

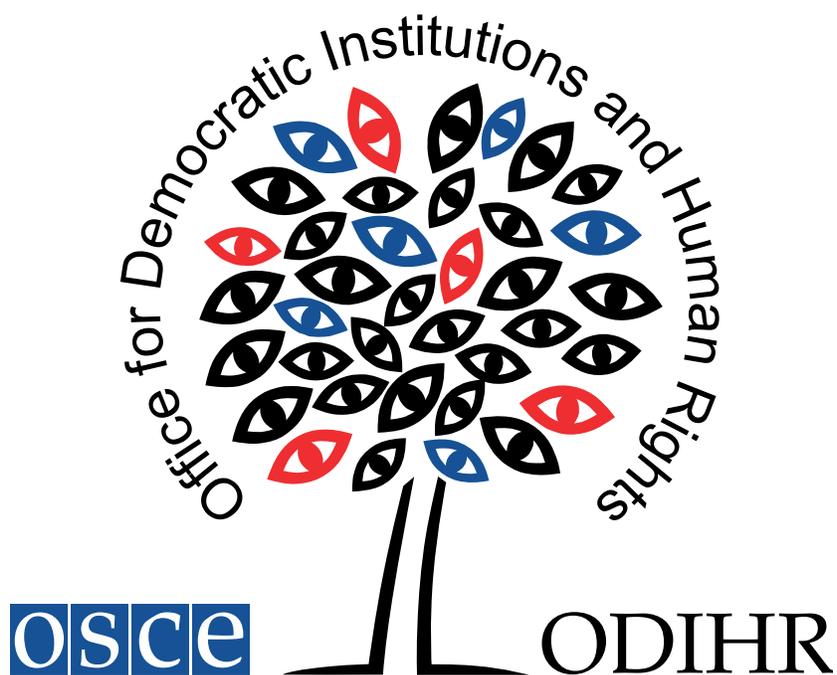


Office for Democratic Institutions and Human Rights

## FRANCE

### PRESIDENTIAL ELECTION 10 and 24 April 2022

#### ODIHR Election Assessment Mission Final Report



Warsaw  
5 September 2022

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**FRANCE**  
**PRESIDENTIAL ELECTION**  
**10 and 24 April 2022**

**ODIHR Election Assessment Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the French authorities and based on the findings and conclusions of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) for the 10 and 24 April 2022 presidential election in France. The ODIHR EAM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic elections as well as national legislation. In line with the ODIHR's methodology, the ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner and visited a limited number of polling stations.

The election was held in a competitive and pluralistic environment, where fundamental freedoms were respected. Voters were provided with ample and diverse information enabling them to make an informed choice among 12 candidates registered in an inclusive manner. While some technical aspects could be improved, the election was effectively administered and enjoyed a high level of public trust.

The president was elected by a universal, direct, and secret ballot in a single constituency, in two rounds. The electoral legal framework is comprehensive yet complex. In line with previous ODIHR recommendations, recent legal amendments removed the restrictions on the right to vote for persons with intellectual or psychosocial disabilities, provided for postal voting for voters in prison and detention facilities, and mandated electronic submission of campaign finance reports. Other prior ODIHR recommendations remain unaddressed, including those concerning proxy voting, criminal liability for defamation and international and citizen election observation.

France has a decentralized election administration, with various institutions responsible for the different aspects of the process. While the election administration faced some challenges with the recruitment of polling board members, it enjoyed, at all levels a high level of public confidence in the integrity and professionalism of their work. Election authorities effectively administered different voting options such as voting at polling stations, including by electronic voting machines, postal and proxy voting, as well as voting from abroad. The recent legal amendments further simplified the procedures for proxy voting, questioning the safeguards for the secrecy of the vote. The election results disaggregated by polling station were swiftly published, contributing to transparency of the process.

Citizens over 18 years of age were eligible to vote, unless disenfranchised by a court decision for certain criminal offences. Positively, persons with intellectual or psychosocial disabilities were eligible to vote without restrictions. Voter lists were extracted from the permanent Single Electoral Register which generally enjoys public confidence. In total, 48.8 million voters were registered for this election, including 52 per cent women.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in French.

The right to stand for the election is granted to citizens with active suffrage rights, except those under guardianship, contrary to international obligations. In order to stand, candidates need at least 500 supporting signatures from elected officials, and a majority of ODIHR EAM interlocutors did not report any issues with the signature collection process. In an inclusive process, the Constitutional Council registered 12 candidates, including 4 women.

The campaign was competitive and took place in a calm and open environment with respect for fundamental freedoms. All candidates developed comprehensive campaign platforms, forthrightly addressing the rise of the cost of living, pension reform, crime, employment, healthcare, immigration and other issues. Some candidates used innovative campaigning technologies. The war in Ukraine subjugated the news cycle throughout the campaign. Campaign events evidenced an overall balanced visibility of women, both as speakers and participants, with gender equality messages featuring in most candidates' discourse. Campaign materials were also accessible for persons with different disabilities.

The campaign finance regulations are comprehensive and provide for transparency. A number of recent amendments addressed some prior ODIHR recommendations, including electronic submission of campaign finance reports and revised sanctions. However, certain areas would require further regulation, including regulation of the timely financial reporting by campaigning political parties. The National Commission for Control of Electoral Accounts and Political Finance exercises oversight over party and campaign financing, and enjoys overall public confidence in its role.

The French media landscape is pluralistic and diversified. However, the growing concentration of media ownership, the recourse by a few large companies to systematic strategic lawsuits targeting investigative journalism and civil society, as well as the noted increase in hostile incidents against journalists, including the cases of violence against reporters covering protests raise concerns. A combination of self-regulation and state oversight ensures equal opportunities of access to media for all candidates, and the media provided diverse, comprehensive and substantial coverage of the campaign.

The legislation provides for comprehensive framework for initiating and handling election disputes and specifies different avenues for seeking legal redress. However, a lack of public hearings of election disputes in the Constitutional Council as well as too short deadlines for their handling after the first round of the election challenged due procedural safeguards and transparency, and OSCE commitments.

This report offers a number of recommendations to support efforts to bring elections in France further in line with OSCE commitments and other international obligations and standards for democratic elections. ODIHR stands ready to assist the authorities to address the recommendations contained in this and previous reports.

## **II. INTRODUCTION AND ACKNOWLEDGMENTS**

Following an invitation from the authorities of France and based on the findings and conclusions of Needs Assessment Mission (NAM) conducted from 7 to 11 February 2022, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Assessment Mission (EAM) to observe the 10 and 24 April presidential election. The ODIHR EAM was led by Ambassador Christian Strohal and consisted of seven experts drawn from six OSCE participating States and was deployed in Paris between 28 March and 28 April.

The ODIHR EAM assessed compliance of the electoral process with OSCE commitments and other international obligations and standards for democratic elections and with national legislation. In line with the ODIHR's methodology, the EAM did not undertake a comprehensive and systematic observation of election day procedures.<sup>2</sup>

The ODIHR EAM wishes to thank the Ministry for Europe and Foreign Affairs (MEFA), the Ministry of Interior (MoI) for their co-operation and assistance, as well as to express gratitude to representatives of other state institutions, political parties, candidates and their campaign teams, media and civil society for sharing their views.

### III. BACKGROUND AND POLITICAL CONTEXT

France is a semi-presidential republic, with a bicameral parliament comprised of a directly elected lower house, the National Assembly, and an indirectly elected upper house, the Senate. Executive power is exercised by a president elected by popular suffrage and a prime minister, appointed by the president. The government is accountable to the parliament. On 13 July 2021, the government called the presidential election for 10 April 2022, and the eventual second round - on 24 April. Since 2002, the presidential elections have been held in the same year as the elections to the National Assembly.

In 2017, Emmanuel Macron of Republic on the Move won the presidential election. In the second round, he defeated Marine Le Pen (representing the National Front) by 66.1 per cent against 33.9 per cent of the votes.<sup>3</sup> The 2017 parliamentary elections further strengthened Mr. Macron's party which secured 308 out of 577 seats in the National Assembly.<sup>4</sup> As the president, Mr. Macron pushed a programme on reforming the economy, spurring growth and reaffirming the country's role on the international scene. President Macron's term was marked by challenges posed by the "yellow vests" protests, which began in 2018 due to increase of fuel taxes and extended to 2019.<sup>5</sup> Public unrest further continued in 2020 due to restrictions imposed to counter the COVID-19 pandemic. On 1 January 2022, France took over the Presidency of the Council of the European Union, and in the run-up to the elections the EU's response to the war in Ukraine dominated political discourse.

Women are well represented in ministerial positions, holding half of the posts in the current government. Although the number of women deputies increased from 155 to 228 following the 2017 elections, they remained underrepresented (39.5 per cent) in the National Assembly and in the Senate (34.8 per cent).<sup>6</sup>

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<sup>2</sup> See previous ODIHR election-related [reports](#) on France.

<sup>3</sup> In 2018, the National Front changed its name to National Rally.

<sup>4</sup> In the outgoing National Assembly, Republic on the Move held 267 seats as of time of the reporting. It was supported by the Democratic Movement (58 seats) and the Act Together (23 seats). On the opposition side, the Republicans held 100 seats, followed by the Socialist Party with 29 seats, the Union of Democrats and Independents group with 20 seats, Liberties and Territories group with 19 seats, France Unbowed with 18 seats, the Democratic and Republican Left group with 16 seats and 20 non-affiliated members of parliament. Seven seats were vacant.

<sup>5</sup> Following the "yellow vests" protests, in late 2018, UN Rapporteurs [raised concerns](#) about the severe restrictions of protesters' rights. A Law on Reinforcing and Guaranteeing the Upholding of Public Order during Demonstrations was adopted on 12 March 2019 following [review](#) by the Constitutional Council.

<sup>6</sup> President Macron advanced an ambitious gender agenda, focusing on abortion, medically assisted reproduction and policies against domestic violence. Criticism, however, was levelled at the government over the reportedly modest amount of resources allocated to reaching gender equality, including in salaries.

#### IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework for presidential elections is comprehensive yet complex as it includes numerous laws, regulatory measures and case law decisions. It primarily consists of the 1958 Constitution, the 1956 Electoral Code, the 1962 Law on Presidential Elections, the 1958 Law on the Constitutional Council, as well as the laws providing for the freedoms of the press and peaceful assembly, political and campaign finance reporting, media oversight, and administrative and criminal responsibility. The legislation is further supplemented by executive regulations, such as the 2001 Government Decree implementing the Law on Presidential Elections or decisions and instructions of administrative agencies. Apart from rules of a technical nature, these sub-laws often regulate important aspects of the electoral process, including candidate nomination, campaign activities and their financing, as well as eligibility requirements for submitting and timelines for reviewing complaints.<sup>7</sup> France is party to the key international human rights instruments pertaining to the holding of democratic elections.<sup>8</sup>

*Consideration should be given to consolidating the electoral legal framework, particularly by integrating the executive regulations pertaining to key aspects of the electoral process into one comprehensive piece of legislation.*

The electoral legal framework underwent some revision since the last presidential election, most recently in 2019 and 2021. According to ODIHR EAM interlocutors, the process leading to the legislative changes was inclusive and provided an opportunity for meaningful public debate and consultations with the relevant institutions and stakeholders. This contributed to overall trust in the existing legislative framework governing elections.

The latest amendments, in line with previous ODIHR recommendations, removed the restrictions on the right to vote for people with intellectual or psychosocial disabilities under guardianship, allowed postal voting for voters serving a prison sentence and those at detention facilities, and mandated the electronic submission of campaign finance reports. The changes also established a permanent electoral register, obliged presidential candidates to ensure accessibility to their campaigns for people with disabilities, banned financial support to parties and candidates by organizations registered outside the European Economic Area, and introduced provisions against the manipulation of information during elections.<sup>9</sup> However, other important ODIHR recommendations remain unaddressed, including those concerning proxy voting, criminal liability for defamation and international or citizen election observation.

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<sup>7</sup> For example, the 2001 Government Decree implementing the Law on Presidential Elections provides, among others, that those eligible to nominate candidates can only support one candidate and that only the nominees can appeal against the decision on the list of candidates; it also establishes the National Commission for Control of the Election Campaign with a power to enact binding decisions which are subject to appeal to the Council of the State. Section II.2.a of the European Commission for Democracy through Law (Venice Commission) [2002 Code of Good Practice in Electoral Matters](#) recommends that “[a]part from rules on technical matters and detail – which may be included in regulations of the executive – rules of electoral law must have at least the rank of a statute”.

<sup>8</sup> Including [the 1966 International Covenant on Civil and Political Rights \(ICCPR\)](#), [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination](#), [the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women](#), [the 2003 UN Convention against Corruption \(UNCAC\)](#), [the 2006 UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#), and [the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms](#). France is a member of the Council of Europe’s Venice Commission and (GRECO). In line with the Constitution, duly ratified international treaties prevail over national legislation.

<sup>9</sup> Other changes expanded the list of elected officials authorized to sign in support of a presidential candidate, simplified requirements for proxy voting, and specified the timeline for calling the presidential elections.

The president is elected for a five-year term and can serve a maximum of two consecutive terms. To be elected in the first round, a candidate must receive more than 50 per cent of the valid votes cast. In case no candidate is elected, a second round is held after two weeks between the two candidates who received the highest number of votes. The candidate receiving the most votes in the second round is elected.

## V. ELECTION ADMINISTRATION

In France, various institutions are responsible for different aspects of elections and manage the process at the national and local levels. The election administration at all levels enjoyed a high level of public confidence in the integrity and professionalism of their work.

The Constitutional Council oversees the electoral process. It registers presidential candidates, reviews and advises on the election-related legislation, adjudicates election-related complaints and announces the final results of the election.<sup>10</sup> On election days, the Council delegated some 2,000 magistrates throughout the country to oversee the voting process and its compliance with the electoral regulations. The magistrates do not interfere in the process, but report directly to the Constitutional Council any occurrences that warrant its attention.

The MoI is in charge of the technical and logistical preparations for the elections. It issues operational instructions on legal and organizational matters to the prefectures and co-ordinates the release of election results to the media and the public. For this election, the MoI issued several timely and comprehensive instructions on various topics, including on election day procedures and COVID-19 related arrangements. The MoI also established an information portal on its website with questions and answers on election administration, election day procedures and links to various services, such as proxy voting and voter registration. In line with its legal obligation and increasing the accessibility of the process, the MoI implemented a broad voter information campaign, including on online platforms, which was also accessible for persons with disabilities.

Prefectures co-ordinate the work of the municipalities and are responsible for the distribution of election materials to the municipalities and the ballots and leaflets with candidate's information to voters.<sup>11</sup> For this election, each of the 106 prefectures established a Local Census Commission.<sup>12</sup> These Commissions had to ensure consistency of voting results protocols at the municipality and polling station level and pre-screen any complaints subject to consideration by the Constitutional Council.

Municipalities form and manage the work of some 70,000 polling stations boards throughout the country. For this election, municipalities organized information sessions before election day although, no formal training was envisaged for polling board members. Following the counting of votes, each polling station communicates voting results by phone and later delivers voting results protocol to their municipality.

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<sup>10</sup> The Constitutional Council is a judicial and consultative body, composed of nine members appointed for a nine-year non-renewable term. The president of France appoints three members, including the president of the Council. Presidents of the Senate and the National Assembly appoint three members each. In addition, the former presidents of France may sit in the Council for life, but none are currently holding this seat.

<sup>11</sup> Each voter receives at their domicile a leaflet with information about the presidential candidates and ballots.

<sup>12</sup> Commissions were composed of three judges appointed by the president of the Court of Appeals.

Municipalities aggregate the results, enter the data in a database and send the results to the prefectures which later send those to the MoI.

*Consideration could be given to mandatory training of polling board chairs to ensure effective and consistent management of election day proceedings*

Polling station boards consist of at least four members, with a chair being an elected municipal official and the rest of the members nominated by political parties or drawn from among the voters on a voluntary basis. Many ODIHR EAM interlocutors emphasized the need for authorities to address persistent challenges to recruit members on a voluntary basis. There are no requirements for representation of each gender at polling stations, and no such data is aggregated, which is at odds with OSCE commitments.<sup>13</sup>

*In line with OSCE commitments, gender disaggregated data with regards to the electoral process should be made available in a comprehensive manner.*

## VI. VOTING METHODS

Voters are given the option to vote in person at the polling stations on election day or by proxy. In 63 municipalities, voters could use offline electronic voting machines at 1,421 polling stations (approximately 1.4 million voters).<sup>14</sup> The MEFA which is responsible for organizing voting abroad has established 992 polling stations at French consulates and embassies in 63 countries.

The legislation provides for various measures for inclusion and independent access of persons with disabilities to the electoral process.<sup>15</sup> By law, municipalities must enable access to voting locations and provide at least one wheelchair accessible voting booth and a ballot box at each polling station. Voters may also be accompanied by a person of their choice should they require such assistance when voting. However, some ODIHR EAM interlocutors noted that in practice, assistive tools, such as Braille templates or materials in easy-to-read format, were not always available to facilitate independent and effective participation of visually impaired voters.<sup>16</sup>

Proxy voting was available for any voter who could not cast the ballot at their precinct. According to the MoI, 1.6 million voters requested proxy voting in the first round, and 1.9 million - in the second round countrywide and abroad. While ODIHR has previously recommended that the practice of proxy voting be reviewed due to potential concerns of the secrecy of the vote, the 2019 legal amendments further simplified the relevant procedures.<sup>17</sup> Voters and their proxies are no longer required to register at the

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<sup>13</sup> Paragraph 40.13 of the [1991 OSCE Moscow Document](#) commits participating States to “ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women”.

<sup>14</sup> In 2008, a moratorium was imposed on the expansion of voting machines beyond these municipalities.

<sup>15</sup> Article L62-2 of the Electoral Code stipulates that the polling stations and voting techniques must be accessible to persons with disabilities, regardless of the type of disability, including physical, sensory, mental or psychological.

<sup>16</sup> Article 29 of the CRPD calls on States to ensure that “voting procedures, facilities and materials are appropriate, accessible and easy to understand and use”. See Paragraph 2.3 of the [Recommendation CM/Rec\(2011\)14](#) of the Council of Europe’s Committee of Ministers on the participation of persons with disabilities in political and public life. See also Paragraph 43 (c) of the UN Committee on the Rights of Persons with Disabilities 2021 [Concluding Observations on the initial report of France](#).

<sup>17</sup> The method of proxy voting was ruled by the Constitutional Council to be in conformity with Article 3 of the Constitution.

same precinct or municipality. Any voter could apply for a proxy, without specifying the reason or presenting any proof of absence. Such a request could be made either online or in person at the police office up to and on election day. Some ODIHR EAM interlocutors expressed concerns regarding the lack of cut-off date in advance of election day and the difficulties for the institutions involved to communicate the proxy applications in a timely manner to the polling station boards. Citizens who voted by proxy were marked on the voter lists. The OSCE commitments and other international obligations for democratic elections require ensuring the secrecy of the vote.<sup>18</sup>

*As previously recommended, consideration should be given to cancelling proxy voting and exploring alternative voting methods which duly uphold OSCE commitments and other international standards.*

Voters in pre-trial detention and those serving a prison sentence are eligible to vote by mail, by proxy and in person with special permission to leave the penitentiary institution. Positively, the introduction of the postal vote in 2019 for this category of voters increased their participation from 2 per cent (in 2017 presidential election) to 22 per cent in this election.<sup>19</sup> As per legal requirement, all these votes were counted in a single national polling station located at the Ministry of Justice.<sup>20</sup>

## VII. VOTER REGISTRATION

French citizens who are 18 years of age by election day have the right to vote, except those deprived of their civil rights by a court decision for misdemeanour and criminal offences.<sup>21</sup> The deprivation of voting rights, however, is an additional penalty determined on a case-by-case basis and is proportionate to the offence committed.<sup>22</sup>

Positively, in line with international obligations, since March 2019, people with intellectual or psychosocial disabilities placed under guardianship are permitted to vote.<sup>23</sup> According to ODIHR EAM interlocutors, this led to the restoration of voting rights of some 310,000 citizens.<sup>24</sup> However, the ODIHR EAM was informed that the vast majority of voters under guardianship had faced challenges with practical arrangements for inclusion into voter lists.

*Consideration could be given to continued efforts to ensure independent participation in public life of persons with intellectual or psychosocial disabilities.*

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<sup>18</sup> Article 3 of the Constitution provides for the secret and equal suffrage. Paragraph 7.4 of [the 1990 OSCE Copenhagen Document](#) commits participating States to “ensure that votes are cast by secret ballot or by equivalent free voting procedure”. See also Article 25 of the ICCPR and Paragraph 20 of the [1996 CCPR General Comment No. 25](#).

<sup>19</sup> The vote by mail in prisons was first introduced for the elections to the European Parliament in 2019. According to the Ministry of Justice, for the presidential election, out of 51,602 eligible voters in prisons 10,740 voted by mail in the first round, and 10,250 in the second round, 187 obtained permission to vote at their polling station in the first round and 196 in the second round, and 521 voted by proxy in the first round and 564 in the second round.

<sup>20</sup> See Article 29-1.-I of the [Decree No. 2021-358](#) of March 31, 2021.

<sup>21</sup> For this election, as of March 1, 2022, 380 prisoners were deprived of their voting rights by courts.

<sup>22</sup> Deprivation of voting rights cannot exceed 5 years in case of a misdemeanour or 10 years in case of a criminal offence.

<sup>23</sup> See [CRPD Committee 2021 Concluding observations on the initial report of France](#), Paragraph 4(d). Article 29 of the CRPD stipulates that state parties to the convention shall “Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others; [...] including the right and opportunity for persons with disabilities to vote and be elected”.

<sup>24</sup> There are some 385,000 adults under guardianship; some 75,000 were deprived of their voting rights by courts.

In January 2019, France established a permanent Single Electoral Register (REU). The National Institute of Statistics and Economic Studies (INSEE) maintains the REU and updates it based on the information provided by municipalities and governmental agencies. Voters are passively registered.<sup>25</sup> Voter registration data is automatically updated with information on the deceased voters and persons serving a prison term. Municipalities have the authority to remove voters from the voter list upon checks by the Verification Commission attesting that the person has no links with this municipality.<sup>26</sup> The law requires, however, that the municipalities send a notification letter to the voter about the change.

Those voters who have changed their domicile address, including those abroad, are required to register with the new address.<sup>27</sup> Eligible voters who are omitted from the REU can also actively register. For this election, voters could register, including at new addresses, either online or in person at the municipalities by 2 and 4 March, respectively.<sup>28</sup> A number of ODIHR EAM interlocutors expressed dissatisfaction with what they found to be too early of the closure of voter registration. Some interlocutors reported technical problems with the functionality of the online registration website during the weeks preceding the deadline for registration and attributed voters missing deadlines for registration to these technical problems.<sup>29</sup> Voters who were not included in the voter lists could be added later with a court decision up to and on election day.<sup>30</sup>

In total 48,803,175 voters (25,479,233 or 52 per cent women) were registered as of 9 March, including 1,433,605 citizens abroad. Voter lists were extracted from the REU and were available for public scrutiny at municipalities upon request one week before the first election day and up to 10 days after. Copies of voter lists can be requested in line with the data protection requirements.<sup>31</sup> Overall, no ODIHR EAM interlocutors raised significant concerns regarding the accuracy of the voter register.

## VIII. CANDIDATE REGISTRATION

The right to stand for presidential election is granted to citizens with active suffrage rights. Those under partial or full guardianship may not stand, contrary to international obligations.<sup>32</sup> As a precondition to stand, potential candidates have to submit to the Constitutional Council proof of they completed civic

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<sup>25</sup> Special categories of voters, such as *gens du voyage* (travellers), sailors, military and people without a domicile are able to register, either in person, online or by mail, using the address of their respective social welfare centre or similar institution.

<sup>26</sup> Verification Commissions are composed of three members representing the respective local government and judiciary. Between the May 2021 municipal elections and 9 March 2022, some 227,000 voters were excluded upon initiative of municipalities.

<sup>27</sup> According to the MoI, a significant number of voters remain registered at their old addresses and that voters, predominantly young voters and students, are not proactively reporting the change of addresses.

<sup>28</sup> Please see the [data](#) published by the INSEE on the changes in the REU.

<sup>29</sup> The Directorate of Legal and Administrative Information under the supervision of the prime minister and MoI are responsible for the maintenance of the online voter registration service. In this election, the deadline for registration was extended to nine weeks.

<sup>30</sup> INSEE reported 4,597 court requests submitted following the closure of voter registration.

<sup>31</sup> According to Article L37 of the Electoral Code, citizens and candidates who access the voter lists have to sign that they are not using the information for commercial purposes.

<sup>32</sup> See Articles 12 and 29 of the CRPD. Paragraph 48 of [General Comment No. 1 to Article 12 of the CRPD](#) states that “a person’s decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising [...] the right to vote [and] the right to stand for election”. See also Paragraphs 58 and 59 of the 2021 CRPD [Concluding observations](#) on the initial report of France.

service, a certificate of no criminal record, a declaration of assets, interests and activities, as well as a letter of intention to run.<sup>33</sup> To be registered, each prospective candidate had to receive at least 500 supporting signatures (*parrainage*) of elected officials by the 4 March deadline.<sup>34</sup> Each official could only support one candidate, and signatures had to be submitted from at least 30 regions or overseas territories, with no more than 10 per cent coming from one region or overseas territory.<sup>35</sup> The majority of ODIHR EAM interlocutors did not report any issues on the process of signature collection.

By 7 March, in an inclusive process, the Constitutional Council registered 12 candidates, including 4 women, offering voters a genuine choice from among a broad spectrum of political alternatives.<sup>36</sup> The Constitutional Council published the list with names and supporting signatures for all 64 prospective candidates, including those who did not receive the legally required 500 signatures.<sup>37</sup>

## IX. ELECTION CAMPAIGN

The official election campaign period for the first round commenced on 28 March and ended at midnight on 8 April; however, campaign finances and media access are regulated for a longer period before the election. The ODIHR EAM was informed that campaigning began *de-facto* much earlier, with candidates announcing their intention to stand and presenting their programmes. The campaign period for the second round resumed on 11 April and ended at midnight on 22 April. There is a campaign silence period in force 24 hours prior to and on both election days, which also extends to online content.

The legal framework provides for equal campaign opportunities for all contestants, and several bodies are responsible for ensuring that this is respected. A temporary National Commission for Control of the Election Campaign (NCCEC) is established for each election to monitor the campaign and ensure equal treatment. The independent Audio-visual and Digital Communication Regulatory Authority (ARCOM) regulates and monitors the conduct of the campaign in all but print media.

The campaign was vibrant and competitive, with respect for fundamental freedoms, including freedoms of expression, peaceful assembly and association. The COVID-19 preventive measures were lifted in mid-March, and thus campaign activities were not affected.<sup>38</sup> Voters had the opportunity to make an informed choice within a wide variety of diverse political options. Nevertheless, in the campaign the recent declining interest among the electorate amidst mounting disillusionment in politics was visible.<sup>39</sup>

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<sup>33</sup> The declarations were published on the website of the High Authority for Transparency of Public Life on 8 March.

<sup>34</sup> There are some 42,000 elected officials in France. Each elected official may send the form with a supporting signature for a candidate directly to the Constitutional Council.

<sup>35</sup> The law does not allow the withdrawal of signatures.

<sup>36</sup> Nathalie Arthaud - Workers' Struggle, Fabien Roussel - Communist party, Emmanuel Macron - Republic on the Move, Jean Lassalle - Resist, Marine Le Pen - National Rally, Éric Zemmour – Reconquest, Jean-Luc Mélenchon - France Unbowed, Anne Hidalgo – Socialist Party, Yannick Jadot – The Greens, Valérie Pécresse – The Republicans, Philippe Poutou – New Anticapitalist Party, and Nicolas Dupont-Aignan – France Arise.

<sup>37</sup> See the [list of the candidates](#) and their supporting signatures as published on the website of the Constitutional Council. Names of the candidates were also published in the official gazette.

<sup>38</sup> The obligation to carry proof of vaccination and to wear masks indoors was [lifted on 14 March](#).

<sup>39</sup> According to many ODIHR EAM interlocutors, the abstention rate loomed large in this election. For the first round, the abstention rate was 26.3 per cent while for the second round – 28 per cent.

Campaign events evidenced an overall balanced visibility of women, both as speakers and participants, with gender equality messages featuring in most candidates' discourse.<sup>40</sup>

On 1 January 2022, France took over the presidency of the Council of the European Union. This afforded the incumbent greater visibility during the campaign period. The war in Ukraine subjugated the news cycle throughout the campaign. Political discourse in the campaign was further dominated by the rise of populist political options on either end of the political spectrum, coupled with the far right shaping the early campaign narrative and representing a sizeable portion of the anti-establishment sentiment.

All candidates developed comprehensive campaign platforms, forthrightly addressing political issues of national interest such as the rise of the cost of living, drop in purchasing power, increased energy and fuel prices and pension reform. They also focused on crime, social protection, employment, healthcare and immigration issues. The second round candidates adjusted their messaging to appeal to undecided voters: Mr. Macron focused more on environmental matters to convince the climate-sensitive electorate and took steps to assuage voter concerns over his plans for pension reform; Ms. Le Pen increased her focus on foreign policy and representativeness of institutions, while spotlighting youth and social issues.

Candidates reached out to voters via rallies, street canvassing, leafleting, posters, billboards, and all types of media. In addition, some candidates deployed innovative campaigning technologies, including hologram-based meetings and mobile phone services.<sup>41</sup> One candidate used for campaigning automated cold calling, which, at the time of reporting, was being investigated by the National Commission for Information Technology and Civil Liberties (CNIL) to assess whether the candidate had violated the EU General Data Protection Regulation.<sup>42</sup>

During the campaign period, there is a ban on paid political advertising in the media, including online, and on social platforms. Many ODIHR EAM interlocutors flagged that the ban on paid political advertising in all media and declining television viewership, resulted in a significant increase in candidates' use of online platforms to amplify their reach to voters.<sup>43</sup>

While campaign finance regulations prohibit use of public resources in campaigns, the current system lacks clear guidance for presidential candidates to avoid possible misuse of resources, including with regards to use of materials, security and public employees during election campaigns.<sup>44</sup>

*Legal provisions on the use of public resources by presidential candidates should be clarified to prevent the misuse or perception of such misuse during the campaign.*

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<sup>40</sup> The ODIHR EAM did not observe any rallies or other public events, but followed coverage of some of them online.

<sup>41</sup> Mr. Mélenchon used hologram-facilitated meetings. Mr. Jadot, Ms. Le Pen, Mr. Macron, Mr. Mélenchon, Ms. Péresse and Mr. Zemmour used mobile phone services.

<sup>42</sup> Ahead of the first round, some citizens reported to the CNIL having received a 30-second voicemail message from candidate Zemmour explaining his programme and why to vote for him. In line with existing data protection rules, when using a service provider for automated cold calling, candidates are recommended to send a first message asking the person approached to agree to receive an ensuing message with political content. In addition, they must also specify an email address or a telephone number that can be contacted to oppose any canvassing. The Prosecutor's office ordered an investigation of possible infringement, based on two complaints filed by civil society organizations.

<sup>43</sup> As reported to the ODIHR EAM, candidates used *Facebook, Instagram, TikTok, Twitch, Twitter* and *YouTube*.

<sup>44</sup> See Paragraphs I.14 and II.B.1.5 of the 2016 ODIHR and Venice Commission [Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#).

Following the 2021 legal amendments, candidates had to ensure full accessibility of their campaign to persons with disabilities. All contestants complied with this obligation and prepared campaign materials in different formats, including, for the first time, in easy-to-read format.<sup>45</sup> The National Consultative Council of Disabled Persons (CNCPPH) welcomed these measures; however, it questioned the compliance of campaign materials of six candidates with FALC standards (*facile à lire et à comprendre*).

## X. CAMPAIGN FINANCE

Campaign finance is primarily regulated by the Electoral Code and the Law on Financial Transparency in Political Life. These are complemented by a large jurisprudence emanated from the Constitutional Council and the Council of State. The regulations are comprehensive and provide for transparency; however, certain areas would require further regulation, including reporting by third parties on a timely basis. The National Commission for Control of Electoral Accounts and Political Finance (CNCCFP) is the independent administrative authority which exercises oversight over campaign financing.

### A. CAMPAIGN INCOMES AND EXPENDITURES

Campaigns are primarily funded by political parties' and candidates' own funds, including loans, as well as donations.<sup>46</sup> The law prohibits contributions from domestic and foreign legal entities but allows those from individuals and political parties. The law does not regulate financing by unaffiliated, non-party campaigners (third parties), limiting the transparency and accountability of campaign finances.<sup>47</sup> Individuals can donate up to EUR 4,600 per election to one or more candidates and up to EUR 7,500 to political parties per year.<sup>48</sup> Following the 2017 legal amendments, only French nationals or legal residents in France can donate to candidates and political parties.<sup>49</sup> Contributions exceeding EUR 150 must be paid by check, bank transfer or credit card. Anonymous donations are permitted below this amount but jointly should not exceed 20 per cent of the spending limit.<sup>50</sup> Total campaign expenditures

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<sup>45</sup> Campaign materials in easy-to-read format have been also posted on the website of the NCCEC.

<sup>46</sup> There is no ceiling on donations by a political party or on the use of a candidate's own funds. In 2020, [according to official records](#), political parties and groups received approximately EUR 66 million in public funding combined, which they also could use for the presidential campaign.

<sup>47</sup> As provided by Paragraph 220 of [the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) (Guidelines on Political Party Regulation), "[i]n order to avoid the creation of loopholes through which unlimited funding can be channelled and financial transactions can be veiled, laws should set proportionate and reasonable limits to the amount that third parties can spend on promoting candidates or parties, ideally by applying existing ceilings for donations to political parties to these actors as well".

<sup>48</sup> Donors who pay the tax revenue benefit from 66 per cent tax relief of the amount donated. As per the CNCCFP [2021 Activity Report](#) (last paragraph, page 98), EUR 56 million in donations and contributions were declared by more than 153,000 taxpayers. Paragraph 236 of the Guidelines on Political Party Regulation recommends to "provide tax credits or tax deductions for individuals and corporations who contribute to parties".

<sup>49</sup> Paragraph 256 of the Guidelines on Political Party Regulation highlights that "it is important that some forms of regulation, with comparable obligations and restrictions as apply to parties and party candidates, be extended to third parties that are involved in the campaign, to ensure transparency and accountability. Third parties should be subjected to similar rules on donations and spending as political parties to avoid situations where third parties can be used to circumvent campaign finance regulations".

<sup>50</sup> The aggregate limits for anonymous donations were up to EUR 3,370,200 for the first round or up to EUR 4,501,800 for the second round candidates. Paragraph 212 of the Guidelines on Political Party Regulation provides that "[a]nonymous donations should be strictly regulated, including through a limit on the aggregate allowable amount of all anonymous donations. Legislation should limit the aggregate maximum amount to a reasonable level designed to ensure that anonymous donors cannot wield undue influence".

for each presidential candidate must not exceed EUR 16,851,000 (up to EUR 22,509,000 for the second round candidates).

*In order to eliminate the possibility of circumventing campaign ceiling, the legislation could comprehensively regulate campaigning by the third parties, including their campaign finance reporting within the timeframe applicable to candidates.*

For the presidential elections, candidates and political parties can use loans in their campaigns; however, the candidates are prohibited from using such funds from individuals and legal entities. In addition, only banks within the European Economic Area can grant loans for these purposes. The law adequately regulates the write-off of loans.

As per the 2021 amendments to the Electoral Code, each registered candidate receives an advance of EUR 200,000 (previously EUR 153,000) for campaign expenses from the public reimbursement funds allocated to candidates.<sup>51</sup> Candidates who received more than 5 per cent of votes are entitled to up to 47.5 per cent reimbursement of the spending limit (maximum EUR 8,004,225, depending on actual expenditures), while those securing less than 5 per cent would receive only up to 4.75 per cent (maximum EUR 800,423).<sup>52</sup> Many ODIHR EAM interlocutors welcomed reconsidering the threshold or amounts of reimbursement as only 4 out of the 12 candidates ended up being entitled to substantial reimbursement, while the others and respective political parties were left in a difficult financial situation.

## **B. REPORTING AND OVERSIGHT REQUIREMENTS**

The official reporting period during which campaign finances have to be accounted for and reported on normally starts 12 months before election day. For this election, candidates had to report on campaign contributions and expenditures for the period between 1 July 2021 until the submission of the financial report (24 June 2022).<sup>53</sup> Each candidate was obliged to appoint a financial agent, which managed the dedicated single account for recording all campaign contributions and expenditures. The absence of financial reporting before election days detracted from the transparency of campaign financing.<sup>54</sup>

*To enhance transparency, consideration should be given to requiring preliminary disclosure of itemized campaign contributions and expenditures by contestants prior to election days.*

For the first time and in line with a previous ODIHR recommendation, candidates have to submit their financial reports and other relevant documents to the CNCCFP through a digital platform FIN'POL - a dedicated service aimed at a more efficient and environment-friendly filing and review process. Candidates are also required to report expenditures from political parties (third parties) as well as in-kind

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<sup>51</sup> Those candidates are entitled to reimbursement of campaign expenditures who comply with legal obligations, including: opening a single bank account; complying with campaign spending limits; paying all campaign expenses by the financial association; presenting campaign finance report.

<sup>52</sup> For the second round candidates, the reimbursement ceiling amounts up to EUR 10,691,775.

<sup>53</sup> For this election, the 2021 legal amendments reduced the reporting period to nine months due to postponed local elections in 2021, to avoid a potential overlap between financial reports.

<sup>54</sup> Article 7.3 of the 2003 UNCAC provides that “[e]ach State Party shall also consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”. See also Paragraphs 247 and 261 of the Guidelines on Political Party Regulation.

donations from individuals, in the annexes of their financial reports.<sup>55</sup> Political parties have an annual reporting obligation, including on campaign expenses, but these reports are submitted outside the period of the candidates' financial report verification by the CNCCFP.

Within a month following the submission of financial reports, the CNCCFP has to publish a summary of these reports, without disclosing the identity of donors, suppliers or lenders. The CNCCFP then approves or rejects financial reports within six months after the deadline for filing the reports.<sup>56</sup> All ODIHR EAM interlocutors expressed overall confidence and acknowledged the CNCCFP's professionalism in its oversight role. The absence of requirements to report by political parties on campaign finances used in presidential elections in a timely manner does not allow the CNCCFP to make efficient oversight of the candidates' compliance with the expenditure ceiling.<sup>57</sup>

*In order to further enhance transparency and accountability, the reporting deadlines for political parties' campaign expenditures could be synchronised with those for candidates to allow effective oversight.*

Generally, the law provides for proportional and dissuasive sanctions. Failure to comply with the reporting requirements may result in financial sanctions and criminal penalties.<sup>58</sup> Following the 2017 legal amendments, violation of the donation limits or receiving funds from the prohibited sources may result in fines in the amount of up to EUR 45,000 (previously EUR 3,750) or up to three years of imprisonment (previously one year). A candidate who exceeds the expenditure ceiling must repay the exceeded amount to the public treasury. Appeals against CNCCFP decisions on acceptance or rejection of reports or decisions on questioned reimbursement amounts can be made within one month to the Constitutional Council.

## **XI. MEDIA**

### **A. MEDIA ENVIRONMENT**

The French media landscape is well established, pluralistic and diversified, with a variety of media outlets providing different views and opinions. Television is the primary source of political information, followed by the Internet, radio and print media.<sup>59</sup> However, some ODIHR EAM interlocutors argued that

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<sup>55</sup> A candidate's financial report should include an appendix with the expenses incurred by the political parties supporting the candidate (there were [455 political parties](#) entitled to fund candidates or other political parties). In 2011, GRECO also [recommended](#) to "hold consultations on whether or not regulations should be introduced to take account of the activities of third parties, depending on their significance in practice".

<sup>56</sup> The [CNCCFP decisions](#) are published in the Official Journal and the website of the CNCCFP. All financial reports of candidates are available upon request but without the identity data of donors.

<sup>57</sup> In the [CNCCFP 2021 Activity Report](#), it is recommended for the legislator to allow CNCCFP real-time access to the accounts of the political parties supporting candidates, especially for presidential elections. The Commission could thus ensure that all expenses covered by the party for a candidate have actually been declared by the party, are justified and traced back to the bank account (page 153).

<sup>58</sup> On 30 September 2021, the High Court of Paris convicted ex-president Nicolas Sarkozy and 13 other persons implicated in his campaign to prison sentences up to two years for exceeding campaign ceiling, forgery of financial documents, fraud and illegal campaign funding.

<sup>59</sup> See the Reuters Institute for the Study of Journalism, [Digital News Report 2021, France](#).

traditional media are witnessing decreasing public trust and interest, with voters progressively turning to online news and social networks for political information and discussion.<sup>60</sup>

Legal safeguards are in place to protect freedom of the press; risks undermining media independence are relatively limited.<sup>61</sup> Nonetheless, several ODIHR EAM interlocutors raised concerns over the growing concentration of media ownership with a consequent impact on pluralism and freedom of the press.<sup>62</sup> Some also opined that the existing laws were considered outdated and required revision to address the challenges of convergence and digitalization of the media markets.

*In order to protect media pluralism, existing legal framework regulating media concentration could be reviewed and adapted to the current state of the media industry. Authorities should revise methodologies to assess the concentration of media ownership, including the influence of individual outlets and the aggregated influence of a media outlet/group across different types of media.*

Systematic strategic lawsuits are used by a few large companies as an instrument to pressure and financially weaken investigative journalism and civil society and are seen to affect their ability to report on issues of public interest.<sup>63</sup> According to some civil society organizations, hostility against journalists has increased, including the cases of violence against reporters covering protests.<sup>64</sup> In addition, journalists have also denounced attacks on the secrecy of sources.<sup>65</sup>

Some ODIHR EAM interlocutors also raised concerns in relation to the news channels, which have adopted an editorial line, often provocative, based on the dissemination of discriminatory contents and lacking political diversity. ARCOM took action against the violations on a few channels, although some civil society organizations deemed these measures too lenient.<sup>66</sup>

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<sup>60</sup> See also the [Media Pluralism Monitor – 2020 Country Report: France](#).

<sup>61</sup> See the [Recommendation CM/Rec\(2018\)1\[1\]](#) of the Committee of Ministers to member States on media pluralism and transparency of media ownership.

<sup>62</sup> In December 2021, 250 media professionals made [a public statement](#) against the undue concentration of French media. In November 2021, the French Senate created a [commission of enquiry](#) "to shed light on the processes that have led or may lead to concentration in the media in France, and to assess the impact of this concentration on democracy". On 31 March 2022, the commission submitted [32 proposals](#) to devise a new regulatory framework.

<sup>63</sup> Lawsuits of this type allege defamation or denigration and are brought for the purpose of intimidating, burdening or harassing the defendant for speaking out against the plaintiff on matters of public interest. In France, [Reporters without Borders](#), [Greenpeace](#), and [other civil society organisations](#) as well as the [media](#) have reported on several cases. Procedural guarantees exist to control these actions and limit abuses, including payment of a deposit for bringing a case, proper justification of damages claimed and a fine for abusive proceedings.

<sup>64</sup> Cases of violence against media representatives took place during the demonstrations against the new national policing scheme and the "global security" law, which would limit the circulation of images of law enforcement officers. See, for example, the [2021 statement issued by Reporters without Borders](#) (RwB) and [2022 annual report](#) of the partner organizations of the Council of Europe Platform to strengthen the protection of journalism and the safety of journalists.

<sup>65</sup> The 2021 [RwB statement](#) notes that "Investigative journalists have also been subjected to harassment. In 2020, at least two were summoned for questioning by [the police] for suspected complicity in violation of police confidentiality. This can threaten the confidentiality of a reporter's sources, which are not sufficiently protected by French legislation. Under a 2010 law [on the protection of the confidentiality of journalists' sources], the authorities need only cite an "overriding public interest" in order to be able to violate the confidentiality of journalistic sources".

<sup>66</sup> Over the last three years the media regulator has issued a number of reprimands against the channel *CNews*, including: a warning for incitement to hatred or violence against Muslims (3 December 2019); and a fine of EUR 200,000 for incitement to hate and discriminatory behaviour against unaccompanied foreign minors (17 March 2021). Another complaint was filed by the collective *Stop Bolloré* on 19 February 2022 against the outlet for incitement to hate. On 13 April 2022, RwB requested the Council of State to sanction ARCOM's inaction *vis a vis* *CNews'* breaches of obligations of honesty, independence and pluralism of information. RwB also asked the Council of State to appeal to

## B. LEGAL FRAMEWORK

The 1789 Declaration of the Rights of Man and of the Citizen protects freedom of speech, and the 1881 Press Law guarantees freedom of the press. However, defamation and insult are still considered as criminal offences, with special legal protection attributed to public officials. Although imprisonment has not been applied in practice, and cases have been handled in line with ECtHR case law, the possibility of being subject to legal proceedings and substantial fines may have a chilling effect on journalists' freedom to expression.<sup>67</sup>

*Authorities should consider decriminalizing defamation in order to bring the relevant legal framework in line with international standards on freedom of expression. Measures should be put in place to protect media from strategic lawsuits to deter the abuse of this practice.*

A number of legal safeguards ensure protection of journalists' independence. Journalists can resort to the transfer clause (*clause de cession*) and conscience clause (*clause de conscience*), allowing them to leave the media outlet and receive a severance package in case of changes in the ownership or a clear modification of the editorial line of their media outlet. At the same time, the casualization of the profession is a growing concern for some media representatives met by the ODIHR EAM, with the number of journalists employed on permanent contracts falling by 12 per cent in last 10 years.<sup>68</sup> ODIHR EAM interlocutors opined that this led to a consequent erosion of labour rights in the media sector.

The 2016 Law to Strengthen the Freedom, Independence and Pluralism of the Media requires outlets to adopt a code of ethics and create an ethics committee to facilitate the resolution of internal disputes between newsrooms and media owners. It also provides that journalists have the right to object to any pressures and refuse to disclose their sources. This law contributes to fostering self-regulation among French media and protecting journalists from undue interference.

In 2018, the Law Against Manipulation of Information was adopted, according to which the president of a court can suspend the distribution of "inaccurate or misleading allegations or statements likely to affect the sincerity of the vote [...] disseminated on a massive scale in a deliberate, artificial or automated manner via an online public communication service" during election campaigns.<sup>69</sup> It also mandates and provides incentives to social platforms to counter disinformation and enhance the transparency of online advertising and report on their efforts. ARCOM, in an exceptional procedure during election campaigns,

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the Constitutional Council to rule on whether the 1986 Law on Freedom of Communication provides for sufficient and appropriate legal safeguards to protect freedom of expression.

<sup>67</sup> Paragraph 47 of the [UN HRC General Comment 34 to the ICCPR](#) notes that "[d]efamation laws must be crafted with care to ensure [...] that they do not serve, in practice, to stifle freedom of expression" See also Paragraphs 2.b.ii-iv of the 2021 [Joint Declaration "On Politicians, Public Officials and Freedom of Expression"](#) by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media (RFoM), the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information.

<sup>68</sup> See [Key Figures on Media and Cultural Industries](#) (p.242, in French), as published by the Ministry of Culture.

<sup>69</sup> The law has been criticised by several lawmakers either for introducing too lenient and non-enforceable remedies or for imposing ambiguous obligations which may hamper freedom of expression. Before the adoption of the law, the Prime Minister and several senators appealed to the Constitutional Council that some of the provisions contravened freedom of expression and the constitutional principle of the legality of offences and penalties. The Constitutional Council validated the law with some reservations. The OSCE RFoM's [legal review of French law against manipulation of information](#) (in French) concludes, *inter alia*, that the law lacks a clear definition of disinformation.

can prevent, suspend or prohibit the distribution of television services controlled by a foreign state that “harm the fundamental interests of the nation [...], particularly by disseminating false information”.

The Electoral Code obliges all media to respect a campaign silence period during which they must not circulate statements or campaign materials or publish opinion polls. The law also prohibits all media to sell and disseminate paid political advertising during elections, and to disseminate election results, partial or final, before the closing of the last polling station in metropolitan France. The 1986 Law on Freedom of Communication regulates coverage and provides for political pluralism during and between elections in audio-visual but not in print or online media.

For each election, ARCOM issues specific recommendations and oversees compliance by national broadcasters.<sup>70</sup> In this respect, the election period was divided into three phases with progressive requirements for equitable and equal coverage of all contestants by broadcast media.<sup>71</sup> This regime was criticised by some ODIHR EAM interlocutors who argued that the requirement of strictly equal coverage for the last two weeks of the campaign excessively limited broadcasters’ editorial freedom and posed difficulties in its practical implementation. In addition, the fact that the obligation to equity and equality in coverage does not apply to the online platforms of the broadcasters, creates a different regulatory regime for the same subjects.

*Existing regulation on equitable and equal campaign coverage should be reviewed to take into account the online services of audio-visual media.*

### C. CAMPAIGN COVERAGE IN THE MEDIA

Overall, the media provided diverse and comprehensive coverage of the electoral process through a variety of programmes and formats. Voters received extensive information on the election timeline and procedures. The media refrained from disseminating banned material during the campaign silence period during both rounds. Audio-visual media abided by their legal obligations and largely respected regulations by offering pluralistic coverage and substantial equal opportunities to all contestants.

Candidates were granted free airtime on certain public service broadcasting channels: each candidate was given 48 minutes in the first round and 45 minutes in the second round.<sup>72</sup> The ODIHR EAM interlocutors did not raise any concerns on allotted free airtime.

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<sup>70</sup> For this election, ARCOM issued a recommendation [No. 2021-03 of 6 October 2021](#) on the rules for campaign coverage and on the principle of political pluralism in radio and television services during election periods.

<sup>71</sup> The first period ran from 1 January until 7 March (the day before the publication of the list of candidates): during this period, broadcasters had to ensure that the speaking time and airtime of the candidates and their supporters is equitable. The second period ran from 8 to 27 March (the day before the start of the official campaign period): speaking time and airtime between the registered candidates and their supporters must have respected equity requirements under comparable programming conditions. During the official campaign periods (from 28 March to 8 April and from 11 to 22 April) television and radio services must have respected strict equality of speaking and airtime of candidates. Negative coverage of a candidate is not taken in consideration and not counted in the total airtime.

<sup>72</sup> As established by ARCOM [Decision of 18 March 2022](#), this airtime was divided in terms of format and duration of: 11 short clips, each lasting 90 seconds and 9 long clips, each lasting 3 minutes and 30 seconds.

ARCOM required 24 main radio and television channels to submit the speaking and airtime of the candidates and their supporters and provide results on regular basis.<sup>73</sup> The authority verified the received data before validating and publishing them in a systematic and timely manner on its website.<sup>74</sup> ARCOM issued 11 public warnings for violation of coverage rules, with their summaries published with reference to the outlet involved and the breach observed.

There was no debate between the first-round candidates which would have contributed to the voters' opportunities to learn about the candidates, and some ODIHR EAM interlocutors expressed regret that this was absent in the campaign.<sup>75</sup> On 20 April, in a strictly regulated two and half hour televised debate, the two second-round candidates squared off on a preliminarily agreed list of topics.<sup>76</sup> The debate, which drew an estimated 15.6 million viewers, allowed voters to acquire in-depth information about these candidates' policy proposals.<sup>77</sup>

*To enhance the opportunity of voters to be informed about and compare electoral programmes of the contestants, the organization of a debate between first round presidential candidates could be considered.*

As per the legal obligation, ARCOM promoted inclusion for all citizens in the democratic process. Therefore, broadcasters were obliged to ensure access for hearing-impaired people to all programmes devoted to the election, with subtitles or sign language.<sup>78</sup>

## XII. COMPLAINTS AND APPEALS

The legislation provides for a comprehensive regulation of the resolution of election disputes. Complaints concerning voter registration can be filed through administrative appeals within municipalities, subject to further judicial review by the courts of first instance and the Court of Cassation as the final instance.<sup>79</sup> Election-related regulations and decisions of administrative agencies, such as ARCOM and the NCCEC, can be appealed before the Council of State. The Constitutional Council considers complaints concerning

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<sup>73</sup> The rest of the audio-visual media provide data on coverage of candidates upon ARCOM's request. Submission intervals are as follows: the first period on a bi-weekly basis, for the second period - on a weekly basis, and for the official campaign period - first on a weekly basis and then on a daily basis.

<sup>74</sup> After the registration of candidates, ARCOM published the [results from media outlets](#) at least once a week.

<sup>75</sup> While candidates were interviewed on a number of television programmes, several of them regretted that during the first round, no debate was organized among contestants.

<sup>76</sup> Both candidates expressed their reservations about the anchor initially designated to host the event. Through her spokesperson, Ms. Le Pen announced she would not accept *France 2* anchor Anne-Sophie Lapix as moderator of the debate due to the journalist's alleged hostility towards her. Mr. Macron was said not to support this possibility either, although he denied such allegations. The National Journalists Union issued a [firm condemnation](#) against this censure. In the end, the debate was moderated by journalists Gilles Bouleau (*TF1*) and Léa Salamé (*FranceInter*).

<sup>77</sup> For the first time, four *Twitch* channels acquired the rights to broadcast the debate (*HugoDécrypte*, *Samuel Etienne*, *Jean Massiet* and *Sardoche*) reaching additionally to over 1.5 million viewers.

<sup>78</sup> The 2005 Law for Equal Rights and Opportunities mandates channels whose audience exceeds 2.5 per cent of the total audience to make all their programmes accessible to hearing-impaired people. For other channels, a proportion of subtitled programmes is fixed in the agreements concluded between the outlet and ARCOM. The law also requires channels with an audience share of more than 2.5 per cent to make a certain number of programmes accessible to visually impaired people by audio description.

<sup>79</sup> Decision of a mayor about voter registration may be appealed to the municipality's Verification Commission that must issue a decision within five days. The commission's decision can be appealed to the court of first instance within 7 days, and further on to the Court of Cassation within 10 days.

the date of the election, election day irregularities and voting results protocols, as well as regarding the decisions of the CNCCFP. The law also entitles the Constitutional Council to adjudicate complaints against its own decision on the registration of candidates, potentially affecting the appearance of impartiality of the Council.

Complaints on candidate registration can be lodged by potential contestants receiving at least one support signature no later than the day after the publication of the list of candidates. Any registered voter can file complaints concerning election-day operations in their respective precincts by having an observation entered in the minutes of the voting results. These complaints are pre-screened by Local Census Commissions, which are entitled to make certain corrections in the minutes or forward the complaints to the Constitutional Council.<sup>80</sup>

The candidates and the prefectures can submit complaints concerning election day operations directly to the Constitutional Council.<sup>81</sup> Candidates and prefects have two days to lodge complaints, and the Constitutional Council must review all the complaints within three days from the first round election day, which is also the legal deadline to publish final results of the first round. In some cases, this means the Constitutional Council has only one day to review the complaints, raising concerns about the adequacy of the legal deadlines necessary for effective investigation and resolution of all complaints.<sup>82</sup> The Constitutional Council has up to 10 days to review second round election day complaints and validate election results. There is no possibility to appeal the final results of elections as announced by the Constitutional Council.

*To ensure the effective resolution of election disputes, consideration should be given to the timeline for consideration of disputes between the first and second round and the finalization of results to ensure the Constitutional Council has sufficient time for review.*

The Constitutional Council received four challenges against registration of candidates and two against the decision on the date of the election. Two of these complaints were dismissed for lack of standing, and the others were rejected for being groundless.<sup>83</sup> In both rounds, the Constitutional Council addressed only those complaints which were assessed as having an effect on the integrity of the vote.<sup>84</sup> In adjudicating these complaints, on 13 and 27 April, the Constitutional Council invalidated the results of

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<sup>80</sup> The Local Census Commissions are not empowered to provide a formal resolution to election disputes and do not deliver legally binding decisions on complaints.

<sup>81</sup> In addition, the MEFA can lodge complaints concerning election day irregularities in overseas precincts.

<sup>82</sup> Section II 3.3.g of the Venice Commission's 2002 Code of Good Practice in Electoral Matters recommends that "Time-limits for lodging and deciding appeals must be short (three to five days for each at first instance)". Paragraph 95 recommends that "[a] time limit of three to five days at first instance (both for lodging appeals and making rulings) seems reasonable for decisions to be taken before the elections. It is, however, permissible to grant a little more time to Supreme and Constitutional Courts for their rulings."

<sup>83</sup> Two of the rejected complaints challenged constitutionality of the legislation for collection of support signatures, among others due to an alleged failure to respect the principles of gender equality and pluralistic representation. In addition, the Government decree announcing the elections was appealed for alleged conflict of interests as it was signed by President Macron who also stood in the election; this appeal was deemed groundless and denied. The ODIHR EAM was informed by the applicant that the Constitutional Council's decision to dismiss the complaint would be brought before the European Court of Human Rights.

<sup>84</sup> The ODIHR EAM could not identify the exact number of individual complaints filed with the minutes of the protocols. There is no centralized public database of complaints.

voting at 19 and 37 polling stations, respectively, on grounds of various procedural irregularities.<sup>85</sup> The review of complaints by both the Local Census Commissions and the Constitutional Council is done without a public hearing, challenging due procedural safeguards and transparency, and running counter to OSCE commitments.<sup>86</sup>

*To ensure effective and accessible legal redress, the authorities could consider decentralizing adjudication of complaints against election results, so that each complaint is adjudicated in first instance within adequate deadlines before a final appeal to the Constitutional Council. Hearings of complaints and appeals should be public, offering all sides the opportunity to be heard and observing procedural safeguards.*

### **XIII. ELECTION OBSERVATION**

In addition to their members, political parties have full access to all stages of the electoral process through representatives appointed to a polling station. Each presidential candidate can also appoint delegates who can be present at any polling station at all times. Voters are also invited to take part in the vote count at the polling station where they voted.

The legislation does not have provisions for election observation, neither citizen nor international, contrary to OSCE commitments in Paragraph 8 of the 1990 OSCE Copenhagen Document and international standards.<sup>87</sup> Still in fulfilment of its OSCE commitment to invite international observers, the authorities invited ODIHR to observe the election and provided the mission with an unimpeded access to all stages of the electoral process, including on the election days. In practice, access of observers to the polling stations and voting results aggregation centres is at the discretion of the chairman of the polling station.

*As previously recommended, the law should be revised to guarantee the access of citizen and international observers to all stages of the electoral process.*

### **XIV. ELECTION DAYS**

In line with the ODIHR methodology, the EAM did not conduct comprehensive and systematic observation of election day proceedings; however, it visited a limited number of polling stations in Paris. The ODIHR EAM also observed the handover of election materials and the tabulation process at the Paris municipality.

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<sup>85</sup> According to the Constitutional Council, the decision took into account the minutes of the Local Census Commissions and the reports of the delegates of the Constitutional Council, as well as of the case rapporteurs.

<sup>86</sup> In one case, the applicant requested the Constitutional Council to review the complaint in a public hearing, but the request was denied. According to Paragraph 13.9 of the 1989 OSCE Vienna Document, OSCE participating States committed to “ensure that effective remedies as well as full information about them are available to those who claim that their human rights and fundamental freedoms have been violated; they will, *inter alia*, effectively apply the following remedies: - the right to a fair and public hearing within a reasonable time [...], including the right to present legal arguments”. Section II.3.3.h of the Venice Commission’s 2002 Code of Good Practice in Electoral Matters provides that “the applicant’s right to a hearing involving both parties must be protected”.

<sup>87</sup> Paragraph 8 of the 1990 OSCE Copenhagen Document provides that “the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place”.

On both election days, polling stations visited by the ODIHR EAM were well organized and efficient.<sup>88</sup> At times, however, voters were seen to only fetch a ballot for a candidate of their choice, and board members did not always instruct them otherwise, which could potentially compromise the secrecy of vote.<sup>89</sup> Electronic voting machines functioned unhindered at the visited polling stations. Despite a previous ODIHR recommendation, such machines operated without a voter-verified paper audit trail (VVPAT) aimed to substantially improve the transparency and accountability of this voting method.<sup>90</sup>

In line with legal requirements, polling stations visited by the ODIHR EAM were accessible for voters with reduced mobility. Tactile ballots for voters with visual impairments were not required, but the Braille template and posters with the names of the candidates in large script were developed by some municipalities. Polling stations were equipped with protective masks and sanitizers, and COVID-19 related protocols were followed. Posters and brochures on voting procedures, including accessible for persons with disabilities, were displayed at the entrance of each polling station.

The tabulation process as observed by the ODIHR EAM was well organised and conducted in an efficient manner. Paris municipality received voting results from polling boards by telephone, which were then entered in the electronic system and later verified against the hard copies of voting results protocols. Preliminary and final results, disaggregated by polling station and municipality, were published on the MoI website, thus contributing to the transparency of the process. The Constitutional Council finalized the election results on 27 April.

## XV. RECOMMENDATIONS

These recommendations as contained throughout the text are offered with a view to further enhance the conduct of elections in France and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations that have not yet been addressed. ODIHR stands ready to assist the authorities of France to further improve the electoral process and to address the recommendations contained in this and previous reports.<sup>91</sup>

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<sup>88</sup> A number of voters per polling station should not exceed 1,000 voters, as recommended by the MoI ordinance. However, according to the Electoral Code, each prefecture can decide on the number of voters per polling station taking into consideration the particularities of the territory.

<sup>89</sup> Each candidate's name was printed on a separate ballot, and voters were required to pick more than one ballot paper in order to avoid exposing their choice.

<sup>90</sup> The voting machines currently in use do not establish a VVPAT. Machine models are approved on the basis of verification of their compliance with the "Technical regulations setting the conditions for the approval of voting machines" approved by the Government decree of 17 November 2003. The approved models are: model 2.07 from *NEDAP-France Election*, *iVotronic* from *ES&S Datamatique*, and *Point & Vote* from *Indra Sistemas SA*.

<sup>91</sup> In Paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations". The follow-up of prior recommendations from the [final report on 2017 presidential election](#) is assessed by the ODIHR EAM as follows: recommendations 7 and 9 were fully implemented, recommendation 1 was mostly implemented See also the ODIHR [electoral recommendations database](#).

## **Legal Framework**

1. Consideration should be given to consolidating the electoral legal framework, particularly by integrating the executive regulations pertaining to key aspects of the electoral process into one comprehensive piece of legislation.

## **Election Administration**

2. Consideration could be given to mandatory training of polling board chairs to ensure effective and consistent management of election day proceedings
3. In line with OSCE commitments, gender disaggregated data with regards to the electoral process should be made available in a comprehensive manner

## **Voting Methods**

4. As previously recommended, consideration should be given to cancelling proxy voting and exploring alternative voting methods which duly uphold OSCE commitments and other international standards.

## **Voter Registration**

5. Consideration could be given to continued efforts to ensure independent participation in public life of persons with intellectual or psychosocial disabilities

## **Election Campaign**

6. Legal provisions on the use of public resources by presidential candidates should be clarified to prevent the misuse or perception of such misuse during the campaign

## **Campaign Finance**

7. In order to eliminate the possibility of circumventing campaign ceiling, the legislation could comprehensively regulate campaigning by the third parties, including their campaign finance reporting within the timeframe applicable to candidates
8. To enhance transparency, consideration should be given to requiring preliminary disclosure of itemized campaign contributions and expenditures by contestants prior to election days
9. In order to further enhance transparency and accountability, the reporting deadlines for political parties' campaign expenditures could be synchronised with those for candidates to allow effective oversight.

## **Media**

10. In order to protect media pluralism, existing legal framework regulating media concentration could be reviewed and adapted to the current state of the media industry. Authorities should revise

methodologies to assess the concentration of media ownership, including the influence of individual outlets and the aggregated influence of a media outlet/group across different types of media.

11. Authorities should consider decriminalizing defamation in order to bring the relevant legal framework in line with international standards on freedom of expression. Measures should be put in place to protect media from strategic lawsuits to deter the abuse of this practice.
12. Existing regulation on equitable and equal campaign coverage should be reviewed to take into account the online services of audio-visual media.
13. To enhance the opportunity of voters to be informed about and compare electoral programmes of the contestants, the organization of a debate between first round presidential candidates could be considered.

### **Complaints and Appeals**

14. To ensure the effective resolution of election disputes, consideration should be given to the timeline for consideration of disputes between the first and second round and the finalization of results to ensure the Constitutional Council has sufficient time for review.
15. To ensure effective and accessible legal redress, the authorities could consider decentralizing adjudication of complaints against election results, so that each complaint is adjudicated in first instance within adequate deadlines before a final appeal to the Constitutional Council. Hearings of complaints and appeals should be public, offering all sides the opportunity to be heard and observing procedural safeguards.

### **Election Observation**

16. As previously recommended, the law should be revised to guarantee the access of citizen and international observers to all stages of the electoral process.

## ANNEX: FINAL ELECTION RESULTS<sup>92</sup>

### First Round

Candidate	Valid Cast Votes	Percentage of Votes
Emmanuel Macron	9,784,985	20.07
Marine Le Pen	8,135,456	16.69
Jean-Luc Mélenchon	7,714,574	15.83
Éric Zemmour	2,485,757	5.10
Valérie Pécresse	1,679,359	3.44
Yannick Jadot	1,628,249	3.34
Jean Lassalle	1,101,643	2.26
Fabien Roussel	802,588	1.65
Nicolas Dupont-Aignan	725,305	1.49
Anne Hidalgo	616,614	1.26
Philippe Poutou	268,965	0.55
Nathalie Arthaud	197,141	0.40

### Second Round

Candidate	Valid Cast Votes	Percentage of Votes
Emmanuel Macron	18,768,639	58.55
Marine Le Pen	13,288,686	41.45

### Information about the Electoral Process

	First Round	Second Round
Number of registered voters	48,747,876	48,752,339
Number of cast votes	35,140,636	35,096,478
Number of invalid votes	239,341	805,249
Number of blank votes	543,750	2,233,904
Voter turnout	72.07 per cent	71.99 per cent

<sup>92</sup> Official election results are available at the [website](#) of the MoI.

## ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas, including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance and non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).