



Office for Democratic Institutions and Human Rights

REPUBLIC OF AUSTRIA

PRESIDENTIAL ELECTION

25 April 2010

OSCE/ODIHR Election Assessment Mission Report



Warsaw
9 July 2010

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGEMENTS	2
III.	BACKGROUND.....	2
IV.	LEGAL FRAMEWORK.....	3
	A. OVERVIEW.....	3
	B. SUFFRAGE RIGHTS	3
	C. RECENT AMENDMENTS.....	4
V.	ELECTION ADMINISTRATION.....	5
	A. OVERVIEW.....	5
	B. ELECTION BOARDS.....	6
	C. VOTER REGISTRATION.....	7
	D. CANDIDATE REGISTRATION.....	8
	E. VOTING CARDS.....	8
VI.	CAMPAIGN.....	10
VII.	CAMPAIGN FINANCE.....	11
VIII.	MEDIA	13
	A. MEDIA ENVIRONMENT	13
	B. LEGAL FRAMEWORK FOR THE MEDIA	14
	C. MEDIA COVERAGE OF THE ELECTIONS.....	15
IX.	PARTICIPATION OF WOMEN	16
X.	NATIONAL MINORITY PARTICIPATION	16
XI.	COMPLAINTS AND APPEALS.....	16
XII.	ELECTION DAY.....	18
	A. VOTING	18
	B. COUNTING AND TABULATION	20
	ANNEX: RESULTS	21
	ABOUT THE OSCE/ODIHR.....	22

**REPUBLIC OF AUSTRIA
PRESIDENTIAL ELECTION
25 April 2010**

OSCE/ODIHR Election Assessment Mission Report

I. EXECUTIVE SUMMARY

In line with OSCE commitments, the Permanent Mission of Austria to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the presidential election scheduled for 25 April 2010 (*Bundespräsidentenwahl*). Based on the recommendation of a Needs Assessment Mission, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for this election.

This election was administered in an efficient and professional manner and commanded a high level of public confidence. The nature of the contest in which three of the five parliamentary parties declined to field candidates to challenge a popular incumbent president, limited voter choice and contributed to a low-key campaign, lacking vigorous debate. Turnout was reported at 53.57 per cent, markedly lower than in 2004.

Campaigning took place in a fair and open atmosphere. The fundamental freedoms of speech, movement and assembly were respected. Voter registers, with the extended suffrage including all citizens over sixteen years of age, appeared to be maintained with a high degree of efficiency and accuracy. The candidate registration system requires that supporters lodge their support with their municipality. It also restricts applications from members of Austria's former ruling houses.

The election administration functioned in a commendably open, transparent and efficient manner, benefiting from experienced and well-trained staff at all levels. The voter card (*Wahlkarte*) allowing for postal balloting is an important and increasingly popular feature of Austrian electoral practice. However, the mechanisms for its use rely on trust and include the possibility for voters to cast ballots after election day, which could have damaging consequences if manipulated in close contests.

The legal framework provides a sound basis for holding democratic elections. Presidential election campaign financing is, however, almost entirely unregulated, with no constraints on the amount or sources of donations, and no requirement for public disclosure. In a welcome development, Austrian election law was amended in 2007 to provide for inviting international observers from OSCE participating States. The amendments, however, do not provide for domestic observation by civic organizations, as called for by the OSCE's 1990 Copenhagen Document.

Essentially self-regulated, diverse and pluralistic broadcast and print media provided extensive coverage of the candidates and their views, which combined with strong analytical reporting and assessment, particularly in the press, enabled voters to make an informed choice. The public service broadcaster is obligated to provide fair and balanced coverage of the candidates and the campaign.

There are no formal procedures for complaints to be submitted to the election administration or for appeals to court during the electoral process. Should any challenges

be submitted, the Constitutional Court hears them only after the elections are over, thus not providing timely and effective redress for violations of electoral rights.

According to standard practice, the OSCE/ODIHR EAM did not undertake a comprehensive and systematic observation of election day proceedings. However, mission members visited a number of polling stations on election day. Voting appeared to take place in an invariably calm and orderly manner. Some differences in practice were noted between various polling boards, with wide variations in the length of voting hours across the country.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

On 10 February 2010 the Permanent Mission of Austria to the OSCE invited the OSCE/ODIHR to observe the 25 April presidential election (*Bundespräsidentenwahl*) in line with OSCE commitments. The OSCE/ODIHR sent a Needs Assessment Mission (NAM) to Vienna from 10-12 February, which recommended an Election Assessment Mission (EAM) be deployed to follow the election.¹

The OSCE/ODIHR EAM was deployed from 11-30 April. It was led by Julian Peel Yates and consisted of 11 election experts from 10 OSCE participating States. OSCE/ODIHR EAM experts visited all nine federal provinces (*Bundesländer*). This was the first OSCE/ODIHR mission deployed in Austria for national elections.²

The OSCE/ODIHR wishes to thank the Federal Ministries for European and International Affairs (FMEIA) and Interior (FMI) as well as all interlocutors for the co-operation and assistance extended to the OSCE/ODIHR EAM during the course of the mission.

III. BACKGROUND

Austria is a federal republic consisting of nine provinces. The Federal Parliament is a bi-cameral body with a first chamber (*Nationalrat*) composed of 183 deputies, directly elected by proportional representation for a five-year term and a second chamber (*Bundesrat*) of 62 deputies, elected by provincial legislatures (*Landtage*).

The Federal President is head of state and is directly elected for a six-year term of office, with a limit of two consecutive terms. The constitutional amendments of 1929 vested significant powers in the office of the President, which were intended to balance the powers of the Federal Government and Parliament. The President is the commander-in-chief of the armed forces, appoints the Federal Chancellor and has the right to dissolve the *Nationalrat*, among other responsibilities.³ In practice, however, the President is expected to follow the recommendations of the Government, and to act politically in a consultative manner.

¹ The OSCE/ODIHR NAM report is available at http://www.osce.org/documents/odihr/2010/03/42967_en.pdf.

² An OSCE/ODIHR team visited Austria prior to the June 2009 Elections to the European Parliament as part of a broader Expert Group reporting on these elections.

³ Constitution, Articles 65-66.

The incumbent President Heinz Fischer was previously elected in 2004 as the candidate of the Social Democratic Party of Austria (SPÖ). The SPÖ and the conservative Austrian People's Party (ÖVP) have dominated modern Austrian politics and all presidents since 1945 who were not independent candidates have represented one of these parties. At the same time, the presidency is widely considered to be a non-partisan office, and Mr. Fischer has suspended his party membership since the 2004 election. Incumbent presidents who chose to run for a second term have historically won re-election, and there have been several previous instances where one of the leading parties decided not to nominate a candidate to oppose a popular sitting president.

Five political parties were elected to the *Nationalrat* on 28 September 2008. These are: the SPÖ with 57 seats, the ÖVP with 51 seats, the Freedom Party of Austria (FPÖ) with 34 seats, the Alliance for the Future of Austria (BZÖ) with 21 seats and the Green Party (*Die Grünen*) with 20 seats. The current government is a grand coalition of the SPÖ and ÖVP.

IV. LEGAL FRAMEWORK

A. OVERVIEW

The legal framework provides a sound basis for the conduct of democratic elections. The legislative framework for presidential elections is comprised of several laws – mainly the Constitution (1929, as amended), Presidential Election Law (PrEL 1971, as amended) and Parliamentary Election Law (PEL, 1992 as amended). While the interaction of these and other laws results in clear and consistent election rules, the lack of a consolidated law might make them difficult for ordinary citizens to access.

In general, the electoral system is lightly regulated, depending on a high level of public confidence in civil servants and office-holders, and an expectation that all election stakeholders will respect the law. Election activities are carried out through regular administrative channels, including the FMI and provincial and municipal executive authorities, and through ad-hoc election boards established at all levels (federal, provincial, district and municipal, as well as for polling).

Under the Constitution the President is elected directly through a majoritarian system.⁴ If no candidate obtains more than half the valid votes, a second round is held between the two gaining most votes. Under the PrEL a presidential election cannot be held concurrently with any other election or referendum.⁵

B. SUFFRAGE RIGHTS

According to the Constitution, all Austrian citizens who have reached the age of 16 by election day have the right to vote in national elections.⁶ The Constitution provides that exclusion from voting can only result from a criminal sentence imposed by a court.⁷ Suffrage is not withdrawn from citizens who are declared incompetent by a court of law, but if persons are incapable of requesting assistance to vote, a ballot will not be given to

⁴ Article 60.

⁵ PrEL, Section 26.

⁶ Article 26.1.

⁷ Article 26.5.

them. In 2007 Austria passed a package of electoral reforms, which included amendments expanding suffrage rights, including decreasing the voting age from 18 to 16 years and extending the use of postal voting.

Under the PEL,⁸ the penalty of loss of voting rights for convicted criminals is limited to intentional crimes and an actual prison sentence of more than a year; the right to vote is restored six months after completion of sentence. Recently, however, the European Court of Human Rights decided in favor of an Austrian prisoner convicted of murder who claimed that his rights were violated by withdrawal of the voting franchise.⁹

Eligible voters over 35 years of age may run for the presidency. Anyone who has committed an act against the *Verbotsgesetz* (Prohibition Law)¹⁰ is excluded from candidacy. In addition, the Constitution excludes from eligibility “members of reigning houses or of formerly regnant families.”¹¹

OSCE/ODIHR EAM interlocutors explained that the exclusion of ruling families is a remnant of the legal protections put in place during the first republic to prevent the restoration of the Habsburg monarchy. This provision appears to be anachronistic in the modern political environment and may be considered as an unreasonable restriction on the right to be elected, as guaranteed by Paragraph 7.5 of the OSCE 1990 Copenhagen Document and Article 25 of the International Covenant on Civil and Political Rights.

Consideration should be given to removing the prohibition against presidential candidacy by descendants of formerly regnant families to ensure full respect for the right to stand as prescribed in the OSCE Copenhagen Document and the International Covenant on Civil and Political Rights.

C. RECENT AMENDMENTS

Postal voting utilizing a voting card (*Wahlkarte*) has been introduced in incremental steps over the past twenty years. As a result of a decision of the Constitutional Court,¹² however, a constitutional amendment was required to ensure that voters’ rights to a secret, personal and free choice in federal elections were protected,¹³ as guaranteed by the Constitution.

⁸ Section 22.1.

⁹ *Frodl v. Austria*, Application No. 20201/04, Judgment (8 April 2010). The case involved an individual convicted of murder who was not granted the right to vote, as the PEL revokes voting rights for those serving prison sentences of more than one year for an offence committed with intent. The chamber in *Frodl* declared that a specific decision on disenfranchisement must be taken by a judge, taking into account the circumstances of the case, and that there must be a link between the offence committed and issues relating to elections and democratic institutions. The judgment in *Frodl* argues that such an approach is currently followed in a majority of Council of Europe countries.

¹⁰ The *Verbotsgesetz* (1947, as amended) prohibits public expression of pro-Nazi sentiments, display of Nazi symbols or denial of Nazi atrocities. The Constitutional Court has determined that all court and administrative agencies are to take account of the law in exercising their responsibilities, including during the registration of candidates and political parties.

¹¹ Constitution, Article 60.3.

¹² Decision No. 10.412/1985.

¹³ Constitution, Article 26.6: “Persons entitled to vote presumably prevented on the day of election to cast their vote before the electoral authority, for example by absence, for reasons of health or staying abroad may make use of their right to vote by postal ballot upon application indicating the reason. The identity of the applicant is to be proven prima facie. The qualified voter has to declare by signature in lieu of oath, that the vote has been cast personally and confidentially.”

Under the PEL,¹⁴ electors voting by post are required to accompany their ballots with an affidavit attesting that their vote was made personally, confidentially and without influence. In addition, voters were required to indicate the date and time when their vote ballot was filled in. In February 2010, nevertheless, the PrEL¹⁵ was amended to eliminate the date/time requirement, since many absentee ballots had been voided during the 2008 parliamentary elections after voters failed to include the date. While the PrEL¹⁶ specifies that voters requesting a voting card “are expected to be prevented from casting their vote local[ly] ... because of travel, ill health or staying abroad,” no procedures are in place to confirm this.

In a welcome development, the 2007 amendments to the PEL¹⁷ provide for inviting international election observers from the OSCE and its participating States, in line with the 1990 Copenhagen Document. However, the election laws do not allow for observers from civil society organizations, as called for by the Copenhagen Document.¹⁸

The right to observe should be further expanded to civil society organizations as prescribed in paragraph 8 of the OSCE Copenhagen Document.

V. ELECTION ADMINISTRATION

A. OVERVIEW

Presidential elections are carried out by a five-tiered election administration that includes the Federal Election Board (FEB), 9 Provincial Election Boards (PEBs), 117 District Election Boards (DEBs), 2,357 Municipal Election Boards (MEBs) and approximately 13,000 Precinct Election Boards.¹⁹ The election boards are permanent bodies providing institutional continuity; their composition is re-adjusted following each parliamentary election. Parties not represented in parliament may nominate “witnesses” to boards at all levels, who may take part in all meetings but have no voting rights in decisions taken by the board. The presence of “witnesses” ensures oversight and increases transparency.

Civil servants at each level of government provide assistance to their respective election boards and carry out other required electoral duties. The FMI plays a significant role in federal elections, providing advice to the lawmakers on electoral legislation, acting as the secretariat for the FEB, taking the lead on technical preparations for any federal election (producing and distributing ballots, voting cards, result protocols, instructions/guides for voters and authorities), as well as advising lower level authorities when requested.

¹⁴ Section 60.3.

¹⁵ Section 10.5.

¹⁶ Section 5a.

¹⁷ Section 20a.

¹⁸ Final Document of the CSCE Conference on the Human Dimension (Helsinki, 1990), Para. 8: “The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process ... They therefore invite observers from any other [O]SCE 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. ...”

¹⁹ Polling stations are run by Precinct Election Boards in sub-divided municipalities or by MEBs in small municipalities. For simplicity, Polling Station Board (PSB) shall be used to describe the board operating a polling station on election day, whether it be a MEB or a Precinct Election Board.

Municipal authorities maintain voter registers and conduct most election day activities. The FMEIA offers information and support on postal voting for Austrian voters abroad.

In this election the administration at all levels carried out its duties in a professional, well-organized, transparent and efficient manner. It enjoyed a high degree of confidence from relevant stakeholders including the candidates and political parties, and those without voting representation on boards. There was evidence of sound training and preparation throughout the tiers of the election administration.

B. ELECTION BOARDS

The FEB is chaired by the Minister of Interior and consists of 17 other members. Two members must be judges while the other 15 are nominated by the political parties represented in parliament on a proportional basis. The FEB supervises the activities of each of the other election authorities. Apart from voter register issues, the FEB has the right to overrule any decision taken by any other election authority. The FEB formally met only twice during the electoral process, to consider candidate nominations and announce final results. A third meeting was not necessary as no complaints were filed. Had there been any further candidate nomination issues or complaints to consider following the election, the FEB could have met again.

The Department of Electoral Affairs within the FMI is responsible for most of the technical preparations for federal elections. The department has a staff of eight and produces and organizes the distribution of materials such as the ballots, voting cards, result protocols and special ballot templates for blind voters. It also provides lower level election authorities with written guidelines and instructions, hosts a website with voter and candidate information and operates an election day hotline where ministry officials answer questions from any electoral authority in the country. Each level of election authority provides any required training for the board members below it.

The multiple layers of lower-level election authorities reflect the country's administrative structure. The PEBs, DEBs and MEBs all consist of 9 members and a chair. Should PSBs be created by a municipality, they consist of 3 members, a chair and a deputy. Board members at all levels are nominated by the parties represented in parliament using the D'Hondt method of proportional distribution on the basis of the parties' local results in the previous parliamentary election. The chair of each board is the head of its respective level of government, except for the PSB chair and deputy, who are nominated by the mayor, generally from the municipal administration. The chair of each board is a non-voting member unless required to break a tie.

The PEBs and DEBs are primarily responsible for the transfer of result information on election day, while PEBs often provide procedural advice to lower-level boards. DEBs also make final decisions on appeals concerning voter registration and are responsible for collecting and counting postal ballots.

MEBs and the municipal authorities are responsible, inter alia, for the maintenance of voter registers, certification of candidate support documentation and the practical conduct of polling on election day, or the administration of PSBs when a municipality is subdivided for election day. The municipal authorities are responsible for compiling polling station results.

The municipalities also bear the costs of running the elections, though the FMI partially reimburses them at a rate of 0.56 EUR per voter in the municipality. The intention is to create an approximate 40/60 split, with the larger portion to be born by the municipalities. The municipalities may add more of their own funds to their election budget contributing to sometimes disparate services between municipalities.

The OSCE/ODIHR EAM noted that party-nominated board members at several polling stations came from only one party. While this may have created a perception of possible bias, most interlocutors expressed little concern in view of the right for all parties involved to have a presence, including as witnesses. In polling stations headed by a mayor in person, a potentially partisan tone may be present, affecting the neutral atmosphere required during voting. Should a particularly close election occur in the future and contentious issues be raised requiring a vote, a deciding vote cast by an elected official could be seen as inappropriate.

Consideration could be given to restricting elected officials from directly serving on election boards, in order to safeguard the impartiality of the election administration.

C. VOTER REGISTRATION

Voter registration in Austria is passive, as voter lists are extracted from the Central Registry (*Zentrale Melderegister*), which is administered by the Central Residency Register Department within the FMI. The voter register is maintained by 2,357 municipal election authorities, apart from Vienna, where updating the voter register is the responsibility of its 23 districts.

The Central Registry is an electronic database used for multiple purposes, including residence, property, car registration and tax. Various governmental agencies may access different parts of the database directly through a complex and secure e-government web application. Entries and changes are done electronically, allowing for continuous updating of data. OSCE/ODIHR EAM interlocutors expressed no concerns, and have a high degree of confidence in their accuracy.

In all, 6,355,800 voters were registered for the presidential election. In addition, there were some 360,000 eligible voters living abroad and registered in a supplementary register. These individuals could vote by mail by requesting a voting card. Political parties may obtain copies of the voter lists in each municipality for a fee covering half of their production costs.

For presidential elections, a voter appears only on one voter list, based on the voter's main residence.²⁰ A registered person who changes his or her main address must de-register from the old place of residence and re-register within three days with the new municipality. Such a change done prior to the cut-off date established for the voter registration is automatically reflected in the voter list.

Within 21 days of the voter registration cut-off date, municipal election authorities produce preliminary voter lists that are available for public scrutiny for a period of 7 to 10 days. In municipalities with more than 10,000 inhabitants, lists are posted in each

²⁰ However, a person may also have one or more secondary address, which in some particular cases allows that person to vote in more than one provincial election.

apartment building. In case there are any mistakes found on the voter lists, voters may make a claim at their respective municipality. According to OSCE/ODIHR EAM interlocutors in various municipalities, very few corrections were made through the scrutiny period for this election. Municipal election authorities individually notify all affected voters about any corrections made during the scrutiny period. Each municipality prints the final voter lists 2-3 days prior to election day, once all voters who applied for a voting card are duly marked.

D. CANDIDATE REGISTRATION

In order to nominate a candidate, committees representing prospective candidates had to submit a payment of 3,600 Euro and an application supported by 6,000 registered voters by 26 March. The FEB then meets to review the applications, ensuring that the conditions for nomination are met. Any candidate who did not initially fulfill the conditions for nomination was given three days from the time they were informed to correct any deficiency.

On 1 April the three officially nominated candidates were announced: the incumbent Mr. Heinz Fischer, running independently but affiliated with the SPÖ, Ms. Barbara Rosenkranz, a member of the FPÖ parliamentary faction, and Mr. Rudolf Gehring, leader of the non-parliamentary Christian Party of Austria (CPÖ). Several prospective candidates failed to collect the required number of support signatures.²¹

Voters who wished to support a candidate had to complete a support form that was certified by their municipality verifying the supporter's identity. They then passed the completed form to their candidate to submit in a package. Candidate support forms could also be obtained at Austrian diplomatic offices abroad. Each voter could only support one candidate and voter lists at the municipality were marked accordingly to ensure multiple endorsements did not occur. The OSCE/ODIHR EAM noted that some municipalities retained records indicating which candidate citizens had supported.

The nomination threshold of 6,000 voters was endorsed by most OSCE/ODIHR EAM interlocutors as stringent enough to exclude marginal or frivolous contenders, whilst allowing organized newcomers to participate. Some, however, expressed concern that requiring a supporter to have their support form certified by the magistrate at their local municipal office is overly bureaucratic and burdensome. Furthermore, the process may dissuade some supporters from taking part, especially in smaller municipalities, if they wished to support a candidate not generally favored in that municipality or from a party other than the one in power locally.

To make the candidate nomination process more accessible and avoid possible stigmatization of candidate supporters, authorities might consider offering an additional mechanism to support a candidate, one that would not require visiting a municipal office.

E. VOTING CARDS

Voters who are not able to cast their ballot in the polling station where they are registered may use a voting card to cast their ballot. Voting cards allow a voter to cast a ballot by mail or courier from abroad or domestically before or until five days after election day, or

²¹ For the specific case of Mr. Habsburg-Lothringen, see section XI of this report.

in person on election day at any polling station in Austria. This service is also available to voters whose mobility is limited, such as those confined to their homes, care institutions or prisons.

Recent amendments to the election legislation significantly loosened restrictions on the use of voting cards, and as a result the use of this method of voting has become increasingly popular. Using a voting card no longer requires a witness or election authority to confirm the identity of the voter; now it is enough for the voters to sign an affidavit on the voting card confirming they are marking the ballot themselves, in secrecy and prior to the close of the last polling station in Austria.

Applications for voting cards were made to the municipality where the voter was registered, either by written request by 21 April, or in person at the municipal office by 23 April. Applications had to be accompanied by valid identification, but what was considered valid (for both in-person and written applications) was determined at the municipal level. Furthermore, a voter could request a proxy or courier to either pick up their voting card and/or return the completed voting card to the appropriate election authority. The OSCE/ODIHR EAM was told by several issuing authorities that a voter could collect voting cards for family members residing at the same address without an application or identification from these voters. Several OSCE/ODIHR EAM interlocutors expressed concern that allowing anyone to collect and return completed voting cards could provide an opportunity for irregularities.

Given the concern about the possible abuse of voting cards, consideration should be given to tightening the methods of distributing, returning and storing voting cards to ensure against abuse of a mechanism that currently relies on a significant level of trust.

Voting cards mailed to voters required the voter to sign for the card upon receipt. However, after two unsuccessful attempts to attain a signature the voting card would be left in the voters' mailbox. When the voting card is issued, the voter list is marked and the voter may then only cast a ballot with the voting card. While by law a reason is required for using a voting card, the electoral authorities admit there is no way to verify these reasons and in practice this requirement is ignored.

Consideration could be given to repealing the requirement to give a justification for requesting a voting card, if it is not used in practice.

Voting cards could be applied for from the date the election was called, but was only immediately available in the municipal offices from the date the ballots were prepared (7 April). In many cases, and although not stipulated for in law or regulations, voters used the voting card as a method of advance voting by applying for and completing a voting card at the same time at a municipal office prior to election day. This was commonly the case in municipalities where the DEB collecting the voting cards was at the same address as the municipality. While the law stipulates that completed voting cards must be stored under lock and key, some authorities secured these ballots in a much stricter manner than others.

For this election, to be counted, all voting cards had to be received by the DEB where the voter was registered by 14:00 on the fifth day after election day. While this provision provides greater flexibility for voters and may reduce the number of invalid ballots

caused by late arrival, it also makes it possible for voters to mark their ballots after the announcement of preliminary results and still return them to the appropriate election authority prior to the deadline. In a close electoral contest, such a provision could influence voters choice and affect the result once the preliminary results have been announced. According to OSCE/ODIHR EAM interlocutors, several provinces had similar provisions for local elections and referenda in the past, but have since altered them to require that ballots be returned by election day, in order to avoid this risk.

It is recommended that electoral timelines be adjusted in order to ensure that voting cards cannot be used to cast a ballot after election day.

Some 373,902 voting cards were issued in all, of which 92 per cent were distributed to voters within Austria. A total of 75 per cent of the issued voting cards were received as postal ballots at the district level; thus no more than 25 per cent were used as regular ballots at polling stations on election day. The voting cards collected at the district level were counted on 30 April, so final results could only be certified after the cards were counted.

VI. CAMPAIGN

The election campaign was low-key, reflecting a somewhat unbalanced contest between a popular incumbent and two lesser-known politicians that was widely considered to be a foregone conclusion. The decision of the ÖVP, as well the BZÖ and the Green Party, not to nominate candidates because of the popularity of incumbent President Heinz Fischer, resulted in a campaign that did not offer voters broad choice or vigorous debate. The incumbent, who was running as an independent but supported by the SPÖ, appeared reluctant to engage in confrontation with his opponents, Ms. Barbara Rosenkranz, nominated by the right-wing FPÖ, and Mr. Rudolf Gehring, an independent supported by the small Christian Party of Austria (CPÖ), apparently because of his conviction that the office of the presidency should remain above politics.

Much of the media coverage of the campaign focused on the “non-campaign”, predicting low turnout. While the Green Party publicly endorsed Mr. Fischer two weeks prior to election day, the ÖVP did not officially endorse any candidate and a few senior party officials caused some controversy by promoting the idea of casting a blank ballot.

Although calm, the campaign environment was polarized. While Mr. Fischer’s campaign emphasized the president’s role as an elder statesman on the international stage, Ms. Rosenkranz and Mr. Gehring stressed the need to protect the traditional family, with both opposing gay marriage and adoption of children by gay couples. At the start of the campaign, Ms. Rosenkranz came under attack after publicly suggesting that the Prohibition Law could be repealed. Whilst she retracted the statement, this incident was widely seen to mark her as a controversial choice and decrease her chances of attracting cross-party support. At the same time, Mr. Gehring’s campaign appeared to take quite radical stances, for instance on increasing the role of the presidency, and by introducing overtly religious topics into the political debate.

Although there is no official campaign period, the election campaign effectively began in late March, some four weeks prior to election day. Both Mr. Fischer and Ms. Rosenkranz ran more elaborate campaigns with posters and billboards throughout the country, while

Mr. Gehring ran a low-cost campaign with promotional material limited to leaflets. All candidates toured the country and Mr. Fischer held several fundraising dinners in various provinces, partially to demonstrate a financial base separate from the SPÖ. Young Fischer supporters also traveled countrywide with a minibus and used the internet as a campaign tool to motivate youth voters, more of whom were eligible to vote than before due to the decrease in the voting age.

There were no reports of any obstacles to campaigning and the fundamental freedoms of speech, movement and association were respected at all times. Political campaigns are largely unregulated in Austria. Candidates and political parties notify the local authorities of any public events so that adequate security can be provided. No one is permitted to make public statements that are seen to violate the Prohibition Law or engage in political activities that violate its provisions. The regional offices of the Federal Agency for State Protection and Counter Terrorism (BVT) are responsible for monitoring campaign events for any sign of security threats or violations of the law, including the Prohibition Law. According to the BVT, there were no reports of any violations during the presidential election campaign. While there were several instances of “anti-Rosenkranz” protests held concurrently with Ms. Rosenkranz’ campaign events, these did not appear to interrupt her activities or constrain her ability to communicate with the voters.

VII. CAMPAIGN FINANCE

Political parties and presidential candidates have no limits on the amount of a private donation that can be received or on who can donate. Donations can be received *inter alia* from foreign companies and citizens, anonymous sources and state-owned enterprises. Such an unregulated system for donations allows for the possibility of abuse, such as by accepting donations from illegal enterprises, and leaves voters without important information on candidates.

The Federal Act on the Functions, Financing and Election Campaigning of Political Parties (Political Parties Act – Part G) contains some limitations on political party financing.²² However, presidential election campaign finances remain almost entirely unregulated. Some debate has begun on the need to enact regulations that would introduce more transparency and accountability in campaign finance. A parliamentary working group was established in February 2010 consisting of the general secretaries of the five parliamentary parties.

There appears to be little public awareness and almost no debate on campaign finance issues outside of parliament. This is partly connected to the fact that little information is publicly available on campaign finances and the present regulations do not provide sufficient information for any independent analysis of either the income or expenses of campaigns. The fact that paid advertisements are not required to include the identity of the payee adds to the lack of transparency in this regard.

Political parties in Austria receive substantial public financing at the federal and provincial level, both for their organizational work and also as a reimbursement of their campaign expenses. However, there are no specific public subsidies for presidential

²² Passed in 1975 and subsequently amended several times.

candidates and no reimbursement of their campaign expenses.²³

Political parties have to report the totals of their annual balances in the Official Gazette. By law, these *inter alia* have to include totals of income categories such as membership fees and the total sum of received donations and loans. They also include totals of expenditures such as staff costs, office expenses, holding of events and others.²⁴ In the presidential election years, these balances also include one broad income category of presidential campaign fund if a party has nominated or has supported a presidential candidate. By showing only aggregate numbers, these balances do not ensure transparency of party income and expenditures; neither does it provide a sufficient level of public accountability and oversight especially as political parties receive a significant level of funding from the State and the provinces.

As a limited measure of accountability, political parties have to submit to the Austrian Court of Audit lists of their donors who have contributed more than 7,260 EUR.²⁵ This excludes donations that parties receive from trade unions, professional associations and business associations.²⁶ However, by law, the President of the Court of Audit is only mandated to keep the records and respond to the requests of a party about their own list of donors. These lists are not publicly available and no other party, parliamentary committee or member of the public may request to view these lists.

From the perspective of campaign finance, presidential candidates may be nominated by political parties, supported by political parties or run as independents. Of these, the finances of independent candidates are the least regulated. The total amounts collected by parties for presidential election campaigns in cases when they nominate or support a candidate are reflected in their annual publication of balance sheets. However, independent candidates are not required to report or account to the public and only have to report all donations above 15,000 EUR to the relevant tax office no later than three months after the receipt of a donation.²⁷ The campaign of Mr. Fischer, who ran as an independent but was supported by the SPÖ, indicated, however, that it would submit the lists of donors to the President of the Court of Audit as if they were a political party, *i.e.* disclosing donations above 7,260 EUR.

Furthermore, the present legal framework does not require that independent candidates establish a legal identity for the association that pays the campaign bills. Although the establishment of such associations appears to be a regular practice for candidates with more extensive support, the lack of regulation in this regard affects the accountability of presidential election campaign finances.

It is recommended that measures be considered to increase the level of transparency and accountability in campaign finances. As a minimum, these should include a ban on anonymous donations, more detailed reporting on campaign income and expenditures, a requirement that reporting on campaign donors be made public and a requirement that all paid political advertisements include the identity of the payee. Additional good practices in campaign financing include pre-

²³ According to Transparency International, Austria's political parties receive approximately 130 million Euro per year in public funding, the highest per capita amount in Europe.

²⁴ Federal Act on the Functions, Financing and Election Campaigning of Political Parties, para 4, section 5.

²⁵ Ibid, section 2, para 4 (8).

²⁶ Ibid, para 4, section 8.

²⁷ General Tax Code, Section 121a, Para 1.

election reporting of income and expenditures, auditing by an independent body of all income and expenditures and including equitable consequences for non-adherence to regulations.

VIII. MEDIA

A. MEDIA ENVIRONMENT

Austria is characterized by a diverse and pluralistic media environment. Although the public service television and radio broadcaster ORF²⁸ (*Österreichischer Rundfunk*) has been gradually losing its audience share since the introduction of private television, ORF1 and ORF2 remain the most popular channels with a combined market share of 40.9 per cent.²⁹ ORF has one regional studio in each province and broadcasts regional programming on ORF2. Private broadcasters include the main TV channels ATV and PULS 4, and German TV channels, which play an important role in the media scene in Austria.³⁰

Although television remains the most important source of news and information, Austria is one of the few countries in Europe where print runs have increased in recent years. More than two-thirds of all Austrians regularly read newspapers and periodicals. The leading daily national newspapers are the *Neue Kronen Zeitung*, *Österreich*, *Kurier*, *Der Standard* and *Die Presse*. *Kleine Zeitung* is the most influential regional newspaper, with its countrywide edition competing with *Kurier*. Influential weekly news magazines with substantive content are *Profil* and *Format*.

The tabloid newspaper, *Neue Kronen Zeitung*, dominates the newspaper market and in relation to the number of inhabitants has the greatest density of readership in Europe, with around 2.5 million printed copies daily. In 1988, together with *Kurier*, it founded the publishing company *Mediaprint*, which handles the printing, distribution and marketing of the two newspapers. Their leading role in the market increased in 2000 when *Mediaprint* successfully merged with NEWS media company, one of the biggest Austrian magazine groups (owner of NEWS, *Profil*, *Format* and others) with the consequence that currently the majority of printed media are published and distributed by *Mediaprint*.

In response to the high concentration of media ownership, Parliament adopted the Cartel Act³¹ (*Kartellgesetz*) on 1 January 2006 and enacted an amendment to the Competition Act (*Wettbewerbsgesetz*), which set new limits on the concentration of media ownership. Despite general public confidence in the independence of the media, some EAM interlocutors expressed concerns about concentration of media ownership in the print sector.

²⁸ ORF (Austrian Broadcasting Corporation) became a foundation in 2001. The foundation's Council is composed of 35 members, nine of which are appointed by the Federal Government, six by parliamentary parties and nine by provincial governments. Six members are appointed by the Audience Council (*Publikumsrat*) and the remaining five members by the ORF labor organization.

²⁹ European Audiovisual Observatory, 2009.

³⁰ German private channels have a combined audience share of 27.9%. Almost 10% audience share goes to German public service channels (European Audiovisual Observatory, 2009).

³¹ The new rules were introduced also in response to European Council Regulation (EC) No. 1/2003 (OJ 2003 L 1/1), which came into force on 1 May 2004.

Although the radio market has been open to private broadcasters since 1993 with 10 regional and 44 local stations, ORF Radio retains the largest audience share. The role of the internet is becoming increasingly important with 72 per cent of the Austrian population having an internet connection.³²

B. LEGAL FRAMEWORK FOR THE MEDIA

The activities of broadcast and print media are mainly regulated by the Federal Law on the Press and Other News Media (Media Act), the Federal Act on the Austrian Broadcasting Corporation (ORF Act) and the Federal Law Stipulating Provisions for Private Televisions (Private Television Act).³³

None of the above federal laws, however, provides any specific provisions regarding media coverage of elections or media access for political parties and candidates. Instead, the media is self-regulating in this area. Election coverage by both public and private media outlets must in any case comply with the basic and fundamental principles contained in Austria's legislation concerning freedom of expression,³⁴ objective news coverage and respect for diversity of opinions,³⁵ and independence of journalists³⁶ and of the journalistic profession.³⁷ OSCE/ODIHR EAM interlocutors expressed general satisfaction with the existing self-regulatory mechanisms and journalistic code of ethics and professional standards, which is deemed to ensure fair and balanced news reporting and political coverage during the election period.

In 2001, the KommAustria Act established the Austrian Communications Authority (KommAustria) to regulate broadcasting. KommAustria replaced the former private broadcasting authority and the Regional Radio Act Commission (which also served as the Cable and Satellite Act Commission).³⁸ KommAustria is a government authority under the Austrian Federal Chancellery and decides on private broadcaster complaints. Appeals against KommAustria decisions can be filed with the Federal Communications Committee (*Bundeskommunikationssenat* - BKS).

The BKS³⁹ acts as the legal authority for decisions made by KommAustria, decides in the first instance on public broadcaster complaints and has legal supervisory authority for the ORF. The BKS is therefore also empowered to review any petition regarding media violations during the election period and, if appropriate, to issue an opinion that the broadcasters are required to publicize.

³² European Audiovisual Observatory, 2009.

³³ New legislation is currently under discussion by Parliament. According to the current draft a new Media Authority would be created and the current media authorities' competencies would be modified.

³⁴ The preamble of the Media Act expressly states that such a federal law is aimed at securing the right to freedom of expression and information as well as ensuring full freedom of the media.

³⁵ Media Act, Article 1, para (3); Private Television Act, Article 30, para (1) and para (2).

³⁶ Media Act, Article 4, para (6): "*Independence is not only the right of journalists and programmers, but also their duty. Independence means independence from state and party influence as well as from other – electronic or print – media or political and business lobbies*".

³⁷ Private Television Act, Article 49, para (1).

³⁸ KommAustria is also responsible for the administration of broadcasting frequencies, exercising regulatory powers under general competition law, regulation of the broadcasting communications infrastructure, and for management of federal press and journalism subsidies.

³⁹ BKS is composed of five members, three of whom have to be judges, independent in their official activities, being a "*panel authority with the powers of a court*" (KommAustria Act, Article 12, para 1).

Violations of individual rights, any breach of the journalistic code of ethics, or other complaints against print media are followed up by the Press Council (*Presserat*). The *Presserat* has recently been reestablished after having been dissolved in 2002, but was not yet fully operational during this election.

C. MEDIA COVERAGE OF THE ELECTIONS

The coverage of the presidential election campaign in the media was extensive and diverse with a range of analytical articles and news reporting on the candidates' activities. All three candidates had good access to the media to present their platforms and views. Overall voters were offered a genuine opportunity to make an informed choice. At the beginning of the campaign, the media focused more on the personal qualities and backgrounds of the two challengers, Ms. Rosenkranz and Mr. Gehring, rather than on their political programs. Speculation about the level of turnout and controversy around the ÖVP call to cast a blank vote also became prominent issues.

The public service broadcaster ORF reported extensively on the election with different formats and panel discussions with experts targeting specific audiences, including national minorities and young voters. It applied the general principles of fair and balanced coverage during the campaign coverage. Election and voter education programs for national minorities were produced by the ORF regional studio in Burgenland and broadcast on ORF2. During the prime-time special election program *Meine Frage* (My Question), ORF allocated 45 minutes to each candidate, and first-time voters from schools all over Austria were invited to put questions to the presidential candidates. During the ORF program *Pressestunde* (Press Hour), each candidate received equal opportunity to participate and be questioned by journalists of different media to allow them to express their political programs and views.

Private broadcasters were also active during the campaign, organizing interviews with candidates, roundtables and interactive programs specifically targeting young voters. ATV, during its prime-time program *Meine Wahl: Der Präsident* (My Election: The President), invited the candidates to encourage declared non-voters to vote. A candidate debate between Ms. Rosenkranz and Mr. Gehring was also broadcast. Mr. Fischer declined to participate in this and all debates, as announced at the beginning of his campaign. The voters could have benefitted from a debate between all candidates to emphasize the differences between the candidates' platforms.

Traditional media outlets offered the younger generation additional opportunities to be part of the political discussion by integrating social media, such as Twitter and Facebook, into their programming.

Paid political advertising is not permitted in public media. Candidates were allowed to advertise in the private media, but this was rather limited and included the placement of a few newspaper advertisements in support of Mr. Fischer and Ms. Rosenkranz in the final days of the campaign.

IX. PARTICIPATION OF WOMEN

Women were active participants in the presidential election. The female candidate in the election, Ms. Rosenkranz, did not appear specifically to target women voters, although the fact that she is a mother of ten was well-publicized and support for the traditional family was a key theme of her campaign. Women were seen to be well-represented in the election administration at all levels.

Women have run several times previously for the presidency, but none has been elected. Similarly, no woman has served as Chancellor. Women are relatively well-represented in the government, with 6 of 14 ministers.⁴⁰ Currently, 28 per cent of the deputies in the *Nationalrat* are women and the Speaker is a woman. However, interlocutors informed the OSCE/ODIHR EAM that politics is still dominated by men, especially at the communal level, and that it can be challenging for women to be nominated by their parties, except for the Green Party, which imposes equal representation between men and women on candidate lists.

X. NATIONAL MINORITY PARTICIPATION

The Austrian State Treaty grants Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria specific rights, including the use of their languages. The National Minorities Act recognizes six national minority groups (*Volksgruppen*) – in addition to the Slovenians and Croatians also the Hungarians, Czechs, Slovaks and Roma.

Interlocutors informed the OSCE/ODIHR EAM that national minorities in Austria are generally well-integrated in society. National minority community representatives reported no particular obstacles to participation in elections and national minorities participate in elections primarily through mainstream political parties. Although political parties and candidates sometimes distribute campaign materials in national minority languages, this did not appear to be the case for the presidential election. Official election materials are not produced in any language other than German.

XI. COMPLAINTS AND APPEALS

As with many areas of the electoral system, the system of complaints and appeals is lightly regulated and depends on a high level of public confidence in the process.⁴¹ There are few formal procedures for the submission of complaints to the election administration. Challenges to violations of electoral rights during an election are permitted only to the extent that they are based on general regulatory and legal controls. Regular broadcast regulations remain in place, as do general administrative and criminal

⁴⁰ European Commission: Database on Women and Men in Decisionmaking (Q4 2009) at <http://ec.europa.eu/social>.

⁴¹ The complaints and appeals process is regulated by the Constitution, the Constitutional Court Law and the PEL.

laws. Violations of the law in these instances are not considered election related and are addressed according to the regular timelines and procedures prescribed in the law.⁴²

Voter registration is one specific area where election-related complaints are allowed during the election period. A written or oral objection can be filed by any citizen requesting the addition or deletion of a person to the list.⁴³ The objection must be filed with the office designated for the recording of objections before the period of access to the lists has closed. Outside of Vienna decisions on objections to the lists are made by the MEB and in Vienna by the DEB within six days of the end of the scrutiny period.

An appeal can be taken within two days of the receipt of the decision. The appeal must be in writing and addressed to the community concerned. Outside of Vienna the decision on the appeal is made by the DEB and in Vienna by the MEB, within four days of receipt. No further appeal is allowed, thus denying voters access to a court to resolve registration disputes either before or after the election.⁴⁴

Challenges to the results of elections are made to the Constitutional Court, and must be filed within a four-week period after the conclusion of the electoral process.⁴⁵ The appeal will only be granted if the challenge is substantiated and the violation affected the outcome of the election. Therefore, individual voters cannot have their case considered on merits unless the infraction has affected the outcome. This creates a situation whereby an individual voter may prove that his/her electoral rights were violated and be denied an effective remedy. Constitutional Court decisions are final; meaning that in these cases there is no possibility to appeal. No complaints were filed to the Constitutional Court contesting the results of this year's election.

The current system, while enjoying general confidence, is not consistent with OSCE commitments, particularly Paragraph 5.10 of the 1990 Copenhagen Document which provides that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Paragraph 13.9 of the 1989 Concluding document of the Vienna Meeting (CSCE) reiterates "the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal." The 1991 Moscow Document stipulates that "participating States will endeavour to provide for judicial review of [administrative] regulations and decisions."

*Consideration should be given to allow certain complaints to be handled and resolved during the election process and to allow for an appeal to a court before the election. Timely as well as effective remedies for election-related complaints and appeals are an important part of international standards and good practices.*⁴⁶

⁴² For example, the Federal Communications Committee (*Bundeskommunikationssenat*) can review petitions alleging broadcast violations and if appropriate issue an opinion which a violator is required to publicize (see MEDIA, Section VIII B below).

⁴³ PrEL section 5.2 and National Council Election Law section 28 to 32.

⁴⁴ A complaint on voter registration issues can be filed to the constitutional court if it is framed as a violation of a fundamental right, but this can only be done after the election.

⁴⁵ Article 141a.1 of the Constitution and Constitutional Court Law, Article 68.1.

⁴⁶ In addition to OSCE commitments international commitments and best practice include: UNHRC General Comment No. 31, paragraph 15, 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

A case was submitted to the Constitutional Court, prior to the election, by Mr. Ulrich Habsburg-Lothringen, who was affected by the constitutional provision⁴⁷ under which members of former ruling families are prohibited from seeking the presidency. Last year, prior to announcement of the election, Mr. Habsburg-Lothringen sought a declaration that the provision should not be applied to him.⁴⁸ His application was rejected; with the Court indicating that such a case was election-related and could be brought only as a post-election challenge should he be rejected as a candidate on this basis.

In the event, Mr. Habsburg-Lothringen did not secure a sufficient number of certified signatures to support his candidacy. The issue of his eligibility for candidacy, however, could certainly have affected his ability to obtain the necessary voter support, as voters might be unwilling to endorse a candidate who they do not believe to be eligible. The underlying issue of his political rights and those of other affected members of formerly regnant families remains unaddressed.

XII. ELECTION DAY

A. VOTING

In line with standard practice, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner. Nonetheless mission members visited a limited number of polling stations in 10 of Vienna's 23 districts, and in several other provinces.⁴⁹

In all locations visited by mission members the voting was well-organized and efficiently and professionally administered. Voting took place in a calm environment. PSBs were well-prepared and acquainted with their responsibilities. Although the PSB members were to be nominated by the main political parties, DEBs explained that finding enough people had become rather difficult and on election day the EAM noticed the absence of some party members.

According to the election legislation, the longest permissible voting hours are from 7:00 to 18:00, but each municipality may set its own hours of operation for polling stations, a feature of Austria's decentralized administration. The OSCE/ODIHR EAM noted that some polling stations had very short voting hours, including a few cases with as little as two hours of voting. Some of these polling stations were found to be in contradiction with the legal provisions that require "no more than seventy voters to be dealt with per hour."⁵⁰ Although there were no formal complaints reported, such short opening hours could disenfranchise certain voters.

bodies." The Venice Commission's Code of Good Practice in Electoral Matters, paragraph 95, emphasizes the importance of having appeals about pre-election matters resolved in a timely manner before election day.

⁴⁷ Article 60.3. "Members of reigning houses or of formerly regnant families are excluded from eligibility." (A similar provision is contained in the PrEL, Section 6.2.)

⁴⁸ Article 140.1.

⁴⁹ Burgenland (Rust), Carinthia (Klagenfurt, Velden, Maria Woerth, Krumpendorf) and Upper Austria (Linz, Neuerhofen, Piberbach, Kematen).

⁵⁰ Article 53 of PEL in conjunction with section 10(1) of PrEL as amended.

To enhance consistency in the electoral process and avoid possible disenfranchisement of voters, consideration should be given to regulating voting hours throughout Austria, or at least to determining the minimum number of voting hours that a polling station must open for.

In general voters were processed quickly, efficiently and according to the regulations. Voters are required to identify themselves with photo ID, although the law permits a voter to vote without ID should the majority of the PSB recognize him or her. However in one region, the OSCE/ODIHR EAM noted people voting without ID, instead showing only their voter notification slips, in apparent violation of the procedures.

Once identified, the PSB entered the voter's name in a blank voter record, while in the printed voter list the sequential voting number of each voter would be written next to voter's name. The OSCE/ODIHR EAM witnessed deviations from this procedure, however, when PSBs entered names into a computer database instead of writing them in the voter record. According to some OSCE/ODIHR EAM interlocutors, such a procedure was inconsistent with legal provisions.

The relatively high number of invalid ballots (above seven per cent) was attributed to voters choosing to cast a blank ballot paper or spoiled ballots to show their dissatisfaction with the voting choice. As there is no separate record of blank or spoiled ballots in the results protocols (blank ballots are counted as invalid votes), there is no way to determine how many ballots may have been intentionally invalidated.

Many polling stations visited, including in small communities, provided disabled access and some polling stations had voting booths accessible for wheelchairs. Visually impaired voters could use a special template, allowing them to vote without assistance. For those polling stations that did not provide disabled access, voters had to request a "flying commission" (mobile voting) or a voting card. Voters who were in hospitals, nursing homes, prisons or in their home and unable to go to vote at the polling station could also request a voting card or a "flying commission."

There was clearly a very high level of trust in the election process itself and in the election authorities, by the voters and political parties alike. This is undoubtedly a positive feature of the Austrian election process. However, there were few safeguards in place apart from the multi-party composition of the election boards. The ballot boxes were not required to be sealed during election day and there were also no security features on the ballot or the envelope (e.g. security stamp or watermark).

Consideration could be given to enhancing the safeguards in place on election day and especially for securing sensitive materials such as ballots cast, in order to protect the overall integrity of the vote.

Voters could use their uncompleted voting cards to vote in any polling station in Austria on election day. In such cases, election authorities were to collect the voting card and provide the voter with a blue envelope to use with their ballot to vote. Special polling stations were also set up on election day in large municipalities solely to vote with voting cards. Voting cards were also cast in regular polling stations, although the completed voting cards were dealt with in a variety of ways. In many cases polling stations collected the voting cards and delivered them to DEBs either during or at the end of election day. These voting cards were not accounted for in any manner and a significant amount of

trust was placed in the individual who eventually delivered them on behalf of the voters. The OSCE/ODIHR EAM was not made aware of any allegations of abuse, however.

B. COUNTING AND TABULATION

Ballots were counted at the polling stations, immediately after the end of voting. In the polling stations visited, the counting of votes was conducted efficiently and transparently, in full view of all those present. Results were marked in the results protocols and immediately forwarded by phone or fax to the MEB. In a few instances, the OSCE/ODIHR EAM noted that PSB members had signed the results protocol in advance, contrary to the regulations.

PSB members then brought the sensitive materials, including the protocols, to the MEBs in sealed paper bags, where the figures were double-checked by municipal officials. Once the municipality finished entering results from all of its polling stations into an electronic format, it forwarded them to the DEB. From there the data was sent electronically to PEBs and further to the FEB. This process was conducted extremely quickly.

At 17:00 on election day,⁵¹ the first initial results were announced on television. Although these were actual results counted by that time in polling stations throughout Austria, they did not include results from Vienna and other locations, as many polling stations only closed at 17:00. One hour later, all three candidates met at the Hofburg Palace in the presence of high-level officials, politicians, and the media for the announcement of the winning candidate.

The counting of postal ballots began only after the deadline for their receipt at 14:00 on 30 April (five days after election day). Counting these ballots occurred at the district level and was carried out by the DEBs and district administrative staff. No particular issues arose from the counting of these ballots, allowing for their quick tabulation to the federal level and the eventual release of final results on 10 May.

⁵¹ Although the law allows polling stations to remain open until 18:00, all polling stations for these elections closed by 17:00.

ANNEX: RESULTS

Final results were announced on 10 May by the FEB as follows:⁵²

Official Final Election Results

Total number of registered voters	6,355,800
Total number of votes cast	3,404,646
Turnout (percentage)	53.57%
Total number of invalid votes	242,682 (7.13%)
Total number of voting cards used	279,245 (8.20%)

Distribution of valid votes to the candidates:

Candidate	Votes received	Percentage
Mr. Heinz Fischer	2,508,373	79.33%
Mr. Rudolf Gehring	171,668	5.43%
Ms. Barbara Rosenkranz	481,923	15.24%

⁵²

See the Ministry of Interior website at www.bmi.gv.at/cms/BMI_wahlen/bundespraes/bpw_2010.

ABOUT THE OSCE/ODIHR

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

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

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

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

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

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

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

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

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