



Office for Democratic Institutions and Human Rights

IRELAND

2007 PARLIAMENTARY ELECTIONS (DÁIL ÉIREANN)

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

26 - 29 March 2007



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of the upcoming parliamentary elections, 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 Ireland between 26 - 29 March. The purpose of the NAM was to assess the pre-electoral environment and preparations for elections, in line with OSCE commitments, and advise on a possible OSCE/ODIHR election observation activity in relation to the parliamentary elections (Dáil Éireann), which are due to be held before early July.

The NAM included Holly Ruthrauff, OSCE/ODIHR Election Adviser, and Nikolai Vulchanov, Election Expert and consultant to the OSCE/ODIHR.

The OSCE/ODIHR is grateful to the Department of Foreign Affairs of Ireland for their assistance in organizing the NAM. The OSCE/ODIHR would also like to thank the Department of the Environment, Heritage and Local Government, as well as the representatives of political parties, media and civil society who took the time to meet with the NAM. The list of meetings is attached to this report.

II. EXECUTIVE SUMMARY

The term of office of the 166-member Dáil Éireann (Lower House of Parliament) is a maximum of five years. According to the Constitution, the President should dissolve the Dáil on the advice of the Taoiseach (Head of Government), and the election should be held within 30 days of the Dáil's dissolution. The NAM was informed that the elections must be held before early July, but most interlocutors expected the election to be held in late May or early June.

Ireland has a pluralistic political party landscape that offers voters a broad choice in elections. In addition, the electoral system allows independents a genuine opportunity to compete. The coming elections will be marked by the attempt of the Taoiseach, Mr. Bertie Ahern, to win a third term in office, with his party Fianna Fáil, opposed in particular by Fine Gael, the key opposition party.

Although elections have not yet been called, political parties have generally selected their candidates and campaigning has begun. Some interlocutors expressed concern that such campaigning, prior to the official announcement of the election, was a way to circumvent the strict campaign finance rules that only come into effect during the official election campaign period.

Seats in the Dáil are allocated through proportional representation according to the single transferable vote system (PR-STV). This system has been in place since the country's

independence and is considered to be broadly popular with voters and political parties alike.

The PR-STV system allows voters to express preferences ranking all candidates on the ballots of their respective constituency. Such preferences are then taken into account during the counting of the votes. As a result, if a voter's first choice has already been elected or will not be elected, his or her next choice is counted in order to ensure that most voters' choices are represented in the Dáil. Thus, the PR-STV permits a voter to vote for personalities ensuring, at the same time, generally proportional representation of most political choices expressed.

Responsibility for administering elections to the Dáil Éireann is decentralized. The Franchise Section of the Department of the Environment, Heritage and Local Government provides guidance to the returning officers who are responsible for the conduct of elections at the constituency level. Returning officers are appointed among the county registrars, except in Cork and Dublin where the sheriffs serve as returning officers.

Voter registration is conducted on an annual basis by the county and city councils. Following public debate about the accuracy of the voter registers, last year the government devoted extra resources and made a special countrywide effort to update them. While NAM interlocutors generally appreciated this effort, some expressed concern that too many eligible voters may have been removed from the register, and that some voters might not take the steps necessary to get their names back on the lists.

The public broadcaster, Irish Radio and Television (RTE), is the main electronic media in Ireland and it provides broad coverage during elections on its TV and radio stations. RTE provides "political party broadcasts" to parties based on the results of the last Dáil elections, and also monitors its news and public affairs programming for political balance. Any complaints during the campaign regarding programming can be brought to the RTE's Election Steering Group, which generally resolves complaints on an informal basis.

All those with whom the NAM spoke expressed confidence in the overall practice of election administration and in the integrity of voting and counting processes. All interlocutors indicated that they would be pleased if the ODIHR had an interest in following the electoral process and developments closer to election day.

The NAM was informed by the Department of Foreign Affairs that an invitation to the OSCE/ODIHR to observe the upcoming elections to the Dáil Éireann would be forthcoming, once elections were officially announced. While the election legislation does not explicitly provide for international observers in polling stations and at the vote count, it allows the returning officers, at their discretion, to authorize additional persons to be present in the respective electoral constituencies. The NAM received assurances that this would be possible to arrange.

The NAM recognizes the high level of public confidence as expressed by all those it met. At the same time, as part of an effort by the OSCE/ODIHR to follow electoral processes in a broader range of participating States, the OSCE/ODIHR recommends the deployment of an Election Assessment Mission (EAM). Since the administration of elections is decentralized, it would be of particular interest for an EAM to follow the conduct of elections at the constituency level, including the counting and seat allocation procedures. The EAM would also plan to follow issues identified during the NAM, such as the voter

registration process and the decision made not to use electronic voting during these elections.

III. FINDINGS

A. POLITICAL CONTEXT

The Oireachtas (Irish Parliament) consists of the directly elected Dáil Éireann and the indirectly elected Seanad Éireann (Upper House). The term of office of the 166-member Dáil Éireann is a maximum of five years. According to the Constitution, the President should dissolve the Dáil on the advice of the Taoiseach, and the election should be held within 30 days of the Dáil's dissolution.

An indirect election to the Seanad Éireann must be held within 90 days of the dissolution of the Dáil Éireann. The 60 members of the Seanad Éireann are composed as follows: 11 are nominated by the Taoiseach, 43 are elected by five panels representing vocational interests (Culture and Education, Agriculture, Labour, Industry and Commerce and Public Administration) and six are elected by the graduates of the National University of Ireland and the University of Dublin (Trinity College).

The political landscape of Ireland has been dominated by the two key political parties, Fianna Fáil and Fine Gael, during its modern history. These two parties emerged from the opposing sides in the Irish Civil War fought from 1922-23 between supporters and opponents of the 1921 Anglo-Irish treaty.

The NAM was informed that the debates between the major political parties are generally focused on personalities and specific issues, rather than on ideological ones stemming from a left-right spectrum. Fianna Fáil, led by Taoiseach Mr. Bertie Ahern, has fulfilled two full five-year mandates, and will attempt to win a third mandate in the upcoming elections. Currently, Fianna Fáil with 81 members (known as Teachta Dála or TD), governs in coalition with the Progressive Democrats (eight TDs). Fianna Fáil has led the government for 17 of the last 20 years.

Fine Gael is the second largest party with 32 TDs. Fine Gael representatives informed the NAM that it would likely form an election coalition with other parties that would agree to a joint platform on key issues and cooperate on transfer votes. Fine Gael last led government from 1994-97.

The other political parties currently represented in the Dáil are the Labour Party (21 TDs), Green Party (6 TDs), Sinn Féin (5 TDs), and the Socialist Party, which has one TD. In addition, there are 13 independent TDs, some of whom form an Independent Technical Group in the Dáil to represent their common interests. Interlocutors informed the NAM that the PR-STV system facilitates the representation of independents and that independent TDs are part of the historical tradition of Irish politics.

Although the elections have not yet been called, political parties have generally selected their candidates and some have presented them in party assemblies. The major political parties have also begun putting up billboards and running paid advertisements in newspapers and television. The NAM was informed by political party representatives that the focus of an Irish election campaign is at the local level with candidates conducting

door-to-door canvassing, rather than nationwide rallies and media events. Posters also figure predominantly in Irish campaigns, especially among parties with more limited influence and budgets.

Because of the nature of the PR-STV system, big parties often provide formal support for more than one candidate per constituency. Although in some cases parties are able to split the constituency territory between their candidates, interlocutors informed the NAM that in some constituencies, intra-party competitions may be more contentious than inter-party ones.

Women are generally underrepresented in Irish political structures. Just 22 of the 166 TDs (13 per cent) elected to the current Dáil were women. Similarly, in the 2004 local government elections, some 16 per cent of the county councillors elected were women.¹

B. LEGAL FRAMEWORK

Elections in Ireland are regulated primarily by the Constitution of 1937, the Electoral Act of 1992, the Electoral Act of 1997, and Election Amendments from 1996, 1998, 2001, 2005 and 2006. Interlocutors informed the NAM that Irish elections also rely on rich case law.

The most recent amendments in 2006 provide for all prisoners to vote by mail, in line with the European Court of Human Rights' decision in *Hirst v. the United Kingdom*² that an absolute ban on prisoner voting violated the European Convention for the Protection of Human Rights and Fundamental Freedoms. Official interlocutors explained that while there was no ban previously on prisoner voting in Ireland, no mechanism existed for prisoners to effectively exercise this right.

The election legislation contains strict provisions for campaign finance, including limits on donations and election spending, introduced in the 1997 Electoral Act. However, spending limits cover only the official campaign period, which is the period from the date of the dissolution of the Dáil until election day. Some party interlocutors expressed concerns that limits could be circumvented by concentrating spending in the period prior to the official announcement of the election. At the same time, while no limits were placed on the purchase of paid billboards in this period, campaign posters were not allowed to be posted in public places until the start of the official campaign, and prior to that anyone posting posters could be fined for littering.

Election spending limits are allocated to candidates on the basis of the size of their constituencies.³ Since political parties do not receive any allocation for campaign spending, they rely on their candidates to transfer part of their "spend" to the national headquarters. One political party estimated that receiving half of each candidate's allocation, the party could spend approximately 2 million Euro during the campaign. Candidates and political parties are responsible for submitting campaign spending reports to the Standards in Public Office Commission within 56 days of election day.

¹ *The Report of the Democracy Commission: The Case for Democratic Renewal in Ireland*, p. 59. Available at <http://www.democracycommission.ie>.

² See *Hirst v. The United Kingdom* (No. 2), Application No. 74025/01 (30 March 2004). <http://www.echr.coe.int/eng/Press/2004/mar/ChamberJudgmentHirstvUK3034.htm>

³ The candidate spending limits for the upcoming elections are: € 30,150 in a 3-seat constituency; € 37,650 in a 4-seat constituency; and € 45,200 in a 5-seat constituency.

The election legislation expressly allows for so-called “personation agents” appointed by candidates to be present in the polling stations during voting and in the counting centre during the count of the votes.⁴ However, the election legislation makes no reference to the admissibility of either domestic non-partisan observers or international observers during voting and counting. At the same time, these provisions allow for returning officers to authorize additional persons to be present in the polling station during voting and in the counting centre during the count of the votes.

C. ELECTORAL SYSTEM

The 166 members of the Dáil Éireann are elected by a proportional representation - single transferable vote (PR-STV) system⁵, in which voters can rank their preferences in the order they choose. Under this system, the voter can indicate his or her preference for as many candidates as appear on the ballot paper, ranking them in numerical order of preference. The voter can also select just one candidate. Each of the 43 constituencies for these elections will elect either three, four or five TDs, depending on the size of its population, as recorded in the official publication of the results of the last census.

By indicating preferences, the voter has the opportunity to direct his or her vote to another candidate(s), should his or her first candidate not need the vote because he or she has already been elected, or has lost the chance to be elected. Similar procedures direct second, third, etc. preferences. This allows the representation in the Dáil of the political preferences expressed by those voters who cast valid ballots to be maximized. As some voters may have expressed a lesser number of preferences than candidates on the ballot, their votes can, at some stage, become non-transferable and thus remain without representation.

The count is conducted for each constituency beginning the day following elections. Valid votes are allocated first to the first preference candidates expressed by the voters. The “quota” for being elected is established by dividing the total number of valid votes by the number of seats plus one and adding one to the result.⁶ Once the first preference votes are allocated, any candidate that reaches the quota or has a “surplus” of any votes above the quota is elected. Next, based on the analysis of the second preferences in the ballots of the elected candidates, those candidates that have no chance to reach the quota are eliminated and the second preferences in their ballots are transferred to the remaining candidates. Possible non-transferable votes are also taken into account. The process is repeated for the subsequent preferences until all seats in a constituency are filled.

All interlocutors with whom the NAM spoke expressed confidence and even pride in the PR-STV system. Interlocutors felt that it was popular with citizens, that citizens understood how to vote and that they enjoyed watching the counts, which are broadcast live on television. Political party interlocutors said they thought it was a fair way to distribute votes, and that it gave chances to smaller parties and independent candidates.

⁴ Election Act, 1992, section 98.d and 113.2.

⁵ Within the OSCE region, the PR-STV is used also in Malta since 1947, and on one occasion – in Estonia, in 1990.

⁶ This formula is known as the Droop quota.

D. ELECTION ADMINISTRATION

The Franchise Section of the Department of the Environment, Heritage and Local Government comprises a 10-person team whose main responsibilities are to provide policy and legislative advice related to elections. During Dáil elections, the Franchise Section provides guidance to the local authorities who administer the process. During presidential elections and referendums, the Franchise Section takes on some election administration responsibilities.

For the 2007 elections, Ireland will have 43 constituencies. These constituencies follow, to some extent, the boundaries of the 34 counties, with a priority on uniform representation of the population in the Dáil. The city and county councils are responsible for compiling the voter registers (see below, "Voter Registration"). The 24 returning officers who have legal responsibility for administration of the elections are chosen among the county registrars. Exceptions are Dublin City, Dublin County, Cork City and Cork County, where the sheriffs are appointed as returning officers. Some returning officers have responsibility for more than one constituency. Returning officers are appointed to this capacity by the Minister of Environment, Heritage and Local Government for the period of elections.

Candidate nominations must be received by the returning officer before noon on the seventh day following the announcement of elections. Candidates can nominate themselves or be nominated by another voter. Political party candidates have to present a "certificate of political affiliation," issued by the headquarters of the respective political party, to demonstrate that the party has agreed to the candidacy. Independent candidates must have the assent of 30 voters in the constituency, for their nomination. Returning officers have one hour to rule on the validity of a nomination once it is submitted.

Each of the country's approximately 6,000 polling stations will be run by a presiding officer, assisted by a poll clerk. Polling stations do not have a minimum or maximum number of voters, but are instead created so as to be accessible by voters, particularly in rural areas.

Special voting is provided for approximately 3,000 voters in nursing homes, hospitals or similar institutions, who are unable to come to the polling station. In such cases, special presiding officers accompanied by the police bring the ballot paper to the voter. Postal voting is provided for approximately 17,000 voters in six categories: civil servants abroad, defense forces, police (optional), certified disabled, students and those employed elsewhere, and prisoners. No general mechanism for voting abroad is provided.

Ballots include all candidates in alphabetical order by last name, with a photo of the candidate and the symbol of the candidate's political party (if any). Voters can mark preferences for as many choices as there are candidates.

In addition to the Franchise Section and the city and county authorities, several other commissions carry out tasks related to elections. The Constituency Commission was created in 1979 to depoliticize boundary delimitation. It is an independent body led by a high court judge that is formed for a six-month period when census data is considered for the purpose of readjusting election boundaries. The Standards in Public Office Commission is a permanent commission that has been created to enforce political ethics legislation, and which also is responsible for overseeing campaign finance regulations.

Some interlocutors suggested to the NAM that an election commission be established to consolidate the administration of elections and ensure standardized procedures between authorities. The Minister of Environment, Heritage and Local Government has publicly made such a recommendation, and the Task Force on Active Citizenship, sponsored by the Taoiseach, has also made this recommendation in its report released during the NAM.⁷

Electronic voting will not be used for the 2007 Dáil elections. Electronic voting machines were piloted in three constituencies during the 2002 Dáil elections, but were not used in subsequent elections because of public concern over transparency and security. This decision followed a report of the independent Commission on Electronic Voting, which recommended further testing and modifications before the equipment could be used in subsequent elections.⁸ Many interlocutors mentioned their concerns about the lack of a paper trail and the way in which electronic voting was introduced. They suggested that should such technology be introduced in the future, it be accompanied by a broad consultation of all political interests.

E. VOTER REGISTRATION

Voter eligibility for elections to the Dáil is extended to Irish citizens over the age of 18 as well as British citizens who are ordinarily resident in Ireland. Citizens must be on the voter register to vote. Voter registers are compiled annually by the registration authorities within county and city councils and published by 1 November for public review. Any claims for the addition or deletion of voters can be made to the county registrar prior to 25 November. The final register is published on 1 February and comes into force on 15 February. Voter registers are compiled locally and no centralized register exists. Registers are computerized and available to political parties for review.

According to the Department of the Environment, Heritage and Local Government, there are 3,066,000 voters currently on the voter registers in Ireland.⁹ The Department informed the NAM that more than one million modifications were made to voter registers during the latest annual review. This was a result of the Department's special initiative aimed at improving the voter registers, following a public debate on their accuracy. The initiative included 1,500 field workers to support registration authorities as well as a large-scale awareness campaign in the media.

NAM interlocutors generally recognized and welcomed the particular efforts of the Department of Environment this year to make the voter registers as accurate as possible. Some interlocutors expressed their hope that similar efforts would be made in the future to ensure the accuracy of the registers. At the same time, some interlocutors expressed concern that in the effort to "clean up" the registers, too many eligible voters might have been removed, and some might not take the steps necessary to get back on the registers. Field workers typically went door-to-door to confirm the information on the voter registers. If no one was at home following 2-3 visits, the field workers would leave a notice that the persons should contact the authorities so as not to be removed from the voter register.

⁷ Reports available at www.activecitizen.ie.

⁸ The Independent Commission on Electronic Voting and Counting at Elections was established by the Government of Ireland in March, 2004 and dissolved in September, 2006. Reports of the Commission are available at www.cev.ie.

⁹ Voters could check their data on the internet at www.checktheregister.ie.

If voters find that their name is not on the final voter register, they can apply to be included in a supplemental voter register until 15 days prior to the election day. In such a case the voter must have their application witnessed by a police officer. Some interlocutors indicated that this enhanced security measure might deter possible registrants, particularly those from marginalized groups such as Irish Travellers.¹⁰ Civil society representatives also expressed concern that Irish Travellers in general might not be included in voter registers, since they do not necessarily have a fixed address.

F. BOUNDARY DELIMITATION

The number of constituencies for these elections has been increased by one since the previous Dáil elections to 43 constituencies. Adjustments in the boundaries were made by the independent Constituency Commission in 2004, following the publication of the 2002 census figures. Preliminary data from the 2006 census has also been published, and some interlocutors expressed the view that another Constituency Commission should have been convened prior to these elections to reflect significant population changes in certain areas.

However, the final census data has not been fully published and official interlocutors informed the NAM that it therefore could not serve as a basis for another delimitation process at this time.¹¹ The Constitution contains guidance that the ratio of TDs to the population should be no more than 30,000 and no less than 20,000 citizens, and that the ratios between constituencies should be the same throughout the country, “as much as it is practicable.”

Several representatives of political parties expressed concern that the current constituency boundaries may not reflect the actual size of the population in certain areas, and that some communities might be underrepresented as a result. These representatives pointed out that based on population variance, some constituencies should have an increased number of TDs and others should have fewer. Most interlocutors felt that “3-seater” constituencies (as opposed to “4-seaters” or “5-seaters”) tend to favour the larger parties while larger constituencies favour the smaller parties. Some party representatives pointed out that the recent tendency has been to introduce more 3-seat constituencies.

G. MEDIA ENVIRONMENT

The Irish media landscape includes a wide range of print, radio and broadcast media. The public broadcaster Irish Radio and Television (RTE) is the main electronic media source, with a nationwide radio station and three television channels, including an Irish language service. In addition, Ireland has approximately 30 local private radio stations and a private television channel, TV3, which primarily broadcasts entertainment programming. In addition, many people subscribe to cable and satellite TV, which gives them a broad selection of international and domestic channels. The Broadcasting Commission of Ireland regulates private TV and radio, but not RTE.

¹⁰ Irish Travellers are an indigenous minority group whose culture and traditionally nomadic lifestyle distinguish them from the majority population. According to the 2002 Census, there are approximately 24,000 Irish Travellers in Ireland, or 0.6 per cent of the population.

¹¹ For information on the census see <http://www.cso.ie/census/>.

Newspapers are also an important news source. There are three national daily “broadsheet” newspapers. In addition, several British dailies are available with Irish inserts. The NAM was informed that newspapers are not regulated by any authority, although there are plans to set up a Press Council.

In the run-up to an election, the RTE forms an internal Election Steering Group which is responsible for providing guidance and ensuring political balance in election programming. During the official election campaign period, the Election Steering Group meets every day and political parties and candidates can bring any complaints about programming to their attention. The RTE informed the NAM that the Election Steering Group generally resolves any such complaints informally with political parties and candidates.

The RTE has adopted internal guidelines for ensuring political party balance in its newscasts and through the broadcast of political party broadcasts (PPBs). PPBs are three-minute segments produced by parties and broadcast at no cost during the election campaign. This broadcast time is allocated to political parties on the basis of the first preference results from the previous general elections. The RTE also uses the last general elections as a basis for measuring balance in its news coverage and public affairs programs. Independent candidates are also afforded some coverage, but RTE recognized that covering them on a national level and treating them equally could be a challenge.

The RTE informed the NAM that it has monitored balance in its news programming since 1 January, with the coming elections in mind. The RTE employs a private company for monitoring news coverage, which will monitor coverage on a strict quantitative basis once the election campaign begins.

Election debates are also planned to be broadcast by RTE during the election campaign. However, there is discussion whether the debate will be between the leaders of the two biggest parties, or whether the leadership of the main six parties will participate.

No paid political advertising is allowed on TV and radio during the election campaign. One party interlocutor expressed the view that this is an old-fashioned approach that limits the ability of the parties to communicate their views effectively.

IV. CONCLUSIONS AND RECOMMENDATIONS

The NAM recognizes the high level of public confidence expressed overall in the electoral process. At the same time, as part of an effort by the OSCE/ODIHR to follow elections in a broader range of participating States, the OSCE/ODIHR recommends the deployment of an Election Assessment Mission (EAM). Since the administration of elections is decentralized, it would be of particular interest for the EAM to follow the conduct of elections at the constituency level, including the rather complex counting procedures. The EAM would also plan to follow issues identified during the NAM, such as the voter registration process and the decision made not to use electronic voting during these elections.

ANNEX: MEETINGS

Monday 26 March

- 10.00** Meeting with Ms. Kathryn Coll and Mr. Brian Earls, OSCE Section, Frank Flood, Irish Aid, Department of Foreign Affairs.
- 11.15** Meeting with Colm Ó Caomhánaigh, Parliamentary Secretary, Green Party.
- 14.30** Meeting with Kevin McLoughlin, General Secretary, Socialist Party.
- 15.30** Meeting with John Higgins, General Secretary, Progressive Democrats.

Tuesday 27 March

- 10.00** Meeting with officials of the Department of the Environment, Heritage and Local Government.
- 13.30** Meeting with Paula Clancy, Director, TASC, and Nora Owen, Member, Democracy Commission.
- 15.00** Meeting with Mark Kelly, Director, Irish Council for Civil Liberties.
- 16.00** Meeting with various civil society groups representing Irish Travellers.

Wednesday 28 March

- 10.00** Meeting with Peter Feeney, Head of Public Affairs and Secretary of Election Steering Group, Radio Telefís Éireann, (RTE).
- 12.00** Meeting with Mike Allen, General Secretary, Labour Party.
- 14.00** Meeting with Sean Dorgan, General Secretary, Fianna Fáil.
- 15.00** Meeting with Tom Curran, General Secretary and Frank Flannery, Director of Elections, Fine Gael.
- 16.30** Meeting with Eoin O’Broin, Director of European Affairs and Eamonn Nolan, National Election Department, Sinn Féin.

Thursday 29 March

- 09.30** Debriefing meeting with Mr. Brian Earls, OSCE Section, Department of Foreign Affairs.
- 13.35** Departure to Warsaw