.org/fom/36729> and <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1577.htm>.

<sup>58</sup> See the opinion of France’s National Union of Journalists (SNJ) [http://www.ejc.net/magazine/article/new\\_bill\\_on\\_protection\\_of\\_sources\\_imperfect\\_law\\_say\\_french\\_journalists/](http://www.ejc.net/magazine/article/new_bill_on_protection_of_sources_imperfect_law_say_french_journalists/).

<sup>59</sup> See full text of the law at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000021601325&dateTexte=&categorieLien=id>.

“an overriding requirement in the public interest”<sup>60</sup> might leave room for arbitrary application.<sup>61</sup> National media experts have called on the authorities to amend the law to further limit possible exceptions.

## B. THE COVERAGE OF ELECTIONS

The 1986 Law on Freedom of Communication sets up a general regulatory framework for a dual broadcasting system which aims to provide for internal political and external pluralism in the media and combat media concentration.<sup>62</sup> Media ownership by industrial groups may, however, challenge the diversity of the news media market due to the potential conflict between media independence and the companies’ regular participation in tenders for public services and facilities.<sup>63</sup> The 2009 Law on Audiovisual Communication and Public-Service Television phased out advertising on public broadcasters, but obliges commercial broadcasters to contribute a fraction of their advertising income to the public-service branch.

The Law on Freedom of Communication also provides for internal political pluralism on public and commercial broadcasters during and between elections and mandates the Supreme Audiovisual Council (CSA) to oversee its implementation.<sup>64</sup> According to the CSA, political pluralism, understood as equitable access of candidates or political parties to broadcasters, should be applicable between elections and during election campaign periods, defined as six weeks preceding the election day.<sup>65</sup> The definition of equity is based on the candidate’s or political parties’ result in the last election and its visibility in the campaign.<sup>66</sup> During these

<sup>60</sup> Article 1 Paragraph 2 of the Law on Protection of Secrecy of Journalistic Sources.

<sup>61</sup> In 2010, the police requested access to detailed phone bills of two journalists of the daily newspaper *Le Monde* covering the so-called “Bettencourt” corruption affair. This case was prompted by a report in *Le Monde* on 2 September 2010 that police had searched Bettencourt’s home. The prosecutor instructed the police to examine the journalists’ phone records in order to identify who informed them about the raid. However, on 6 December 2011 the Court of Cassation ruled that prosecutor who initiated the procedure to identify information leaks in the “Bettencourt” case, had infringed the law on protection of sources by trying to access phone records of *Le Monde* journalists. According to the ruling, “the infringement of the confidentiality of journalists’ sources was not justified by the existence of an overriding public interest and the measure was not strictly necessary and proportionate to the legitimate aim pursued.” Decision available at [http://www.droit-medias-culture.com/spip.php?page=imprimer\\_article&id\\_article=600](http://www.droit-medias-culture.com/spip.php?page=imprimer_article&id_article=600).

<sup>62</sup> In addition, the state grants financial subsidies to daily newspapers to promote economic competitiveness in order to secure plurality of titles and diversity of views. See <http://www.arretsimages.net/contenu-imprimable.php?id=4867>.

<sup>63</sup> See <http://en.rsf.org/france-presidential-candidates-answer-our-16-04-2007,21731.html>. Latest figures on audience share and advertising revenues available at <http://www.mediametrie.fr/television/communiqués/1-audience-de-la-television-du-18-au-24-juin-2012.php?id=682> and <http://www.cnc.fr/web/fr/barometre-marche-publicitaire/-/ressources/1847906>.

<sup>64</sup> The Constitutional Council stressed the constitutional value of pluralism, both on public and commercial broadcasting, as one of the conditions for democracy. Decisions available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1986/86-217-dc/decision-n-86-217-dc-du-18-septembre-1986.8289.html> and <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1990/89-271-dc/decision-n-89-271-dc-du-11-janvier-1990.8713.html>

<sup>65</sup> Decision of the CSA from 4 January 2011, available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023492991>.

<sup>66</sup> Although the CSA does not publish figures on candidates’ coverage, it informed the OSCE/ODIHR EAM that approximately 50-60 per cent of election campaign coverage should be devoted to the majority in parliament, 25-35 per cent – to the opposition, and 5-25 per cent – to other political parties, respectively.

elections, public and commercial broadcasters had to present monitoring results on a weekly basis on the *temps de parole* (directly allocated time) of candidates (or political parties) to the CSA. In addition, to compare the results, the CSA carried out full monitoring of the leading broadcasters and sample monitoring of minor broadcasters. Although the CSA recommendation obliges broadcasters to monitor both *temps de parole* (directly allocated time) and *temps d'antenne* (coverage) of candidates and political parties, only data on the *temps de parole* (directly allocated time) were to be provided to the CSA and were published on its website.<sup>67</sup> Further, neither the broadcasters nor the CSA conduct a qualitative content analysis to assess the tone of the coverage.<sup>68</sup>

*The CSA could consider taking into account data on both directly allocated time and time of coverage, as well as an assessment of the tone of the coverage, in order to reliably assess the internal pluralism displayed by broadcasters.*

Several interlocutors, including journalists, informed the OSCE/ODIHR EAM that it is difficult to implement the principle of equitable coverage in their daily work, in particular during the short campaign for these elections. While the principle of equity was not questioned as such, interlocutors underscored that it took priority over newsworthiness and some coverage had to be skipped in order to keep the balance. In cases of non-compliance with regulations, the CSA is entitled to sanction broadcasters after it has issued one warning. The CSA informed the OSCE/ODIHR EAM that it had received a substantial number of informal complaints regarding political coverage, including from candidates, on a daily basis. Neither formal warnings nor sanctions were issued against broadcasters during the election campaign or after it.

In the absence of paid political advertising in both electronic and print media, public broadcasters are obliged to provide free airtime to political parties contesting the election. Political parties represented by groups in the National Assembly are entitled to 3 hours of airtime (on both TV and radio) during the campaign period, while political parties supporting at least 75 candidates –up to 7 minutes of airtime each.<sup>69</sup>

Print media are not regulated and are bound only by internal codes of conduct regarding the coverage of elections.

Published public opinion polls are reviewed by the Commission for Opinion Polls (*Commission des Sondages*). In case the commission finds that the poll is not in compliance with certain criteria for reliability of methodology, the media is required to publish a clarification. A provision of a draft law on public opinion polls (not yet adopted by the parliament) that provides for scrutiny of polls before their publication raised concern among some OSCE/ODIHR EAM interlocutors who maintained that it might constitute prior

---

<sup>67</sup> See <http://www.csa.fr/Espace-juridique/Deliberations-et-recommandations-du-CSA/Recommandations-du-CSA-en-vue-de-consultations-electorales-ou-referendaires/Recommandation-n-2012-05-du-2-mai-2012-du-Conseil-superieur-de-l-audiovisuel-a-l-ensemble-des-services-de-radio-et-de-television-relative-aux-elections-legislatives-de-juin-2012>

<sup>68</sup> OSCE/ODIHR EAM interlocutors informed that, according to the current methodology, negative coverage of a candidate is not counted.

<sup>69</sup> Between elections, public broadcasters have to provide a certain amount of free airtime (which varies from year to year) for political parties represented by a group in the National Assembly and for trade unions and other professional groups.

ensorship and undermine the freedom of expression. Publication of polls, including on the internet, is prohibited during the electoral silence period and on election day. Results from polling stations that closed earlier and exit polls were, however, reported by the media outlets in other countries (including those broadcasting in French), before the end of voting in mainland France; this constitutes a challenge to the full implementation of such provisions.

## XII. COMPLAINTS AND APPEALS

The Electoral Code provides many avenues for adjudicating electoral disputes, depending on the nature of the dispute. Courts of first instance review complaints by the voter concerned, by any other registered voter of the municipality or by the prefect against decisions of administrative commissions regarding voters lists. Citizen not registered after the deadline has passed can appeal to this court to be included on an exceptional basis. Decisions of the court can be appealed to the Court of Cassation (the highest court). On election day, the court of first instance decides on requests presented by a voter alleging that s/he was unduly omitted or removed from the voters' list.

The Administrative Tribunal reviews complaints regarding candidate registration. In case of incomplete or irregular declaration, the prefect refers the case to this tribunal, which must decide within 3 days. The candidate may challenge this decision before the tribunal. In such cases, the decision can *de facto* be appealed to the Constitutional Council through a request to invalidate the election.<sup>70</sup> The Constitutional Council considered one appeal on the decision of an Administrative Tribunal to maintain the registration of a candidate and dismissed the case on the grounds that, in this case, it could not rule on an election yet to be held.<sup>71</sup>

The Constitutional Council is vested with the authority to decide on any challenge to the validity of the election in any constituency. Any registered voter or candidate standing in that constituency can file a complaint contesting the results of the election, within 10 days after the proclamation of the results.<sup>72</sup> The main grounds on which the elections were challenged concerned eligibility of candidates, irregularities during the electoral campaign or in the conduct of elections, validity of ballots, and violations of provisions concerning the campaign finance. There is no possibility to challenge alleged violations in the conduct of elections or in the electoral campaign until the election is over, the only remedy being the cancellation of the election. This is not fully compatible with OSCE commitments regarding the need for effective and timely remedy in election-related matters.<sup>73</sup>

---

<sup>70</sup> See Articles L.159 – L.160 of the Electoral Code.

<sup>71</sup> Decision No. 2012-25 ELEC from 7 June 2012.

<sup>72</sup> After the first round, the only admissible complaints are those related to the election of a candidate. Out of five complaints filed with the Constitutional Council, only one was judged admissible and was later dismissed. After the second round, a total of 108 complaints were filed to the Constitutional Council that issued, as of July 20, 53 decisions, dismissing the 53 cases.

<sup>73</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have effective means of redress against administrative decisions.” Paragraph 13.9 of the 1989 Concluding Document of the Vienna Meeting (CSCE) iterates “the right to a fair and public hearing within a reasonable time before and independent and impartial tribunal.” Paragraph 15 of the General Comment 31 requires that states “ensure that individuals also have accessible and effective remedies to vindicate ... rights” and emphasizes an “obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.” Paragraph 95 of the VC/CoE Code of Good Practice in Electoral Matters emphasizes the importance of having appeals about pre-election matters resolved in a timely manner before election day.

*To ensure the protection of suffrage rights, consideration should be given to revising the appeals arrangement so that at least some types of complaints, in particular those related to the registration of candidates, could be adjudicated in a final decision before the elections, thereby providing a timely resolution of election-related disputes that is integral to the broader right to effective remedy.*

Complaints are generally considered by the Constitutional Council in a written procedure. The Council could decide to hear parties, if they so wish or where it considers the risks of invalidating the results to be serious. The Council could also decide to receive verbal testimonies from all relevant actors of the process (candidates, those in charge of the elections, members of the polling bureaus). In any case, all documents from the polling station concerned (protocols, voter lists, etc.) are to be examined by the Council.

The results can be annulled in one polling station, but the election in the constituency would be annulled only if the Council considers that the integrity of the vote has been seriously breached or if, according to the number of the votes annulled, another candidate could have been elected.

### **XIII. ELECTION DAY**

#### **A. VOTING**

In line with standard practice for assessment missions, the EAM did not observe election day procedures in a systematic or comprehensive manner. Nonetheless, the EAM visited a limited number of polling stations in eleven municipalities on election day,<sup>74</sup> including polling stations equipped with electronic voting machines. Polls were open from 8:00 to 18:00, although in large communes they remained open until 20:00, in accordance with the law.<sup>75</sup> Polling stations were generally accessible for disabled people, but no special means were provided for visually impaired voters who could thus not vote in secrecy.<sup>76</sup>

*Authorities should provide means for visually impaired and other disabled people to vote by secret ballot.*

The voting process was very well organized in polling stations visited, and procedures were followed in a generally uniform manner. Posters and brochures on voting procedures were present all polling stations visited. Typically, one polling station was set up for approximately 900 registered voters.

Each candidate's name was printed on a separate ballot. Voters appeared to have an overall good understanding of the voting procedures, although some of them were unaware of the requirement to take at least two ballots and that they had to use the polling booth to protect

---

<sup>74</sup> Aubervilliers, Boulogne-Billancourt, Chartres, Dammarie-les-Lys, Esbly, Les Lillas, Melun, Montreuil, Saint-Denis, Saint-Mandé, Malakoff.

<sup>75</sup> See Article 41 of the Electoral Code.

<sup>76</sup> In Article 29(ii) of the Convention on the Rights of People with Disabilities (CRPD) states have committed to protect "the right of persons with disabilities to vote by secret ballot in elections." France ratified the CRPD on 23 February 2010.

secrecy. In addition, polling officials did not always remind voters to take several ballots and that voting inside booths is mandatory.

In 64 municipalities, electronic voting machines continue to be used. No malfunctioning was apparent or reported in the visited polling stations equipped with such machines. Despite previous OSCE/ODIHR recommendations, however, such machines operated without a Voter Verifiable Paper Audit Trail (VVPAT) that could substantially improve transparency of this voting method.

## **B. COUNTING AND TABULATION OF RESULTS**

During counting and tabulation, rules were generally respected and the process was fully transparent and conducted in an efficient manner. Voters actively participated in the counting process and were randomly chosen and invited by polling officials from among those who voted during the election day, as set forth in the law.

At the municipal and department levels, the centralizing bureaus were receiving lower-level results by telephone or fax and were uploading them on computers. Disaggregated results were made public immediately following the closing of all polling stations and were updated as tabulation progressed. The work was carried out systematically and thoroughly in the limited number of *préfectures* visited by the OSCE/ODIHR EAM. While OSCE/ODIHR EAM was able to be present during tabulation and uploading of the results into the MoI information system, it noted that the *préfectures* did not grant access to candidates' proxies, arguing that this was a technical process.

## **XIV. ANNOUNCEMENT OF FINAL RESULTS**

On the morning following election day, the census commissions verified all polling station protocols and issued protocols for each constituency. The commission had to publicly proclaim the results for the constituency before midnight on the day after the elections. Consolidated protocols of the commission, as well as the polling station protocols and annexed documents from each polling station, were kept at the *préfectures*.

Although the work of the census commissions is not public, a representative of each candidate could attend and request that any complaint be registered in the protocols. Any voter registered could consult these documents for his/her constituency during the ten-day period when the elections could be contested in the Constitutional Council. The Minister of Interior transmitted the list of elected candidates to the President of the National Assembly. In these elections, 155 (slightly over one quarter) of the 577 elected deputies were female, up from 107 elected in 2007.

## ANNEX: OFFICIAL RESULTS

### First Round – 10 June 2012

Number of seats to be attributed: 577

Number of deputies elected: 36

Voters	Number	Percentage of registered voters	Percentage of voters
Registered	46,082,104	100	
Abstentions	19,712,978	42.78	
Votes Cast	26,369,126	57.22	

Blank or Invalid	416,267	0.90	1.58
Valid Votes	25,952,859	56.32	98.42

	Votes	Percentage	Number of seats
Extrême gauche (EXG)	253,386	0.98	
Front de gauche (FG)	1,793,192	6.91	
Socialiste (SOC)	7,618,326	29.35	22
Radical de Gauche (RDG)	428,898	1.65	1
Divers Gauche (DVG)	881,555	3.40	1
Europe-Ecologie-Les Verts (VEC)	1,418,264	5.46	1
Régionaliste (REG)	145,809	0.56	1
Ecologiste (ECO)	249,068	0.96	
Autres (AUT)	133,752	0.52	
Le Centre pour la France (CEN)	458,098	1.77	
Alliance Centriste (ALLI)	156,026	0.60	
Parti Radical (PRV)	321,124	1.24	
Nouveau Centre (NCE)	569,897	2.20	1
Union pour un Mouvement Populaire (UMP)	7,037,268	27.12	9
Divers de Droite (DVD)	910,034	3.51	1
Front National (FN)	3,528,663	13.60	
Extrême Droite (EXD)	49,499	0.19	

**Second Round – 17 June 2012**

**Number of seats to be attributed: 541**

**Number of deputies elected: 541**

<b>Voters</b>	<b>Number</b>	<b>Percentage of registered voters</b>	<b>Percentage of voters</b>
<b>Registered</b>	43,234,000		
<b>Abstentions</b>	19,276,406	44.59	
<b>Votes Cast</b>	23,957,594	55.41	

<b>Blank or Invalid</b>	928,411	2.15	3.88
<b>Valid Votes</b>	23,029,183	53.27	96.12

	<b>Votes</b>	<b>Percentage</b>	<b>Number of seats</b>
<b>Front de gauche (FG)</b>	249,525	1.08	10
<b>Socialiste (SOC)</b>	9,420,426	40.91	258
<b>Radical de Gauche (RDG)</b>	538,324	2.34	11
<b>Divers Gauche (DVG)</b>	709,409	3.08	21
<b>Europe-Ecologie-Les Verts (VEC)</b>	828,916	3.60	16
<b>Régionaliste (REG)</b>	135,354	0.59	2
<b>Le Centre pour la France (CEN)</b>	113,196	0.49	2
<b>Alliance Centriste (ALLI)</b>	123,352	0.54	2
<b>Parti Radical (PRV)</b>	311,211	1.35	6
<b>Nouveau Centre (NCE)</b>	568,288	2.47	11
<b>Union pour un Mouvement Populaire (UMP)</b>	8,740,625	37.95	185
<b>Divers de Droite (DVD)</b>	418,135	1.82	14
<b>Front National (FN)</b>	842,684	3.66	2
<b>Extrême Droite (EXD)</b>	29,738	0.13	1

Information of the Ministry of Interior at  
<http://www.elections.interieur.gouv.fr/LG2012/FE.html>

## ABOUT THE OSCE/ODIHR

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

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

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

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

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

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

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

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

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