



Office for Democratic Institutions and Human Rights

REPUBLIC OF SLOVENIA
EARLY ELECTIONS OF THE NATIONAL ASSEMBLY
4 DECEMBER 2011

OSCE/ODIHR Election Assessment Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the Government of the Republic of Slovenia, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 23 November deployed an Election Assessment Mission (EAM) for the 4 December 2011 early National Assembly elections. They took place in context of divisions over the government's response to the economic crisis and several referenda rejecting measures adopted by the authorities. In addition to the political parties represented in the National Assembly, four parties were formed shortly before the election, with two of them attracting considerable public interest.

Overall, the legislative framework provides a sound basis for the conduct of democratic elections. Particularly noteworthy is the attention given to ensuring the universality of the vote, provided through different means of voting. Certain aspects of the legislation could benefit from further consideration, including the lack of explicit legal provision for international election observation. Nevertheless, the National Election Commission (NEC) and other electoral bodies ensured that the OSCE/ODIHR EAM had full access to the entirety of the electoral process.

A unique feature of the National Assembly elections is the provision of dual voting rights to citizens belonging to the Italian and Hungarian minorities, in addition to the reserved seats for these minorities. Dual voting rights diverge from the fundamental OSCE commitment regarding equality of the vote and are at odds with international good practice.

The elections were administered by four levels of electoral commission. These were composed of judges, legal professionals and political party nominees. The election administration appeared to work efficiently and impartially and enjoyed the confidence of stakeholders.

The registration of candidate lists was inclusive. It also accommodated the appearance of new parties on the political scene. Of the 20 parties registered, 13 registered candidate lists in all 8 constituencies. In total, some 1,393 candidates stood for these elections and the wide selection provided a pluralism of choice for voters.

The campaign was relatively subdued and focused on economic issues to a large extent. In addition to traditional methods, such as billboards and meetings with voters, social media was a noticeable means of campaigning. Overall, print and broadcast media covered a variety of political actors and topics, and party leaders faced each other in a number of televised debates. Some parties, however, complained about equitable conditions in the media. Enforcement mechanisms for media regulations, as well as procedures for monitoring campaign coverage and acting on media-related complaints appeared to be weak.

Political financing regulations do not provide sufficient transparency and there is no authority that oversees political financing in a thorough manner. Although legislation has been drafted

which would improve the transparency and accountability of political party and campaign financing, it has yet to be adopted by the National Assembly.

The representation of women in political life has been low but has increased slowly over the past decade. In these elections, some 43 per cent of candidates were women. Following the full implementation of a gender quota in this election, the percentage of women elected increased to 31 percent, as compared to 13 per cent after the 2008 elections.

The legal framework provides for rapid and effective consideration of complaints and appeals, including at Constitutional Court level, although there are a few aspects that could stand review.

In accordance with OSCE/ODIHR's methodology, the EAM did not conduct a comprehensive and systematic observation of election day proceedings. However, mission members visited a limited number of polling stations on election day. Voting and counting in this limited number of polling stations showed a process that was well-organized and efficiently conducted. There was one incident involving missing ballots, which the authorities quickly investigated. The EAM was also informed of difficulties in ensuring that all out-of-country ballots were received in time.

Although Slovenian law provides for measures to enable the participation of disabled voters, these measures do not always facilitate the secrecy of their vote, and access to polling stations remained an issue. The NEC stated that it plans to conduct a review, together with groups representing disabled people, aimed at amending legislation and procedures to improve access.

Preliminary election results were announced quickly and transparently. Final results were declared 12 days after election day to account for the receipt of ballots mailed from abroad. However, publication of results on the internet at polling station level would further enhance the transparency of the electoral process.

A number of recommendations in this report set out ways in which the electoral process may be further improved. The OSCE/ODIHR stands ready to work with the authorities of the Republic of Slovenia to address these recommendations.

II. INTRODUCTION AND ACKNOWLEDGMENTS

On 13 October 2011, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) was invited by the Government of the Republic of Slovenia to observe the 4 December 2011 early elections to National Assembly, in anticipation of the formal calling of elections by the President. The OSCE/ODIHR undertook a Needs Assessment Mission to Slovenia from 17 to 19 October.¹ Based on its recommendations, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 23 November to 8 December.

¹ All OSCE/ODIHR reports on elections in Slovenia are available at:
www.osce.org/odihr/elections/slovenia

The OSCE/ODIHR EAM was led by Dame Audrey Glover and consisted of a team of six election experts from as many OSCE participating States. The team was based in Ljubljana, but visited other areas of the country. In line with the OSCE/ODIHR's methodology, the EAM did not undertake systematic or comprehensive observation of election day procedures, although EAM members did visit a limited number of polling stations and counting centres.

OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs of Slovenia for its assistance and co-operation. OSCE/ODIHR would also like to thank the National Election Commission, the National Assembly, the Constitutional Court, the Ministry of Interior, as well as the representatives of other state institutions, electoral commissions, political parties, media, civil society organizations, and other interlocutors who took the time to meet the mission.

OSCE/ODIHR had not previously observed or assessed elections in Slovenia, although it did visit the country in context of the June 2009 elections to the European Parliament.

III. BACKGROUND

Slovenia is a parliamentary republic with legislative authority exercised by a 90-member National Assembly. The National Council, an indirectly elected body, has a secondary role in the legislative process.² Executive power is exercised primarily by the government, headed by a prime minister. The president is directly elected for a five-year term and has limited powers.

The political spectrum has been marked by frequently changing alliances within and among the political parties, which nevertheless remain divided between the right and left side of the political scene. In the outgoing parliament, seven parties were represented, as well as two deputies from the Italian and Hungarian minorities.³ The Social Democrats (SD) and the Slovenian Democratic Party (SDS) were the biggest parties, with 27 seats each. The government was formed by the SD, in coalition with the Party for Real - New Politics (ZARES - Nova Politika), Liberal Democracy of Slovenia (LDS) and the Democratic Party of Pensioners of Slovenia (DeSUS).

Apart from the strong opposition of the SDS, the government of Prime Minister Borut Pahor faced a worsening economic situation and the need to introduce economic and social reforms. DeSUS and ZARES left the government in May and June 2011, respectively, and the remaining minority government controlled only 33 seats in the National Assembly. The break-up of the coalition was a result of growing differences among coalition partners, aggravated by a series of failed referenda; the first on the media law in December 2010 and the second on the part-time employment law in April 2011. A third defeat came with the

² The National Council is elected indirectly for a five-year term and is comprised of 40 representatives of different professional groups and local communities.

³ The Constitution refers to Italian and Hungarian 'national communities' and to Roma as a 'community'. This report uses the terms 'minorities' as well as 'communities'.

referendum held in June 2011, which concerned three laws including the government's major project on pension reform (which would have gradually raised the retirement age).⁴

The failure of a vote on five ministerial nominees on 20 September, designated as a vote of confidence in the government, caused the government's dissolution. On 21 October, President Danilo Türk dismissed the National Assembly and called elections for 4 December 2011. The 2011 elections were the first early parliamentary elections in the history of independent Slovenia.

An important feature of these elections was the participation of new parties. Two of these, 'Positive Slovenia' and 'Gregor Virant's Civic List', were established by well-known politicians and attracted substantial public interest.

IV. ELECTORAL SYSTEM

The National Assembly of Slovenia has 90 seats, 88 of which are elected on the basis of proportional representation and two of which are elected by the Italian and Hungarian minorities through a majoritarian, preferential system. Deputies are elected for a four-year term.

For the proportional representation component of the elections, the country is divided into 8 constituencies of generally equal size in terms of the number of registered voters, with each constituency electing 11 deputies. Constituencies are further divided into 11 districts, which can vary widely in terms of number of registered voters.⁵ The ballot in each district contains the name of the candidate who has been nominated by each party in that district, as well as the name of the party, its symbol, and the number of the candidate on the ballot. Voters choose a candidate by circling the number of the candidate, although the vote is valid if another form of selection is made, as long as the voter's intent is clear. A vote for a candidate counts as a vote for the candidate list in that constituency, as well as a vote for the candidate.

Parties are eligible for the distribution of mandates if they obtain at least four per cent of the valid votes nationwide. Mandates are first allocated within each constituency to the eligible candidate lists using the *Droop* quota. After the first allocation, the overall proportional calculation of the number of mandates each party is entitled to on a nationwide basis is done, using the *d'Hondt* method. The mandates not already distributed are then allocated to candidate lists among all the constituencies, in the order of the highest remainder of votes in proportion to the quota used in each constituency.

Mandates within a list are assigned to specific candidates on the basis of the percentage of the vote each received in his/her district. That is, candidates within a list are ranked on the basis

⁴ Referenda can be called regarding laws adopted by the National Assembly. The National Assembly is bound by the result of such referenda, which can be requested by one third of deputies, by the National Council or by 40,000 voters. A number of OSCE/ODIHR EAM interlocutors criticized the facility with which referenda may be organized to overturn National Assembly decision.

⁵ For example, the smallest district in constituency 4 had 11,634 eligible voters (Ribnica), while the largest had 30,381 (Grosuplje).

of the percentage of votes they received in comparison to the overall total of valid votes in their respective districts.⁶

The overall equality of the vote is ensured in the Slovenian system because mandates are awarded to parties proportionately to their nationwide vote total. However, because the allocation of mandates to candidates within a party list is done on the basis of the percentage of the vote received by each candidate, the voting weight of voters in a small district can be greater than that of voters in a large district in allocating mandates within a party list. The Constitutional Court decided in 2000 that this did not violate the principle of equality of the vote.⁷ In addition, the system has other consequences: some districts may have multiple candidates elected, while others do not have any candidate elected. Moreover, a candidate may receive fewer votes than other candidates running in the same district but can be elected by virtue of having a higher percentage of votes than other candidates from her/his party in other districts.

The two deputies from the Hungarian and Italian minority communities are elected from two special constituencies, in which only those that register themselves as members of these minority communities may vote. Such voters have two votes, since they are also eligible to vote in the proportional system elections (see Legal Framework section). In each special constituency, the mandate is awarded through the *Borda* system of preferential voting. Eligible voters choose from among individual candidates, ranking the candidates in order of preference. Points are assigned on that basis, with a candidate getting points equal to the number of candidates for a first preference vote, one point less for a second preference, etc. The candidate with the most points obtains the mandate in that constituency.

V. LEGAL FRAMEWORK

The legal framework governing the National Assembly elections consists primarily of the Constitution, the Constitutional Act Amending Article 80 of the Constitution, the Law on Elections to the National Assembly (hereinafter, the election law), the Elections and Referendum Campaign Act (ERCA), and the Voting Rights Register Act. Additionally, the Political Party Act (PPA), the Radio and Television Corporation of Slovenia Act and the Court of Audits Act apply. Election-related criminal offenses are included in the Criminal Code as well as in the election law.⁸

The legal framework has undergone a number of changes in recent years. Most notably, the 2006 amendments to the election law included a 4 per cent threshold for participation in the distribution of seats (as required by the Constitution since 2000) and a minimum 35 per cent quota for the representation of each gender in every candidate list. The amendments also modified procedures for appointing members of election commissions and included some amendments of a technical nature. The PPA, as amended in November 2007, adjusted the

⁶ The candidate who receives the highest percentage of votes in his/her district obtains the first mandate allocated to the list in that constituency, the candidate receiving the second highest percentage obtains the second mandate, etc.

⁷ Constitutional Court decision, U-I-354-96, 3 September 2000.

⁸ Article 110 of the election law, and Articles 131 – 157 of the Criminal Code.

level of fines imposed for violations of its provisions and extended the list of legal persons not permitted to donate funds to political parties.⁹

Overall the legislative framework provides a sound basis for the conduct of elections to the National Assembly. There was a discussion in 2011 on amending various aspects of the law, including both the electoral system and more technical areas of the law, such as deadlines for candidate registration. However, these were not passed by the National Assembly.¹⁰

Citizens aged 18 years or older by election day enjoy the right to vote and to stand for election. The only reason for depriving a citizen of their right to vote and stand is a declaration of mental incapacity by a court; the withdrawal of suffrage rights for “failure to comprehend the meaning, purpose and effects of elections” must be specifically decided in the same court decision.¹¹ All non-citizens of Slovenia who have permanent resident status in the country have the right to vote in municipal council and mayoral elections.¹²

A. DUAL VOTE

The Constitution grants the members of the Italian and Hungarian national communities special rights to be further regulated by law.¹³ Article 80 of the Constitution further guarantees these two communities direct representation in the National Assembly, specifically stating that “one deputy of the Italian and one deputy of the Hungarian national communities shall always be elected to the National Assembly.” The election law stipulates that members of these communities have the right to vote for and stand for election as a deputy of the Italian or Hungarian national communities. Although not explicitly stated in the law, the members of these two national communities are granted the right to cast two votes for National Assembly elections, one in their regular constituency of permanent residence and one vote in the special constituency of their respective national community.¹⁴

In response to a challenge to the constitutionality of the right of these minorities to have a double vote, the Constitutional Court concluded in 1998 that the legal provisions (in the election law as well as other laws) providing for dual voting are not in conflict with the Constitution, in view of protecting the rights of national communities.¹⁵ The Constitutional

⁹ The Elections and Referendum Campaign Act was amended in February 2011, but these amendments did not affect elections to the National Assembly.

¹⁰ See National Assembly announcement 004-03/11-0008, 17 June 2011.

¹¹ Article 7 of the election law, refers to 'business capacity'. See also, Article 137 of the Civil Code, Supreme Court Decision II Ips 684/2008, and Constitutional Court Decision U-I-346/02 (para.17).

¹² Article 5 and 103 of the Local Elections Act.

¹³ Article 64.4 of the Constitution. The “Agreement on Guaranteeing Special Rights of the Slovene National Community in the Republic of Hungary and the Hungarian National Community in the Republic of Slovenia”, signed in 1992 and ratified in 1993 (Official Gazette RS-MP, no. 6/93) and the “Osimo Agreement between SFRY and the Italian Republic” (Official Gazette SFRY, no.1/77). Moreover, as per the statement of the OSCE High Commissioner on National Minorities, bilateral agreements should not “undercut the fundamental principles laid down in multilateral instruments.” See the “Statement on Sovereignty, Responsibility and National Minorities”, 26 October 2001, <http://www.osce.org/hcnm/53936>.

¹⁴ Members of these two communities, as well as members of the Roma community, are able to cast two votes in local elections in specified areas.

¹⁵ Constitutional Court decision U-I-283/94, 12 February 1998. <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/63D0F88CC8BF4EB6C12571720028092A>.

Court also acknowledged that dual voting departs from the principle of the equality of the vote.

The Council of Europe's Venice Commission opinion on dual voting rights for minorities outlines three conditions under which dual voting rights might be an acceptable exception to the principle of equality of the vote: that the objective of dual voting (i.e., representation of minorities) is not achievable by other means, that it is a transitional solution, and that it concern a small minority.¹⁶

In the case of Slovenia, the dual voting measures concern two numerically small minorities.¹⁷ However, the current dual voting rights for the Italian and Hungarian communities are not foreseen in law as transitional, nor has there been a recent review to examine whether the objective of representation might be obtained by other means which would not infringe as directly on the principle of equality of the vote.

The OSCE/ODIHR EAM notes the positive efforts of Slovenia to facilitate the participation of minorities in the election process, both at national and local level. However, the provision of dual voting rights to some voters diverges from the principle of equality of the vote as stated in paragraph 7.3 of the 1990 OSCE Copenhagen Document and in other international documents.

The OSCE/ODIHR EAM recommends that the authorities consider reviewing dual voting rights for National Assembly elections in view of the Council of Europe Venice Commission opinion, as well as existing bilateral treaties and relevant minority rights standards, in order to determine whether the objective of direct representation of the Hungarian and Italian communities in the National Assembly requires the maintenance of the current dual voting system or may be achieved through alternative means.

B. PERMANENT RESIDENCE RIGHTS

On 26 February 1992, approximately 25,000 individuals were erased from the registry for permanent residents. These were citizens of the former Socialist Federal Republic of Yugoslavia (hereafter SFRY) who had permanent resident status in Slovenia at that time.

The Constitutional Court has made multiple decisions which ruled that the erasure was unconstitutional.¹⁸ In 2006, a case was brought to the European Court of Human Rights (hereinafter, ECtHR) by a group of individuals, some of them stateless and some citizens of other former Yugoslav republics. The applicants alleged that, among other violations, they have been arbitrarily deprived of the possibility of acquiring the citizenship of the newly-established Slovenian state and/or of preserving their status as permanent residents and that, therefore, Article 8 of the European Convention of Human Rights had been violated. The ECtHR agreed with the violation of Article 8 of the Convention and noted that "the violation

¹⁶ The Council of Europe's European Commission for Democracy through Law (Venice Commission), CDL-AD (2008) 013, Report on Dual Voting for Persons Belonging to National Minorities, [www.venice.coe.int/docs/2008/CDL-AD\(2008\)013-e.asp](http://www.venice.coe.int/docs/2008/CDL-AD(2008)013-e.asp).

¹⁷ The 2002 census indicated that there were 2,258 people who declared themselves Italian and 6,243 who declared themselves Hungarian. <http://www.stat.si/popis2002/en/default.htm>.

¹⁸ Constitutional Court decisions U-I-246/02 and U-II-1/10, http://odlocitve.us-rs.si/usrs/us-odl.nsf/index_eng.htm.

found clearly indicated that appropriate general and individual measures needed to be adopted in Slovenia so that the violations could be remedied.”¹⁹ This judgment, however, is not final as it was referred to the Grand Chamber of the Court in February 2011 upon the request of the Slovenian authorities.²⁰

A number of positive legislative and administrative developments have taken place in this area. In July 2010, the amendments and supplements to the Legal Status Act entered into force granting the status of permanent residence retroactively, subject to an application process by the people affected. Since this date, 49 people have obtained permanent residence, but the status of some 13,000 people has not yet been regulated.²¹ While this issue does not directly deal with citizenship, the lack of permanent residence could indirectly affect their right to obtain citizenship and voting rights in National Assembly and other elections.

C. ACCESS FOR OBSERVERS

The election law permits representatives of candidate lists to be present at election commission meetings and it allows 'trustees' of those representatives to be present in polling stations. However, the law does not contain explicit provisions for international or domestic non-partisan election observation, nor does it provide for the voting and counting process to be public. The National Election Commission (NEC), nevertheless, issued accreditation to the OSCE/ODIHR EAM, which was able to access the entire process without restrictions.

In order to create the legal basis for the effective implementation of Paragraph 8 of the 1990 Copenhagen Document²² and to ensure full access to all stages of the election process to observers, an explicit provision for election observation should be introduced in law, in particular setting out rights and responsibilities of observers as well as accreditation arrangements.

VI. ELECTION ADMINISTRATION

The elections were administrated at four levels: the NEC, 8 Constituency Election Commissions (ConECs), 88 District Election Commissions (DECs) and over 3,649 Polling Boards (PBs) in Slovenia, and an additional 34 PBs abroad. In addition, two special constituency election commissions are formed for the election of the deputies from the Italian

¹⁹ *Kuric and Others v. Slovenia*, Application no 26828/06, Council of Europe: European Court of Human Rights, 13 July 2010, available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=7&portal=hbkm&action=html&highlight=slovenia&sessionid=84789094&skin=hudoc-en>.

²⁰ Under Articles 43 and 44 of the European Convention on Human Rights, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on the day the request is rejected. The judgment in this referral is still pending at the time of writing.

²¹ According to the information provided by the Ministry of Interior; data as of October 2011.

²² Paragraph 8 of the 1990 Copenhagen Document reads: ‘The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other OSCE participating states and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law.’

and Hungarian minority communities. Election commissions are appointed for four years, while PBs are established for each election. The OSCE/ODIHR EAM found that there was high public confidence in the work of the election administration.

The NEC is responsible for the overall conduct of the elections, including ensuring the uniform application of the election law, coordinating the work of lower-level election commissions, declaring the results of the National Assembly elections, overseeing the implementation of voting at Slovenia's diplomatic representations, and considering appeals. The main role of the ConECs is to review candidate lists and determine election results in the constituencies. They also supervise the technical election work in their respective constituencies. DECAs are responsible for appointing PBs, designating polling stations, supervising the operational organization of the elections in the district, and determining the results at the district level.

Election commissions are composed according to a mixed judicial, professional and political model. The NEC is appointed by the National Assembly and consists of a president, deputy president, five members and five deputy members.²³ The president and the deputy president of the NEC are appointed from amongst Supreme Court judges at the recommendation of the Judicial Council. One member and one deputy are appointed from among legal experts, and the remaining members and deputies are appointed on the proposal of the deputy groups in the National Assembly, taking into account the proportional representation of the parties.

ConECs and DECAs are appointed by the NEC and are similarly composed. They each consist of a president, deputy president, three members and three deputies. ConECs have two judges and two legal experts, while DECAs have one of each. In both cases, the remaining members and deputies are appointed according to the political formula described above. DECAs have a non-voting secretary who is an official in the one of the 58 local administrative units under the authority of the Ministry of Public Administration. The secretaries carry out much of the operational work of DECAs and often support more than one DEC.

The special ConECs for the Hungarian and Italian minority commissions effectively serve as both ConEC and DEC for the national minority component of the National Assembly elections. They register the candidates for their respective constituencies, appoint PBs to conduct the minority voting, supervise the operational work related to the minority elections, and determine the results. They are composed in the same way as a regular ConEC, with the additional requirement that at least one member must be from the respective minority.

PBs consist of a president, a deputy president, two members and two deputies.²⁴ PBs are generally appointed on the basis of political party representation in the National Assembly; however, the OSCE/ODIHR EAM was informed that in practice some DECAs do not follow this strictly. In the Italian and Hungarian minority areas, each polling station has two PBs – one to conduct the elections for the minority constituency and one to conduct the election for the regular constituency. In the Italian minority areas, the two PBs are in most cases

23 For all levels, deputy commissioners take part in discussions but do not have the right to vote, except in the absence of a member. Deputies do not necessarily come from the same party as the member they replace.

24 Article 41 of the election law specifies only 'an even number' of members and deputies. The exact number is recommended in the NEC instruction.

comprised of the same people. In the Hungarian areas, the two PBs have separate membership.

VII. VOTER REGISTRATION

Slovenia has a passive system of voter registration in which the state maintains the voter registers based on permanent residence. There are three types of voter register for the National Assembly elections: the register of voters with permanent residence, the register of voters without permanent residence, and registers for the special minority constituencies. The first two types of lists are drawn from the Register of Permanent Residence maintained by the Division for Civil Status, Public Documents and Residence Registration of the Ministry of Interior (MoI). The Register of Permanent Residence, linked to the Civil Status Registry, is an electronic database accessible by the administrative units at the local level. The administrative units update records in the database on a daily basis and cross-checks are conducted to ensure accuracy. The register contains the voter's constituency, district and polling station.

Preliminary voter lists are made available for public scrutiny 20 days before election day. The responsible authorities – the administrative units and diplomatic representations – must check the voter registers and make corrections, if necessary. The lists are not provided to political parties or others but are available for review by voters at the respective administrative units. Voters can check any voter registration record by reviewing the paper lists, and can request corrections from the respective administrative unit. These decisions may be appealed to the district court.

Changes to the Register of Permanent Residence and the Civil Status Registry are taken into account up to 9 days before election day (10 days for voters abroad). Final corrections to the voter lists based on voter claims must be made no later than six days before election day. The final voter lists are then distributed to the DECs, and polling cards are mailed to the voters.

The MoI and political parties considered the voter lists to be highly accurate, especially for voters in Slovenia. Citizens who find on election day that they are not on the voter list may obtain a certificate from the administrative unit allowing them to vote at the polling station of their registration. However, only 38 certificates had to be issued in these elections. There were a total of 1,709,692 eligible voters for these elections, including some 56,000 out-of-country.²⁵

The lists for the Italian and Hungarian minority constituencies are maintained by the commission of the respective self-governing national community. For these elections there were 2,789 people registered in the Italian community special voter register and 6,661 people registered in the Hungarian register. To be eligible for inclusion on one of these registers, a citizen who is a member of the respective community must have permanent residence in a locality identified as being part of the special constituency. Those who were on the list for the special constituency in previous elections are included automatically; otherwise, a citizen may be considered as a member of the national community by making a declaration.²⁶ The

²⁵ Website of the National Election Commission, <http://volitve.gov.si/dz2011/en/udelezba/udelezba.html>.

²⁶ Article 35 of the Voting Rights Register Act.

Voting Rights Act delegates the definition of more detailed eligibility criteria to the self-governing national communities. However, these bodies informed the OSCE/ODIHR EAM that they have not adopted any further criteria for inclusion of the respective community members on the lists.

The OSCE/ODIHR EAM recommends that regulations concerning the national community voter registers and the criteria for inclusion be reviewed in order to ensure that there are adequate measures to determine the eligibility of those who are entitled to cast a vote in the national community constituencies.

VIII. CANDIDATE REGISTRATION

According to the election law, candidates may be nominated by political parties or groups of voters. Candidates are nominated on a list for each constituency, and a candidate may only stand in one constituency. A political party may nominate lists in every constituency with the support of three National Assembly deputies; in a particular constituency with the support of 50 voters.²⁷ The nominations must be in accordance with the party statute.²⁸ A nomination by a group of voters requires the support of at least one hundred voters residing in the constituency; no lists were nominated by groups of voters in these elections. Candidate lists must be submitted to the respective ConECs no later than 25 days prior to the election.

The number of candidates on a list may not exceed the number of deputies to be elected in the constituency. There is no minimum number of candidates required on a candidate list. The law provides for a candidate to stand in two electoral districts, if there are not as many candidates on a list as there are deputies to be elected in a constituency. If there is only one candidate on a list submitted by voters, then that candidate may stand in all electoral districts.

Candidate lists must respect a gender quota. On each list of candidates, no gender should be represented by less than 35 per cent of the total number of candidates on the list.²⁹ In these elections, two lists in constituency 3 were not registered due to the parties' failure to respect the gender quota. Although the election law allows for the correction of formal shortcomings in candidate registration, failure to meet the gender quota was considered by ConECs as a legal requirement. These two parties – the 'Greens of Slovenia' and the 'Sustainable Development Party' (TRS) – were therefore only able to compete in seven of the eight constituencies.

Candidates for representatives of the Italian and Hungarian ethnic communities are nominated by at least 30 voters who are members of those communities. For the Hungarian

²⁷ The signatures of 100 voters are required if the nominating party members do not reside in the constituency. The list of 'Stranka Humana Slovenija' was denied registration in constituency 5 on the grounds that it did not have a sufficient number of valid signatures.

²⁸ The lists of the 'Justice Party' (SPSP) were denied registration in all constituencies on the grounds that the candidate nomination procedure was not in accordance with the law and the party's statute, as in line with Article 56 of the election law. The election law only allows correction of a "formal shortcomings."

²⁹ The quota does not apply when there are only three candidates on a list. In such cases there must be at least one candidate from each gender. Candidate lists nominated by groups of voters are not subject to the quota.

minority, two candidates were nominated, while only one candidate was nominated for the Italian minority constituency.

After verification of validity, the confirmed lists of candidates are published in the media at least 15 days prior to election day. For these elections the deadline for submitting the lists was on 9 November. On 19 November, the NEC announced that out of 21 parties which had submitted candidate lists, 20 were registered to participate in the upcoming election, with a total of 1,393 candidates.³⁰ The rules for registration of candidate lists respect international standards and commitments and provide for an inclusive process. Four new parties were able to nominate lists without difficulty. Cases of rejection of candidate lists were legally justified.

IX. CAMPAIGN

The election campaign commenced on 4 November, 30 days before election day, and continued until 24 hours before election day. All contestants were able to campaign freely and voters were presented with a wide variety of choice among 20 different parties across the political spectrum. The campaign took place in a calm atmosphere. There were no obstacles to campaigning and freedoms of speech, movement and association were respected at all times.

Some OSCE/ODIHR EAM interlocutors indicated that the intensity and type of campaign activities were influenced by the short time for preparation of the election campaign due to the call for early elections, and by limited financial resources, as the parties had contested different elections and referenda in the past years. Nevertheless, the 13 parties that registered in all 8 constituencies campaigned throughout the country. Two new parties, the 'Positive Slovenia,' led by the mayor of Ljubljana Zoran Janković, and the 'Gregor Virant's Civic List,' led by the former Minister for Public Administration, drew significant public interest and found themselves at the center of public attention. As a result, the campaigns of more established parliamentary parties were to some extent overshadowed by the newcomers.

Campaign strategies adopted by contestants depended largely on the size of the party and their voter base. SDS and 'Positive Slovenia' had the most visible campaigns. Both used a variety of tools, including jumbo-posters, paid advertisement, regional events and personal meetings of party leaders, such as 'Positive Slovenia's' programme, 'Tea with Janković'. DeSUS, traditionally supported by pensioners, and the Slovenian People's Party (SLS), with a rural support base, relied on their parties' regional structures at the local level. The 'New Slovenia-Christian People's Party' addressed their Catholic voter-base both by religious media and newsletters, and by internet, community campaign and personal contacts.

Inexpensive methods of campaigning, including social networks, were widely used. All 20 contesting parties developed web pages, 18 campaigned via Facebook and 11 via Twitter. The most active in this respect were 'Positive Slovenia,' SDS, LDS and TRS. While for major contestants social networks were an important but supportive tool in the campaign. Some smaller parties (TRS, LDS, ZARES) treated them as a crucial channel of communication. Social networks became also an important source for the media. For

³⁰ Please see http://volitve.gov.si/dz2011/kandidati/seznam_list.html.

example, the leader of SDS posted documents about his personal property on Facebook, which became a widely discussed story.

The campaign focused on the personalities of the party leaders and their values. Another dominating theme was the economic crisis. According to many interlocutors, the 2011 elections were the first in which the campaign focused on economic and development issues, rather than on ideology. Apart from discussion of tax changes, mechanisms to ensure a stable budget, and Slovenia's future in the Euro zone, a number of strategic infrastructure projects were discussed.

X. POLITICAL PARTY FINANCE AND CAMPAIGN FINANCE

Political financing is regulated by the PPA and the ERCA. Multiple institutions have jurisdiction in implementing these acts. The last amendments to the PPA were made in 2007 and to the ERCA in 2011.

In 2007, GRECO produced an evaluation report on the transparency of party funding and election campaigns and later in 2010 issued a compliance report.³¹ The recommendations in the report were related to the improvement of the transparency of party funding, the possibility of providing detailed financial reports of the political parties and campaign organisers, and the need for strengthening the capacities and resources of the relevant institutions for monitoring and supervising party and campaign financing. Although legislation has been drafted which would improve the transparency and accountability of political party and campaign financing, it has yet to be adopted by the National Assembly.

A. POLITICAL PARTY FINANCING

Pursuant to the PPA, political parties may be financed from a variety of private and public sources. Private contributions to political parties can be made by individuals and legal entities, up to approximately 15,000 EUR; in certain cases, disclosure is required.³² A number of OSCE/ODIHR EAM interlocutors opined that these provisions are often misused, alleging that donors make multiple contributions, each below the limit, in order to remain anonymous. As reports are not audited, they consider this a potential loophole. Parties gaining over one per cent of votes are also entitled to receive state subvention. Of the total budgeted amount, 10 per cent is divided equally between all eligible parties. The remaining 90 per cent is proportionally divided among parties represented in the National Assembly according to the number of votes received.

Political parties must submit annual reports, listing all incomes and expenditures, to the Court of Audits by 31 March each year. The law does not provide for regular audits to be conducted. However, reports are "reviewed and evaluated" by the Court of Audits.³³ Parties must submit the reports to the National Assembly by 30 April and a summary is published in

³¹ Group of States against Corruption (GRECO) of the Council of Europe. Both reports are available at: www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.

³² The allowed amount is ten average monthly wages, per year. If the total contribution from each natural person or legal entity exceeds three average monthly wages in one year, details of such donor need to be declared in party's annual report.

³³ Article 24.1 of the PPA.

the Official Gazette. If a political party fails to report, it is temporarily suspended from receiving public funding.

The OSCE/ODIHR EAM recommends that political party financial reports provide a detailed breakdown of all donations in order to increase the level of transparency of political financing. Detailed versions of the reports should be publicly accessible.

B. CAMPAIGN FINANCING

Although campaign finance regulations are stipulated in the ERCA, the same provisions from the PPA that specify political parties' financing also apply to the financing of election campaigns. In practice, campaigns are mainly financed from parties' own funds and from individual or corporate donations.

As stipulated in the ERCA, a single bank account must be opened for each campaign. The expenditure ceiling is calculated on the basis of 0.40 EUR per eligible voter in each electoral unit contested. For these elections, the spending ceiling for those contesting all races was some 683,000 EUR. Many OSCE/ODIHR EAM interlocutors stated that they expected to spend below the limit due to the financial crisis and significantly fewer private donations.³⁴

Reporting requirements for the financing of electoral campaigns are stricter than political party reporting requirements. Campaign organizers have to submit a financial report to the National Assembly and the Court of Audits within 15 days of closing their bank account. The report has to list the total funds collected, sources of funding and the expenses incurred during the campaign. Within six months of closing the account, the Court of Audits conducts a financial audit of the campaign accounts of those parties entitled to a partial reimbursement of campaign expenses. Sanctions range from 50 to 100 per cent of reimbursement, depending on the excess spending.

C. SUPERVISION OF PARTY AND CAMPAIGN FINANCING

By law, several authorities are responsible for supervising political finance. The Court of Audits receives annual reports from political parties and reports from election campaign organizers. However, the Court of Audits does not have investigative or enforcement powers and does not audit the political parties' annual reports.

The MoI Inspectorate has competence over the supervision and implementation of the provisions of the ERCA. According to the Inspectorate, investigations are initiated upon information received from state institutions, media or anonymous reports. Regarding the financial provisions of the PPA, the Ministry of Finance is the responsible authority. Lastly, both financial reports are submitted to the Committee for Public Accounts of the National Assembly.

³⁴ The law provides for partial reimbursement of campaign expenses for parties reaching a minimum threshold of votes gained. Parties who receive mandates are entitled to the reimbursement of campaign expenses up to 0.33 EUR per vote received. Parties not receiving seats but obtaining at least six per cent of votes cast in at least one constituency or at least two per cent of votes cast countrywide receive up to 0.17 EUR per vote. Candidates for the Italian and Hungarian national communities are entitled to a reimbursement of 0.33 EUR per vote for election campaign activities if they gain at least 25 per cent of the points in their constituencies.

According to most OSCE/ODIHR EOM interlocutors, the involvement of different institutions in overseeing political financing is complex and not fully effective. Since the adoption of the PPA, no sanctions have been enforced for violation of the financial provisions, and only a few minor fines have been imposed on organisers of election campaigns. This was attributed to a lack of political will on the part of the political actors and state authorities to pursue allegations of violations and to adopt stricter legislation on political financing. Furthermore, there is a lack of jurisdiction, competence and resources for institutions to systematically supervise political financing and a lack of power to impose sanctions for violating the law.

Consideration could be given to the possibility of giving a single institution the jurisdiction as well as the resources to scrutinise the financial operations of political parties and campaign organisers in a proactive manner.

XI. MEDIA ENVIRONMENT

The media environment is diverse and includes public and commercial broadcasters, as well as a plurality of print media. Public ‘RTV Slovenia’ has three national television channels and three national radio channels, as well as regional TV channels in Maribor and Koper. In addition, ‘RTV Slovenia’ carries special programming for the Italian and Hungarian communities. Commercial television includes three main national TV stations: Pop TV, *Kanal A* and TV3. Television is the main source of public information, while newspaper readership is declining. The internet is widely used and has become an important tool for transmitting political information.

A. LEGAL FRAMEWORK FOR THE MEDIA

The legal framework for the media coverage of the election campaign includes provisions of the ERCA, as well as rules for public broadcasters contained in the Radio and Television Corporation of Slovenia Act (RTV Act). In addition, specific regulations on presentation of candidates and parties have to be adopted by ‘RTV Slovenia’ at least 45 days before the elections.³⁵

The ERCA stipulates a 24-hour campaign silence period starting the day before election day. It also regulates paid and free coverage in public media and the publication of opinion polls. In March 2011, the Constitutional Court overruled an article in the act prohibiting publication of polls seven days prior to elections, ruling a one week ban on opinion polls unconstitutional.³⁶

The RTV Act requires public broadcasters to ensure credible and impartial information regarding political events. The public broadcaster also has to offer parties free airtime during the campaign period based on their representation in the National Assembly and the European Parliament. Parliamentary and non-parliamentary parties must receive equal time for free presentations within their respective categories, with non-parliamentary parties being

³⁵ Article 6 of the ERCA.

³⁶ Constitutional Court Decision nr. U-I-67/09 from 24 March 2011.

entitled to one-third of the total time provided for campaign presentations. Paid political advertising is allowed on 'RTV Slovenia' during campaigns. Paid ads must clearly indicate the entity funding the advertisement.

In accordance with the ERCA, the public broadcaster adopted its regulations for political party coverage.³⁷ Two different formats were envisaged: direct party presentations and electoral debates. As in previous campaigns, RTV decided to grant this airtime only to parties running in all eight constituencies.³⁸ Some parties not running in all constituencies claimed that this criterion is in conflict with the principle of equal representation, as provided by the RTV Act.

The public broadcaster could consider granting free airtime for presentations to all parties contesting the elections to the National Assembly. A proportional formula could be adopted when the number of contesting parties is high.

Rules establishing limits on length and number of paid ads were also adopted by RTV, determining that spots could not be longer than 45 seconds and should be aired separately from other ads. Limits were also set on the number of spots per party, per day in each marketing block.

The Media Inspectorate of the Ministry of Culture and the Market Inspectorate of the Ministry of Economy are the competent bodies for the supervision of the implementation of the RTV Act.³⁹ The Market Inspectorate told the OSCE/ODIHR EAM that they have never exercised competence over the provisions on campaign coverage, while the Media Inspectorate highlighted the lack of enforcement measures at its disposal. The EAM was informed of one media-related complaint lodged with the Media Inspectorate.⁴⁰

Complaints of breaches of rules can be submitted to RTV's news programme editorial boards or to its General Director. Parties did complain on a number of occasions, alleging unfair or unlawful coverage. One media-related complaint was also sent to the Human Rights Ombudsman's Office and one to the Commission for Petitions, Human Rights and Equal Opportunities of the National Assembly. No regulatory body systematically monitors media coverage during the campaign. As indicated by some OSCE/ODIHR EAM interlocutors, there is a lack of effective enforcement mechanisms of media regulations, and procedures for acting upon complaints appear to be weak.

Consideration could be given to having one media regulatory body with the expertise, resources and mandate to monitor respect for campaign related rules, investigate alleged violations, and impose effective remedies when violations take place. Clear procedures should be established to receive and act upon complaints about unfair or unlawful media coverage during the campaign.

³⁷ RTV rules on allocation of airtime for parties presentations were published on 21 October 2011 and entered into force on 14 November 2011.

³⁸ RTV stated that other contestants were covered in news programmes based on the newsworthiness of events.

³⁹ Article 44 of the RTV Act.

⁴⁰ The Inspectorate of the Ministry of Interior, which has oversight functions as per the ERCA, received 58 reports of alleged breaches of electoral silence in the media, including on web pages.

B. MEDIA COVERAGE OF THE ELECTIONS

Apart from campaign coverage in the news, 'RTV Slovenia' provided free airtime to parties standing in all constituencies, consisting of direct presentations to voters.⁴¹ Special 'RTV Slovenia' election programmes included six debates for the above parties. The first debate only included parliamentary parties and a second debate was held among non-parliamentary parties. For the next three debates, 'RTV Slovenia' adopted a mixed formula, inviting parties by drawing lots. The final debate was conducted among all 13 parties standing countrywide.⁴²

On 10 November, 'RTV Slovenia' aired a regularly scheduled political talk show with four parliamentary parties and two of the new parties: 'Positive Slovenia' and 'Gregor Virant's Civic List'. The parties had been selected based on their opinion poll ratings. Parliamentary parties not included criticized this format on the grounds that during the official campaign period 'RTV Slovenia' is bound by law to equally represent parties with seats in the National Assembly and in the European Parliament. 'RTV Slovenia' was criticised by some parties for its initial proposal to invite parties to the two final debates based on polling ratings. Some parties protested this decision in letters to 'RTV Slovenia'; the public broadcaster subsequently withdrew this proposal.

Concerns were also raised by some OSCE/ODIHR EAM interlocutors over a 'RTV Slovenia' news journalist who allegedly organized interviews on the advice of her spouse during the campaign; the spouse was an adviser to one of the candidates. 'RTV Slovenia' responded that journalists in its news programmes acted according to professional standards and that the questions asked were justified and relevant.

Private TV channel campaign coverage included news, debates and special programmes. The leading commercial TV station 'Pop TV' aired four debates and also covered the campaign in its news programmes, interviews and discussions. Other commercial media outlets, both at the national and local levels, also reported on campaign activities with a variety of formats. *Kanal A* organised electoral coverage in its news programmes, while 'Info TV' and 'Pink SI' broadcast a number of debates and discussions among parties. Newspapers published feature articles and devoted special pages to the elections. Websites, blogs, and social networks were also an important source of information.

Although there are no legally binding campaign coverage regulations for commercial media, some complaints regarding lack of coverage in the private media were brought to the attention of the OSCE/ODIHR EAM. On 1 December four parties – the TRS, the Party for Equal Opportunities, the Democratic Labor Party, and the SMS-'*Zeleni*' – organized a protest against media discrimination on public and private televisions.⁴³ They complained that television rarely covered small parties and thus violated the right of citizens to be informed.

⁴¹ Free direct presentations and debates or interviews on TV and radio were also available for candidates in the Italian and Hungarian minority constituencies, in the respective programmes in these languages.

⁴² 'Radio Slovenia' organised special election programmes at national and regional level including debates and interviews with the parties standing in all constituencies, in addition to the three-minute direct presentations. Campaign coverage was also broadcast in its regular news programmes.

⁴³ The protest was held in front of the premises of 'RTV Slovenia' and 'Pop TV'.

XII. NATIONAL MINORITIES

The official data provided by the Slovenian Statistics Office does not provide information on ethnic affiliation. The last census to include such data was prepared in 2002. At that time, Serbs, Croats and Bosniaks were the most numerous ethnic minority groups. According to estimates based on the 2002 census, the number of Slovenian citizens coming from other former Yugoslav republics is around 120,000.⁴⁴ In these elections, citizens from these groups were active, running as candidates for parties including DeSUS, LDS, SD and 'Positive Slovenia.'

Slovenia ratified the Council of Europe Framework Convention for the Protection of National Minorities in 1998. In context of this convention, the autochthonous Italian and Hungarian communities are considered national minorities, as well as the Roma community. As noted above, they are provided with special constitutional rights, including the right to use national symbols freely, the right to education and schooling in their own language and the right to preserve their national identity. With respect to political representation, Hungarian and Italian communities have the right to establish their own self-governing communities and to be directly represented in local self-governing bodies and in the National Assembly. Some of the measures envisaged for the Hungarian and Italian communities apply also to Roma community.

In their campaigns, national minority candidates mostly used traditional campaign methods rather than internet social networks. They were visible in local media and held numerous meetings with local community members.

Bilingual ballots and other materials were available to voters in these two national minority areas, but there was no voter education campaign. Some interlocutors suggested that this would be helpful, especially due to the preferential voting system used in the special constituencies.

XIII. WOMEN'S PARTICIPATION

Although low levels of female representation have persisted in Slovenia, political participation of women has slowly improved over the last decade.⁴⁵ The numbers of women elected in National Assembly, European Parliament, and local elections increased mainly because of the introduction of quotas and lobbying by women. In the 2011 National Assembly elections, 28 women were elected (31 per cent), compared to 12 in 2008 (13 per cent).

Gender quotas were first introduced in 2004 in the Law on Elections to the European Parliament. In 2005 and 2006, respectively, quotas were introduced in the laws on local

⁴⁴ Although the legislation does not provide any special status for members of these communities, the National Assembly adopted a declaration recognizing their identity and role in the Slovenian society on 1 February 2011. Official Gazette of RS, 7/11.

⁴⁵ After the 2000 elections to the National Assembly, 8 per cent of deputies were women. The number increased to 12 and 13 per cent in 2004 and 2008, respectively.

elections and on National Assembly elections. The 2011 National Assembly elections were the first in which the gender quota was applied fully (35 per cent, see Candidate Registration section). Of the 1,393 candidates standing, 561 were women (43 per cent). Of the 13 parties registered in all constituencies, 'Positive Slovenia' had the highest percentage of women candidates (48.2 per cent). As media attention focused on party leaders, the visibility of females was lower as there were only two female party leaders among the 13. Of the six public debates organized by the public broadcaster, the majority of participants were male (85 per cent).

Gender issues did not play a prominent role during the campaign. Nevertheless, the question of the influence of the electoral system on gender participation was raised by the NGO 'Slovenian Women's Lobby', which presented a report on how political parties assign male and female candidates to electoral districts.⁴⁶

XIV. COMPLAINTS AND APPEALS

Election dispute resolution is primarily regulated by the electoral law. The Act on Administrative Disputes is also applicable with regard to the Supreme Court as is the Constitutional Court Act with regard to that court. In addition, the Voting Rights Register Act regulates disputes pertaining to voter registration. Overall, the legislation provides for effective and timely legal remedy, and there is public confidence in the adjudication bodies and procedures.

The election law stipulates that complaints on irregularities in the candidate nomination procedure may be lodged with the ConECs. As a second instance, the law provides for a judicial review of the ConEC decisions on candidate registration with the Supreme Court. However, it is not clear whether a complaint may be lodged with the Supreme Court only against decisions of electoral commissions on candidate registration or on the legality of any acts adopted by electoral bodies, as specified by the Law on Administrative Disputes.⁴⁷ Moreover, the Law on Administrative Disputes stipulates that the Supreme Court decides on the legality of acts adopted by electoral bodies. In most cases, timeframes are sufficiently short (48 hours to file complaints or appeals) and for the competent body to give a decision, in line with international best practice.

A constitutional complaint against an individual act of the authorities may be filed with the Constitutional Court after all other legal remedies have been exhausted.⁴⁸ In such cases, the legal deadline for lodging a complaint is 60 days and there is no deadline for the Constitutional Court to take a decision. Although the OSCE/ODIHR EAM was told by the court that short, 48-hour timeframes are applied to election-related disputes in practice, long

⁴⁶ The analysis focused on five parties represented in the 2008 parliament - LDS, SDS, SD, SLS and the 'Slovenian National Party' - and covered all parliamentary elections since 1992. According to their analysis, women were under-represented as candidates in districts in which their parties were considered likely to win and were disproportionately assigned to marginal districts.

⁴⁷ On 12 January 2012, the Constitutional Court decided that appeals against ConECs are not possible given that elections are a fast process and that all issues need to be solved immediately. Decision, Uv1/2012.

⁴⁸ Article 51 of the Constitutional Court Act.

deadlines have the potential of depriving some complainants of their right to effective remedy.⁴⁹

Complaints about alleged irregularities at a PS or DEC, including election results, are lodged with the ConECs. The law states that “if the NEC establishes such irregularities in the work of a ConEC, which considerably affect, or could affect, the election results, then it shall determine the election results in the constituency itself.” However, the law does not specify whether the NEC assesses the legality of acts of the ConECs *ex officio* or on the basis of a complaint/appeal.

The election law could be amended to explicitly state whether the NEC has competence to assess the legality of ConEC acts on the basis of complaints and/or ex officio, as well as who may file a complaint. It could also clarify what kinds of irregularities affect the election result.

The Constitution mandates the National Assembly to confirm parliamentary mandates. This is done by the Commission for Public Office and Elections, which is formed at the first session of the new National Assembly and ceases to exist after mandates have been confirmed. Candidates or their representatives have the right to lodge complaints with the Commission on decisions of electoral commissions that could have affected the confirmation of a deputy’s term of office. The Commission decides on all such complaints before confirming mandates. This may constitute a conflict of interest, potentially affecting the impartiality of the Commission and its decisions. However, such Commission decisions can be appealed to the Constitutional Court.⁵⁰

In order to avoid ambiguity and uncertainty, including potential conflict of jurisdiction, legal provisions could be revised to establish a uniform, hierarchical dispute procedure for all decisions and acts of electoral commissions.

Eleven complaints were filed with ConECs by the SPSP on the denial of candidate list registrations in all eight constituencies, the TRS and the ‘Green Party’ in Constituency 3 and the *Stranka Humana Slovenija* in Constituency 5. The rejections were appealed to the Supreme and the Constitutional Court, which upheld the ConECs’ decisions.

The OSCE/ODIHR EAM was informed of pre-election day complaints filed by voters that were not considered significant by ConECs and the NEC and were not addressed. In addition, some 179 complaints were lodged with the MoI Inspectorate on alleged violations of campaign rules, including violations of campaign silence (see Media section).⁵¹ The Information Commissioner dealt with seven alleged violations of the Personal Data

⁴⁹ As provided for in paragraph 5.10 of the 1990 OSCE Copenhagen Document and paragraph 18.2 of the 1991 OSCE Moscow Document. Both documents state that OSCE participating States are committed to ensure that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.”

⁵⁰ Judicial review is provided by the Article 69 of the Constitutional Court Act. The law does not provide details on procedures for challenging decisions of election commissions, particularly on the appointment of election administration members. It only provides that such decisions can be appealed to the Supreme Court.

⁵¹ As of 14 December, the Inspectorate rejected 6 cases. In 39 cases, it found no violation of campaign silence.

Protection Act by political parties or candidates.⁵² At the time of this report, investigations were still ongoing.

XV. VOTING METHODS

Although voters generally vote in polling stations on election day, a number of other channels facilitate this right. These include early voting,⁵³ postal voting for voters in hospitals or retirement homes, mobile voting for ill or disabled voters, out of district voting⁵⁴ and voting abroad. DEC's mark requests for out of district, postal, and mobile voting in voter lists to prevent double voting.

A. VOTING ABROAD

Voters abroad can vote by post or, in some countries, at diplomatic representations. They can vote in-country if they notify the NEC in advance. In these elections, some voters reportedly did not receive ballots in time to mail them back to Slovenia, in particular in Australia.⁵⁵ As ballots were not sent by registered mail, the NEC did not know how many voters were affected. No formal complaints were made, although the SDS expressly raised concerns about this issue with the OSCE/ODIHR EAM. By law, citizens abroad have ballots sent automatically to their last registered address. Both the NEC and the MoI stated that the authorities were not always notified of changes by citizens abroad with the result that many ballots may have been misdirected.⁵⁶

The OSCE/ODIHR EAM recommends that the legislation and procedures for voters abroad be reviewed to ensure that these voters receive ballots in time. This may include lengthening deadlines, sending ballots by other means, or other procedures.

B. VOTERS WITH DISABILITIES

Special provisions are in place for voters with disabilities. The law obliges DEC's to identify at least one polling station accessible for disabled voters; there were 97 polling stations with

⁵² The Information Commissioner is an autonomous and independent body established to supervise the protection of personal data and access to public information, <https://www.ip-rs.si/?id=195>. Allegations included the misuse of personal data from the voter register, the illegal use of photographs in a campaign leaflet, and the obtaining and use of e-mail addresses and other personal data illegally.

⁵³ Early voting is available to all voters without advance notification at special polling stations established at DEC's. Early voting begins five days prior to election day and ends two days before election day. In total, 30,677 ballots were cast at early voting polling stations.

⁵⁴ A voter who will be outside his/her own district on election day may vote in another location on election day if a request is made to their DEC at least 3 days in advance. Each district must designate a polling station for such voters.

⁵⁵ Postal ballots from voters abroad must be postmarked prior to election day but are counted if they arrive up to eight days after election day. In total, 6,843 ballots were received from abroad. The NEC stated that voter lists from embassies are checked against postal ballots in order to ensure that there is no double voting.

⁵⁶ As of election day, over 3,400 of some 55,000 ballot packs sent had been returned as undeliverable. The deadline for finalizing candidate registration 20 days prior to election day with an additional 4 days for deciding any complaints prevents ballots from being printed and mailed earlier.

this designation for these elections. These may be equipped with voting machines to assist disabled voters to cast their ballots autonomously, but this is not required.⁵⁷

A group of disabled people's association raised concerns with the NEC that there were an insufficient number of accessible polling stations, that not all districts were equipped with voting machines, and that it was not possible for a disabled voter residing in a district without such a machine to go to such a polling station in another district. They stated that as a result, some disabled voters could not vote in secret as required by Slovenian law and the Convention on the Rights of Persons with Disabilities.⁵⁸ The OSCE/ODIHR EAM also noted that early voting polling stations were not always accessible or equipped with voting machines for disabled voters.⁵⁹

The NEC informed that the cost of voting machines made it difficult to have them in all districts and that the election law does not provide for voters to vote outside of their districts in National Assembly elections, except at designated 'out of district' polling stations. The NEC noted that existing means allow all voters to cast their ballots, including by mobile voting and by having another person assist disabled people. They also stated that if a polling station was inaccessible to a voter, the PB would bring the ballot to that voter outside. The NEC acknowledged that these measures were not satisfactory for all disabled voters and stated that it would conduct a post-election review of voting procedures to identify changes that could be made to improve access.

The OSCE/ODIHR EAM recommends that the NEC and other relevant authorities conduct a review to identify and adopt measures, including amendments to legislation if necessary, which would further facilitate access for disabled voters. It further recommends that such a review be inclusive of disabled voters.

C. ELECTION DAY

There were 3,468 polling stations throughout Slovenia, a relatively high number compared to the number of eligible voters. As a rule, voting is conducted from 07:00 to 19:00. All political parties and other interlocutors indicated a high degree of confidence in the voting and counting process.

In accordance with OSCE/ODIHR methodology, the OSCE/ODIHR EAM did not conduct a comprehensive and systematic observation of election day proceedings. However, mission members did visit a limited number of polling stations on election day. In the polling stations visited by the OSCE/ODIHR EAM, the voting process was smooth, well-organized and transparent. All PBs visited appeared to have a good understanding of the procedures, and all

⁵⁷ Article 79a of the election law. Voters wishing to vote at such polling station must inform the DEC no later than three days before election day. For these elections, 55 of the polling stations designated as accessible were equipped with voting machines.

⁵⁸ Article 29.a.ii of the Convention says that States Parties will protect 'the right of persons with disabilities to vote by secret ballot...' Slovenia ratified the Convention and the Optional Protocol on 24 April 2008.

⁵⁹ Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections, adopted on 19 December 2011. [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)045-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)045-e.pdf).

said that their respective DEC had provided training, either to the PB as a whole or to the president and deputy. In one polling station designated as accessible for disabled voters, however, the PB said that they did not know how to operate the voting machine.

Although voters are required to present photographic identification, in some polling stations visited the PB did not ask for such identification but used the information slip sent to each voter prior to election day. The law and NEC instructions allow for exceptions to photo identification, such as if the voter is known to the PB, but in such cases this must be noted in the voter list.

The OSCE/ODIHR EAM was informed about an incident in Tržič district in constituency 1 in which 100 unused ballots were missing at the DEC on election day. Voting was briefly suspended in that district to count all unused ballots, but the voting time was then extended by one hour. A police investigation found no indication that a criminal offense had taken place.

To safeguard secrecy, the NEC instructions require that ballots be sent to the DEC for counting if there are less than 10 ballots. This is also a risk in 'omnia' polling stations, where there may only be a single voter for some districts. However, PBs at several 'omnia' polling stations appeared to misunderstand the instructions and informed the OSCE/ODIHR EAM that they would count all ballots at the polling station, even if there was a small number for a given district. Similarly, votes cast using a machine at polling stations designated for the disabled are deposited in the ballot box and counted with other ballots. However, these ballots have a different format from other ballots and are often low in number, thereby potentially compromising the secrecy of the vote.

The OSCE/ODIHR EAM recommends that NEC instructions be clarified to ensure that secrecy of the vote is fully ensured for all instances when a low number of ballots cast may compromise secrecy of the vote, such as in 'omnia' polling stations, votes cast by machine in polling stations designated as accessible for disabled voters, or polling stations with small numbers of voters.

D. ANNOUNCEMENT OF RESULTS

Preliminary results are entered into a computer system at DEC level and are cross-checked for accuracy at the NEC level before being made public. Preliminary results were published quickly, although final results were not announced until after postal ballots from voters abroad had been received and counted. PBs posted a hardcopy of results at the polling station; however, the overall preliminary results were not detailed by polling station on the NEC website.

In order to further increase transparency, the OSCE/ODIHR EAM recommends that results disaggregated by polling station be made publicly available on the NEC website.

According to information provided by the NEC, 11 complaints were filed with ConECs alleging irregularities in the work of the polling boards on election day. In one case, a complaint was upheld and a recount was ordered. Final results were declared on 16 December 2011.

ANNEX 1 – ELECTION RESULTS⁶⁰

National Assembly Elections, 4 December 2011

Number of eligible voters	1,709,692
Number of voters who turned out to vote	1,121,573
<i>Turnout in percent</i>	65.60 %
Number of valid votes	1,102,256
Number of invalid votes	19,219
<i>Invalid votes in percent of votes cast</i>	1.7%

Party	Votes	Percent	Mandates
Positive Slovenia	314.273	28.51	28
Slovenian Democratic Party (SDS)	288.719	26.19	26
Social Democrats (SD)	115.952	10.52	10
Gregor Virant's Civic List	92.282	8.37	8
Democratic Party of Pensioners of Slovenia (DeSUS)	76.853	6.97	6
Slovenian People's Party (SLS)	75.311	6.83	6
New Slovenia-Christian People's Party	53.758	4.88	4
National Minority Deputies			2

⁶⁰ Source: National Election Commission, <http://volitve.gov.si/dz2011/>.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the 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.

The OSCE/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 130 staff.

The OSCE/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 standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/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. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/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 persons, 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**, the OSCE/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. The OSCE/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.

The OSCE/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).