



Office for Democratic Institutions and Human Rights

PORTUGAL

PARLIAMENTARY ELECTIONS

4 October 2015

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

3-4 September 2015



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the authorities of Portugal to observe the 4 October parliamentary elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Portugal from 3 to 4 September. The NAM included Dr. Beata Martin-Rozumiłowicz, Head of the OSCE/ODIHR Election Department, and Mr. Alexander Shlyk, Deputy Head of the OSCE/ODIHR Election Department.

The purpose of the mission was to assess the pre-election environment and the preparations for the elections. Based on this assessment, the NAM recommends whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as with representatives of political parties, media, and civil society. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for its assistance in organizing the visit. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the mission and to share their views.

II. EXECUTIVE SUMMARY

On 21 July, following consultations with political parties, the President of Portugal scheduled the parliamentary elections for 4 October. Voters will elect all 230 members of the parliament by proportional representation from 22 multi-member regional constituencies. A number of OSCE/ODIHR NAM interlocutors noted that a discussion on the possible reform of the electoral system may be held after the upcoming elections, but pointed out that amending relevant constitutional provisions may be difficult.

The election law has been amended several times since the last elections assessed by the OSCE/ODIHR in 2009, mostly with regard to the technical aspects of the conduct of elections. A number of the OSCE/ODIHR NAM interlocutors noted the importance of the amendments concerning the media coverage of the campaign, introduced in July 2015.

These elections will be conducted by a three-tiered election administration. The National Election Committee (NEC) is vested with the responsibility for general oversight of the election process and ensuring equal treatment of all voters and contestants. The primary responsibility of the Tabulation Centre Commissions is to tabulate the results in the constituencies and to allocate the mandates to the respective candidates. Some 12,000 Precinct Election Commissions are responsible for the conduct of voting and counting of ballots in polling stations. The Directorate General for Internal Affairs of the Ministry of Interior, as well as 22 Civil Governor Offices, 308 municipalities and 3,091 parishes, plays a significant logistical and administrative role. All OSCE/ODIHR NAM interlocutors expressed trust in the professionalism and effectiveness of election administration.

Citizens who are 18 years of age or older on election day are eligible to vote, with the exception of those whose suffrage rights have been withdrawn by a court decision as part of sentencing for a crime or for reasons of mental incapacity. Voter register is linked to a national population registration database. The OSCE/ODIHR NAM was informed that nearly all citizens have been issued national ID cards since the 2009 elections, which contributes to the ability of the electoral administration to avoid duplicate entries in the voter register.

Citizens with voting rights are also eligible to stand as candidates, with the exception of certain high officials. Only political parties can register candidate lists, and citizens cannot stand as candidates individually or as groups of independent candidates, contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document.

Political parties that the OSCE/ODIHR NAM met with welcomed the 33 per cent gender quota for the candidate lists (including a provision that specifies that at least every third candidate on the list should be of a different gender) and noted that they do not experience difficulties with nominating women as candidates.

OSCE/ODIHR NAM interlocutors expected the campaign to focus on economic issues, and to be conducted through door-to-door canvassing and outdoor meetings with voters. Media is expected to play a significant role as an avenue of outreach to voters. None of the OSCE/ODIHR NAM interlocutors expected any significant problems to arise with regard to the ability of electoral contestants to campaign freely and on a level playing field.

The law outlines possible sources of funds to be used for campaign expenditure, caps campaign-related expenses and donations to the political parties from physical and legal persons. Political parties that meet specific legal conditions are entitled to receive a state subsidy that aims to refund costs incurred during the campaign, as well as annual state financial support. The law obliges parties to submit their campaign accounts after publication of election results, and their yearly financial reports to the Constitutional Court. OSCE/ODIHR NAM interlocutors acknowledged and welcomed the rigour and fairness with which the 'Entity for Political Financing' (*Entidade das Contas e Financiamentos Políticos* – ECFP) performs its political and campaign finance oversight duties.

Parties presenting candidate lists for parliamentary elections are entitled to free airtime on both public and private television and radio stations. The newly adopted law on coverage of the election campaign in the media aims to establish a balance between the requirement for equitable coverage of all electoral contestants and the editorial freedom of media outlets. OSCE/ODIHR NAM interlocutors noted that possible issues with regard to the implementation of this law during the upcoming elections remain to be evaluated.

Complaints are generally submitted to the NEC, or the PECs on election day, with the possibility of eventual appeal to the Constitutional Court, whose decisions are final. OSCE/ODIHR NAM interlocutors did not expect many complaints to be filed during the upcoming elections. In general, they evaluated the electoral dispute resolution system as efficient and transparent.

All interlocutors expressed a high level of confidence in all aspects of the electoral process. Apart from the newly introduced legislation on media coverage of the elections, no new issues have been identified pertaining to the conduct of elections that would benefit from a repeated assessment by the OSCE/ODIHR. Based on this, the OSCE/ODIHR NAM does not recommend deploying an election-related activity for the upcoming early parliamentary elections. However, the OSCE/ODIHR encourages the authorities of Portugal to consider the issues raised by interlocutors in discussions with the OSCE/ODIHR NAM, as well as the previous

recommendations of the OSCE/ODIHR, many of which remain unaddressed. The OSCE/ODIHR stands ready to offer its assistance upon request in a post-election follow-up process.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

On 21 July, following consultations with political parties, the President of Portugal scheduled the parliamentary elections for 4 October. Voters will elect all 230 members of the parliament.

The election law has been amended several times since the last elections assessed by the OSCE/ODIHR in 2009.¹ Despite a previous recommendation of the OSCE/ODIHR to consider consolidating the electoral legal framework, the election law continues to be supplemented by a multitude of other laws that regulate specific aspects of the electoral process.

In the previous elections, held on 5 June 2011, the centre-right Social Democratic Party (PSD) gained 38.7 per cent of the votes (108 seats) and formed a coalition government with the People's Party (CDS-PP) which obtained 11.7 per cent of the votes (24 seats). The main opposition party is the centre-left Socialist Party (PS), which gained 28.1 per cent of the votes in 2011 (74 seats). The coalition of the Communist Party and the Green Party, jointly known as the Democratic Unity Alliance (CDU) garnered 7.9 per cent (16 seats), and the Left Bloc – 4.6 per cent (8 seats). There are 24 active political parties.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Members of parliament are elected by proportional representation from 22 multi-member regional constituencies, including two constituencies for the autonomous regions of Madeira and the Azores islands, as well as two constituencies for the voters residing in Europe and elsewhere, respectively. Seats are allocated to constituencies on the basis of the number of voters registered in each one and range from 2 in Portoalegre and the two out-of-country constituencies to 47 in Lisbon. While there is no formal threshold for parties to obtain seats in parliament, natural thresholds apply in each constituency. A number of OSCE/ODIHR NAM interlocutors noted that a discussion on the possible reform of the electoral system may be held after the upcoming elections, but pointed out that amending relevant constitutional provisions may be difficult.

Parliamentary elections are primarily governed by the Constitution of 1976 and the Law on Parliamentary Elections (the election law) adopted in 1979. Despite a previous recommendation of the OSCE/ODIHR to consider consolidating the electoral legal framework, the election law continues to be supplemented by a multitude of other laws that regulate specific aspects of the electoral process. These include the law on political parties, the law on funding of political parties (including campaign finance), the law on the right of assembly, the law on media coverage of elections, the law on the National Election Commission, the law on out-of-country voting, the law on the format of political campaign, and the law on opinion polls.

The election law has been amended several times since the last elections assessed by the OSCE/ODIHR in 2009. Specifically, the 2010 amendments to the election law extended and harmonized the categories of voters residing abroad eligible to cast their ballots early in the parliamentary elections. In 2011, a limited number of technical amendments were introduced into

¹ All OSCE/ODIHR election-related reports on Portugal can be found at: <http://www.osce.org/odihr/elections/portugal>.

the election law, primarily concerning the conduct of campaign and the modalities of operation of the election administration. OSCE/ODIHR NAM interlocutors highlighted that the implementation of these amendments in the elections since their adoption (2011 parliamentary election, 2013 local elections and 2014 European Parliament elections) did not present any difficulties.

A number of the OSCE/ODIHR NAM interlocutors noted the importance of the amendments concerning the media coverage of the campaign (see Media section below). These were introduced through Law No. 72-A, which entered into force on 23 July 2015 shortly before the upcoming elections, contrary to the international good practice.² Technical amendments introduced to the election law in August 2015 resulted from the reform of the judicial system.

While candidates or party agents are entitled to be present at polling stations and to follow election-day procedures, despite the previous recommendation of the OSCE/ODIHR, the election law does not explicitly provide for international or domestic non-party election observers. This is at odds with paragraph 8 of the 1990 OSCE Copenhagen Document.

C. ELECTION ADMINISTRATION

These elections will be conducted by a three-tiered election administration: the National Election Committee (NEC), 22 Tabulation Centre Commissions (TCCs) and some 12,000 Precinct Election Commissions (PECs). All OSCE/ODIHR NAM interlocutors expressed trust in the professionalism and effectiveness of election administration.

The NEC is vested with the responsibility for general oversight of the election process and ensuring equal treatment of all voters and contestants. It is appointed anew by each legislature in the beginning of its term and a Supreme Court judge serves as its chairperson. The other members represent the Ministry of Justice, the Ministry of the Interior (MoI), and the government department responsible for the media, as well as each parliamentary group in the parliament. Thus, the total number of NEC members varies from one legislative term to another.

The NEC ensures that public and private broadcasters remain impartial during election campaigns. In this task, it is assisted during the official campaign by the Regulatory Authority for the Media (ERC) and also conducts its own media monitoring. The NEC is also responsible for voter education and publishing final results received from the MoI.

The middle level of election administration comprises the 22 TCCs, one per constituency. Each TCC has 12 members and is chaired by a judge of the judicial district that has its headquarters in the capital of the constituency or, in the case of Lisbon and Porto, by the judge of the corresponding Civil Court. The other members comprise two lawyers selected by the chairperson, two mathematicians appointed by the Ministry of Education and Culture, or, in the autonomous regions of the Azores and Madeira, by the Minister of the Republic. The other members are six chief electoral officers of polling stations in the constituency, who are appointed by the district court headquartered in the capital of the constituency. Each TCC also has a non-voting chief legal clerk who serves as a secretary. The primary responsibility of each TCC is to tabulate the results in the constituencies and to allocate the mandates to the respective candidates.

Some 12,000 PECs are responsible for the conduct of voting and counting of ballots in polling stations. Delimitation of precincts is determined by the mayor of each parish where these are

² The [Code of Good Practice in Electoral Matters](#) of the Venice Commission of the Council of Europe states that “the fundamental elements of electoral law ... should not be open to amendments less than one year before an election”, see point II.2.b.

established, and any two voters can appeal the mayor's decision to the district court. Each PEC consists of five people (a chairperson, his/her deputy, and three members), all from the locality where the polling station is located and appointed by the mayor. The PECs are also joined by the representatives of the electoral contestants appointed by the mayor of the locality. The mayor also has the possibility to appoint voters residing in the area covered by the PEC to ensure that the number of PEC members is sufficient for it to carry out its duties. While serving as a PEC member is compulsory for all citizens, the law allows some categories of citizen, such the elderly, sick or those living abroad, to opt out.

The MoI Directorate General for Internal Affairs, as well as 22 Civil Governor Offices, 308 municipalities and 3,091 parishes, plays a significant logistical and administrative role.³ The parish administration is responsible for convening the political parties contesting the elections in the given constituency to appoint PEC members. The OSCE/ODIHR NAM was also informed that, at times, mayors demonstrate political bias, which the NEC addresses through its decisions on complaints from voters or electoral contestants.

Ballot papers are first counted at the PECs, and then transferred to the TCCs who verify the protocols and tabulate the results. Preliminary results are compiled by the MoI based on the data it receives from the TCCs on election night, and official results are only released once all the relevant written protocols have been verified and approved by the TCCs. The NEC has 10 days to publish the final results of the elections.

D. VOTER REGISTRATION

Citizens who are 18 years of age or older on election day are eligible to vote, with the exception of those whose suffrage rights have been withdrawn by a court decision as part of sentencing for a crime or for reasons of mental incapacity. Despite a previous recommendation by the OSCE/ODIHR, and contrary to the UN Convention on the Rights of Persons with Disabilities, citizens can also be disenfranchised if they are "clearly acknowledged to be demented".⁴

Voter register is linked to a national population registration database. The OSCE/ODIHR NAM was informed that nearly all citizens have been issued national ID cards since the 2009 elections, which contributes to the ability of the electoral administration to avoid duplicate entries in the voter register. Voter registers are displayed for verification in each parish in March every year, and the citizens also have a possibility to verify their registration as voters and confirm location of their polling stations via Internet or by free SMS. The MoI continuously updates the voter register until 60 days before the elections, and any voter who moves to a new locality after this deadline has to vote in his/her previous place of residence.

Voting abroad in parliamentary elections is possible by post, but requires active registration beforehand at one of 123 diplomatic missions around the world. Some 200,000 expatriates have enrolled on the electoral list in past elections, and approximately 20 per cent of these have exercised their right to vote in parliamentary elections. During the registration period, the MoI receives voters' data from the diplomatic missions and publishes them online; these voter lists close 15 days prior to election day. Before the election, the MoI sends a registered letter to each voter, containing the ballot and an inner and outer envelope, a copy of the voter's registration card,

³ Administrative reform in 2013 resulted in a decrease of the number of parishes from the previous figure of 4,260.

⁴ See Article 2.b of the election law. Article 29 of the [UN Convention on the Rights of Persons with Disabilities](#) contains an obligation to "ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected...."

as well as information on how and when to return the ballot. The ballot must be mailed by post on or before election day.

E. CANDIDATE REGISTRATION

Citizens with voting rights are also eligible to stand as candidates, with the exception of certain high officials, such as the President of the Republic, judges, members of the NEC, military personnel and serving diplomats. Only political parties can register candidate lists, although candidates they support are not required to be members of the respective parties. Thus, despite previous recommendation of the OSCE/ODIHR, citizens cannot stand candidates individually or as groups of independent candidates, contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document.

The Constitutional Court registers political parties based on the submission of 7,500 supporting signatures and other documents of the prospective party, as well as their electoral coalitions. The Constitutional Court also acts as a final instance of appeal for electoral disputes regarding registration of candidate lists by the courts based in the capitals of respective constituencies. Interlocutors of the OSCE/ODIHR NAM expected 12 contestants, including two coalitions, to register their candidates. Political parties that the OSCE/ODIHR NAM met with welcomed the 33 per cent gender quota for the candidate lists (including a provision that specifies that at least every third candidate on the list should be of a different gender) and noted that they do not experience difficulties with nominating women as candidates.

F. ELECTION CAMPAIGN

The official campaign period is limited to 13 days, during which the rules for media access for electoral contestants and coverage by media of the election campaign apply. Political parties may organize campaign rallies and distribute campaign materials before the official campaign begins. There is a 24-hour campaign silence period before the election day.

OSCE/ODIHR NAM interlocutors expected the campaign to focus on economic issues, primarily employment and social security, and to be conducted through door-to-door canvassing and outdoor meetings with voters. Media is expected to play the most significant role as an avenue of outreach to voters. None of the OSCE/ODIHR NAM interlocutors expected any significant problems to arise with regard to the ability of electoral contestants to campaign freely and on a level playing field.

G. POLITICAL AND CAMPAIGN FINANCE

In accordance with the law on funding of political parties, campaign activities can be financed by the funds received as state subsidies, private donations from physical persons, fundraising for the electoral purposes, and contributions from political parties to the candidates they support. The law provides that expenses incurred during the six months before the elections for the purpose of electoral benefit are counted as campaign-related expenses, and their total amount is capped at 60 national monthly minimum wages (35,340 EUR in 2015) per candidate contesting the elections. Following the elections, political parties that nominated candidates for more than half of the seats in the parliament and won at least one of them are eligible to receive state subsidy which aims to refund the costs incurred during the campaign. Twenty thousand minimum monthly wages (11,780,000 EUR in 2015) will be distributed between all eligible parties, with 20 per cent divided equally between them and the rest proportionately allocated based on electoral results.

In addition to the refund of campaign expenses, annual state financial support is provided to political parties on the basis of the number of votes received by them in previous elections, given that the party has representation in parliament or has garnered at least 50,000 votes in the previous elections. A number of OSCE/ODIHR NAM interlocutors noted that public funding is the major source of income for parliamentary political parties. Private corporations and citizens are allowed to make contributions to political parties up to a limit of 25 minimum monthly wages per year (14,725 EUR in 2015), and foreign nationals are prohibited from making donations. Non-monetary contributions, accounted for on the basis of their current monetary value and loans count toward this limit as well.

The law obliges political parties to submit their campaign accounts within 90 days of publication of election results, and their yearly financial reports by 31 May of the subsequent year, to the Constitutional Court. The 'Entity for Political Financing' (*Entidade das Contas e Financiamentos Políticos* – ECFP), established under the Constitutional Court, has 35 days to audit the campaign accounts and the parties have ten days to respond to requests for clarifications from the ECFP. It has up to six months to verify the yearly reports of the political parties. After receiving the respective auditing reports from the ECFP, the Constitutional Court decides whether the electoral or yearly accounts are compliant with the law. Sanctions for violations of campaign financing provisions include fines and up to three years imprisonment. OSCE/ODIHR NAM interlocutors acknowledged and welcomed the rigour and fairness with which the ECFP performs its political and campaign finance oversight duties.

H. MEDIA

The main Public Broadcaster, *Rádio e Televisão de Portugal* (RTP), has two national channels with country-wide coverage. In addition, it has two cable channels and two regional services for the Azores and Madeira, respectively. There are also two private channels with nation-wide coverage, TVI and SIC. TVI, SIC and RTP are the most influential TV stations with the highest numbers of viewers. There are six nationwide radio stations – three public and three private. All print media outlets are private.

Parties presenting candidate lists for parliamentary elections are entitled to free airtime, on both public and private television and radio stations. Free airtime on nation-wide broadcasters is divided among the political parties and coalitions that contest at least a quarter of the seats in the parliament in at least a quarter of constituencies, proportionately to the number of candidates they put forward. Regional broadcasters divide free airtime equally between all contestants running in the elections in respective constituencies.

Following amendments introduced to the election law in July 2015, legal provisions pertaining to coverage of the election campaign both within and outside the official campaign period, including online, are now contained in the newly adopted Law No. 72-A. As noted by OSCE/ODIHR NAM interlocutors, this law aims to establish a balance between the requirement for equitable coverage of all electoral contestants and the editorial freedom of media outlets. The OSCE/ODIHR NAM was also informed that adoption of this law resulted in a negotiation between three main television stations and the electoral contestants on the modalities of the pre-electoral debates, and specifically the way to include representatives of the two coalitions contesting the elections in these. As no agreement was reached, no debate between all contestants is planned before the upcoming elections and leaders of the two largest parties are expected to debate twice before the elections (once on television and once on the radio). OSCE/ODIHR NAM interlocutors noted that possible issues with regard to the implementation of this law during the upcoming elections remain to be evaluated.

The ERC is the public body vested with responsibility for regulation of the print and broadcast media, as well as the press agencies. It has five members, including four that are appointed by the parliament and select the fifth one, who serves as a chairperson, by themselves. The ERC has a media monitoring unit, which permanently and systematically monitors the main public and private TV channels to ensure compliance with relevant legislation. It also follows radio broadcasts and print media. The OSCE/ODIHR NAM was informed that during the upcoming elections the ERC will monitor compliance of the media outlets with the newly adopted legal provisions. In line with these, representatives of electoral contestants may submit their complaints regarding media coverage to the NEC, who will have 48 hours to forward them to the ERC along with its opinion on the matter. Several interlocutors of the OSCE/ODIHR NAM noted that this deadline may prove too short. The ERC has the authority to issue directives and recommendations that are not, however, legally binding for the media outlets. The ERC can also consider cases on its own initiative and informed the OSCE/ODIHR NAM that it does so occasionally.

I. COMPLAINTS AND APPEALS

Legal provisions with regard to adjudication of electoral disputes are dispersed among different laws and regulations. While the law provides for the possibility of adjudication of some complaints by the NEC, the NEC's own rules of procedure established the right for any citizen or political party to lodge a complaint with the entity. The NEC can issue sanctions for violations of legal provisions on equal treatment of voters or electoral contestants and its decisions can be appealed to the Constitutional Court whose rulings are final. Cases of a criminal nature are referred to the prosecutors and the police for investigation.

On election day, PECs accept complaints and decide on their admissibility and merits by a majority vote of their members. Complaints must be entered into the minutes compiled by the PECs. The TCCs also verify all complaints submitted to the PECs and inform the plaintiff of the ruling. Plaintiffs have the right to appeal the decisions of the TCCs to the Constitutional Court, whose rulings are final.

OSCE/ODIHR NAM interlocutors did not expect many complaints to be filed during the upcoming elections. In general, they evaluated the electoral dispute resolution system as efficient and transparent.

IV. CONCLUSIONS AND RECOMMENDATIONS

All interlocutors expressed a high level of confidence in all aspects of the electoral process. Apart from the newly introduced legislation on media coverage of the elections, no new issues have been identified pertaining to the conduct of elections that would benefit from a repeated assessment by the OSCE/ODIHR. Based on this, the OSCE/ODIHR NAM does not recommend deploying an election-related activity for the upcoming early parliamentary elections. However, the OSCE/ODIHR encourages the authorities of Portugal to consider the issues raised by interlocutors in discussions with the OSCE/ODIHR NAM, as well as the previous recommendations of the OSCE/ODIHR, many of which remain unaddressed. The OSCE/ODIHR stands ready to offer its assistance upon request in a post-election follow-up process.

ANNEX: LIST OF MEETINGS

Officials

Ministry of Foreign Affairs

Miguel Gagliardini Graça, Director for International Political Organizations

Jorge Cruz, Head of the United Nations Unit, Department of International Political Organizations

Alexandra Baptista, OSCE Desk Officer, Department of International Political Organizations

National Election Committee

Fernando da Costa Soares, President

Carla Sofia Franco Luís, Member

João Tiago Machado, Member

João Manuel Rosa de Almeida, Member

Paulo Madeira, Secretary

Ministry of Interior, Directorate General of Internal Affairs

Isabel Miranda Gaspar, Director, Department for Technical Support and Electoral Studies

Sónia Tavares, Head, Legal and Electoral Studies Unit

Jorge Silva, Director, Department for the Management of Electoral Information Systems

Paula Vasco, Head, Electoral Information Systems Unit

Isabel Ramos, Head, Electoral Administration Unit

Office for the Media (ERC)

Marta Carvalho, Director, Legal Department

Joana Pizarro Bravo, Chief of Staff of the Regulatory Body

Constitutional Court

Margarida Pimentel, Director, Legal Information Unit

Political Party Representatives

Social Democratic Party (PSD)

Jorge Braga de Macedo, MP, Chairman of the International Relations Committee

Ricardo Baptista Leite, MP

Sérgio Vieira, Chief of Staff

Socialist Party (PS)

Francisco André, Head, International Affairs Department

Media Representatives

Rádio e Televisão de Portugal (RTP)

Paulo Dantininho, Chief Information Officer

Rosário Salgueiro, Deputy Chief Information Officer

Diário de Notícias Newspaper

Andre Macedo, Editor-in-chief

Civil Society Representatives

Marco Lisi, Professor, Assistant Professor, *Universidade Nova de Lisboa*