



Office for Democratic Institutions and Human Rights

ITALY

PARLIAMENTARY ELECTIONS

9-10 April 2006

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

13-16 February 2006



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Ministry of Foreign Affairs of the Republic of Italy, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Italy between 13-16 February. The NAM included Gerald Mitchell, Head of the OSCE/ODIHR Election Department, Nikolai Vulchanov, Deputy Head of the OSCE/ODIHR Election Department and Holly Ruthrauff, OSCE/ODIHR Election Adviser. The purpose of the NAM was to assess the pre-electoral environment and advise on the potential for an OSCE/ODIHR activity in relation to the parliamentary elections scheduled for 9-10 April 2006, in line with OSCE commitments.

The NAM held meetings in Rome with representatives of the governmental authorities, election administration, political parties, parliamentary bodies and the media (see annex).

The OSCE/ODIHR is grateful to the Italian authorities, in particular the Ministry of Foreign Affairs and the Ministry of Internal Affairs, for their co-operation and assistance provided during the NAM.

II. EXECUTIVE SUMMARY

The OSCE/ODIHR Needs Assessment Mission took place just after the dissolution of parliament on 11 February, which coincided with the official announcement of the parliamentary elections for 9-10 April and the start of the official media campaign period.

The OSCE/ODIHR received an invitation to observe the elections from the Ministry of Foreign Affairs on 15 February, in line with Italy's commitments under the Copenhagen Document of 1990. The NAM was informed that special legislative provisions were enacted on 27 January to permit observation of polling stations by OSCE observers for the 9-10 April 2006 parliamentary elections,

The political environment in the run-up to elections appears to be sharply divided between a center-right coalition "The House of Freedoms", and a center-left coalition "The Union", and between their leaders, Prime Minister Silvio Berlusconi and former Prime Minister Romano Prodi. The official media campaign began upon the dissolution of parliament, and broadcast media is now being strictly regulated by the *par condicio* (equal treatment) law.

The media environment in Italy is largely characterized by the fact that the Prime Minister has a controlling interest in three major nationwide commercial television networks and has a degree of control over the public television outlets by virtue of his office. This was frequently referred to as the “Italian anomaly.”¹ Some interlocutors generally believed that while the campaign rules in the media were likely to be respected during the campaign period, the “Italian anomaly” could nevertheless have an impact on the process.

The parliamentary elections will be conducted according to a new election system, introduced in legislative amendments to the election legislation on 21 December, 2005. The new system is based on regional proportional representation, and replaces the mixed majoritarian-proportional system introduced through a popular referendum in 1993. Representatives of the majority in the outgoing Parliament shared their arguments in favour of the new election systems, while their opponents expressed concerns related to the late and overall unilateral introduction of the new system, as well as its possible repercussions in a broader perspective.

All interlocutors expressed confidence in the overall practice of election administration as conducted by the Electoral Services of the Ministry of the Interior and in election day proceedings.

The OSCE/ODIHR recommends the deployment of an Election Assessment Mission (EAM). The Mission should be deployed during the second week of March, and remain through the campaign period until shortly after the 9-10 April elections. The Mission should include an expanded core team to closely follow the campaign, and to deploy fact finding visits outside of Rome as necessary. A media monitoring component of the Mission would also be needed, in line with the OSCE/ODIHR standard media monitoring methodology. No systematic and large-scale election day observation of polling station procedures is envisaged.

III. FINDINGS

A. POLITICAL CONTEXT

In the run-up to the parliamentary elections, the prevailing political environment seems to be sharply divided between the governing center-right coalition, House of Freedoms, and the opposition center-left coalition, the Union. According to interlocutors, the newly introduced electoral system encourages parties to adhere to coalitions and further emphasizes the role of the party leadership. One analyst commented that while many voters might not understand the new electoral system, everyone understands the campaign to be “Berlusconi vs Prodi” - a head to head race between the leaders of the two coalitions. Some party representatives supported the idea of a more consolidated system based on two blocs, while smaller parties seem to be concerned that they might lose their identity.

The two major coalitions have remained relatively stable in their composition since the previous 2001 parliamentary elections. The House of Freedoms is led by Prime Minister

¹ See also, OSCE Representative on Freedom of the Media, “Visit to Italy: The Gasparri Law, Observations and Recommendations,” 7 June 2005.

Berlusconi and includes his party *Forza Italia*, *Alleanza Nazionale* (*National Alliance*), *Unione Democratici di Centro* (*Democratic Union of the Center*) and *Lega Nord* (*Northern League*). The Union is led by former Prime Minister Romano Prodi and includes a broad range of parties, including *Democratici di Sinistra* (*Democrats of the Left*), *La Margherita*, *Rifondazione Comunista* (*Communist Refoundation*).

The two main coalitions are taking different approaches to the campaign. Representatives of the Union explained that they had held a nation-wide unofficial primary election on 16 October, in which 4.3 million voters participated, selecting former Prime Minister Romano Prodi to be their candidate for Prime Minister. At the same time, representatives of the House of Freedoms underlined that the parliamentary elections would also serve as their primary, with the party gaining the most votes within the coalition selecting the Prime Minister.

Some political party representatives expressed the opinion that recent changes to the campaign finance regulations would result in virtually no limits for spending and permit higher donations to remain anonymous. One representative felt that the change of electoral systems would mean more expensive campaigns, since all campaigns would now need to be conducted on a national scale. The official campaign period begins on 5 March.

B. LEGAL FRAMEWORK

The legal framework includes the Constitution of Italy, the electoral code, the law on voting abroad and several laws regulating media coverage (see below, “Media Environment”). Extensive changes to the election code, including the introduction of a new electoral system, were first introduced in to the parliament in October 2005, and passed on 21 December 2005. In addition to the changes to the electoral system itself, the amendments introduced several features to enhance participation including voting by mail for residents abroad and certain groups of Italians temporarily abroad. Also, a decree law was passed on 27 January 2006 to enable mobile voting for homebound voters, a trial of electronic counting and admission to the polling stations of OSCE observers on the occasion of the 9-10 April 2006 election.

Much of the dialogue with the NAM focused on the recent amendments to the election code. Some political party representatives complained that the rules of the game had changed “when the players were already on the field”, and that there was no broad dialogue or consensus between the minority and majority in the parliament regarding the changes to the system. They further complained that the closed-list system would distance citizens from the candidates and that candidate selection would be the hands of party elites.

Government representatives clarified that the decree law allowing for the OSCE to observe is valid only for the upcoming parliamentary elections and the constitutional referendum planned for June. This decision was taken by the government and confirmed by the parliament as an urgent matter to facilitate observation by the OSCE/ODIHR on this occasion. However, government officials expressed their belief that the election code would be changed in the future to allow for international observers on a permanent basis, in line with OSCE commitments.

C. ELECTORAL SYSTEM

On 9-10 April, voters will elect 630 deputies to the Chamber of Deputies (lower house) and 315 senators to the Senate (upper house). Eligibility to vote for the Chamber is extended to all Italian citizens that have reached 18 years of age, while to be eligible to vote for the Senate they must have reached 25 years of age. Recent changes to the election legislation have introduced a regional proportional representation system, at state level for the Chamber and at regional level for the Senate. The previous two parliamentary elections were held on the basis of a mixed system with 75 per cent of seats elected in single mandate districts and 25 per cent elected in a proportional manner.

For the election of the Chamber, Italy is divided into 26 constituencies which will return 618 deputies. For the elections of the Senate, the country is divided into 20 constituencies which coincide with the administrative division of the country into 20 regions² and will return 309 senators. The numbers of seats returned from each constituency are determined on the basis of respective population numbers. In addition, 12 deputies and six senators are to be elected by some four million Italian citizens resident abroad. Voting abroad will take place two weeks in advance of the vote in Italy. Votes from abroad are allocated to four constituencies, which include Europe, North America, South America and the rest of the world, respectively. The votes will be mailed to the respective consular offices.

There is no official register for parties in Italy. Parties are registered only for general elections. Registration is conducted by the Electoral Service at the Ministry of Interior between 44 and 42 days before the election day (24-26 February). In order to be registered, a party should submit its logo, name, candidate lists, and its program. Grounds for refusal of registration represent the presence of religious symbols in the logo or close resemblance of the name with the name of another party already registered. A coalition of parties is constituted if the respective parties agree on a common electoral manifesto and a personality to lead the coalition. Parties that are not sufficiently represented in parliament have to collect signatures to register³. Several interlocutors thought that the signature requirement disadvantaged smaller parties.

Both the Chamber and the Senate will be elected on a proportional basis from closed constituency lists⁴, with a series of thresholds to determine eligibility of parties and coalitions to participate in the allocation of seats. Thresholds are determined at national level for the Chamber and at constituency level for each senatorial constituency. Seats are allocated to eligible parties and coalitions with a quota method. Should unallocated seats remain after the respective quotas are determined, these are further distributed in accordance with the "largest remainder". The method applies also for the allocation of the seats received by a coalition between its eligible constituent parties, as well as for each eligible party or coalition between its (maximum 30) constituency lists for the Chamber.

² These include 15 "ordinary" regions and 5 regions of special status.

³ The following parties do not need to present signatures: Forza Italia, Democratic Left, Margherita, National Alliance and the Democratic Union of the Center.

⁴ An eligible citizen can be a candidate only from one constituency list, either for the Chamber or for the Senate. Candidate lists are to be submitted for registration in the respective constituencies between 3 and 5 March.

A “majority bonus” for the winning coalition is also foreseen to inject a degree of stability in the government should there be no party or coalition that achieves at least 55 percent of the seats, or a total of 340 seats, in the Chamber⁵. For the Senate the bonus is granted at regional level for each constituency⁶. If the strongest party has received less than 55 percent of the seats in the respective constituency, the bonus ensures that such party is allocated 55 percent of the seats. Individual regional bonuses could cancel each other out⁷.

For the Chamber, a coalition must receive at least 10 per cent of the valid votes in order to become eligible for the seat allocation. Within a coalition, each party must receive at least 2 per cent of the valid votes to receive seats, with the “best loser” (party closest to the 2 per cent threshold) is also eligible for seats. Parties that are not in a coalition must receive at least 4 per cent to receive seats. If a coalition receives less than 10 percent of the valid votes, but a party within the coalition receives more than 4 percent, such a party becomes eligible to participate in the allocation of seats.

For the Senate, seats are allocated on a regional basis. A coalition must receive 20 per cent of the valid votes within the constituency to receive seats. A party which is a member of a coalition must receive at least 3 per cent of the valid votes in order to be able to receive seats, and for a party which is not a member of a coalition, the respective threshold is 8 per cent. If a coalition receives less than 20 percent of the valid votes, but a party within the coalition receives more than 8 percent, such a party becomes eligible to participate in the allocation of seats.

Supporters of the new election system pointed out that it encourages coalition building and consolidation of the political landscape, in particular with the introduction of a majority bonus and generally in line with a bi-partisan model. Supporters of the previously existing mixed system stressed the absence of a majority element which could distance voters from their elected representatives. While the new system could be characterised by a degree of complexity, it foresees measures to diminish the number of “lost” votes cast for parties or coalitions which could not overcome the respective thresholds.

Representatives of the majority maintained that amending the legislation before the elections was justified, since amending legislation at the beginning of a parliamentary term could “de-legitimize” the sitting body. One majority party representative admitted that the changes would benefit the center-right, since their voters would be more likely to vote for individual parties than for the coalition as a whole.

D. ELECTION ADMINISTRATION

The Electoral Services Department of the Ministry of Interior is the permanent body responsible for administering elections in Italy. In addition, each of the 103 administrative

⁵ A “bonus” has been in used in Italy also in the 1950’s.

⁶ It would appear that the draft amendments originally foresaw a single bonus for the Senate, but this change was later considered to be against the constitutional principle of a regionally based Senate, and separate regional bonuses were therefore introduced.

⁷ The potential effect of the regional bonuses is to produce a narrower majority in the Senate, which could even differ politically from the majority in the Chamber. Since both the Chamber and the Senate must, according to the Constitution, support the government, there is a possibility for an ambiguous situation after the elections

districts has an electoral office within the prefect's office and each municipality has a municipal election office that updates voter lists and runs municipal elections. Temporary election bodies include the municipal level courts that receive and tabulate election results. Finally, electoral boards oversee voting and counting in the approximately 60,000 polling stations in Italy, each including maximum 1,200 registered voters.

Voters are registered under a "passive" system of registration which is based on "automatic" registration of all individuals that reach voting age on election day. Voter registers are based on voters' registered permanent residence and are updated regularly, twice a year.

A new mechanism for selecting members of the six-member election boards was introduced by the December 2005 amendments to the election code. Previously members were selected by lots, but under the new amendments they will be selected by the municipality, with the President and Secretary of the election board appointed by the Court of Appeals. Some party representatives commented that this could further politicize the process, particularly in smaller municipalities where there is a clear dominant party. At the same time, an Electoral Services official explained that drawing lots did not guarantee political balance, and sometimes resulted in the selection of members who did not have any interest or experience in elections. With the new system, the minority is always represented on the election boards by at least one member.

Article 66 of the Constitution confers responsibility upon each of the parliament chambers for the ensuring the eligibility and compatibility of its members. Both the Chamber and the Senate have a parliamentary election committee (*giunta*) responsible for verifying the results of the elections and the eligibility of candidates. The parliamentary election committees receive results from the district judiciary offices which conduct the allocation of seats, and verify the final results. The committees also rule on election-related complaints, with no appeal possible. The composition of the committees is proportional to the composition in parliament, although by tradition the president of the committee is chosen by the minority.

Many interlocutors were pleased that a system of electronic tabulation would be tested in four regions of the country, and expressed hope that this would speed up the announcement of results and prevent mistakes in the tabulation process. At the same time, some interlocutors did not clearly understand what aspects of the process would be computerized. In those four regions (Lazio, Puglia, Liguria, Sardinia) where the trial will take place, an additional technician will be present in the polling station to process the results and send them to the municipality via computer, in a process parallel to that of the traditional count conducted by the election board, resulting in a paper protocol. The traditional method of tabulation will remain the basis for the official results, although the unofficial computer tabulated results are expected to be received earlier.

The newly adopted electoral system will also have implications for ballot design. Only party symbols will be included on the new ballots, with the party symbols grouped by coalitions. Parties running outside of a coalition will be grouped in a separate column. However, the names of candidates will be displayed in the polling stations. Some party and government representatives felt that this ballot would simplify the process and reduce the number of invalid ballots, which according to them had been quite high in previous elections. Others felt that voters would be frustrated that they were not able to express a

preference for a candidate, as before, and some would write the name of a candidate anyway, accidentally invalidating their ballot. There was also some concern expressed that voters were not aware of the changes and might be confused by the late introduction of the new ballot. The Electoral Services Department informed the NAM that it will broadcast voter education spots on how to mark the new ballot.

E. MEDIA ENVIRONMENT

The most discussed aspect of the coming elections remains the media environment. Many with whom the NAM met pointed to the so-called “Italian anomaly” whereby the Prime Minister has a controlling interest in major nationwide commercial television networks and has a degree of control over the public television outlets by virtue of his office. Although a strict regulatory framework is in place during the official media campaign, some political party representatives expressed concern that coverage could still be unbalanced and regulations inconsistently enforced. Also, many expressed the view that during the weeks prior to the start of the official media campaign period, the Prime Minister, in particular, had an “overbearing presence” on television, challenging the principle of equal conditions. The situation caused the President of the Republic to intervene and remind broadcasters that coverage should be generally equitable, even during the pre-election period.

The *par condicio* (equal treatment) law⁸, passed on 22 February 2000, provides for equal treatment of all political parties and coalitions during the official media campaign period⁹ and bans all political advertising on broadcast media. From the dissolution of the parliament (11 February) until the presentation of the candidate lists (5 March), this law guarantees equal quantitative and qualitative coverage to all political parties represented in parliament. After 5 March, the law guarantees equal treatment to all parties competing in the elections. A representative of the governing party informed the NAM that they had tried to amend the law to make coverage commensurate with a party’s electoral strength, so that small parties would not dominate the broadcast time prior to the election. However, these amendments failed to pass.

The provisions of *par condicio* are monitored and enforced by two regulatory bodies - private broadcasters are regulated by the Guarantee Authority in the field of Communications (AGCOM) and public broadcasters by the parliamentary RAI oversight committee. Both the AGCOM and the RAI parliamentary committee issue regulations before the official media campaign begins giving specific guidance to broadcasters. The AGCOM, established in 1997, is an independent political body, with 8 members selected by parliament and the chairman nominated by the parliament and appointed by the president.

The RAI parliamentary committee is a bicameral committee including 20 senators and 20 deputies, with a composition reflecting that of the parliament and a president selected by the minority. The committee was given responsibility to regulate campaign coverage on public broadcasters by the *par condicio* law. The committee also selects the board of RAI, which according to committee representatives is also influenced by the parliamentary majority. According to these representatives, quantitative coverage is relatively easy to

⁸ The law applies only for broadcast media.

⁹ From 5 March to 7 April, when the campaign silence begins.

measure and control, but more sophisticated means of using the media to one's own advantage is very difficult to regulate within the current framework. Committee representatives reported that there was disagreement within the committee regarding the regulations of the media campaign, which were finally passed by the majority. The minority had criticized provisions requiring debates to be between party leaders, rather than only between coalition leaders and another provision allowing for a final press conference of the Prime Minister during the last two days of the campaign.

Some interlocutors expressed the opinion that while the *par condicio* law strictly regulates coverage during the campaign period, it does not resolve the main problem in the media environment to date, which is the potential conflict of interests between the Prime Minister's commercial holdings and his public office. Although this issue is not just election-related, it was highlighted by many interlocutors with whom the NAM spoke.

IV. CONCLUSIONS AND RECOMMENDATIONS

The OSCE/ODIHR recommends the deployment of an Election Assessment Mission. The Mission should be deployed in the second week of March, and remain through the campaign period until after the 9-10 April elections. The Mission should include an expanded core team to closely follow the campaign, and to deploy fact finding visits as necessary. A media monitoring component of the Mission would also be needed, in line with the OSCE/ODIHR's standard media monitoring methodology.

All interlocutors expressed confidence in the overall practice of election administration as conducted by the Electoral Services of the Ministry of the Interior and in election day proceedings. No systematic and large-scale election day observation of polling station procedures is envisaged.

ANNEX – MEETINGS AGENDA

Monday, 13 February 2006

Communication Unit, *Democratici di Sinistra*

Ministry of Foreign Affairs.

National Secretariat of *Rifondazione Comunista*

Tuesday, 14 February 2006

Ministry of the Interior, Department of Electoral Services.

Guarantee Authority in the field of Communications (AGCOM)

RAI headquarters, Institutional Relations Department

Wednesday, 15 February 2006

Forza Italia

Elections Commission of the Chamber of Deputies

“Commissione di vigilanza sulla RAI”

Alleanza Nazionale

Representatives of the Italian delegation to the OSCE Parliamentary Assembly

Election Commission of the Senate and the Constitutional Affairs Commission of the Senate

Margherita

Thursday 16 February 2006

Final debriefing at the Ministry of the Interior, with the Ministry of Foreign Affairs