



Office for Democratic Institutions and Human Rights

TURKEY

PARLIAMENTARY ELECTIONS

22 July 2007

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

29 May-1 June 2007



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation to observe the early parliamentary elections on 22 July 2007, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment mission (NAM) to Turkey from 29 May to 1 June 2007. The OSCE/ODIHR NAM was composed of Mr Gerald Mitchell and Mr Konrad Olszewski, Head and Deputy Head of the OSCE/ODIHR Election Department, and Mr Julian Peel Yates, Election Expert.

The purpose of the OSCE/ODIHR NAM was to assess the pre-election environment and preparations for the elections, and advise on a possible OSCE/ODIHR election observation activity in relation to the elections.

The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs of Turkey for its assistance and cooperation in organizing the OSCE/ODIHR NAM in a short timeframe. The OSCE/ODIHR would also like to thank the Ministry of the Interior, together with representatives of political parties, civil society and the media who took the time to meet with the OSCE/ODIHR NAM.

II. EXECUTIVE SUMMARY

Early parliamentary elections in Turkey have been scheduled for 22 July 2007. They were called at the behest of the governing party in accordance with constitutional provisions requiring the holding of elections forthwith if parliament is unable to elect a new president of the Republic. On 1 May the Constitutional Court had ruled invalid the parliamentary vote for the presidency on 27 April for want of a two thirds' quorum.

Attempts by the prime minister at short notice to introduce a package of constitutional amendments to provide for a directly elected president have been blocked by veto by the current president. The roots of the current political situation lie in underlying tensions between secularist and Islamist influences in Turkey, with the army warning of its duty as the defender of secularism.

The overall parliamentary election process appears to enjoy a high level of public confidence. Previous assessment by OSCE/ODIHR in 2002 observed that election legislation established a framework for democratic elections in line with international standards, whilst expressing reservations at the strict legal limits on political debate.

The electoral system contains an unusually high threshold of 10% of the vote to achieve party representation in parliament. This leads to distortions, and concerns were expressed to the OSCE/ODIHR NAM that it unfairly prejudices Turkish citizens of Kurdish origin.

The Supreme Board of Elections, the overarching body responsible for the conduct of elections and composed of senior judges, commands widespread confidence and respect. Changes have been made to ensure a single ballot paper for both political party and independent candidates.

Electronic registration of voters has been extended to the whole country, which should help to reduce double registration and other anomalies. The calling of elections at short notice has inevitably limited the time available for public inspection of voter lists.

Seventeen political parties are expected to run, representing a genuine diversity of opinion. The legal framework, however, contains somewhat restrictive provisions concerning both candidates and political parties, and challenges to individual candidate registration may be expected. Concerns were expressed to the OSCE/ODIHR NAM over the concentration of power in party leaders' hands, and lack of vigorous internal party democracy.

Turkey has dynamic, but closely regulated broadcast media. The detailed media regulatory framework poses complex challenges alike for journalists, broadcasters and regulators, and constrains freedom of expression. Strict monitoring of broadcasts by the Radio and Television Council covers only private channels, and no longer the state-controlled public broadcaster TRT, since changes made from 2002.

There is no specific provision in law for either international or domestic non-partisan observers, although in practice the latter are permitted freely to enter polling stations. The Supreme Board of Elections assured the OSCE/ODIHR NAM there would be no difficulty for access by international observers.

Recognising the complex current political environment and impasse raising issues of fundamental constitutional importance, whilst also noting the level of public confidence in the electoral process, the OSCE/ODIHR recommends the deployment to Turkey of an Election Assessment Mission, to include a media monitoring component. This is also in line with the continuing practice of following elections in the broadest range of participating States.

III. BACKGROUND

At the beginning of May 2007 the Turkish parliament, the Turkish Grand National Assembly (TGNA), voted to hold early parliamentary elections on 22 July 2007. The decision followed the political crisis and deadlock which had developed in the previous days over the failure by the TGNA to elect a new president of Turkey to succeed Ahmet Necdet Sezer, before the expiry of his single 7 year term on 16 May 2007. The roots of the crisis lie in underlying tensions between secularist and Islamist influences in Turkey. The early elections were called at the behest of the governing Justice and Development Party (AKP) in accordance with constitutional provisions requiring the holding of elections forthwith where parliament is unable to elect a president. Elections were otherwise ordinarily due to take place on 4 November 2007.

The first round of voting by the TGNA for the presidency took place on 27 April. It was boycotted by the opposition, with the Republican People's Party (CHP), the principal opposition party, complaining at the lack of prior discussion and consultation and the

surprise announcement of the AKP's candidate, the current foreign minister, Abdullah Gul, only shortly before the legal deadline. Political tensions rose markedly at once thereafter with statements by the army the same day warning that the military was the defender of secularism, and mass demonstrations by secularists in Istanbul and other major cities, against what they perceived as the danger of growing islamisation. The election failed after the Constitutional Court ruled on 1 May, on application by the CHP, that the first round of voting was invalid, on the grounds that a quorum of two-thirds of the membership of the TGNA was necessary (367/550), which was not achieved because of the opposition boycott.

The candidature of Abdullah Gul was withdrawn, and the prime minister, Recep Tayyip Erdogan, promptly submitted a package of constitutional amendments to the TGNA for, inter alia, the direct election of the president by popular vote and a reduction in the length of the parliamentary term from five years to four. The opposition and many secularist supporters complained that there was inadequate preparation and discussion for such proposals which would have far reaching consequences, affecting complex constitutional balances.

President Ahmet Necdet Sezer subsequently used his constitutional powers to reject the measures, which were again approved by parliament on 31 May. The president may not again veto the package but can either put it to referendum or refer it to the Constitutional Court.

In setting the parliamentary election date of 22 July, the Constitutional Commission of the TGNA approached the Supreme Board of Elections (SBE) for guidance as to the earliest possible date, and the SBE advised a shortened 80 day minimum campaign beginning on 4 May. The campaign is thus underway, in a substantially polarised atmosphere.

For the previous parliamentary elections in 2002, the OSCE/ODIHR deployed an Election Assessment Mission¹. The mission observed the vibrancy of Turkey's democracy, the capacity of the electorate to institute governmental change, and the high level of public confidence in the integrity of the election process. The mission noted as outstanding issues, inter alia, restrictions on the freedom of speech and limits on political debate, a strictly regulated media environment, distortions caused by the unusually high 10% threshold for election, and lack of equality in the ballot between party and independent candidates.

IV. FINDINGS

A. LEGAL FRAMEWORK

The legal framework for parliamentary elections includes the Constitution, the Law on Basic Provisions on Elections and Voter Registers, the Law on Parliamentary Elections of 1983, as amended, the Law on Political Parties, the Law on the Establishment of Radio and Television Enterprises and their Broadcasts, and many provisions of the penal code and other legislation affecting freedom of expression, freedom of assembly and other civil and political rights. There has been substantial amendment to this body of law during the life of the outgoing parliament. The OSCE/ODIHR Assessment Report of December 2002 noted

¹ OSCE/ODIHR Assessment Report on the 3 November 2002 Parliamentary Elections in the Republic of Turkey, 3 November 2002. Available at www.osce.org/odihr-elections

that overall the election laws provided a framework for the conduct of democratic elections in line with international standards.

There is no specific provision in law for either international observers or domestic non-partisan observers, although in practice the latter are permitted freely to enter polling stations. The SBE assured the OSCE/ODIHR NAM that there would be no difficulty for access for international observers, and it did not propose to issue any formal accreditation.

B. ELECTORAL SYSTEM

Turkey has a unicameral parliament, with the TGNA composed of 550 deputies elected from districts based on the 81 provinces, for a five year term. Each province has at least one deputy. The remaining deputies are distributed according to the number of inhabitants. Provinces which have 1-18 deputies form a single election district, whilst provinces with 19-35 deputies form two districts, and Istanbul, with more than 35 deputies has three².

Election to the TGNA is through a proportional system of representation, using the d'Hondt method to allocate mandates. To stand for and achieve election, political parties must pass both a threshold of sufficient countrywide organization, and a percentage of total votes cast. They must be registered in, and present a full list of candidates in more than half of the provinces, and must gain at least 10% of the votes cast nationwide. Joint party lists for candidates are not permitted³.

Independent candidates are allowed to stand, and are awarded seats if, under the d'Hondt method of seat allocation, they achieve a sufficient number of votes in the district in which they are running. There is no prohibition on independent candidates joining or forming a political party after election.

The 10% threshold remains unusually high by international comparison. On 30 January 2007, the European Court of Human Rights ruled, on a complaint brought by two Turkish applicants, Mehmet Yumak and Resul Sadak, that it did not amount to a violation of the right to free elections, but noted that it was the highest threshold of any Council of Europe member state, and advised open discussion to consider lowering it. OSCE/ODIHR noted in 2002 that it leads to distortions and that some 45% of votes in those elections were effectively rendered ineffective, gaining no representation in the TGNA.

Voting is compulsory by law, with failure to vote punishable with a fine of 5 Turkish lira. The OSCE/ODIHR NAM was given to understand by its interlocutors that this provision is regarded as symbolic and is rarely enforced, not least as administrative protections prevent enforcement against those on the lowest incomes.

C. ELECTION ADMINISTRATION

The election administration in Turkey is composed of four levels. The top tier is the SBE (noted above), a permanent administrative body with judicial authority, consisting of seven members and four substitutes. All members are senior judges, six elected by the Plenary Assembly of the High Court of Appeals and five elected by the Plenary Assembly of the Council of State from amongst its members⁴. The chairman and vice-chairman are elected by the members of the SBE. SBE members serve for a term of six years. The SBE is responsible for the fair and orderly conduct of the elections, for issuing election regulations

² Articles 3-4 of Law 2389 on Parliamentary Elections (10 June 1983) as amended.

³ Article 16 of the Law above.

⁴ Article 79 of the Constitution of the Republic of Turkey, ratified in 1982.

and instructions, carrying out investigations, taking final decisions on all irregularities, complaints and objections, and verifying the election returns. The SBE, however, plays no role in regulating campaign finance. The OSCE/ODIHR NAM noted from a number of interlocutors the high level of public confidence in which the SBE appears to be held, and the respect for its judicial composition.

The second tier is formed by Provincial Election Boards, composed of three judges of the highest rank in the province. They serve terms of two years. Political parties may also appoint non-voting representatives to the boards.

The third tier consists of County Election Boards, comprising a chairman, six regular and six substitute members. The chairman appoints two members from amongst civil servants. The four political parties which received the highest number of votes in the country during the last election may each appoint a member and a substitute, provided the party is running in the election. If these parties fail to provide nominations, other competing political parties, drawn by lot, may appoint the remaining members. The chairman of the County Election Board is the highest ranked judge in the county.

The lowest tier is that of the Ballot Box Committees, appointed by the County Election Boards. They consist of a chairman, and six principal and six alternate members. The five political parties which gained the most votes in the county at the last parliamentary elections may appoint one principal and one alternate member. The remainder of appointees are drawn by lot from the local aldermen council. Countrywide there are more than 170,000 Ballot Box Committees, each responsible for up to 300 voters. The small number of voters per polling station helps to accelerate counting and minimises crowding.

The decisions of each level of the election administration can be appealed to the next higher level. The SBE is the final arbiter of appeals at all levels, including complaints against its own decisions. Under the Constitution and the election laws the decisions of the SBE are definitive and may not be further appealed or brought before a court.

In its 2002 report, OSCE/ODIHR recommended that the authorities should consider putting the names of independent candidates on the same ballot paper as political parties (hitherto votes were cast for independents on separate and smaller ballot papers which invited confusion and risked compromise of the secrecy of the ballot). The law has since been amended in this sense to provide for a single ballot, and the TGNA in May 2007 passed a constitutional amendment with 468 votes in favour to ensure that the provision is implemented for the forthcoming elections⁵. A provision, also passed in the last year, lowering from 30 to 25 the minimum age entitlement to be a deputy, will not apply in these elections as there was no similar constitutional exception made, and the requisite year will not have passed.

A number of interlocutors of the OSCE/ODIHR NAM expressed their concern at the change to a single ballot paper for political party and independent candidates. They believe that it will disadvantage independents due to the complexity and length of a joint ballot, and suggested that it would especially disadvantage Turkish citizens of Kurdish origin, and

⁵ Article 67 of the Constitution requires a year to pass before electoral amendments take effect. The provision is designed to prevent late and potentially contentious amendments shortly before elections. This provision would otherwise have prevented the change concerning the ballot paper from being implemented for these elections.

the less well educated. Election as an independent remains a means by which the rigour of the 10% nationwide threshold for political parties can be mitigated.

D. VOTER REGISTRATION

In 2002 35 provinces embracing some 26 million voters were registered electronically. The programme of electronic registration, based on a voter's unique identification number given at birth under the authority of the Ministry of the Interior, has since been extended to the remaining 46 provinces of some 17 million voters, with the primary aim of reducing double registration.

The OSCE/ODIHR NAM was informed by the SBE that voters can have access to their own information through the SBE website. The SBE noted that the primary difficulty that they had faced through the short notice for the forthcoming early elections concerned voter lists. Normally there is a 3 month period of public listing before elections, but for these elections the lists had been published for 13 days after the announcement of the elections for verification and correction before they had had to be finalised. The lists were first issued in November 2006.

The election laws contain transparency provisions which help to ensure the accuracy and universality of the voter lists. Additional control mechanisms lie in the periodic censuses with questionnaires sent to each home. Political parties have access to the lists and can check their accuracy. Voters can lodge objections or complaints.

E. CANDIDATE AND PARTY REGISTRATION

The SBE informed the OSCE/ODIHR NAM that 21 political parties were eligible to run in the elections, of which 4 had decided not to run. Of the 17 who would do so, the Motherland (ANAP) and True Path (DP) parties had announced they would merge, and other mergers were possible. Due to the 10% threshold only two parties achieved representation in the TGNA in the elections of 2002 (AKP and CHP), although the total had expanded to six parties or party groupings by 2007, through bye-elections, realignments and changes of party by individual deputies.

The overall legal framework includes provisions which can restrict both parties and candidates from running. Article 76 of the Constitution sets out a lengthy list of restrictions on eligibility to become a deputy, codified in Article 11 of the Parliamentary Election Law. These and other provisions of law have been used extensively in the past to bar candidates. The Constitutional Court holds the power to dissolve political parties on application by the Public Prosecutor. The SBE has the responsibility to determine and rule on candidate eligibility. The absence of an opportunity to appeal such judicial decisions and the absence of appeal from an administrative decision, remain contrary to OSCE commitments⁶. A number of interlocutors expressed their concern to the OSCE/ODIHR NAM at the lack of active democracy within political parties and at the concentration of power in the hands of party leaderships, which in many cases were claimed to have near exclusive control of the selection of candidates. The deadline for candidate selection and submission of names is 4 June, with revisions possible until 8 June. Given the legal framework and its previous implementation, challenges to individual candidate registration may be expected.

⁶ Vienna Document (1989) paragraph 13.9; Moscow Document, paragraphs 18.2, 18.3 and 18.4; Copenhagen Document paragraphs 5.10 and 5.11.

F. CAMPAIGN ENVIRONMENT

The formal campaign period began on 4 May. The governing party wished it to be held sooner, but as noted above the SBE advised on a minimum 80 day campaign period. Many interlocutors of the OSCE/ODIHR NAM underlined the importance of the elections in the current political impasse and their expectations of vigorous and potentially divisive competition and of a high turnout on election day. The OSCE/ODIHR NAM noted concerns expressed at the timing of the elections in mid-summer, coinciding with the holiday season and summer heat. Opposition parties drew attention to the predicted absence of many villagers away in summer homes in late July, and in difficulties for temporary seasonal workers absent from their ordinary places of residence, especially those employed in the tourist industry on the coast. There is no provision in the electoral law for postal ballots.

The law forbids the use of any language other than Turkish for electioneering⁷. Concerns were expressed by human rights groups that such a provision inhibits those representing, or seeking to represent, minority and particularly Kurdish interests predominantly in the southeast of the country, from effective campaigning.

All interlocutors welcomed the possibility of an OSCE/ODIHR presence during the elections.

G. MEDIA

Turkey has dynamic, but closely regulated broadcast media, constrained in aspects of freedom of expression by the regulatory framework. There are currently 23 national, 16 regional and 212 local television enterprises broadcasting terrestrially, together with 1084 radio broadcasters.

The legal framework for media coverage of the elections is provided by the election laws, and specifically the Law on the Establishment of the Radio and Television Enterprises and their Broadcasts ('Broadcasting Law')⁸. The Broadcasting Law specifies⁹ that broadcasts during election periods are regulated by the SBE, and establishes a Radio and Television Supreme Council (RTUK) charged with monitoring transmissions during election periods in keeping with the decisions of the SBE¹⁰. RTUK reports to the SBE, which has the power of sanction nationally. For regional broadcasts the power of sanction is delegated by the SBE to Provincial Election Boards.

The law lays down detailed standards for broadcasting, requiring that broadcasts shall not be biased or partial and that there shall be equal opportunity for political parties¹¹. Broadcasts are forbidden from violating the existence and independence of the Turkish Republic, the territorial and national integrity of the state, and the reforms and principles of Atatürk. Paid political advertisements in the election period are banned. Party political broadcasts are precisely provided for in Article 52, and permitted only from the seventh day before voting until 1800 hrs on the eve of elections. Each party may broadcast at no

⁷ Article 58 of the Law on Basic Provisions on Elections and Voter Registers.

⁸ Law No 3984 of 20 April 1994 as amended.

⁹ Article 32.

¹⁰ Article 27.

¹¹ Article 4.

cost two 10 minute speeches on radio and television. Parties having a group in the TGNA have an additional 10 minute slot, and a further 20 minutes are given to the party in power or senior partner in coalition government, with 15 minutes for minor partners. The principal party of opposition has the right to an additional 10 minute speech.

Officials of the RTUK informed the NAM that RTUK personnel monitor all broadcasts from Ankara, Istanbul and Izmir. Monitoring of broadcasting from elsewhere is carried out by local personnel of the Ministry of the Interior. Until 2002 RTUK monitored both private channels and those of the state-owned broadcaster TRT. Since 2002 the responsibility for monitoring TRT has been transferred to TRT itself, which is no longer under the supervision of RTUK, which covers private channels only.

The standards set out in the Broadcasting Law are detailed and prescriptive and the strict regulatory framework poses complex challenges alike for all concerned, including journalists, broadcasters and regulators.

The Broadcasting Law has been amended as recommended by OSCE/ODIHR in 2002 to reduce the powers of the SBE to suspend broadcasting for transgressions, and to provide a more flexible range of penalties and responses. In the event of violations, RTUK, under the authority of the SBE, can now initially ask for an apology; it may subsequently suspend the programme concerned, with the possibility of the further sanction of closure of the channel for 5 to 15 days, with the option of an ultimate penalty of a fine imposed via the courts. The Broadcasting Law has also been amended as recommended by OSCE/ODIHR, reducing from one week before polling to one day the prohibition on broadcasts for or against a specific political party or candidate, and any broadcasts which might influence a citizen's vote through any kind of programmes such as news or interviews or through advertising or public opinion surveys¹².

The detailed broadcasting regime for radio and television does not apply to campaigning via the internet, which is unregulated.

V. CONCLUSIONS AND RECOMMENDATIONS

A high level of public confidence in the overall integrity of the election process in Turkey, and faith in the administration of the elections under the authority of the judicially composed SBE, appears to have been maintained since the OSCE/ODIHR Assessment Mission of 2002. The OSCE/ODIHR NAM, however, notes the complex current political environment and impasse, and the great importance of the elections as the path to resolving issues of fundamental constitutional importance. In line with its continuing practice of following elections in the broadest range of participating States, the OSCE/ODIHR recommends the deployment of an Election Assessment Mission, to follow the issues identified previously and above, and to include a media monitoring component.

¹²

Article 32 of the Broadcasting Law.

ANNEX

LIST OF MEETINGS

Ministry of Foreign Affairs

Ambassador Hasan Gogus, Director General for Multilateral Political Affairs
Mr Husrev Unler, Deputy Director General for the Council of Europe and Human Rights
Dr Hasan Ulusoy, Head of Department
Ms Neval Orbay, First Secretary
Mr Ertan Yalcin, Second Secretary

Ministry of the Interior

Mr Ahmet Sarac, Acting Director General for Administration of Provinces

Parliament

Mr Burzan Kuzu MP, Chairman of the Constitutional Commission of the TGNA

Supreme Board of Elections

Mr Ahmet Baspinar, Acting Head, Supreme Board of Elections

Political Parties

AKP Mr Eyup Fatsa MP, Deputy Head of Parliamentary Group
CHP Mr Ali Topuz MP, Deputy Head of Parliamentary Group
 Mr Orhan Ziya Diren (Member of OSCE PA)
 Mr Osman Cosgunoglu MP (Member of PACE)
ANAP Mr Suleyman Saribas, Deputy Head of Parliamentary Group

Civil Society

Foundation for Political Economic and Social Research:
Mr Ibrahim Kalin, General Coordinator

Turkish Democracy Foundation:
Mr Mujdat Kayayerli

Human Rights Association:
Mr Yusuf Alatas, President
Ms Feray Salman, Board Member

Human Rights Foundation of Turkey
Mr Yavuz Onen, President

Media

Radio and Television Supreme Council
Mr Nurullah Ozturk, Head of Monitoring and Evaluation
Mr Nihat Caylak, Expert

Turkish Radio Television Corporation (TRT)
Mr. Zafer Kiraz, Deputy Head of News Department