



Office for Democratic Institutions and Human Rights

PORTUGAL

PARLIAMENTARY ELECTIONS 27 September 2009

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

24-26 June 2009



Warsaw
22 July 2009

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXECUTIVE SUMMARY	1
III.	FINDINGS.....	2
A.	BACKGROUND AND POLITICAL CONTEXT	2
B.	LEGAL FRAMEWORK AND ELECTORAL SYSTEM	3
C.	ELECTION ADMINISTRATION	3
D.	VOTER REGISTRATION.....	5
E.	ELECTION CAMPAIGN AND FINANCING OF POLITICAL PARTIES	5
F.	VOTING ABROAD.....	5
G.	MEDIA ENVIRONMENT	5
H.	COMPLAINTS AND APPEALS.....	6
IV.	CONCLUSIONS AND RECOMMENDATIONS.....	6
	ANNEX: LIST OF MEETINGS.....	7

PORTUGAL
PARLIAMENTARY ELECTIONS
27 September 2009

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation to observe the forthcoming parliamentary elections, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Portugal from 24 to 26 June 2009. The OSCE/ODIHR NAM was conducted by Mr. Konrad Olszewski, Deputy Head of the OSCE/ODIHR Election Department, and Mr. Mats Lindberg, OSCE/ODIHR Election Adviser. The purpose was to assess the pre-election environment and advise on possible OSCE/ODIHR election observation activity. It was the first time that the OSCE/ODIHR carried out an election-related visit in Portugal.

The OSCE/ODIHR NAM held meetings in Lisbon with representatives of various ministries involved in the organization of the elections, the National Election Commission, the Constitutional Court and political parties (see annex for the list of meetings). The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs and the Ministry of the Interior for their co-operation and assistance during the NAM.

II. EXECUTIVE SUMMARY

On 27 June, following consultations with political parties, the President of Portugal scheduled the parliamentary elections for 27 September 2009. The Portuguese parliament is unicameral, with 230 members elected by proportional representation in regional multi-member constituencies for a four-year term. The OSCE/ODIHR NAM interlocutors did not expect the forthcoming elections to lead to significant changes in the composition of the parliament, in which the two main opponents, the centre-left Socialist Party and the centre-right Social Democratic Party, currently hold almost 200 of the 230 seats. The economic situation is likely to be the main campaign theme.

The official campaign period is limited to 13 days, during which rules for media access for election contenders and coverage by media of the election campaign apply. However, political parties are allowed to start campaigning before the beginning of the official campaign period, by engaging in activities such as rallies and the distribution of election materials.

The Law on Parliamentary Elections adopted in 1979 is supplemented by a multitude of other laws that also contain provisions regulating the conduct of parliamentary elections. Although the election law has been amended several times, it still contains somewhat outdated legal provisions. While candidates or representatives of political parties are entitled to be present at polling stations and to follow election-day procedures, the election law does not provide for international or domestic non-party election observers.

Furthermore, it does not allow individual candidates to run in the parliamentary elections. This, along with the absence of provisions allowing international or domestic non-party observers, challenges some OSCE commitments for democratic elections.

Election stakeholders met by the OSCE/ODIHR NAM expressed overall confidence in the work of the administration of the election. However, the representatives of the National Election Commission (NEC) mentioned some instances of undue interference by local authorities in recent elections.

Notwithstanding the overall trust in the election process, some OSCE/ODIHR NAM interlocutors welcomed the possibility of OSCE/ODIHR observation activity to identify any shortcomings in the electoral legislative framework or any practices that may have become obsolete. They also stated that an external assessment conducted by the OSCE/ODIHR would be useful with a view to identifying possible areas for improvements to legislation, electoral practices and procedures.

Based on the findings outlined in this report, and given the interest in and the expected usefulness of observation activity, the OSCE/ODIHR recommends the deployment of an Election Assessment Mission (EAM) for the forthcoming parliamentary elections. The OSCE/ODIHR EAM will be composed of about a dozen election experts, who will be deployed for approximately three weeks ahead of election day and will visit a number of regional centres. The OSCE/ODIHR EAM will review the legal framework and focus on electoral practices in Portugal. It will not undertake systematic and comprehensive observation of election-day procedures, as this was not identified as an issue of concern.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

On 27 June, following consultations with political parties, the President of Portugal scheduled the parliamentary elections for 27 September 2009. The Portuguese parliament is unicameral, with 230 members elected for a four-year term.

The centre-left Socialist Party currently holds an absolute majority in Parliament with 121 Members. The main opposition party is the Social Democratic Party, which is a centre-right party with 75 seats. Other parliamentary parties include: the Communist Party (12 seats), the Popular Party, which is a traditional Christian Democrat Party (12 seats), the Left Bloc (8 seats), and the Green Party (2 seats). There are about 20 active political parties in Portugal.

The Social Democratic Party won the most votes in the recent elections to the European Parliament, while the Socialist Party came second. The Communist Party and the Green Party ran in a coalition and received about ten per cent of the votes. The OSCE/ODIHR NAM interlocutors did not expect the forthcoming elections to lead to a significant change in the composition of the parliament. The economic situation is likely to be the main campaign theme.

Despite request for separate meetings with all of the parliamentary political parties, the OSCE/ODIHR NAM could meet only briefly with two of them.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The primary legislation for these elections is the Law on Parliamentary Elections (hereinafter “the election law”) adopted in 1979. Though amended several times, some legal provisions seem somewhat outdated, with, for instance, repeated references to the former Portuguese territory of Macau. The election law is supplemented by a multitude of other laws that also contain provisions regulating the conduct of parliamentary elections. These include the Constitution, the law on political parties, the law on funding of political parties (including campaign funding), the law on the right of assembly, the law on media coverage of elections, the law on the National Election Commission, the law on out-of-country voting, the law on the format of political campaign and the law on opinion polls.

Members of Parliament (MPs) are elected by proportional representation in multi-member regional constituencies. The seats are allocated according to the d’Hondt formula and the number of MPs elected in each electoral district is proportional to the district’s population. Portugal is divided into 18 electoral districts. In addition, there are two additional districts – for Madeira and the Azores islands – as well as two districts for the out-of-country vote, bringing the total of electoral districts to 22. There is no formal threshold for parties to obtain seats in parliament, although “natural thresholds” apply depending on the number of seats elected in multi-member constituencies.

Portuguese citizens who have reached 18 years of age on election day are eligible to vote. Citizens with voting rights are also eligible to run as candidates in elections, with the exception of certain high officials, such as the President of the Republic, civil governors, judges, members of the National Election Commission, military personnel and serving diplomats. Only political parties can register candidate lists. Therefore, citizens are not allowed to run as individual non-partisan candidates or as a group of independent candidates, which challenges Paragraph 7.5 of the 1990 OSCE Copenhagen Document,

While political parties’ candidates or representatives are entitled to be present at polling stations and to follow election-day procedures, the election law does not provide for international or domestic non-party election observers. This is in contradiction of paragraph 8 of the 1990 OSCE Copenhagen Document.

C. ELECTION ADMINISTRATION

The parliamentary elections are conducted by a three-tiered election administration: the National Election Committee, 22 Central Polling Stations (CPSs) and approximately 12,000 Electoral Offices (EOs).

The NEC is the main electoral body providing oversight of the election process. It is reappointed for each legislative period and a Supreme Court judge serves as its chairperson. The other members are one representative each from the Ministry of Justice, Ministry of the Interior and the Ministry of Parliamentary Affairs, as well as one representative of each of the parliamentary groups represented in parliament. Thus, the number of NEC members depends *de facto* on the number of parliamentary groups.

The NEC ensures that public and private broadcasters remain impartial during election campaigns. In this task, it is assisted during the official campaign by the Regulatory Authority for the Media (ERC). The ERC is a public body, independent from the Government and reporting to Parliament. It has a media monitoring unit, which permanently and systematically monitors the main public and private TV channels to ensure compliance with relevant legislation. It also follows radio broadcasts and print media. The NEC furthermore allocates free airtime (see Section G on the Media Environment) on electronic media to political parties contesting the elections. The NEC is also responsible for voter education and for publishing final results.

At the intermediate election administration level, there are 22 CPSs, corresponding to the 22 electoral districts. Each CPS has 12 members and is chaired by a judge of the judicial district, with headquarters in the capital of the electoral district or, in the case of Lisbon and Porto, by the judge of the 1st Civil Court. The other members comprise two jurists selected by the chairman, two mathematicians appointed by the Ministry of Education and Culture, or in the autonomous regions of the Azores and Madeira, respectively, by the Minister of the Republic. Further members are six chief electoral officers of a polling station appointed by the civil governor, or in the autonomous regions, by the Minister of the Republic. Finally, each CPS has a chief legal clerk who will serve as secretary, without the right to vote.

There 12,000 EOs at the polling-station level. Each of these consists of five members: a chief electoral officer, his/her deputy and three members.

The Directorate General for Internal Affairs of the Ministry of the Interior, as well as 22 Civil Governor Offices, 308 municipalities and 4,260 parishes play a significant logistical and administrative role. The parish administration is responsible *inter alia* for convening the political parties to appoint members to the Electoral Offices. However, according to the NEC, at times during previous elections the parish administrations failed to inform the political parties in a timely manner about such meetings. The NEC also informed the OSCE/ODIHR NAM that some complaints had been filed with the NEC during previous elections regarding news items in some municipal newsletters, which could be perceived as supporting certain political parties, as well as instances of parish council officials being present at polling stations, ostensibly to check that everything was in order. However, according to the NEC, the presence of such officials was perceived by some voters and candidates as an attempt to interfere in the electoral process.

In the election context, the Constitutional Court registers political parties and candidate lists and acts as a final instance of appeal for electoral disputes.

Official results are only released once all the relevant written protocols have been approved and verified by CPSs. Ballot papers are first counted at EOs, and then the results are transferred to CPSs. The official results take 1-2 days to compile for smaller constituencies, while bigger ones, such as Lisbon, can take up to a week. Final official election results must be published by NEC within 10 days.

D. VOTER REGISTRATION

Voters are registered by means of a “passive” system; all citizens who reach voting age on or before election day are automatically included on voter list. Registration is linked to a national central database, which in turn is linked to the ongoing issuance of a new type of ID cards with an electronic chip. According to the representatives of the Ministry of Interior, such cards have so far been distributed to some 10 per cent of the Portuguese electorate.

When changing place of residence within Portugal, citizens have to register for civil registration purposes at their new place of residence, and the voter lists is updated automatically. Voter registration closes 60 days before election day, which means that any voter registering at a new address after this deadline has to vote at his/her previous residence. An elector who is not included on the voter list may not cast a ballot.

E. ELECTION CAMPAIGN AND FINANCING OF POLITICAL PARTIES

The official campaign period is limited to 13 days, during which the rules for media access for election contenders and coverage by media of the election campaign apply. Political parties may organize campaign rallies and distribute campaign materials before the official campaign begins. There is a campaign silence period which starts 24 hours before the elections.

State financial support is provided to political parties, as is State funding for election campaigns. Funding is determined by the number of votes received by political parties in previous elections and the number of constituencies contested and candidates registered for the elections. Private corporations and citizens are allowed to make campaign contributions to political parties up to a certain limit, but foreign nationals are not. Parliament recently proposed higher limits for such contributions, but the President vetoed the amendments. Campaign costs are reimbursed up to a certain ceiling based on submitted receipts. Campaign spending for each candidate is limited to 15 times the official national monthly minimum wage.

F. VOTING ABROAD

Approximately five million Portuguese citizens live abroad. Voting abroad in parliamentary elections is possible by mail, but requires active registration beforehand at one of the some 120 Portuguese diplomatic missions around the world. Only about 200,000 Portuguese expatriates have enrolled on the electoral list in past elections, and only approximately 20 per cent of these have habitually exercised their right to vote in parliamentary elections. There are two separate electoral districts for the votes abroad.

G. MEDIA ENVIRONMENT

The main Portuguese Public Broadcaster, RTP, has two national channels with country-wide coverage. In addition, it has two cable channels and two regional services for the Azores and Madeira, respectively. There are also two private channels with nation-wide coverage, TVI and SIC. TVI, SIC and RTP are the most influential TV stations, with TVI

enjoying the highest number of viewers. There are six nationwide radio stations – three public and three private. All print media outlets are private.

Parties presenting candidate lists for parliamentary elections are entitled to free airtime. Free airtime provided by nationwide public and private TV and radio broadcasters is divided among the political parties and coalitions that have put forward a minimum of 25 per cent of the total number of candidates and that are competing in at least 25 per cent of the total number of constituencies. Free airtime provided by regional broadcasters is divided equally among the political parties and coalitions that have put forward candidates in the constituency or in one of the constituencies covered, entirely or mostly, by the respective broadcasts.

There are no specific legal regulations about Internet campaigning or the use of other new technologies in campaigning.

H. COMPLAINTS AND APPEALS

The NEC does not actively monitor the implementation of the election legislation, but adjudicates complaints, such as on equal treatment of political parties by media in the election period. It can issue sanctions for such violations, except in the case of criminal acts, in which it refers the matter to the prosecutor. Decisions by the NEC can be appealed to the Constitutional Court whose rulings are final.

Political parties can make formal complaints at any point in the electoral process, but they have to submit them in writing to be valid. On election day, EOs accept complaints and decide with a majority of their members whether the complaints are admissible. In all cases, complaints must be entered into the minutes. The EOs decide on the substance of the complaints with a majority vote. The CPSs also verify all complaints submitted to the EOs, and they inform the plaintiff of the ruling. Plaintiffs have the right to appeal to the Constitutional Court, whose rulings are final.

IV. CONCLUSIONS AND RECOMMENDATIONS

Notwithstanding the overall confidence in the election process, some OSCE/ODIHR NAM interlocutors welcomed the possibility of an OSCE/ODIHR observation activity to identify any shortcomings in the electoral legislative framework, or any practices that may have become obsolete. They also stated that an external assessment conducted by the OSCE/ODIHR would be useful with a view to identifying possible areas for improvements in legislation, electoral practices and procedures.

Based on the findings outlined in this report, and given the interest in and the expected usefulness of observation activity, the OSCE/ODIHR recommends the deployment of an Election Assessment Mission for the forthcoming parliamentary elections. The OSCE/ODIHR EAM will be composed of about a dozen election experts, who will be deployed for approximately three weeks ahead of election day and make a number of visits to regional centres. The OSCE/ODIHR EAM will review the legal framework and focus on electoral practices in Portugal. It will not undertake systematic and comprehensive observation of election day procedures, as this was not identified as an issue of concern.

ANNEX: LIST OF MEETINGS

The OSCE/ODIHR NAM met the following interlocutors:

Ministry of Foreign Affairs

Mr. Carlos Costa Neves
Director for International Political Organizations
Directorate General for Political Affairs

Mr. João Francisco Moura
Desk Officer for Humanitarian Issues and Council of Europe

National Election Committee (NEC)

Mr. João Carlos de Barros Caldeira
President

Mr. João Almeida
Member

Mr. Jorge Oliviera de Faria
Member

Mr. Nuno Godinho de Matos
Member

Mr. Jorge Migueis
Member (Interior Ministry)

Ms Joaquina Maria Alves Martins Amorim
Secretary

Interior Ministry Directorate General of Internal Affairs

Ms Rita Faden
Director General of Internal Affairs

Mr. Jorge Miguéis
Director of Electoral Administration

Mr. Domingos Magalhaes
Director of Services

Ms Isabel Miranda
Head of Legal Affairs Division

Ms Paula Vasco
Head of Data Processing Division

Office for the Media

Mr. Pedro Berhan de Costa
Head of Department

Mr. J.P. Figueiredo
Member of Cabinet of H.E. the Minister for Parliamentary Affairs

Mr. João Paulo Palha
Deputy Director

Mr. Sérgio Gomes da Silva
Head of Division

Constitutional Court

Mr. António Ernesto Duarte Silva
Director of Documental and Juridical Information Department

Parliament of Portugal

Mr. Abel Baptista
Member of Parliament, Democratic and Social Centre – People's Party (CDS/PP)

Mr. Renato Leal
Member of Parliament, Socialist Party

Ms Cristina Ferreira
Head of the International Relations Division

Institute of Strategic and International Studies

Mr. Bruno Cardoso Reis

Embassy of Greece to Portugal

Mr. Spyridon Theocharopoulos
Ambassador

Ms Natalaia Karageorgou
Counsellor