



Office for Democratic Institutions and Human Rights

AUSTRIA

PRESIDENTIAL ELECTION

25 April 2010

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

10-12 February 2010



Warsaw
8 March 2010

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**REPUBLIC OF AUSTRIA
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**OSCE/ODIHR Needs Assessment Mission Report
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I. INTRODUCTION

On 10 February 2010, the Permanent Mission of Austria to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 25 April presidential election (*Bundespräsidentenwahl*). The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Vienna from 10-12 February 2010 which was composed of Mr. Nicolas Kaczorowski, Head of the OSCE/ODIHR Election Department, and Mr. Drew Hyslop, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-electoral environment and the preparations for the presidential election, and to advise on a possible election observation or assessment activity. The OSCE/ODIHR NAM met with the Ministry of Foreign Affairs, Ministry of Interior, Constitutional Court, Provincial Election Commission of Vienna, political parties, media representatives and civil society organizations. A full list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Federal Ministry for European and International Affairs and the Federal Ministry of Interior for the assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

Austria is a federal republic consisting of nine states (*Länder*). The federal parliament is a bicameral body with a first chamber (*Nationalrat*) composed of 183 deputies, directly elected for five-year terms and an second chamber (*Bundesrat*) of 62 deputies who are voted in by state legislatures (*Landtage*). The federal president is the head of state and is directly elected for a six-year term, with a two-term limit.

The federal president is elected in a two-round electoral system; if none of the candidates obtains a majority of valid votes in the first round, a second round takes place three weeks later between the two candidates who received the largest number of votes.

Presidential elections are regulated primarily by the constitution, the presidential election law and the parliamentary election law. The election legislation was significantly amended in 2007, by, *inter alia*, lowering the voting age from 18 to 16, by facilitating postal voting, by extending parliamentary mandates from four to five years and by specifically authorizing the OSCE to observe elections.

Elections are administered by a five-tiered system, including the Federal Election Board (FEB), nine Provincial Election Boards (PEB), 117 District Election Boards (DEB), 2,357 Municipal Election Boards (MEB) and some 13,000 polling stations. OSCE/ODIHR NAM interlocutors expressed their confidence in the impartiality and professionalism of the election commissions at all levels. Parliamentary parties can appoint commission members while non-parliamentary parties are entitled to nominate observers. Multiparty commissions increase the transparency of the election process and provide effective safeguards. The election legislation, however, does not provide for the presence of domestic non-party observers in contradiction with paragraph 8 of the Copenhagen Document.

There are approximately 6,400,000 registered voters in Austria. Registration is passive, taken from a national civil register and administered at the municipal level. The list will be posted in public areas for review for 10 days during which time voters can contest any entry on the list.

In addition to a number of legal requirements, committees representing prospective presidential candidates must collect 6,000 endorsements from voters and pay 3,600 EUR to cover some electoral costs. The FEB registers presidential candidates. Following the declaration of Ulrich Habsburg-Lothringen, a member of a former ruling family, to run for office, a discussion ensued about a constitutional provision that prohibits members of the former ruling family to run for office and about whether this restriction continues to be justified in contemporary Austria.

Campaigning is largely unregulated in Austria. There is no campaign period, no restrictions on campaign advertising and few regulations related to campaign financing. A variety of means are expected to be used to reach voters, including the use of new social media on the internet. Of particular attention is the outreach to younger voters, as a lowering of the voting age and the six-year term means that there are an estimated 900,000 newly eligible voters since the last election.

There is a high level of public financing given to political parties – an estimated 130 million EUR per year to all parties, or approximately 27 EUR per registered voter. Parties are reimbursed for campaign expenses involving party lists, but are not reimbursed for presidential election campaigns. There are no limits on campaign expenditures, party expenditures, or on donations. Disclosure requirements are minimal and campaign expenditures for parties running in the presidential campaign are included as part of regular political party reporting. Auditing of expenditures is conducted by auditors selected from a list of names provided by the party.

Austria has pluralistic media environment. The public broadcaster (Austrian Broadcasting Corporation, ORF), is the largest television channel, followed to a much lesser extent by the privately-owned ATV and Puls4. Self-regulation applies to the coverage of the campaign and political parties by the media. ORF explained to the OSCE/ODIHR NAM that it provides balanced and equitable campaign coverage, although there is no formal monitoring of coverage by ORF or an independent body. According to ORF, their coverage of candidates is driven by newsworthiness.

Elections in Austria appear to enjoy a high level of support and trust among all stakeholders and include checks and balances. Furthermore, all interlocutors welcomed the presence of

observers but highlighted that the presidential election is likely to be a relatively calm campaign. However, the OSCE/ODIHR has never followed an election process in Austria. In this context and given the findings noted in this report, including the recent amendments to election legislation (most notably that allowing for international election observation) and the widely unregulated system for campaign finance, the election process could benefit from an independent review. For these reasons, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission for the presidential election scheduled for 25 April to review the legal and administrative framework as well as current electoral practices.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Austria is a federal republic consisting of nine states (*Länder*). The federal parliament is a bicameral body with a first chamber (*Nationalrat*) composed of 183 deputies, directly elected for five-year terms and an second chamber (*Bundesrat*) of 62 deputies who are voted in by state legislatures (*Landtage*). The federal president is the head of state and is directly elected for a six year term, with a two term-limit. The president is the commander-in-chief of the armed forces, responsible for concluding treaties, appointing judges and selecting the chancellor after parliamentary elections. Although amendments to the constitution in 1929 entrust the president with significant powers, in practice most political power is wielded by the chancellor and the parliament.

The last parliamentary elections were held in 28 September 2008, which resulted in five parties elected into the 183-seat first chamber: The Social Democratic Party of Austria (SPÖ) with 57 seats, The Austrian Peoples Party (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 SPÖ and ÖVP have historically dominated the political scene in Austria. All presidents of Austria since 1945 who were not independent candidates have represented one of these two parties. In addition, nearly all governments formed after 1945 were grand coalitions between these two parties or majority and minority governments of one of the two. The exceptions were the periods between 1983-1986 and 2000-2006, when the SPÖ and then the ÖVP formed coalitions with the FPÖ (and later BZÖ), respectively.

The 25 April presidential election is preceded by local elections in Lower Austria, Tyrol and Vorarlberg on 14 March and Styria on 21 March. They will be followed by elections in Burgenland and Styria this summer and highly anticipated elections in Vienna this autumn.

The OSCE/ODIHR has not observed or assessed previous elections in Austria.

B. LEGAL FRAMEWORK AND ELECTION SYSTEM

Presidential elections are regulated primarily by the constitution, the presidential election law and the parliamentary election law. The election legislation was significantly amended in 2007, when the election amendment act lowered the voting age from 18 to 16, facilitated

postal voting, extended parliamentary mandates from four to five years and specifically authorized the OSCE to observe elections. The election legislation however does not provide for the presence of domestic non-party observers in contradiction with paragraph 8 of the Copenhagen Document. Further amendments were made in February 2010, addressing issues to improve postal voting and ensure consistency between the presidential and parliamentary election acts as well as the European Parliament election act.

The president is elected in a two-round electoral system; if none of the candidates obtains a majority of valid votes in the first round, a second round takes place three weeks later between the two candidates who received the largest number of votes. Should there only be one candidate contesting the election, then the election is held in the form of a referendum. The law does not address what would happen should the candidate not be elected with a majority of votes in the referendum.

The election legislation includes provisions to allow voters who are away from home on election day to cast their ballots. All voting which takes place outside of the designated polling station is done by applying for a voting card at the local municipality. Voting cards allow for postal voting, homebound voting and voting anywhere in Austria. When the card is issued, the voter list is marked and the voter is then only allowed to cast a ballot with the voting card. Voting is possible in hospitals, prisons, at home (through “flying polling stations” or mobile voting) or can be cast by post or courier. Postal voting must be completed by election day, and must be received by the fifth day after a presidential election. Postal voting is counted at the district level. In 2008 some 500,000 voting cards were issued, and approximately 375,000 were received by post.

C. ELECTION ADMINISTRATION

Elections are administered by a five-tiered system, including the Federal Election Board (FEB), nine Provincial Election Boards (PEB), 117 District Election Boards (DEB), 2,357 Municipal Election Boards (MEB) and some 13,000 polling stations. All electoral boards are permanent and formed in advance of parliamentary elections. They convene as necessary to administer all elections until a new appointment is made in advance of the next parliamentary vote. Parliamentary parties can appoint commission members; non-parliamentary parties are entitled to nominate observers. Multipartite commissions increase the transparency of the election process and provide effective safeguards.

The Ministry of Interior supports the FEB, with the Minister also chairing the FEB. The Department of Electoral Affairs in the Ministry of Interior is responsible for most of the technical preparations for federal elections. The Ministry of Foreign Affairs is involved only in informing citizens living abroad about postal voting procedures, required steps and deadlines.

The FEB is composed of 17 members and a chair. Two members, appointed by the Minister of Justice, must be judges and the remaining 15 members are nominated by the political parties in parliament, distributed proportionally based on their number of seats. The FEB members cannot be members of any other election administration body. The FEB is responsible for supervising the work of all other election authorities, and can disregard any decision or decree of lower level authorities, with the exception of decisions regarding the voter list. The FEB generally meets four times during a presidential election, twice to

review and confirm candidate nominations, a third time after the election to compile the results and a final meeting to address any complaints and announce the final results.

The multiple layers of lower level election administration reflect the local governance structure. The PEBs, DEBs and MEBs all consist of nine members and a chair. The members are elected by legislature or councils at their respective level, split between political parties proportionally to their respective results obtained locally for national parliamentary elections. The chairs are either the governor of the state, the head of the district or the mayor depending on the level and specific region involved. The PEBs primary responsibility is to compile results, both election day results from MEBs and the postal voting results from the DEBs. DEBs are responsible for postal voting as it is assumed that there are enough voters at this level to ensure the secrecy of the ballot. In addition to compiling results from polling stations, MEBs are responsible for the voter registers, and in smaller municipalities can act as the sole polling station.

Each municipality is divided into one or more precincts, with polling stations responsible for the practical conduct of polling on election day. There is no federal regulation regarding the opening hours, and officials informed the OSCE/ODIHR NAM that municipalities determine the time at which polling stations should open and close. Since counting can start at the closing of polls, unofficial preliminary results are often known as voting still takes place in other municipalities. There however exists a gentleman's agreement with the broadcast media not to divulge this information. It is nevertheless readily available unofficially on the internet through blogs and other social media sites.

D. VOTER REGISTRATION

There are approximately 6,400,000 registered voters in Austria. Registration is passive, taken from a national civil register and administered at the municipal level. Interlocutors met by the OSCE/ODIHR NAM expressed a high level of confidence in the system, with civil registration within a municipality being required for access to many local services.

For the 2010 presidential election, the voter register will be compiled on 2 March. The list will be posted in public areas for review for 10 days during which time voters can contest any entry on the list.

Registered voters receive a mailing from the municipality with information about the polling place and day, and opening hours of the polling station. They are also often informed in advance of the voter registration review period through public announcements in print media.

E. CANDIDATE REGISTRATION

Eligible voters over 35 years old may run for the presidency, with the following exceptions: the candidate must not have been convicted of an intentional criminal offense or have been serving a prison sentence within the past six months, cannot commit an act against the 1947 Prohibition Law,¹ and not be a member of a former ruling family.

¹ The Prohibition Law of 1947 (*Verbotsgesetz 1947*) banned the NSDAP and provided the legal framework for the process of denazification in Austria.

Candidate registration began on 2 March and runs until 26 March. Committees representing prospective candidates must submit an application supported by 6,000 registered voters. Voters who wish to support a candidate must complete a form of support that is registered by their municipality. Special candidate support forms are also available for those who are abroad. Voters can only support one candidate, and the municipality marks the voters name against the voters list once the candidate support form is completed to ensure against multiple endorsements.

The current president, Heinz Fischer, announced his intention to run for a second term of office on 23 November. He will run as an independent candidate, although his campaign expects to receive the majority of its support from the SPÖ. The FPÖ has chosen Barbara Rosenkranz, member of parliament, to run for president. The other large political parties are not expected to nominate a candidate for this election.

Following the declaration of Ulrich Habsburg-Lothringen, a member of a former ruling family, to run for office as an independent candidate, a discussion ensued about a constitutional provision that prohibits members of the former ruling family to run for office and about whether this restriction continues to be justified in contemporary Austria. He complained about the clause to the Constitutional Court in September 2009, but was told that he would first need to have his application rejected by the FEB before lodging a complaint. The Green Party has submitted a proposal in parliament to amend the constitution, but it has not received the necessary support. According to press reports, all parties in parliament are in favor of such an amendment but some feel further debate is needed. According to Dr Habsburg-Lothringen the constitutional ban on former ruling families denies candidacy to some 1,000 individuals in Austria.

F. CAMPAIGN AND CAMPAIGN FINANCE

Campaigning is a largely unregulated activity in Austria. There is no campaign period, no restrictions on campaign advertising and few regulations related to campaign financing. Interlocutors met by the OSCE/ODIHR NAM stated that presidential campaigns are generally more personality based than issue based, and anticipated the same again this year with the highly popular incumbent running a positive campaign based on his accomplishments from his first term in office.

A variety of means are expected to be used to reach voters, including the use of new social media on the internet. Of particular attention during this campaign is outreach to younger voters, as a lowering of the voting age and the six-year term means that there are an estimated 900,000 newly eligible voters since the last election. President Fischer announced his intention to run for a second term by a public announcement on YouTube, and a number of parties are using reality television shows to gain traction with younger voters.

There is a high level of public financing given to political parties – an estimated 130 million EUR per year to all parties, or approximately 27 EUR per registered voter.² Parties are reimbursed for campaign expenses involving party lists, but are not reimbursed for presidential election campaigns.

² Interview with Hubert Sickinger, Deputy President of the Advisory Council of Transparency International.

There are currently no limits on campaign expenditures, party expenditures, or on donations. Reporting for presidential campaigns is not required beyond the regular reporting for political parties; campaign expenditures for parties running in the presidential campaign are included as part of regular political party reporting. Political party reporting for income includes one report annually listing total contributions to the party, which is made public, and a second report that is submitted to the president of the Court of Audit identifying all campaign donations above 7,260 EUR. This second report is not publicly released, thus reducing transparency. Auditing of expenditures is conducted by auditors selected from a list of names provided by the party. In the case of independent campaigns, the requirements are different, with obligation to report donations to tax authorities, although it is somewhat less restrictive for reporting individual donations with a higher threshold for reporting. Sanctions appear limited, focusing on the submission of reports rather than on the correctness of information, and then only including the possibility to withhold future political party funding until reporting is filed.

G. MEDIA

Austria has pluralistic media environment, with three main national-level television channels and a number of radio and print outlets providing news programming. The public broadcaster (Austrian Broadcasting Corporation, ORF) is the television channel with the largest market share, followed by the privately-owned ATV and Puls4. German television channels also have a large viewership.

Although interlocutors met by the OSCE/ODIHR NAM explained that most Austrians receive their news from television, newspapers remain very popular. Austria is one of the few countries in Europe which have seen print runs increase in recent years. The largest newspaper, Kronen Zeitung, has a daily print run of some 2.5 million copies and around 800,000 subscribers. The three largest newspapers are Kronen Zeitung, Österreich, and Kurier and cover political developments. With smaller print runs, Der Standard and Die Presse cover the center-left and center-right (respectively) with more substantive content. Regional newspapers are also popular in most states as are weekly magazines, such as Profil and Format.

Self-regulation applies to the coverage of the campaign and political parties by the media. ORF Television explained their election coverage plans, which include debates, individual interviews and reporting on campaign events. Other than reporting on newsworthy campaigning, ORF will air no election related media events in the last week before the election. The public broadcaster is not allowed to sell any political advertising.

ORF explained to the OSCE/ODIHR NAM that it provides balanced and equitable campaign coverage, although there is no formal monitoring of coverage by ORF or an independent body. New legislation is currently being discussed that could change this. Following an investigation from the European Commission into ORF regarding its financing regime, the public broadcaster has agreed to clarify ORF's public service mandate and create a new media authority to supervise its implementation. It is not clear if this would relate to elections, however.

IV. CONCLUSION AND RECOMMENDATION

Elections in Austria appear to enjoy a high level of support and trust among all stakeholders and include effective checks and balances. Furthermore, all interlocutors welcomed the presence of observers but highlighted that the presidential election is likely to be a relatively calm campaign. However, the OSCE/ODIHR has never followed an election process in Austria. In this context and given the findings noted in this report, including the recent amendments to election legislation, most notably that allowing for international election observation and the widely unregulated system for campaign finance, the election process could benefit from an independent review. For these reasons, the OSCE/ODIHR NAM recommends to deploy an Election Assessment Mission for the presidential election scheduled for 25 April to review the legal and administrative framework as well as electoral practices.

ANNEX: LIST OF MEETINGS

Federal Ministry for European and International Affairs

Brigitta Blaha, Director of the Department for Austrians Abroad
Bernhard Faustenhammer, Deputy Head of Division
Harald Kotschy, Minister Plenipotentiary, Head of the Unit for Council of Europe and OSCE/Human Dimension

Federal Ministry of Interior

Robert Stein, Head of Department, Electoral Affairs
Gregor Wenda, Deputy Head of Department, Electoral Affairs

Provincial Election Board for Vienna

Christine Bachofner, Head of the Secretariat

Constitutional Court

Helmut Hörtenhuber, Member of the Constitutional Court
Britta Wagner, Secretary General of the Constitutional Court

Freedom Party of Austria (FPÖ)

Peter Fichtenbauer, Head of the FPÖ Parliamentary Club, Member of the Federal Election Board

Austrian People's Party (ÖVP)

Stefan Steiner, Head of Political Department
Patrick Voller, Director for European and International Affairs

The Green Party

Ulrich Habsburg-Lothringen, Declared Presidential Candidate

Heinz Fischer Campaign

Stefan Bachleitner, Campaign Manager

Austrian Broadcasting Corporation (ORF), Radio and Television

Karl Amon, Editor in Chief
Stefan Ströbitzer, Head of Information of ORF2

Die Presse

Michael Prüller, Deputy Editor in Chief

Transparency International – Austrian Chapter

Hubert Sickinger, Deputy President of Advisory Council, Expert on Campaign Finance