



Office for Democratic Institutions and Human Rights

ESTONIA

PARLIAMENTARY ELECTIONS

6 March 2011

OSCE/ODIHR Election Assessment Mission Report



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OSCE/ODIHR Election Assessment Mission Final Report

I. EXECUTIVE SUMMARY

In line with OSCE commitments, the Minister of Foreign Affairs of Estonia invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 6 March 2011 elections to the *Riigikogu* (Parliament). Based on the recommendation of a Needs Assessment Mission, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for these elections.

The *Riigikogu* elections were conducted in an environment characterized by respect for fundamental rights and freedoms and a high degree of trust in the impartiality of the election administration. Election stakeholders expressed confidence in the overall process, including the Internet voting. Voters had an opportunity to make an informed choice among a field of candidates representing a variety of political alternatives.

The legal framework generally provides an adequate legal basis for the conduct of democratic elections in accordance with OSCE commitments and other international standards, although it is of concern that large parts of the Internet voting remain unregulated. The legislative framework for complaints and appeals is generally adequate for resolving electoral disputes in line with international standards.

While citizenship is recognized as an admissible restriction to suffrage, in particular for elections for national office, it is of concern that a significant group of long-term residents with undetermined citizenship, amounting to some seven per cent of the total population, do not have the right to vote or stand as candidates in national elections. They can however vote, but not stand as candidates, at local elections.

OSCE/ODIHR EAM interlocutors in general expressed a high level of confidence in the professionalism, efficiency and transparency of the election administration. While the Election Act provides for a wide range of voting methods, the procedures put in place to prevent multiple voting generally provide for effective safeguards.

Voters could cast their ballots via the Internet during the advance voting period from 24 February to 2 March. Despite concerns raised by some interlocutors, the OSCE/ODIHR EAM in general found widespread trust in the conduct of the Internet voting by the National Electoral Committee (NEC). However, there is scope for further improvement of the legal framework, oversight and accountability, and some technical aspects of the Internet voting system.

The campaign took place in a calm atmosphere, and all contestants were able to campaign freely. Prohibition of the outdoor political advertising remained in place. In some instances, activities of the local governments blurred the distinction between the state and the governing party at local level or were perceived as advantaging one of the electoral contestants.

A new Committee on Monitoring the Funding of Political Parties was constituted after the elections, charged with monitoring contenders' compliance with regulations on campaign finance. Some OSCE/ODIHR EAM interlocutors expressed regret that the Penal Code no longer prescribes criminal liability for receipt of illegal donations.

The media environment is diverse and provided voters with a range of viewpoints through informative and inclusive broadcast debates and coverage in the Internet. However, there is a lack of an autonomous regulatory authority able to set clear rules on campaign coverage and monitor media compliance with the rules.

There are neither legal barriers to the participation of women in political life nor legal provisions to encourage it. Women's participation in political life is relatively low. No political party was led by a woman and only 20 out of 101 elected MPs are women, down from the 24 in the outgoing *Riigikogu*.

Issues related to national minorities did not feature prominently in the campaign. Political parties made varying degrees of effort to include persons belonging to national minorities on their candidate lists and to reach out to Russian-speaking voters. Despite some provision of election information in Russian, weak Estonian language skills may present an obstacle to national minorities' participation in the electoral process.

Few formal complaints were filed before the NEC or the Supreme Court concerned, *inter alia*, disenfranchisement of the convicted prisoners and alleged lack of reliability, secrecy and security of the Internet voting. All complaints were rejected as being ungrounded or for not being filed within the deadline.

In accordance with the OSCE/ODIHR methodology, the OSCE/ODIHR EAM did not include short-term election observers and 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 in the limited number of polling stations visited proceeded in a calm manner. The election committees in general worked efficiently and followed the procedures. The vote count was for the most part conducted in an efficient, orderly and transparent manner. Voter turnout was recorded at 63.5 percent.

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 Estonian authorities to address these recommendations.

II. INTRODUCTION AND ACKNOWLEDGMENTS

In accordance with OSCE commitments, the Minister of Foreign Affairs of Estonia on 9 December 2010 invited the OSCE/ODIHR to observe the 6 March 2011 elections to the *Riigikogu*. Following a Needs Assessment Mission undertaken on 10-13 January, the OSCE/ODIHR deployed an EAM from 21 February to 8 March 2011.¹ The OSCE/ODIHR EAM was headed by Tana de Zulueta, and consisted of nine experts based in Tallinn and four regional experts based in two regional locations. The OSCE/ODIHR EAM was drawn from 14 OSCE participating States.

The elections were assessed for their compliance with OSCE commitments and other international standards for democratic elections, as well as with Estonian legislation. This report should be read in conjunction with past OSCE/ODIHR reports, which provide additional

¹ OSCE/ODIHR Needs Assessment Mission Report is available at:
<http://www.osce.org/odihr/elections/estonia/75216>.

details on Estonian elections and whose recommendations remain applicable.² Following the 2007 elections, the OSCE/ODIHR concluded that they “reflected the democratic practice and tradition that have become characteristic of the electoral process in Estonia.”

The OSCE/ODIHR EAM wishes to thank the Ministry of Foreign Affairs, the NEC, as well as other national and local state institutions, election authorities, candidates, political parties and civil society organizations for their co-operation.

III. POLITICAL CONTEXT

Estonia is a parliamentary republic with legislative authority exercised by a unicameral *Riigikogu* (Parliament) elected for a term of four years. The president is elected by the *Riigikogu* for a five-year term. The president nominates the prime minister for the approval by the *Riigikogu*. In the March 2007 elections, six parties entered the *Riigikogu*. The highest number of seats, 31 out of 101, was obtained by the Estonian Reform Party, which went on to form a government with the Union of *Pro Patria* and *Res Publica* and the Social Democratic Party. In May 2009, the Social Democratic Party left the ruling coalition, and the other two parties continued as a minority government.

IV. ELECTORAL SYSTEM AND THE LEGAL FRAMEWORK

The *Riigikogu*'s 101 members are elected in a proportional open-list system for a 4-year term in 12 multi-member electoral districts, with a nationwide 5 per cent threshold. The electoral districts are of different sizes, with the number of mandates ranging from 5 (district No 6, Lääne-Virumaa) to 14 (district No 4, Harju-ja Raplamaa), depending on the number of registered voters in each district on the first day of the month when the elections were called.

Allocation of mandates is performed in three steps. Personal mandates are initially distributed among candidates who reached the simple quota (the number of valid votes divided by the number of mandates) in their district. Only those parties that attained a five-per cent threshold nationwide participate in further distribution of seats, with the positions of candidates on district party lists re-ordered in line with the number of votes each candidate received. Each party receives as many district mandates as the number of times the total number of votes cast for the candidates on the district party list exceeds the simple quota. Finally, the remaining seats are distributed at national level using a version of the D'Hondt method.

The legal framework generally provides an adequate legal basis for the conduct of democratic elections in accordance with OSCE commitments and other international standards, although the regulation of the Internet voting remains insufficient. The conduct of parliamentary elections is regulated primarily by the 1992 Constitution and the 2002 *Riigikogu* Election Act (Election Act). Other applicable laws include the Political Parties Act, the Media Services Act, the National Broadcasting Act, the Constitutional Review Court Procedure Act, the Penal Code and the Code of Misdemeanor Procedure. These laws are complemented by regulations of the NEC. There have been minor amendments to the Election Act since the 2007 *Riigikogu* elections, including the extension of the Internet voting period from three to seven days.

The Chancellor of Justice assesses the compliance of legislation with the Constitution. He may

² OSCE/ODIHR reports on previous elections in Estonia are available at:
<http://www.osce.org/odihr/elections/estonia>.

propose that the *Riigikogu* reconsiders legislation he deems unconstitutional and challenge its constitutionality before the Supreme Court.

A. VOTING AND CANDIDACY RIGHTS

Citizens who have attained 18 years of age on election day have the right to vote. Persons who have been deprived of their legal capacity by a court decision and prisoners who have been convicted of any criminal offence are deprived of the right to vote. This, according to the Ministry of Interior, excludes 1,989 legally incapacitated people and 1,416 prisoners from the voter lists.

The European Court of Human Rights (ECtHR) has repeatedly held that an automatic and indiscriminate disenfranchisement of prisoners violates the right to free elections enshrined in Article 3 of Protocol No 1 to the European Convention on Human Rights.³ The withdrawal of prisoners' voting rights irrespective of the gravity of their offence is also not in accordance with OSCE commitments and other international good practice.⁴

As in 2007, the OSCE/ODIHR recommends that the Election Act is amended to end the automatic and indiscriminate ban on voting for prisoners convicted of any criminal offenses to bring it in line with OSCE commitments and other international good practice.

B. CITIZENSHIP

After the restoration of Estonia's independence in 1991, citizenship was granted automatically to holders of Estonian citizenship prior to 1940 and their descendants. There remains a significant group of stateless people or "long-term residents with undetermined citizenship" amounting to 7.1 per cent of the total population.⁵ These are largely migrants from other areas of the Soviet Union, and their descendants, who did not obtain any citizenship after its dissolution.

Long-term residents with undetermined citizenship do not have the right to vote or stand as candidates in *Riigikogu* elections. They however have the right to vote, but not to stand for office, in local elections.

The long-term residents with undetermined citizenship do not have the right to join political parties. This is in contravention of paragraph 9.3 of the 1990 OSCE Copenhagen Document and Art.22.1 of the ICCPR that provides for the freedom of association and applies, according to Art.2.1 of the ICCPR, to all individuals within the territory of the State Party and subject to its jurisdiction.

The legislation should be amended to allow long-term residents with undetermined citizenship to join political parties.

³ *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, ECHR 2005 IX; *Frodl v. Austria*, no. 20201/04, 8 April 2010; and *Greens and MT v United Kingdom* [2010] ECHR 1826, 23 November 2010.

⁴ Para. 24 of the OSCE Copenhagen Document states that any restriction of rights and freedoms must be strictly proportionate to the aim of the law; Para 5.4 of the Existing Commitments for Democratic Elections in OSCE Participating States says that "suffrage cannot be suspended or withdrawn except for reasons of legal incapacity [...] or conviction for a serious criminal offence. Withdrawal of individual franchise must be based on judicial action, and, in the case of criminal conviction, must be proportionate to the nature of the offence." See also Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD (2002) 23, p. 15, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

⁵ <http://estonia.eu/about-estonia/society/citizenship.html>.

Citizenship may be acquired through naturalization. Requirements include knowledge of the Estonian language, Constitution and Citizenship Act. Applicants who pass the citizenship and language exams are eligible for reimbursement of language training costs.⁶ Since 1992, 152,437 persons have become citizens by naturalization, with 765 applications refused.⁷ In 2010, 1,184 persons were naturalized. According to a survey commissioned by the Ministry of Culture, the percentage of persons with undetermined citizenship who were not interested in acquiring the citizenship of any state rose from 16 per cent in 2008 to almost 40 per cent in 2010. Reasons given for not applying for Estonian citizenship included difficulties with learning Estonian (94 per cent), the perceived unfairness of having to take an exam (73 per cent) and visa-free travel to the Commonwealth of Independent States countries (77 per cent).⁸

Certain categories are barred from applying for citizenship. These include people convicted of serious criminal offences whose criminal record has not been extinguished; and people who are or have been employed by an intelligence service or army of another state. Around 20 per cent of the people with undetermined citizenship are precluded from citizenship on these grounds: approximately 21,000 due to criminal record and around 300 because they served in the Soviet army or state security.⁹ The Citizenship Law outlines a number of reasons for which citizens may be deprived of Estonian citizenship, including holding citizenship of another state; these provisions do not apply to persons who hold Estonian citizenship by birth.

Minors (below 15 years of age) may acquire citizenship through an expedited process, on the request of their parents. Proposals to give citizenship automatically to children born to people of undetermined citizenship, as has been recommended by the OSCE High Commissioner on National Minorities,¹⁰ did not receive the necessary parliamentary support.¹¹ According to Police and Border Guard Board, since 2008, about 68 per cent of parents with undetermined citizenship have opted to apply for Estonian citizenship for their newborn children.

V. THE ELECTION ADMINISTRATION

The 6 March elections were administered by a three-tiered election administration, comprising the NEC, 15 County and 2 City Electoral Committees (CECs),¹² and 625 Division Committees (DCs).

The NEC and the CECs are standing bodies appointed for four-year terms. The NEC has seven members appointed respectively by the Chief Justice of the Supreme Court (appoints two

⁶ Other naturalisation requirements include residency for at least eight years, including continuous residence for at least five, and a loyalty oath. The language exam is not required for applicants who have acquired basic, secondary or higher education in the Estonian language. People born on or before 1 January 1930 are not required to take the written part of the language examination.

⁷ Data as of February 2011. Most instances of naturalization took place between 1992 and 1998, with the numbers dropping significantly after that. See <http://estonia.eu/about-estonia/society/citizenship.html>.

⁸ "Monitoring of Attaining of Estonian Integration Strategy 2010," Ministry of Culture, <http://www.kul.ee/index.php?path=0x1377x1496>.

⁹ Information provided by the Ministry of Interior.

¹⁰ <http://www.osce.org/hcnm/37812>.

¹¹ See amendment proposal of the Estonian Center Party of August 2010 (796 SE I), available at: <http://www.riigikogu.ee/?page=eelnou&op=ems&emshelp=true&eid=1116571&u=20110307101400>. The Chancellor of Justice suggested that citizenship be granted to children of parents of undetermined citizenship automatically, with the possibility for the parents to opt out rather than having to opt in (Speech in the *Riigikogu*, October 2009).

¹² In the cities of Tallinn and Tartu.

members – one judge of a court of first instance and one judge of a court of appeal), the Chancellor of Justice, the Auditor General, the Chief Public Prosecutor, the Secretary General of the *Riigikogu* and the State Secretary. The Chairperson and the Deputy Chairperson are elected by the NEC from among their members. None of the members of the NEC work on a full-time basis. The NEC convenes meetings on an *ad hoc* basis rather than regularly. It is assisted by 3 permanent staff and 20 to 25 temporary staff from the Chancellery of the *Riigikogu*.

While the country is divided into 12 electoral districts, the second level of the election administration structure (CECs) reflects the administrative division of the country into 15 counties and 2 cities. The CECs are chaired respectively by the county or city secretary, and are composed of up to 12 members. As in Estonia local governments exist on the level of cities and rural municipalities, but not of the county, the CECs are appointed by the county governor and the city council on the proposal of the county and city secretary respectively. The county and Tallinn and Tartu governments provide operational support to the CECs.

The DCs are temporary bodies, composed of a chairperson and up to eight members, appointed by the local government council. The chairperson and half of the members are nominated by the city or rural municipality secretary, while the rest may be nominated by political parties. Political parties altogether nominated less than half the number of members they were entitled to. While a number of parties nominated DC members in significant numbers,¹³ the local authorities and electoral bodies told the OSCE/ODIHR EAM that some parties lacked capacity to do so. The city or rural municipality government provide operational support to the DCs. The OSCE/ODIHR EAM noted the close working co-operation of DCs with local administrations.

The NEC conducted training sessions in the 15 counties and in the cities of Tallinn and Tartu attended by the CECs chairpersons and by at least two members of each DC.¹⁴ All DC members were invited to participate in an online training program developed by the NEC.

OSCE/ODIHR EAM interlocutors in general expressed a high level of confidence in the professionalism, efficiency and transparency of the election administration.

A. VOTER EDUCATION

The NEC conducted voter education campaign which included newspaper advertisements and audio and video clips on public and private broadcasters, including in Russian language, and posters describing procedures. The NEC also used *Facebook*, *YouTube* and *Twitter* as communication channels. The NEC website contained comprehensive and regularly updated information in Estonian and summaries in English.

B. VOTER REGISTRATION

The Population Registration Bureau prepares the voter lists and sends notification cards to each citizen registered in the voter list 30 days before election day. Requests for correction of personal data¹⁵ or inclusion in the voter lists could be made to the rural municipality or city

¹³ Estonian Center Party, Estonian Reform Party, Union of *Pro-Patria* and *Res Publica* and Social Democratic Party.

¹⁴ The chairperson and at least one other member were required to attend the training sessions. In some places, many members of the DCs were present.

¹⁵ The address of residence could not be changed during this period.

secretary up to and on election day.¹⁶ Daily updates of the voter lists were made by the Population Registration Bureau and sent to the DCs through the local government authorities. The list of Estonian citizens permanently living abroad was sent to the diplomatic missions according to the information kept by the Population Registration Bureau. No OSCE/ODIHR EAM interlocutors raised concerns about the accuracy of the voter lists.

C. VOTING METHODS

The Election Act provides for a wide range of possibilities for Estonians to exercise their right to vote. In addition to the election day, voters could vote via the Internet, and cast ballots in advance during a three-day period (from 28 February to 2 March) either at the polling division where they were registered or at a polling station designated in each city or rural municipality for voting outside the place of residence.¹⁷ During this period, mobile voting was conducted in hospitals, nursing homes and custodial institutions on receipt of written requests from voters.¹⁸

Estonians permanently or temporarily residing abroad could either vote in person at Estonian diplomatic representative offices, by mail through those offices, or via the Internet. Voting on ships flying under the Estonian flag in international waters or the waters of foreign states could be conducted, upon application by the master of the ship.¹⁹

The Election Act provides a general framework of procedures for transferring votes cast during the advance voting period to the electoral bodies where they are counted. These procedures are designed to ensure that each voter, even if they had used more than one of the available voting methods, had only one valid vote counted. The NEC issued instructions on how voters lists should be annotated accordingly.

Not later than two days before election day, the NEC passed to the relevant CECs the lists of voters who had cast their vote by the Internet and the envelopes containing the out-of-country votes. At the same time, the CECs exchanged among themselves the envelopes containing the votes cast in advance by voters outside their places of residence. The CECs delivered to the respective DCs the lists of voters from their divisions who had cast their votes via the Internet, as well as the envelopes of those who had voted in advance, with the exception of votes cast by voters registered as permanently residing out-of-country, which were processed by the CECs. Procedures were put in place to ensure that such voters would not be able to vote in the country, either during the advance polling or on election day.²⁰

In the second stage, at the DC level, at the latest on the day before election day the voter list of the DC was annotated to record the voters who had cast their votes in advance. This was done in a specific order based on the priority to be given to different votes in the cases of voters who had voted by more than one method. Thus, for example, a vote cast via the Internet was cancelled by an advance vote by paper ballot, while a paper ballot cast in advance outside the place of residence or out-of-country was cancelled by an advance vote in the polling division of

¹⁶ As of 4 February, 912,565 voters were registered. Following corrections made to the voter lists, by election day this number had increased to 913,346.

¹⁷ To ensure the secrecy of the ballot, voters voting outside their place of residence used the double-envelope system, whereby an inner blank envelope containing the ballot paper was placed inside an outer one identifying the voter.

¹⁸ The authorities of the custodial institutions were responsible to submit to the DC the list of voters who wanted to vote.

¹⁹ The NEC received one such request the day before election day, too late to organize voting.

²⁰ This procedure provides for a chain of communication from the DC or the CEC to the Population Registration Bureau, to the NEC, and back.

the voter's residence. When this process was completed, the DC used the Election Information System to report to the NEC which votes cast via the Internet should be cancelled.

On election day, if the voter's name already had a signature against it, indicating that they had voted in advance in the DC of their place of residence, or an annotation indicating that they had voted via the Internet or in advance outside their place of residence or out-of-country, they were not allowed to vote.

No OSCE/ODIHR EAM interlocutor raised any concern that the safeguards put in place were insufficient to prevent possible multiple voting by different voting methods. Based on the explanations given to the OSCE/ODIHR EAM by the relevant bodies, it appears that the procedures put in place provide for effective safeguards.

VI. INTERNET VOTING

A. OVERVIEW

Estonian voters can cast their ballots remotely via the Internet in national and municipal elections.²¹ Internet technology is widely used in both the government and private sectors; an estimated 67.8 per cent of households have Internet access at home, and 88.1 per cent of the population uses Internet banking.²² Free wireless Internet access is widely available in public places.

Internet voting is an additional method to cast a ballot and is not mandatory. Since the 2007 *Riigikogu* elections, the Internet voting period has been extended from three to seven days – in these elections, voters could vote remotely via the Internet from 24 February to 2 March. The number of citizens choosing this option has increased steadily since 2005 and reached 140,846 in 2011.²³ As a measure to ensure that a vote is cast without undue interference or pressure, every voter could cast a ballot via the Internet as many times as he/she wished with only the last cast vote taken into account. The Internet vote could be cancelled by casting a paper ballot during the advance voting period.

The OSCE/ODIHR EAM in general found widespread trust in the conduct of the Internet voting by the NEC. However, there is scope for further improvement of the legal framework, oversight and accountability, and some technical aspects of the Internet voting system. More detailed and formal control of software installation and reporting on testing of the Internet voting system could further increase transparency and verifiability of the process.

1. Legal Framework

The Election Act establishes the legal basis for the Internet voting and counting of votes cast via the Internet and is supplemented with an NEC decree and operational guidelines that provide more detailed instructions for some stages of the process. Such aspects as the use of

²¹ The 2011 *Riigikogu* elections were the second occasion, after 2007, that Estonians had the opportunity to vote via the Internet in national elections. In addition, Internet voting was available in the 2005 and 2009 municipal elections and the 2009 European Parliament election.

²² See www.stat.ee.

²³ In the 2009 municipal elections 104,313 voters cast ballots via the Internet, compared to 58,614 in the 2009 European Parliament elections, 30,243 in the 2007 *Riigikogu* elections, and 9,317 in the 2005 municipal elections.

cryptographic methods, testing, auditing or assignment of operational duties and responsibilities are not addressed in the existing legislation.

Although the Election Act indicates that the NEC can invalidate the results of the Internet voting,²⁴ it does not specify on which basis and under which circumstances the results of the Internet voting can be declared invalid. It further does not specify how and by which means voters can be informed that they have to recast their vote on paper on election day.

The OSCE/ODIHR recommends that legal provisions with regards to all stages of the Internet voting, including conditions for invalidation of the Internet voting results, are further detailed and consolidated in the law.

2. Management and Oversight

In line with its general responsibility for conducting elections, the NEC exercised oversight of the Internet voting. It had three key roles in the process. First, the NEC contracted the project manager, who was charged with the conduct of the Internet voting. Second, the NEC members held the physical keys needed to decrypt the votes (one by each NEC member). Third, the NEC was responsible for the digital signing of electronic documents such as the list of candidates (by the NEC secretariat staff) and the Internet voting results (by the NEC chairperson).

As none of the NEC members or secretariat staff possessed expertise in IT, the NEC relied on the *Riigikogu* IT department. The *Riigikogu* IT department undertook the public tenders for auditors, the filming of Internet voting procedures, and for an externally recruited project manager.²⁵ The OSCE/ODIHR EAM observed that the NEC tended to accept their explanations without questioning.

Most actors involved in the Internet voting process had been involved in the past elections and collaborated very efficiently. However, the OSCE/ODIHR EAM was concerned that this led to an environment where critical questions were no longer asked and where detailed protocols of proceedings were too rarely part of the process.

The OSCE/ODIHR recommends that the NEC builds its own in-house IT expertise and capabilities on Internet voting and retains detailed written records at all stages of the Internet voting process.

B. THE INTERNET VOTING ELECTORAL PROCESS

The Internet voting process consists of five key stages: testing, set-up of the system, conduct of voting, counting, and destruction of data. The NEC organized the Internet voting process in a professional and timely manner. It maintained security of the system and ensured that voters wishing to cast their vote via the Internet could do so as easily as possible.

²⁴ Art. 73(1¹) of the Election Act.

²⁵ The Council of Europe (CoE) recommends that the competent electoral authority “shall satisfy itself that the e-voting system is genuine and operates correctly.” See Appendix I, recommendation 31 of CoE Committee of Ministers’ Recommendation Rec 2004(11) on legal, operational and technical standards for e-voting, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=778189>.

1. Testing

Similarly to previous elections, the NEC conducted extensive testing of the Internet voting system before setting it up. Firstly, the Internet voting project manager tested the software delivered by the vendor. This was, however, carried out without formal reporting. After that, the Cyber Defence League (CDL)²⁶ conducted an exercise in January 2011 to test the software under given threat scenarios, and produced a report for the NEC that was made available to observers but not to the public. In February, the CDL tested the functionality of the Internet infrastructure under extreme conditions and decided to create a 'whitelist'²⁷ that contained Internet addresses from where legitimate votes could be expected (including embassies abroad).

In a parallel process, a programmer, who was contracted by the NEC, verified the software code. The identity of the programmer and his report to the NEC was kept secret. It was not made available to the OSCE/ODIHR EAM, other observers or political parties.

During a public test-voting period, from 8 to 10 February, citizens could vote in a mock election. A number of deficiencies, such as lack of functionality with one of the operating systems, were uncovered and rectified by the software vendor.

Testing is a crucial exercise to find any deficiencies in the system. The NEC made a substantial effort to test various components of the Internet voting, including by members of the public. However, reporting on the performed tests was often informal or kept secret.

The OSCE/ODIHR recommends that the NEC issues formal reports on testing of the Internet voting system and publishes them on its website in order to further increase transparency and verifiability of the process.

2. Set-up of the System

The vendor, *Cybernetica AS*, handed over the internet voting software to the NEC in December 2010. The OSCE/ODIHR EAM was informed that the project manager was able to update the software of the Internet voting system until right before the elections started, and without a formal consent of the NEC. This was done without any formal procedure or documented acceptance of the software source code by the NEC, which limited the information on which version of the software was ultimately used.

The Internet voting system was set up at the premises of the NEC between 15 and 18 February. On the last day, the cryptographic keys used for encrypting and decrypting the votes were generated and handed over to members of the NEC. This stage also included an end-to-end test of the casting and counting of a small number of test votes. The NEC, observers and representatives of political parties were in attendance to check that the system was configured correctly.

The OSCE/ODIHR recommends that the NEC adopts formal procedures for software deployment and establishes a deadline for its updates.

²⁶ The Cyber Defense League was created by the regulation of the Government of Estonia (see <https://www.riigiteataja.ee/akt/125012011003>) to help protect the country from cyber attacks.

²⁷ 'Whitelisting' is a way of protecting the Internet services from malicious impacts like distributed Denial of Service (dDoS) attacks. Communication that stems from computers not on the 'whitelist' is blocked.

3. Voting

The Internet voting system remained largely the same as in previous elections.²⁸ A voter identified him/herself with the use of the activated ID card in order to cast a ballot. Voters download the required application from the NEC website. The vote was encrypted and authenticated by a voter's digital signature.²⁹ The vote was then stored on a server after confirming the validity of the digital signature. As in previous elections, and despite the recommendation made by the OSCE/ODIHR in 2007, the time of casting a vote was recorded in a log file by the vote storage server along with the personal identification code of the voter. This could potentially allow checking whether the voter re-cast his/her Internet vote, thus circumventing the safeguards in place to protect the freedom of the vote.

Two changes were introduced to the voting process since the 2007 *Riigikogu* elections. Firstly, the voter applications were reprogrammed by *Cybernetica AS* in a way in which the application is downloaded from the NEC website as stand-alone program and is not run in the user's browser. Secondly, voters were given the possibility to use a mobile phone with a specially enabled SIM card to identify him/herself and digitally sign the vote. It was used by less than two per cent of Internet voters. Authentication with the use of an ID card remained available.³⁰

Daily update of the voter register during the voting period as required by the Election Act was performed together with the daily backup of data. The project manager accessed the servers for daily data maintenance and backup breaking the security seals and using a data storage medium employed also for other purposes. This practice could potentially have admitted the undetected intrusion of viruses and malicious software.

It is recommended that no maintenance of the Internet voting system servers is performed from the start to the end of the Internet voting process.

4. Counting

Counting of internet votes took place on 6 March in the presence of the NEC members and domestic and international observers. Before the decryption of the votes, the Internet votes superseded either by another Internet vote or by an advance paper ballot were cancelled. Four members of the NEC then used their keys to start the decryption of the votes, after which the votes were counted, uploaded into the Election Information System and displayed.

During the counting, one vote was determined invalid by the vote counting application since it was cast for a candidate who was not on the list in the corresponding constituency. The project manager could not explain how this occurred – the investigation was still ongoing at the time of issuing the report.

²⁸ For a detailed account of the Internet voting system and process in Estonia, see Final Report of the OSCE/ODIHR EAM to 2007 *Riigikogu* Elections, pp. 11 – 14. Available at <http://www.osce.org/odihr/elections/estonia/25925>.

²⁹ This process resembles the widely-used double-envelope system known from postal voting, whereby an inner sealed (encrypted) blank envelope containing the ballot paper is placed inside an outer one (digitally signed) that identifies the voter.

³⁰ The digital ID card, which voters use to authenticate their identity, has been available for several years. It is used extensively including for work, healthcare, public transport, and other functions. Out of a population of 1.14 million with active digital ID cards, 414,679 have at some point been used for digital authentication.

It is recommended that a provision is introduced to provide clear criteria for determination of the validity of the votes cast via the Internet.

5. Data destruction

In Estonia, the data and the internet voting equipment need to be destroyed in order to preserve the secrecy of the vote in view of the ever-increasing computing powers available for a trial-and-error decryption. Most important parts of the Internet voting system³¹ were destroyed on 11 April in the presence of the NEC members, the auditor and observers.

While regulations for the storage and destruction of materials used in the paper ballot voting follow the requirements provided for in the Personal Data Protection Act,³² the Internet voting remains unregulated in this respect. In particular, details are lacking in the specifications on how personal data should be destroyed.

Consideration should be given to introducing legal provisions to bring specifications of processing, storing and destruction of the data and equipment used in Internet voting in compliance with the Personal Data Protection Act.

C. SECURITY

Guaranteeing the security of an Internet voting process is challenging due to the open nature of the Internet. Ensuring the security of electronic votes relies on the selection of an appropriate cryptographic scheme, securing the Internet communication from malicious attacks and operating the system in a way which minimizes the risk of failure.

1. Security of the vote

In recent years, advances have been made in the field of cryptography to enable end-to-end verification of the votes cast, i.e. a possibility for an individual voter to verify that his/her vote was (i) cast as intended, (ii) recorded as cast, and (iii) counted as recorded. Such individual verifiability usually relies on giving the voter a code that allows him/her to check later whether their vote was correctly recorded or even counted. In addition, there are algorithms that enable universal verifiability, meaning that anyone is able to verify that the cast votes have been decrypted and counted properly. Estonia's Internet voting system does not employ such tools. The OSCE/ODIHR EAM was given the explanation that this was due to concern that enabling verifiability might confuse voters.

The OSCE/ODIHR EAM was made aware of a program that could, if it was running on a voter's computer, change the vote without the possibility for the voter to detect it. The case was brought to the attention of the project manager who assessed this threat to be theoretically plausible but nearly impossible to implement in reality. The author of the program filed a petition with the NEC that was dismissed and subsequently appealed to the Supreme Court. The introduction of an opportunity for the voter to verify that his/her vote was cast and recorded as intended would mitigate that risk.

³¹ The key pair, the encrypted votes, including all back up CDs, the hard disk drives, the SSL server and the secret keys used for signing the Internet voting software. However, hard disk drives of the vote forwarding server and the backup server were not destroyed.

³² Art. 7.2(3) requires the processor of personal data, to describe "the procedure for and manner of processing personal data."

The OSCE/ODIHR recommends that the NEC forms an inclusive working group to consider the use of a verifiable Internet voting scheme or an equally reliable mechanism for the voter to check whether or not his/her vote was changed by malicious software.

2. Security of Internet Communication

Shortly after the 2007 Riigikogu elections, a dDoS attack was mounted against Estonian web servers. Following this, the authorities undertook a number of initiatives to counter any future attacks of this kind. Involvement of the Computer Emergency Response Team of Estonia (CERT-EE) and the CDL in testing and monitoring security threats is a welcome measure that enables a large-scale mobilization of human resources in the event of a plausible cyber attack and further increases public trust in the system.

3. Security of Operations

In any Internet voting system, the loss of even a small number of votes or a period of downtime would be significant failures. The Estonian Informatics Centre (RIA) hosts servers for many governmental projects in one server room, where the Internet voting system was only separated by a sealed computer rack.³³ One server, with the operating system and Internet voting software installed but not configured, was kept as a backup in case of server failure.

The two servers (vote forwarding server and vote storage server) had two hard drives each operating in parallel, so that if one failed, the other would remain. However, the failure of a simple component, such as the power supply of one of the servers or, in a worst-case scenario, the hosting environment destroyed or otherwise compromised, would result in a considerable downtime. No precise service level standard, such as guaranteed time of service availability, was in place for the data centre; nor was its operation certified according to an international information security industry standard like ISO 27000.³⁴

The OSCE/ODIHR recommends that the NEC formalizes a disaster recovery plan for the case of system failure. This could include a mirrored operation in two data centres.

D. ACCOUNTABILITY AND TRANSPARENCY

Given the lack of paper trail for Internet voting, public trust in its integrity rests to a significant degree on accountability and the transparency of the operation.

1. Certification

The 2004 Council of Europe (CoE) Recommendation on electronic voting and the CoE recent guideline on certification³⁵ recommend that technical requirements are established and that its component are tested for their compliance with these requirements. The NEC made comprehensive and commendable efforts to test the Internet voting system, including by members of the public. However, this testing was not preceded by the establishment of

³³ A computer rack is a standard equipment to operate computers in a data centre in a space-saving way that limits unauthorized physical access.

³⁴ See <http://www.27000.org/index.htm>.

³⁵ Guidelines of the Committee of Ministers of the CoE on Certification of E-voting Systems (2011). http://www.coe.int/t/dgap/democracy/activities/ggis/E-voting/E-voting%202010/Biennial_Nov_meeting/Guidelines_certification_EN.pdf.

comprehensive technical requirements and was only overseen by the Internet voting project manager, who also administered the necessary amendments. The NEC decided, as in 2007, not to have the Internet voting system certified by an independent third party.

The OSCE/ODIHR recommends delegating the responsibility for certification of the Internet voting system to an independent public body that would evaluate and then digitally sign the final version of the Internet voting software and publish a public evaluation report.

2. Auditing

The NEC contracted an auditor to assess compliance of the Internet voting with technical, legal and procedural requirements. The NEC considered that the audit ensures the necessary accountability of the system which makes formal certification unnecessary.

KPMG Baltic was contracted by the NEC, after a public tender, to check the compliance of the NEC actions with an operation manual. The only obligation specified in the contract³⁶ was that KPMG had to be present at the execution of procedures and check that they were followed in accordance with the manual. The OSCE/ODIHR EAM observed that both the auditor and the NEC only occasionally made detailed notes about deviations from the manual, thus limiting the opportunities for follow up on possible shortcomings.

The operation manual for the Internet voting comprised a number of separate documents that were originally written by the software vendor and were later updated by the project manager. The NEC published these documents on its website,³⁷ but did not organize any review or a formal acceptance procedure for them.

It is recommended that an operation manual is consolidated in a single comprehensive document and describes all Internet voting procedures.

As instructed by the NEC, all procedures were filmed. However, it is questionable whether all actions could be documented with a single camera.³⁸ In any case, such video footage cannot replace a formal paper-based record.

The OSCE/ODIHR recommends that an independent public body is appointed to perform a compliance audit of the whole Internet voting process with a consolidated operation manual.

3. Observation

The OSCE/ODIHR EAM noted that there has been an increased degree of interest in observing the Internet voting on the part of the political parties and civil society. The NEC organized training sessions for domestic observers to familiarize them with the operation manual. Observers were allowed to view the source code of the voter application only after signing a non-disclosure agreement, which limited the observers' ability to comment on the source code and, therefore, transparency of the system.

³⁶ The OSCE/ODIHR EAM was provided a copy of the contract by the NEC.

³⁷ As published on the NEC's website at <http://www.vvk.ee/valijale/e-haaletamine/e-dokumendid>

³⁸ The OSCE/ODIHR EAM observed that on many occasions the camera was facing the wrong way when the activities were shifting from one computer to another.

While publicly-available documentation covers most stages of the Internet voting in a detailed manner, it is not presented in a way that makes it readily comprehensible to all interested actors. Similarly, the OSCE/ODIHR EAM notes that a substantial knowledge of IT was necessary for observers to follow the training sessions.

The OSCE/ODIHR recommends that further measures are taken to enhance the transparency of the Internet voting process, possibly through providing additional materials and training that are readily comprehensible by all interested actors and the public even without special knowledge of IT.

VII. CANDIDATE REGISTRATION

Citizens who have reached 21 years of age are eligible to stand for the *Riigikogu*, with the exception of serving members of the Estonian defense forces. An eligible citizen may stand on the list of a political party registered with the Ministry of Justice or run independently. Nine political parties and 32 independent candidates submitted registration documents to the NEC. None of them were rejected. In total, 789 candidates participated in the elections. All 6 political parties represented in the outgoing parliament, as well as Estonian Christian Democrats, Estonian Independence Party and Russian Party in Estonia, presented candidates in each of the 12 electoral districts.

A deposit equal to the amount of 2 minimum monthly salaries (approximately 550 Euro) per candidate was required. All political parties paid the deposit for all their candidates in a lump sum. This deposit is refunded to the party if it reaches the national five-per cent threshold and to independent candidates if they are elected or receive at least one-half of the simple quota for the district. Some OSCE/ODIHR EAM interlocutors considered the amount of the deposit excessive and as a potential barrier to active political participation.

Consideration could be given to easing the conditions for refund of the deposit in order to promote political participation.

VIII. THE ELECTION CAMPAIGN

The campaign took place in a calm atmosphere, and all contestants were able to campaign freely. Campaigning was generally subdued. Numerous interlocutors informed the OSCE/ODIHR EAM that the intensity and type of campaign activities were influenced by the straitened economic conditions, as political parties had limited financial resources. There was a significant focus on low-key, relatively inexpensive methods, including leafleting and door-to-door campaigning. Some parties took over cafes where a range of events, including concerts and other cultural programs, were held, at which campaign materials were distributed and candidates met with voters. Online advertising was used extensively. Although several interlocutors indicated that TV advertising was used less intensively than in previous elections due to financial constraints, it was nevertheless an important means of outreach.

Key issues in the campaign included taxation and social welfare spending, unemployment, demographic decline and education. Early in the campaign, the Ministry of Finance issued an analysis of the costs of the campaign pledges made by the various contenders. Some saw this as an improper intervention of a government ministry in the campaign.

Allegations surfaced in December about financial links of the leader of the Estonian Center Party and mayor of Tallinn, Mr. Edgars Savisaar, with the Russian Federation, in contravention of a ban on political party financing from abroad. Media and political opponents, including Prime Minister and leader of the Estonian Reform Party, Mr. Andrus Ansip, suggested during the campaign that a vote for Mr. Savisaar would risk increasing the influence of a foreign country.

The official campaign period began on 26 January, the day after candidate registration ended. A 2005 amendment to the election act prohibits outdoor political advertising during the official campaign period.³⁹ The Chancellor of Justice challenged the constitutionality of the prohibition at the Supreme Court in relation to the rights to stand as candidate, to vote and to nominate candidates and the freedom of expression. The Court ruled in July 2010 that the provision was in line with the constitution, but left it open for the *Riigikogu* to abolish it.⁴⁰ According to the police information on how the law would be applied in practice, the prohibition related specifically to posters and stickers, and not to other forms of advertising, such as balloons or T-shirts. Advertising was permitted on campaign tents. According to the Police and Border Guard Board, around 40 cases of alleged illegal outdoor political advertising were brought to police attention, of which only 7 were considered serious enough to commence misdemeanour proceedings. While outdoor posters were prohibited during the official election campaign, they were widely used beforehand.

Consideration could be given to lifting the prohibition on outdoor political advertising during the official campaign period.

Given that the advance and the Internet voting finished on 2 March, voters who took the opportunity to vote by these methods did so before the final days of the campaign, including the debate organized for party leaders by the public broadcaster on 5 March, and did not have an opportunity to change their vote.

Given the trend of ever greater use of Internet voting, with a significant proportion of the electorate voting before the end of the campaign period, consideration could be given to enabling voters who voted remotely via the Internet to change their vote with a paper ballot on election day.

Some activities blurred the distinction between the state and the governing party at local level, which is not in compliance with paragraph 5.4 of the 1990 OSCE Copenhagen Document. Local government, free-of-charge newspapers in some towns where the Center Party holds power at local level, including Tallinn and Narva, promoted candidates of the Center Party, and criticized national government policies. A poster campaign by the city of Tallinn government, with the slogan “*Tallinn Aitab*” (“Tallinn Helps”), was perceived by many as contributing to the campaign of the Estonian Center Party, with its campaign slogan “*Aitab*” meaning “Enough” as well as “Helps”. As such, the poster campaign also circumvented the prohibition on outdoor political advertising.

IX. CAMPAIGN FINANCE

The Political Parties Act is the primary law regulating campaign financing. Adopted in 1994, the most recent amendments were enacted in November 2010, and came into force on 1 April

³⁹ Article 5-1 of the Election Act.

⁴⁰ See OSCE/ODIHR *Needs Assessment Mission Report*, <http://www.osce.org/odihr/elections/estonia/75216>.

2011, after the elections. Public funding of political parties is provided, and private donations from natural persons are also permitted. By law, anonymous donations and donations from national and foreign legal entities are forbidden. The law does not provide for limits on campaign expenditure.

Political parties are heavily reliant on state financing. Parties represented in parliament receive an annual state subsidy proportional to the number of seats they hold.⁴¹ In 2010, the total state financing to all parliamentary parties was almost 5.4 million Euro. The two biggest parties in the outgoing parliament – the Center Party and the Reform Party – each received approximately 1.5 million Euro. According to political parties’ websites, the proportion of public funding in political parties’ budgets ranges from 77 per cent to 99 per cent.⁴²

Political parties are required to disclose donations received and membership fees on a quarterly basis. Political parties are required to disclose the full identity of donors, the date and amount of the donation on their respective websites.⁴³ There is no upper limit on individual donations.

The November 2010 amendments revoked the clause of the Penal Code that prescribed criminal liability for receipt of illegal donations.⁴⁴ Some OSCE/ODIHR EAM interlocutors expressed regret at this decision, contending that some political parties received illegal donations, including from legal persons. As an example, the OSCE/ODIHR EAM was informed that in response to the claims that the Center Party leader had been allegedly negotiating an illegal donation from foreign sources, no investigation could be started due to the lack of appropriate legal provisions.

It is recommended that reinstatement of the Penal Code provisions that stipulate criminal liability for receipt of illegal donations is considered in order to discourage such misdemeanour.

In accordance with the 2010 amendments, the Committee on Monitoring the Funding of Political Parties that was constituted on 27 March will review reports on campaign expenditures and sources of funding for all political parties, independent candidates and election coalitions running in elections. These reports are publicly available on the Internet.

In addition to nominees of political parties represented in parliament,⁴⁵ the committee includes representatives of the Chancellor of Justice, Auditor General and NEC. By law, the role of the committee is to monitor “whether the party, election coalition or independent candidate is adhering to the requirements provided by the present law”.⁴⁶ The Committee is mandated to issue warnings if election contestants fail to submit their campaign finance reports, do not submit information on their campaign finance accounts or fail to keep a registry of donations. If they fail to comply with the warning, the Committee can impose a fine of up to 20,000 Euro.

Some OSCE/ODIHR EAM interlocutors expressed concerns that the committee would not

⁴¹ Parties not meeting the threshold for representation in the Riigikogu are also entitled to financing from the State budget if they obtain at least one per cent of the vote.

⁴² In 2010, public funding represented 77 per cent of the Reform Party’s income, 84 per cent of the Center Party’s income, 81 per cent of the Union of *Pro Patria* and *Res Publica*’s income, 97 per cent of the Greens’ income, 94 per cent of the Social Democratic Party’s income and 99 per cent of the People’s Union’s income.

⁴³ Article 12(3)-6 of the Political Parties Act.

⁴⁴ Article 402 of the Penal Code.

⁴⁵ These cannot be sitting members of the Parliament, nor members of the Government.

⁴⁶ Article 12¹⁰.1 of the Political Parties Act.

have sufficient independence or capacity to ensure compliance with the regulations. The law does not specify whether the Committee is entitled to conduct an audit of political party finances or cross-check their expenditures with their contractual partners. In addition, a number of OSCE/ODIHR EAM interlocutors expressed concerns that the committee, when formed, might lack the necessary specialist staff to carry out an adequate audit of contestants' submitted reports. Similarly, if a serious violation is suspected, the committee is not specifically mandated to turn to the law enforcement institutions and request an investigation.⁴⁷ In theory, political party finances for the public funding component could also be audited by the National Audit Office; however, the office has not carried out any such audits to date.

Consideration should be given to enhancing the capacity of the Committee on Monitoring the Funding of Political Parties by giving it the necessary authority and resources to conduct adequate monitoring of compliance with campaign financing regulations. Further, the committee should have the authority to request investigations from law enforcement bodies if serious violations are suspected.

Paid advertisements either in the press or the broadcasting media do not have to include the identity of the person placing them or paying for them. In this regard, the public does not have a way to monitor independently the level of expenditure by political parties, candidates or indeed any other participants in the campaign, such as NGOs, corporations, etc.

Consideration should be given to requiring that all campaign advertisements identify who paid for them and indicate, where appropriate, the number of copies produced.

X. THE MEDIA

A. OVERVIEW

The media environment is diverse and provided voters with a range of viewpoints. The public service broadcaster (ERR) operates two TV stations (ETV1 and ETV2) and five radio stations. There are nine domestic private TV channels and over 30 radio stations. Public television and radio broadcast some programming in Russian. However, numerous OSCE/ODIHR EAM interlocutors noted that Russian speakers mainly watch channels originating in the Russian Federation. There are 5 national dailies, 1 of them in Russian, and more than 30 weeklies, magazines and regional newspapers, several of them in Russian. The highest-circulation national daily is *Postimees*, with some 60,000 copies per day. Online media are a key source of information. ERR dedicated a section on its Internet portal to elections.⁴⁸ The private *Delfi.ee* online news portal broadcast live debates and covered the campaign in its news.

B. REGULATORY FRAMEWORK

Two main laws regulate the media. The National Broadcasting Act regulates the public service

⁴⁷ In its 2008 Evaluation Report on Estonia on Transparency of Party Funding (p.18), the Group of States against Corruption (GRECO) of the Council of Europe recommended "to assign the monitoring in respect of the funding of political parties and electoral campaigns to an independent body which is given the mandate, the authority, as well as the financial and personnel resources to effectively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions."

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2007\)5_Estonia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)5_Estonia_Two_EN.pdf)

⁴⁸ <http://valimised.err.ee/>.

broadcaster, while the recently enacted Media Services Act regulates the public and private broadcasting services.⁴⁹ There is no licensing of print media.

The National Broadcasting Council regulates public television and radio.⁵⁰ In December 2010, it adopted regulations for the coverage of the election campaign on ERR specifying that news coverage had to be unbiased and candidates in government positions were to be covered in their official capacities only if unavoidable. The Council did not conduct structured monitoring during the campaign. ERR compliance with the regulations was followed on the basis of complaints.⁵¹

The Ministry of Culture is the supervisory body for the private and public broadcasters' compliance with the provisions of the Media Services Act which provides for politically balanced coverage during the campaign. No complaints related to private TV and radio stations were received during the campaign. A number of OSCE/ODIHR EAM interlocutors said that complaints-based supervision is not sufficient to ensure fair and balanced campaign coverage.

C. MEDIA COVERAGE OF THE ELECTION CAMPAIGN

In line with its legal obligations, ETV1 organized five live debates for political parties. Four of them focused on thematic issues, and one was organized for party leaders on the eve of the elections.⁵² ETV2 held a debate in Russian. All political parties standing were invited to each debate. ETV1 also held a debate for independent candidates. The debates attracted high viewership and they received much comment in the online and print media. Some OSCE/ODIHR EAM interlocutors noted that private television news coverage of the campaign was sparse and occasionally unbalanced. As required by law, the public radio station *Vikerraadio* broadcast thematic debates and interviews.⁵³ Russian language *Raadio4* and youth-oriented *Raadio2* covered the campaign in their news and debates.

The lack of an autonomous regulatory authority empowered to set clearer rules on campaign coverage and conduct structured monitoring to ensure media compliance with the rules had some negative consequences.⁵⁴ For example, the OSCE/ODIHR EAM recorded three cases in which candidates continued to host TV entertainment shows on a private channel during the campaign. Instances of bought airtime in the debates of some local TV and radio stations, in apparent contravention of the EU's Audiovisual Media Services Directive and Estonian legislation,⁵⁵ were brought to the OSCE/ODIHR EAM's attention. One TV station in the Narva region confirmed that management advised candidates to buy airtime in debates rather than advertisements.

⁴⁹ The Media Services Act, passed in 2010, replaced the 1994 Broadcasting Act. There were no major changes regarding the regulation of the election campaign.

⁵⁰ The Council is composed of five members of parliament representing different political factions and four media experts.

⁵¹ The Ethics Adviser monitors ERR programming for compliance with the provisions of the National Broadcasting Act on the basis of complaints. The Broadcasting Council deals with major complaints notified by the Ethics Adviser, according to whom 40 campaign-related complaints were received, mainly from the public, most of them criticizing the organization of the ETV debates.

⁵² The debate of the party leaders was broadcast with subtitles in Russian.

⁵³ All independent candidates were entitled to 10 minutes interviews.

⁵⁴ The EU's Audiovisual Media Services Directive (2007) encourages co-regulation of audiovisual media, stating that "Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems", Article 4(7). <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>.

⁵⁵ According to article 10(4) of the European Audiovisual Media Services Directive and article 30(9) of the Estonian Media Services Act, news and current affairs programmes shall not be sponsored.

The public service broadcaster does not carry any advertising, including political advertising. Political parties and candidates placed paid advertisements in private media. There is no regulation regarding the rates broadcasters may charge electoral subjects. Political advertising is not specifically defined under any law and, as a result, it is unclear which laws regulate it.⁵⁶

Consideration should be given to establishing an autonomous regulatory authority that could set clearer rules for campaign coverage, and monitor compliance with the Estonian Media Act.

XI. PARTICIPATION OF WOMEN

There are neither legal barriers to the participation of women in political life nor legal provisions to encourage it. Estonia has ratified the Convention on the Elimination of all Forms of Discrimination against Women.⁵⁷ The Constitution prohibits discrimination *inter alia* on the basis of gender. Women's participation in political life is relatively low. No party contesting the elections was led by a woman. For the 2011 *Riigikogu* elections, 22.6 per cent of candidates were women, with in most cases not more than 2 women among the first 10 on the national lists. Only the Center Party employed a system placing women and men in alternate positions for the top 10 places on the national list. Reflecting this, only 20 out of 101 elected MPs are women, down from the 24 in the outgoing *Riigikogu*.

Women were generally well represented in the election administration. While only 1 out of 7 NEC members is a woman, 71 per cent CEC members were women, and 10 out of 17 CECs were chaired by a woman.⁵⁸ According to the NEC, some 78 per cent of DC personnel were women.

XII. PARTICIPATION OF NATIONAL MINORITIES

Estonia's population includes representatives of several ethnic and/or linguistic groups. Ethnic Estonians make up 69 per cent of the population.⁵⁹ The largest national minorities are Russians (26 per cent), Ukrainians (2 per cent) and Belarusians (1 per cent). Other groups, including Finns, Tatars, Latvians and Poles, each make up less than 1 per cent of the population. An estimated 30 per cent of the population speak Russian as their first language. Russian speakers are especially concentrated in the capital (43 per cent) and in the north eastern cities of Narva (93 per cent) and Kohtla-Järve (80 per cent), according to 2000 census data.

Estonia's ratified the Framework Convention for the Protection of National Minorities in 1997, adding a limiting declaration that the term 'national minority' is interpreted as applying only to

⁵⁶ According to the Ministry of Culture, the provisions of the Media Act on advertising (Chapter 3) cover political advertising as well. A Chancellor of Justice report, "The Final Answer and A Memorandum on the Broadcasting of Political and Electoral Advertisements in the Estonian Public Broadcasting" (<http://www.oiguskantsler.ee/index.php?newsID=311&menuID=39>) revealed the divergent views of the Culture, Justice and Economic Affairs and Communications Ministries as to which laws should regulate political advertising, referring also to the Advertising Act and the Law of Obligations Act.

⁵⁷ http://www.un.org/womenwatch/daw/cedaw/cedaw25years/content/english/CONCLUDING_COMMENTS/Estonia/Estonia-CO-4.pdf.

⁵⁸ See NEC Website, <http://web.vvk.ee/index.php?id=10581>.

⁵⁹ Information as of January 2010, from <http://estonia.eu/about-estonia/country/population-by-nationality.html>.

Estonian citizens, and not to other permanent legal residents.⁶⁰ The government maintains that in practice it uses a more comprehensive definition and that the rights under the Convention are granted to all national minorities in Estonia.⁶¹

Approximately 50 per cent of members of national minorities are Estonian citizens and therefore enjoy both the right to vote and to stand in elections, while 24 per cent are of undetermined citizenship.⁶² National minorities are underrepresented in political life, particularly at national level. In 2010, the United Nations Committee on the Elimination of Racial Discrimination noted with concern the very low level of political participation of minorities in Estonia.⁶³ In the outgoing *Riigikogu*, less than 10 per cent of members belonged to national minorities. Candidates are not asked to indicate ethnicity or language proficiency when registering with the NEC.

Political parties made varying degrees of effort to include persons belonging to national minorities on their candidate lists and to reach out to Russian-speaking voters. One party that explicitly identified itself along ethnic lines did not meet the five per cent threshold. Estonia's public broadcaster aired some election debates in Russian on TV and radio, while political parties and some individual candidates issued campaign materials in both Estonian and Russian.

Issues related to national minorities did not feature prominently in the campaign.⁶⁴ Prior to the elections, the Estonian Cooperation Assembly/Roundtable of Nationalities, a network of civil-society organizations, issued an appeal to election contestants and the public to take a more constructive approach to Estonia's ethnic and linguistic diversity.⁶⁵

By law, Estonian is the sole official language. Government survey data indicate that the level of Estonian language proficiency among national minorities has steadily risen, particularly among the young.⁶⁶ Government initiatives have sought to improve knowledge of Estonian among national minorities, although OSCE/ODIHR EAM interlocutors indicated that the supply of free or low-cost language training does not meet demand. Reimbursement for language training costs is available for individuals who pass language proficiency exams, required for many jobs, as well as for those seeking naturalization. On 23 February 2011, the *Riigikogu* passed a new version of the Language Act, which some OSCE/ODIHR EAM interlocutors said could weaken the right of national minorities to use, and receive information in, their own language in the public and private spheres. The act will enter into force in July 2011.

The NEC conducted an information campaign through the Russian-language media, but its official website featured information only in Estonian and English. According to the NEC, it

⁶⁰ See <http://www.interculturaldialogue.eu/web/files/33/en/CFCPNM-R.pdf>.

⁶¹ Third Report Submitted by Estonia Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, 13 April 2010.

⁶² http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_SR_Estonia_en.pdf.

⁶³ <http://www.kogu.ee/population-and-ethnic-relations-2/>.

⁶⁴ UN Committee on the Elimination of Racial Discrimination, 77th Session, concluding observations on state report, <http://www2.ohchr.org/english/bodies/cerd/cerds77.htm>.

⁶⁵ Some OSCE/ODIHR EAM interlocutors noted that the issue of minority-language education featured in the campaign. Beginning in the 2011-2012 school year, state-funded upper-secondary schools should teach at least 60 per cent of the curriculum in Estonian. Minority representatives have voiced concern about the capacity of teachers in Russian-language schools to teach an increased number of subjects in Estonian.

⁶⁶ http://kogu.ee/public/Rahvuste_Umarlaua_poordumine_Eng.pdf.

⁶⁶ "Monitoring of Attaining of Estonian Integration Strategy 2010," Ministry of Culture of Estonia, <http://www.kul.ee/index.php?path=0x1377x1496>.

was acceptable for local election commissions to use Russian to inform or assist voters. Some DC officials told the OSCE/ODIHR EAM that they were prepared to accept and respond to complaints in Russian. The OSCE/ODIHR EAM observed an election-day incident in which a voter had difficulty casting his vote due to poor knowledge of Estonian.

Instructions about Internet voting procedures were available in Russian at the Internet voting website, but the user interface for Internet voting was only in Estonian. A 2010 report of the Directorate of Democratic Institutions of the Council of Europe, which analysed the use of Internet voting in four Estonian elections, concluded that “The fact that the Internet voting application is offered only in Estonian language caused a very large part of the Russian speaking community to refrain from using this tool.”⁶⁷

Given that weak Estonian language skills may present an obstacle to national minorities’ participation in the election process, OSCE/ODIHR recommends that consideration is given to offering the Internet voting application in Russian and expanding the amount of information on voting procedures available in Russian.

XIII. COMPLAINTS AND APPEALS

The legislative framework for complaints and appeals, most importantly the Election Act and the Constitutional Review Court Procedure Act, is generally adequate for resolving electoral disputes in line with OSCE commitments. Decisions of DCs may be challenged before the CEC, those of the CEC before the NEC, and, finally, before the Supreme Court. Challenges of the electoral results can be brought before the Supreme Court within three days. The court may invalidate the results if the violation may have significantly affected them.

Two formal complaints were brought to the attention of the NEC, one regarding the election legislation, and another regarding voting procedures in one polling station. The NEC rejected both as unfounded. Additionally, a citizen asked the NEC to cancel all the votes cast via the Internet due to alleged lack of secrecy, security and reliability of the Internet voting system in light of the program he developed to change the content of the vote without the voter noticing. Another citizen complained that some candidate names were hidden under certain display settings. Due to their lack of evidentiary basis, the NEC did not consider these to be formal complaints.

A total of seven complaints were submitted to the Supreme Court, including the four above mentioned cases. One complainant invoked the ECtHR ruling in *Hirst v. UK* and requested that election results are cancelled because convicted prisoners had not been allowed to vote. These complaints were dismissed by the Supreme Court as ungrounded or for not being filed in time.

Additionally, two complaints were filed to the Supreme Court by the Center Party with regard to the Internet voting. The Center Party challenged the decision of the NEC to dismiss the complaint of a citizen who requested to cancel of the votes cast via the Internet. It also requested the Supreme Court to cancel the results of the *Riigikogu* elections for the same reason of alleged lack of secrecy, security and reliability of the Internet voting. After the latter complaint was dismissed for not being filed in time, the Center Party announced that it plans to file a petition to the European Court of Justice and raise the issue of the Internet voting

⁶⁷ http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/EVoting_Documentation/GGIS_2010_15_Internet_voting%20in%20Estonia%202005-2009%20E%202_.pdf.

reliability before the *Riigikogu*.

The Center Party challenged the rejection of its nominee for membership of the DC by the Piirisaare Municipal Council through the local council appeal system.⁶⁸ No further appeals were made after the actions of the Piirisaare Municipal Council had been found justified.

Six election-related requests were brought to the attention of the Chancellor of Justice in his function as Ombudsman. These included the blanket ban of prisoners' voting rights; the permissibility of election campaigning during the early voting period; the impossibility to change an early vote on election-day; and the Internet voting applications where not all relevant information was visible on the computer screen. The Chancellor of Justice decided not to start proceedings in any of these cases.

XIV. DOMESTIC AND INTERNATIONAL OBSERVERS

According to the Election Act, meetings of any electoral committee are public and anyone has the right to examine their minutes. The status of observers and the accreditation procedure are not prescribed by the law but the NEC has the responsibility to adopt a regulation on this subject.⁶⁹ The Regulation on the Status of Observers at *Riigikogu* Elections provides for international as well as domestic observers' accreditation, the former being the responsibility of the NEC and the latter of the CECs. Domestic observers include political parties and candidates representatives. Observers are entitled to observe all election-related activities, including the counting and tabulation of the results and the conduct and procedures of electronic voting.

It is recommended that in order to remove any possible uncertainty, the legislation is amended to provide for the access of international and domestic civil society observers to all stages of the electoral process.

The NEC informed the OSCE/ODIHR EAM that some 106 international observers were accredited. The civil society organization Transparency International coordinated some 30 domestic observers. The political parties in general deployed very few observers on election day. Some political party interlocutors told the OSCE/ODIHR EAM that they did not expect any problems in the polling stations and had full confidence in the professionalism of the DCs.

XV. ELECTION DAY

Voting in the limited number of polling stations visited by the OSCE/ODIHR EAM proceeded in a calm manner, and the electoral committees in general worked efficiently and followed the procedures. Although voting was generally quick and efficient, in some instances, overcrowding in polling stations was noted at peak times. Voting at home was conducted upon receipt of written requests submitted to the DC before 16:00. It was noted that in many polling stations there was inadequate access for disabled persons. Nevertheless, the possibility for the Internet voting and for voting at home provided alternatives for persons unable to vote at polling stations.

In polling stations visited, the vote count was for the most part conducted in an efficient, orderly and transparent manner, although in some polling stations visited it was noted that

⁶⁸ The nominee's rejections was, among other things, due to his deficient knowledge of Estonian.

⁶⁹ Art. 15 Para. 4(9) of the Election Act.

observers were not allowed to approach closely enough to see what was happening.

Several alleged electoral offences were reported to the police, including interference with the conduct of elections especially by drunken people and political campaigning on election day. Most proved unfounded.

For a period after the closing of the polling stations, there was a two-hour delay in updating results on the official NEC website due to the failure in the election information system of the NEC. While the correct results were being transmitted from polling stations to the NEC, they were not being made public in a timely manner. As a temporary solution, the NEC resorted to making results available through social network websites. Numerous members of the public used these sites to express their concern at the delays. The potential for public mistrust when such technical problems occur would have been mitigated if election results had been posted at polling stations immediately after counting.

The day after election day, all ballots were verified and recounted at the CEC, in accordance with the law. The OSCE/ODIHR EAM was informed of one case where the number of votes received by a candidate in Tartu had been overstated by 100 on the protocol. The correction of the mistake during the recount affected the attribution of mandates, in that the candidate involved, who had initially received a compensatory mandate, after all received a district mandate. This isolated case nevertheless demonstrated the added value of the second count.

Overall turnout was 63.5 per cent, up from 61.9 per cent for the 2007 *Riigikogu* elections. Of the voters who took part in the elections 27.4 per cent voted in advance, including 24.3 per cent who voted via the Internet.

Based on international good practice, consideration could be given to amend the legislation to require the posting of results at each polling station, in order to further increase transparency and trust in the process.

ANNEX: ELECTION RESULTS

Political party	Number of votes	% of vote	Number of mandates
Estonian Reform Party	164,255	28.6	33
Estonian Center Party	134,124	23.3	26
Pro-Patria Union-Res Publica	118,023	20.5	23
Social Democratic Party	98,307	17.1	19
Greens of Estonia	21,824	3.8	0
Estonian Peoples Union	12,184	2.1	0
Russian Party in Estonia	5,029	0.9	0
Estonian Christian Democratic Party	2,934	0.5	0
Estonian Independence Party	2,571	0.4	0
Independent candidates	15,882	2.8	0
Number of eligible voters	913,346		
Total votes cast	580,264		
Valid votes cast	575,133		
Turnout	63.53%		
Voters who voted in advance (including via the Internet)	249,811		
Internet voting			
Internet votes cast including repeated votes	145,230		
Repeated Internet votes	4,384		
Number of Internet voters	140,846		
Number of Internet votes cancelled due to advance voting	82		
Internet votes counted	140,764		
Share of the Internet votes among all votes	24.30%		

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 programs 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).