



Office for Democratic Institutions and Human Rights

CZECH REPUBLIC

PARLIAMENTARY ELECTIONS

28-29 MAY 2010

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

22-25 MARCH 2010



Warsaw
16 April 2010

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I. INTRODUCTION

In line with its methodology, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Prague from 22 to 25 March 2010 in anticipation of an official invitation to observe the parliamentary elections scheduled from 28 to 29 May 2010. The OSCE/ODIHR NAM included Ms. Lusine Badalyan, OSCE/ODIHR Election Adviser and Mr. Konrad Olszewski, OSCE/ODIHR Senior Election Expert. On 31 March 2010 on behalf of the Czech government, the Permanent Mission of the Czech Republic to the OSCE invited the OSCE/ODIHR to observe the forthcoming elections.

The purpose of the OSCE/ODIHR NAM was to assess the pre-election environment and the preparations undertaken for the parliamentary elections, and to make recommendations on a possible OSCE/ODIHR observation activity. The OSCE/ODIHR NAM met with various state officials, the election administration, and representatives of political parties, the media, and civil society. A list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and co-operation in organizing the NAM. The OSCE/ODIHR is also grateful to all interlocutors for having taken the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The Czech parliament is bicameral; it is composed of an 81-members Senate, elected for a six-year term and a 200-member Chamber of Deputies, elected for four years. The members of the Chamber of Deputies are elected under a proportional system with regional lists and preferential voting. Political parties must exceed the national threshold of five per cent to gain seats. From 28 to 29 May, only the Chamber of Deputies will be elected.

In 2009, following a vote of no confidence in the government, parliament was dissolved. This triggered early elections, which were initially scheduled for October 2009. However, the shortening of the chamber's term limit was successfully challenged in the Constitutional Court, which ruled it unconstitutional. Despite subsequent constitutional amendments, early elections did not take place and were finally scheduled shortly before expiry of the parliamentary term.

The legal framework governing parliamentary elections comprises the constitution, the election law and a number of other legal acts. Most amendments made to the election law since 2002 have been technical, with the exception of increasing the number of preferential votes from two to four.

The parliamentary elections are administered by a number of different institutions, including the State Election Commission (SEC), the Ministry of Interior, the Ministry of Foreign Affairs, the Czech Statistical Office, district offices located in each electoral constituency, municipal offices, mayors and polling station commissions. The SEC, headed by the Minister of Interior

and composed of representatives of different state institutions, co-ordinates the preparation and organization of the elections. There is no centralized voter register and municipal offices are responsible for voter registration. The Law on Protection of Personal Data does not provide for the voter register to be posted for public scrutiny, although each voter has the possibility to check the accuracy of his/her data.

All political parties and movements registered in the country can nominate candidate lists for the parliamentary elections. Candidate lists may be registered in 14 multi-member electoral constituencies that coincide with the territorial-administrative division of the country (regions). Political parties must pay an electoral contribution in the amount of CZK 15,000 (about EUR 600) for each candidate list nominated in an electoral constituency. Individual candidates cannot stand for the lower chamber, which is not in line with OSCE commitments.

Political parties can campaign at any time and there is no campaign silence period before or on election day. The only restrictions are that parties cannot campaign in or around polling stations on election day, that public television and radio stop broadcasting free campaign spots two days prior to election day and that there is a ban on publishing opinion polls in the last three days before an election.

Political parties may receive revenue from a wide range of sources, including from the state, membership fees, donations, rents, loans and credits. There is no campaign expenditure limit. Some OSCE/ODIHR NAM interlocutors stated that campaign financing would benefit from more transparency. There is no requirement to report on campaign finances during or after an election. Political parties submit an annual financial report to parliament. Campaign expenditures are included in these reports as a separate line item, without any detailed breakdown of income or expenditure. Political party reports, thus, do not sufficiently disclose how campaigns are financed and there is no independent control of party and campaign financing.

The Czech Republic has a pluralistic media environment with a wide variety of commercial and public broadcasters, as well as print media. According to the election law, public television and radio should allocate 14 hours of free airtime to political parties running for the elections and this time should be divided equally among the parties. The use of paid political advertisement is prohibited in the electronic media, both public and private, and broadcast media covers the election campaign through debates, interviews, news and other political programs. The print media, in contrast, face no restriction during a campaign period and can provide paid political advertisement.

Despite the fact that specific issues such as party and campaign finance were raised that could be improved through legal amendment, the OSCE/ODIHR noted a profound confidence of political parties in the integrity of the electoral process and in the professionalism and impartiality of the election administration. No significant concerns were expressed related to the functioning of democratic institutions, the respect for fundamental freedoms, the transparency of the electoral process, candidate registration, the campaign environment, media access and election day proceedings. As an OSCE/ODIHR observation activity would not add significant value to the electoral process, the OSCE/ODIHR NAM does not recommend an election-related activity for the 2010 parliamentary elections. The OSCE/ODIHR would, however, like to reiterate that all recommendations made in previous OSCE/ODIHR reports are still current. The OSCE/ODIHR, therefore, stands ready to engage with the Czech authorities in a follow-up process and to assist them in addressing these outstanding recommendations.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The constitution establishes a bicameral parliament. It is composed of an 81-members Senate, elected for a six-year term and a 200-member Chamber of Deputies, elected for four years. The President of the Republic is elected indirectly by the parliament for five-year terms and has limited specific powers. From 28 to 29 May only the Chamber of Deputies will be elected.

Five political parties won parliamentary seats during the elections that took place on 2 and 3 June 2006. The composition of the lower chamber did not allow for a rapid formation of a government coalition. The mandates were evenly distributed between two potential coalitions. On the one hand, the Civic Democratic Party (ODS), the Christian and Democratic Union – Czechoslovak People’s Party (KDU-ČSL) and the Green Party won 100 seats. The other half was gained by the Czech Social Democratic Party (ČSSD) and the Communist Party of Bohemia and Moravia (KSČM). Finally, ODS, KDU-ČSL and Green Party formed a governing coalition in January 2007, with Mirek Topolánek as Prime Minister.

On 24 March 2009, after four earlier attempts, the opposition ČSSD and KSČM passed a vote of no confidence in Topolánek's government. Consequently, ČSSD and ODS agreed to dissolve the parliament immediately and to hold early parliamentary elections in October 2009. They also formed an interim government of non-party affiliated experts, with half nominated by ČSSD and half by the coalition of ODS, KDU-ČSL and the Green party. However, a member of parliament filed a complaint with the Constitutional Court, challenging the law on shortening the term of the Chamber of Deputies.¹ He argued that *ad hoc* amendment of the constitution violated his right to be elected, as due to the shortening of parliament’s term he could not execute his post for the full four years. The Court ruled in favour of the complainant and invalidated the election date. As a consequence, the parliament adopted a permanent constitutional amendment to simplify the procedure of calling early elections and hence overcome the Court’s ruling.

However, in a surprise move the ČSSD announced that it would not vote in favour of the dissolution of the parliament. The ČSSD explained to the OSCE/ODIHR NAM that they feared that a new challenge to the Constitutional Court could have called the legality of the election into question. Thus, the elections were at the end scheduled at the regular date.

Besides the current parliamentary parties, several newly founded parties are also contesting these elections. These are TOP 09, which was founded in 2009 as a right-wing split from the KDU-ČSL, and Public Affairs party (VV), a local party in Prague founded in 2001, which emerged as national party in 2009.

The OSCE/ODIHR observed the parliamentary elections in the Czech Republic in 1998 and 2002.² It concluded that 2002 parliamentary elections met international standards and OSCE commitments for democratic elections. The OSCE/ODIHR also provided a number of recommendations in its final report, which set out ways in which the election process could be further improved.

¹ The constitution was temporarily amended to allow holding early elections.

² Reports of the OSCE/ODIHR Election Observation Missions to the Czech Republic are available at: <http://www.osce.org/odihr-elections/14460.html>.

B. LEGISLATIVE FRAMEWORK AND ELECTORAL SYSTEM

The legal framework governing the parliamentary elections comprises the constitution, adopted in December 1992 as well as the Law on Elections to the Parliament and on the Amendments of Certain Other Laws (hereinafter, election law), passed in September 1995 and last amended in 2009. These laws combined with a number of other acts form the legal framework for elections. The OSCE/ODIHR NAM was informed that the Ministry of Interior submitted a list of amendments for the parliament's consideration; however most substantial amendments were not adopted. The amendments to the election law since 2002 have been rather technical with the exception the increase of the number of preferential votes from two to four (see below).

The senate is elected on the basis of a majoritarian system from single-member constituencies, and the Chamber of Deputies is elected under a proportional system based on regional lists, with a preferential element. Political parties have to surpass a 5 per cent threshold to enter parliament while coalitions of two parties have to gather 10 per cent of the vote and coalitions of three parties 15 per cent.

The 14 electoral constituencies coincide with the 14 regions of the country. Voters choose a candidate list from among the party lists registered in a given region. The voters may also indicate preferences for particular candidates on the list they choose. Previously, voters could indicate two preferences while they can choose four candidates. Candidates who get at least five per cent of preferential votes on a party list have priority in obtaining a mandate.³ If the number of preferences indicated by the voters is too low, mandates will be allocated according to the order of candidates on the lists.

The number of mandates that has to be distributed in each region is not fixed and is calculated only after the elections by a formula stipulated by the election law, based on the total number of votes cast. Mandates are distributed according to the D'Hondt formula in each region, but only to those lists that overcome the five per cent threshold nationally.

The election law does not include a provision for national or international observation of the election procedures, which is not in line with the OSCE Copenhagen Document. However, the State Election Commission (SEC) has adopted a regulation that provides for international observers indicating that the Ministry of Interior is the body which can accredit observers.

C. ELECTION ADMINISTRATION

The parliamentary elections are administered by a number of different institutions, including the SEC, the Ministry of Interior, the Ministry of Foreign Affairs (MFA), the Statistical Office (CSO), district offices located in each electoral constituency, municipal offices, mayors and polling station commissions (PSC).⁴

On the top of the election administration structure is the SEC, which is composed of ten members appointed by different state institutions responsible for the organization of the elections. The SEC, headed by the Minister of Interior, co-ordinates the preparation and organization of the elections and oversees the implementation of election legislation. The SEC

³ For previous elections this number of valid votes was seven per cent.

⁴ A number of other Ministries participate in the process: the Ministry of Justice, the Ministry of Health, Ministry of Labour and Social Affairs, Ministry of Defense and Ministry of Finance.

is meeting on *ad hoc* basis and those meetings are not open for the public, thus limiting the transparency of its work.

The Ministry of Interior provides guidelines for the preparation and technical aspects of the organization of elections.

The next level of election commissions are the PSCs, which organize and conduct opening, voting and counting in the polling stations. The PSCs are made up of political party representatives. Political parties, movements and coalitions running in the elections may nominate one member and one substitute to each PSC. In case when parties do not nominate the required number of members, the mayor must appoint commission members.⁵

The CSO is another key institution in the structure of the election administration responsible for the processing and tabulation of election results. The CSO establishes about 500 result-collection points across the country, where the PSCs bring the result protocols.⁶ Those points are staffed mostly by employees of the CSO and the access to them is restricted. The preliminary results are immediately published on Internet, and on the day after election day, the CSO sends the results to the SEC for approval. The law provides for two weeks for challenging the final results of elections.

The OSCE/ODIHR NAM interlocutors expressed full confidence in the professionalism and impartiality of SEC, CSO and other election management bodies. They raised no particular concerns for these elections.

D. REGISTRATION OF VOTERS AND CANDIDATE LISTS

There are approximately 8.3 million registered voters. There is no centralized electronic voter register and municipal offices are responsible for voter registration. Those voters, who are not included in the permanent register such as military personnel, persons in hospitals, detention centres or prisons, are included in the special register. The voter register is not posted for public scrutiny under the Law on Protection of Personal Data, however each voter has the possibility to check his/her data in the register. Voters, whose names are missing from the lists and who can prove their right to vote in a relevant polling station, can also be included in the register on election days. Voters have also the possibility to acquire an absentee voting certificate, which will enable him or her to vote at any polling station on election days. Voters shall apply in person and a relevant note is made in the voter list as a safeguard against possible multiple voting.

The OSCE/ODIHR NAM was informed that there will be 108 polling stations established abroad providing the possibility for Czech citizens to vote at embassies and consulates. The voter register compiled abroad should be closed 40 days before election day and all embassies should send the registers to the MFA. All out-of-country votes are cast for one particular electoral constituency, which is decided by lot.⁷

⁵ Each PSC must have at least five members; in polling stations where the number of voters does not exceed 300 the commission may be composed of four members.

⁶ Each point is responsible for about 30 polling stations.

⁷ For these elections it will be the region of Southern Bohemia.

All political parties and movements registered in the country can nominate candidate lists for parliamentary elections.⁸ Political parties must pay an electoral contribution in the amount of CZK 15,000 (about EUR 600) for each candidate list in each electoral constituency where the party nominates a candidate list. This fee is not refundable and is transferred to the state budget.⁹

Twenty seven political parties, movements and coalitions submitted candidate lists for registration.¹⁰ Fifteen parties did that in all 14 electoral constituencies. Individual candidates cannot run for the elections to the lower chamber of the parliament, which is not in line with paragraph 7.5 of the OSCE Copenhagen Document.¹¹

E. CAMPAIGN AND POLITICAL PARTY FINANCING

The election law stipulates that the election campaign must be organized with ‘honesty’ and ‘integrity’. It is prohibited to publish any false information regarding candidates and political parties. There is no official start of the campaign and parties can start campaigning any time. Public television and radio have to stop broadcasting free campaign spots two days before the elections. Otherwise, there is no campaign silence period before or on election days. The only restrictions are as follows: 1) parties cannot campaign in polling stations and their vicinities on election days; and 2) there is a ban on publishing opinion polls in the last three days before the elections and on election days before the close of polling stations.

Despite the fact that political parties started campaigning in autumn 2009 for the early elections and spent a lot of funds, all parties met informed the OSCE/ODIHR NAM that they were planning to campaign actively, mostly using personal meetings with voters, the media and leaflets. At the time of the OSCE/ODIHR NAM, outdoor campaigning in the form of billboards or posters was not visible in Prague.

There are no limits on campaign expenditure. Political parties may receive revenues from a wide range of sources, such as contribution from the state, membership fees, donations, rentals, interests, loans and credits. The financing of political parties is regulated by the Act on Association in Political Parties and Movements. Parties may receive state funding under certain conditions:

- Each political party and movement that wins at least 3 per cent of the national votes in the elections is entitled to receive a permanent annual contribution of CZK 6 million (about EUR 240,000) plus CZK 200,000 (about EUR 8,000) for every 0.1 per cent up to 5 per cent. No additional sum is paid to political parties and movements that acquire more than 5 per cent of the overall amount of votes;
- After the elections, each political party that won at least 1.5 per cent of the total number of valid votes nationally receives CZK 100 (about EUR 4) for each vote received;
- Each political party is entitled to receive a yearly contribution for each elected member of parliament amounting to CZK 900,000 (about EUR 36,000).

⁸ The Ministry of Interior informed the OSCE/ODIHR NAM that about 60 parties and movements are registered in the Czech Republic.

⁹ The contribution is returned to the political party only in case when its candidate list was not registered.

¹⁰ 26 parties were registered to run for the parliamentary elections.

¹¹ In Paragraph 7.5 of the OSCE Copenhagen Document OSCE participating States commit to “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.

Besides state funding parties also are allowed to receive private contributions. The law defines some limitations on private donations: state legal entities, legal entities owned by municipalities,¹² charity organizations, foreign legal entities or foreign citizens can not make donations.¹³

Parties are required to submit an annual financial report to the parliament by 1 April each year. In case of incomplete reporting or failure to present a report the activities of the party can be suspended or it can be dissolved. The financial reports are considered public documents, however most political parties do not post this information on their website or make it public otherwise.¹⁴

Some OSCE/ODIHR NAM interlocutors stated that campaign financing would benefit from more transparency and oversight. There is no reporting on campaign financing during or after election days. The campaign expenditure is included in the general annual financial report of the party as a separate line without any detailed breakdown of incomes and expenditures of the campaign. According to the Czech chapter of Transparency International, reports presented by political parties do not provide sufficient details on how they are financed because of inadequate disclosure requirements. In addition, there is no sufficient and independent control of party and campaign financing.

F. MEDIA

The Czech Republic has a pluralistic media environment with a wide variety of commercial and public broadcasters, print and electronic media. The main television channels include the public broadcasting corporation *Česká Televize (ČT)* and two private broadcasters with high viewership *Nova* and *Prima*. *ČT* is the public service broadcaster in the Czech Republic and has four channels: *ČT1*, *ČT2*, a news channel *ČT24* and a sports channel *ČT 4 Sport*.¹⁵ In addition, six public radio stations are broadcast across the Czech Republic and there are many other private television and radio stations broadcasting at the national, regional and local levels.

There is also a diversity of print media in the Czech Republic. The tabloid *Blesk* has the largest readership with a circulation of up to 430,000 daily copies. *Mladá fronta Dnes* is the second largest daily paper with a circulation of 290,000 copies. Another popular newspaper is *Právo*, which politically is close to Czech social democrats, with a circulation of 165,000 copies.¹⁶

The legal framework regulating the activities of media during the electoral campaign is composed of several laws; among those are the election law, the Broadcasting Act, Electronic Communications Act, Czech Television Act, and Czech Radio Act.

According to the election law, public television and radio should allocate 14 hours of free airtime to political parties running for elections and this time should be divided equally among all competing parties. The broadcasting time is decided by lot and parties are responsible for the content of the spots. The use of political paid advertisement is prohibited in the electronic media, both public and private, and media is covering election campaign through debates,

¹² This provision shall not apply if the share of the state, a state enterprise or municipality in legal entities does not exceed 10 per cent.

¹³ Except for foreign nationals having permanent residence in the Czech Republic.

¹⁴ According to the information provided by Transparency International during the OSCE/ODIHR NAM.

¹⁵ The last two channels are only digitally available.

¹⁶ The latest circulation data are available at <http://www.uvdt.cz/>.

interviews, news and other political programs. The print media, in contrast, have nearly no restrictions during the campaign period and can offer paid political advertisement.

Both public television *ČT* and public radio informed the OSCE/ODIHR NAM that they invite to pre-election debates those parties that have more than five per cent support.¹⁷ *ČT* is planning to organize one debate for each of the 14 regions and at the end of the campaign a national debate between the two frontrunners according to opinion polls.¹⁸

The Council for Radio and Television Broadcasting is a regulatory and oversight body for electronic media. It supervises the maintenance of plurality of programs and information provided by radio and television and shall ensure the independence of its content. Other regulatory bodies are the Council of Czech Television and the Council of Czech Radio, which oversee the operations of television and radio respectively.

G. PARTICIPATION OF NATIONAL MINORITIES

According to the 2001 census, the vast majority of population is Czech (94.24 per cent). The most numerous minorities are: Slovaks, Poles, Germans, and Ukrainians. Based on official census data 11,746 people identify themselves as Roma.¹⁹ However, according to some estimates that figure is about 200,000 - 250,000.

The European Commission on Racism and Intolerance (ECRI) of the Council of Europe in its fourth monitoring cycle report adopted in April 2009 mentions that “anti-Roma hate speech has become an increasingly regular feature of public discourse in the Czech Republic”.²⁰ On 4 March 2010, UN High Commissioner for Human Rights indicated that the situation of Roma in the Czech Republic was deteriorating.²¹

In February 2010, the Supreme Administrative Court ruled in favour of the government’s proposal to ban the far-right Workers Party on the grounds that it spreads xenophobia and racial hatred. The court reached the conclusion that the party’s program was not compatible with the constitution, where human rights are guaranteed.

IV. CONCLUSION AND RECOMMENDATION

Despite the fact that specific issues such as party and campaign finance were raised that could be improved through legal amendment, the OSCE/ODIHR noted a profound confidence of political parties in the integrity of the electoral process and in the professionalism and impartiality of the election administration. No significant concerns were expressed related to the functioning of democratic institutions, the respect for fundamental freedoms, the transparency of the electoral process, candidate registration, the campaign environment, media

¹⁷ Both public television and public radio order opinion polls to make such decisions.

¹⁸ At the moment of conducting the OSCE/ODIHR NAM, *ČT* organized five debates, and nine parties participated in those debates.

¹⁹ Data available at the webpage of Czech Statistical Office at:

http://www.czso.cz/eng/redakce.nsf/i/basic_final_results_of_the_population_and_housing_census_2001.

²⁰ ECRI’s report can be found at:

http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf.

²¹ See the statement at <http://www.unmultimedia.org/radio/english/detail/91690.html>.

access and election day proceedings. As an OSCE/ODIHR observation activity would not add significant value to the electoral process, the OSCE/ODIHR NAM does not recommend an election-related activity for the 2010 parliamentary elections. The OSCE/ODIHR would, however, like to reiterate that all recommendations made in previous OSCE/ODIHR reports are still current. The OSCE/ODIHR, therefore, stands ready to engage with the Czech authorities in a follow-up process and to assist them in addressing these outstanding recommendations.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Mr. Hynek Kmoníček, Deputy Minister of Foreign Affairs and member of the State Election Commission

Mr. Ivan Počuch, Head of Security Policy Department, Ministry of Foreign Affairs

Mr. Tomáš Jadlovský, OSCE Desk Officer

Ms. Silvia Šimkovičová, Head of the Working Group of the Consular Department

Ministry of Interior

Ms. Jitka Červenková, Head of the Election Section

Ms. Hana Egersdorfová, Expert Assistant

Czech Statistical Office

Mr. Stanislav Drápal, Deputy Head of the Czech Statistical Office

Mr. Pavel Kuklík, Head of the Freestanding Department for Processing of Election Results

Civic Democratic Party (ODS)

Mr. Jakub Kajzler, Head of International Department

Communist Party of Bohemia and Moravia (KSČM)

Mrs. Věra Žežulková, Deputy Chairperson

Mr. Petr Šimunek, Head of the Media Policy and Election Preparation Department

Czech Socialist Democratic Party (CSSD)

Mr. Jan Hamáček, Chairman of the Foreign Affairs Committee of the Chamber of Deputies

Public Affairs Party (VV)

Mrs. Karolína Peake, Deputy Chairperson

Ms. Kristina Kočí, Assistant

Czech Public Radio

Mr. Tomáš Pancir, Head of the Domestic News Editor's Office

Czech Public Television

Mr. Milan Fridrich, Head of News Desk

Ms. Pavlína Kvapilová, Moderator

Mr. Václav Moravec, Presenter

Dženo Association

Mr. Ivan Veselý, Executive Director

Transparency International

Mr. David Ondračka, Director

Mrs. Eliška Císařová, Project Co-ordinator