



Office for Democratic Institutions and Human Rights

THE NETHERLANDS

EARLY PARLIAMENTARY ELECTIONS

9 June 2010

OSCE/ODIHR Election Assessment Mission Report



Warsaw
9 September 2010

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I. EXECUTIVE SUMMARY

The Permanent Delegation of the Kingdom of the Netherlands invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 9 June 2010 early parliamentary elections in the Netherlands in line with OSCE commitments. Based on the recommendation of a Needs Assessment Mission, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 25 May to 12 June.

The elections to the lower House of Parliament were conducted in the context of a high level of confidence in the election administration. The pluralistic political and electoral system provided voters with a broad choice among diverse political options. Overall, the largely unregulated campaign and media environment gave political parties ample opportunity to communicate their views to voters. Voter turnout was registered at 75.4 per cent.

The election process has undergone considerable reform since the previous parliamentary elections, held in 2006. Due to concerns raised during those elections about the risks to integrity and secrecy of the vote posed by the use of electronic voting machines, a thorough review process was undertaken to establish what measures should be taken to preserve public confidence. The review resulted in the withdrawal of regulations permitting the use of electronic voting machines. The decision to cancel electronic voting was a positive and appropriate measure in view of the serious challenges to electoral integrity that were identified in 2006. Moreover, the transparent process through which the issue was considered further contributed to maintaining public confidence.

Beyond the abolishment of electronic voting, a number of changes were introduced in the Elections Act, which took into account previous recommendations made by the OSCE/ODIHR. The amendments were generally aimed at increasing enfranchisement, voter participation, and the integrity of the election process.

The legal framework overall provides a sound basis for the conduct of democratic elections. Notably, it provides for the observation of elections, in accordance with OSCE commitments. However, some elements are not fully compatible with OSCE commitments and other international standards. Proxy voting, which apparently accounts for at least ten per cent of votes cast, has the potential to undermine fundamental election principles, despite recently introduced safeguards. In addition, there is no possibility for voters, candidates or parties to appeal to a court regarding important aspects of the election process, including the results.

Commendably, the Netherlands regularly reviews its election process, and discussion of electoral reform is ongoing. One important question under consideration is whether a central authority should have a role in overseeing certain aspects of the organization of the elections. In view of the decentralized nature of the election administration, with responsibility shared among governmental entities at national and local level and the electoral committees, a potential issue in this respect is whether one body would be given clear responsibility in law for ensuring the integrity of elections.

The campaign was very active and marked by open debate among the parties on substantive issues. The campaign in the media, especially the electronic media which plays an increasingly important role in Dutch elections, is largely unregulated. Political parties considered the role of the media as fair for the most part. An unusual element of the campaign was the involvement of the government's Central Planning Bureau, which assesses the economic implications of political party platforms. This role was widely accepted and appeared to be positive in general; however, the practice is not provided to all electoral contestants. Election campaigns are still relatively inexpensive, but campaign financing is largely non-transparent. A draft law to improve accountability and transparency has not yet been brought to Parliament, in part due to the early elections.

The Netherlands has, proportionally, one of the highest immigrant populations in the OSCE area. Many parties made efforts to attract immigrant voters, including through the participation of candidates with an immigration background in electable positions on their lists. While most parties avoided making immigration an issue in the campaign, one major party focused on this issue, sometimes with harsh rhetoric.

The participation of women in elections is relatively high in the Netherlands, and some 40 per cent of incoming members of the House are women. A recent Supreme Court decision ordered the State to take action regarding one political party which refuses to allow women to be candidates. The decision was based in part on the Convention on the Elimination of All Forms of Discrimination against Women.

In line with standard practice for election assessment, the OSCE/ODIHR EAM did not conduct comprehensive or systematic observation of polling procedures. Members of the OSCE/ODIHR EAM visited a few polling stations on election day. In the polling stations visited, voting procedures were conducted smoothly, although small issues were noted with regard to the counting process, attributable to the large ballot paper and to lack of familiarity with hand counting. Another key factor appeared to be differences in the extent of training provided by municipalities to polling station staff regarding the counting procedures. Despite objections from some municipalities, the transition back to paper ballots appears to have generated few significant problems.

II. INTRODUCTION AND ACKNOWLEDGMENTS

On 17 March 2010, the OSCE/ODIHR was invited by the Permanent Delegation of the Kingdom of the Netherlands to observe the 9 June early elections to the lower house of Parliament in line with the country's commitment. The OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to the Netherlands from 29 to 31 March 2010. Based on its recommendation, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) from 25 May to 12 June 2010.¹

The OSCE/ODIHR EAM was led by Mr. Jonathan Stonestreet and consisted of a team of 12 election experts from 10 OSCE participating States. In addition to experts based in the Hague, the OSCE/ODIHR EAM deployed teams to Rotterdam and Groningen. The OSCE/ODIHR EAM also visited Amsterdam, Arnhem, Assen, Dordrecht, Groenlo, Haarlem,

¹ See the OSCE/ODIHR Needs Assessment Mission report at www.osce.org/odihr-elections/43716.html.

s-Hertogenbosch, Leeuwarden, Maastricht, Tilburg and Utrecht, as well as other towns in 13 of the 19 electoral districts.

The OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs, the Parliament, the Ministry of Interior and Kingdom Relations, the Electoral Council, representatives of local election administration, local government authorities, political parties, media, civil society organizations and other interlocutors for the co-operation and assistance extended to the OSCE/ODIHR EAM.

III. BACKGROUND

The Netherlands is the largest part of the Kingdom of the Netherlands, which also comprises the Netherlands Antilles and Aruba. These three entities conduct their internal affairs autonomously, and each elects its own parliament and has its own executive branch.

The Netherlands is a constitutional monarchy with a parliamentary system of government. The Parliament of the Netherlands (*Staten Generaal*) is bicameral. The upper chamber, the Senate (*Eerste Kamer* or First Chamber), comprises 75 members indirectly elected for a four-year term by the 12 provincial assemblies. The lower chamber, the House (*Tweede Kamer* or Second Chamber), consists of 150 members directly elected for a four-year term in a proportional representation system. The executive branch of government is formed by the Council of Ministers, headed by the Prime Minister. The Council of Ministers is appointed and dismissed by the monarch. The Netherlands is composed of 12 provinces and some 430 municipalities.

The Netherlands enjoys a high degree of political pluralism, with ten political parties represented in the outgoing parliament. Governments have always been formed by coalition, as no party has ever obtained an absolute majority. Since 2002 the centre-right Christian Democratic Appeal (CDA) led four consecutive governments. The government formed after early elections in 2006 consisted of CDA with 41 seats in the House, the centre-left Labour Party (PvdA) with 33 seats, and the conservative Christian Union (CU) with 6 seats.

The opposition consisted of the left Socialist Party (SP) with 25 seats, the right-liberal People's Party for Freedom and Democracy (VVD) with 22 seats (one deputy later became an independent), the right-wing Party for Freedom (PVV) with nine seats, the Green Left (GL) with seven seats, the liberal Democrats 66 (D66) with three seats, the animal rights focused Party for Animals (PvdD) with two seats, and the orthodox protestant Political Reformed Party (SGP) with two seats.

The governing coalition collapsed on 20 February 2010, after the PvdA left government over the continued deployment of Dutch forces in Afghanistan. With no prospect of a new government supported by a parliamentary majority, on 23 February the government announced elections for 9 June, with the CDA and CU staying on in a caretaker role. The early elections to the House were held just three months after the 3 March 2010 local government elections that received significant media attention for the success of right wing parties and for election malfeasance in a few municipalities.

The OSCE/ODIHR previously deployed an EAM to the Netherlands for the 2006 parliamentary elections.² The Dutch authorities have followed up some of the recommendations made in the final report from that mission, as part of a broader election reform effort. Among other changes to the electoral process since the 2006 parliamentary elections, the legal possibility for the use of electronic voting was eliminated, due to concerns regarding the secrecy and integrity of the vote.

IV. ELECTORAL SYSTEM

A. OVERVIEW

The 150 members of the House are elected through proportional representation, on the basis of open candidate lists, with preferential voting. The system is highly proportional, as there is no legal threshold for obtaining representation apart from the basic electoral quota.³ The system offers opportunities for numerous electoral lists to obtain representation and decreases the likelihood that one or even two political parties can obtain an absolute majority.

There are 19 electoral districts. The electoral districts exist for the purpose of election administration and to allow the presence of regional candidates on the lists, but the distribution of seats among the parties is calculated based on the national vote totals.

In order to cast a valid vote, the voter must mark the ballot with a red pencil in the circle in front of the name of one candidate. Each valid ballot is counted as a vote for the candidate and for his/her electoral list. Ballots on which no candidates are marked are considered blank.

B. SEAT ALLOCATION

The 150 seats in the House are allocated to electoral lists and candidates in three stages. First, a determination is made as to which of the electoral lists are eligible to participate in the allocation of seats by calculating the electoral quota. All electoral lists which have a national vote total equal to or greater than the electoral quota are eligible for seat allocation. Second, the number of seats to be allocated to each list is then determined using the electoral quota.⁴ Finally, a determination is made as to which candidates receive mandates. Candidates that have received preference votes exceeding 25 per cent of the electoral quota are each awarded a seat in the order of decreasing number of preferences, provided a sufficient number of seats have been awarded to the respective list. Any remaining seats are awarded to candidates in the order that they appear on their respective lists.

The system of preference voting has limited impact on reordering the lists in parliamentary elections. While 30 candidates in the 9 June elections directly obtained seats through

² See the OSCE/ODIHR Election Assessment Mission Report on the Parliamentary Elections of 22 November 2006, at www.osce.org/odihr-elections/22327.html.

³ The national total of valid votes is divided by 150 to obtain the electoral quota. For the 9 June 2010 elections, the electoral quota was $9,416,001 / 150 = 63,773$.

⁴ After an initial calculation for seats based on the full electoral quota the remaining seats are awarded sequentially to the lists which, after the award of the seat, have the highest average number of votes per seat awarded.

preference votes, only two of these won seats through preference voting who would not otherwise have obtained mandates based on their positions on the respective electoral lists.⁵

V. LEGAL FRAMEWORK

A. OVERVIEW

The primary legislation governing elections in the Netherlands is the Elections Act, most recently amended in October 2009.⁶ Key legislation also includes the Charter for the Kingdom of the Netherlands (Charter) and the Constitution of the Netherlands. Further legislation relating to elections includes, *inter alia*, the General Administrative Law Act, the Political Parties Subsidization Act and the Criminal Code.

The Charter, which regulates the political relationship between the three entities that form the Kingdom of the Netherlands, provides that elections shall be free and by secret ballot. It also states that each entity may award the right to vote in their representative assemblies to Dutch nationals, including those who are not residents of the respective entity, as well as residents who are not Dutch nationals.⁷

The Constitution enshrines the principles of equal suffrage and secret ballot, and sets the eligibility conditions to vote and to be elected. The Constitution also provides that the members of both chambers of parliament shall be elected by proportional representation and that each (outgoing) chamber shall examine the credentials of its newly elected members and decide on any disputes arising in connection with the credentials or with the election.

The current Elections Act was significantly revised in 1998, 2005 and 2009. It does not cover all aspects of the electoral process; elections are also regulated by the Elections Decree, which unifies election-related decisions adopted by the Cabinet of Ministers, and/or by ministerial regulations. The Elections Act does provide for observation of the election process, in accordance with paragraph 8 of the OSCE Copenhagen document, thus enhancing transparency and accountability. In addition to observers, any voter is authorized to remain in the polling station while the electoral committee is in session, so long as they do not create a disturbance or hinder the progress of the session.

B. RECENT AMENDMENTS TO THE ELECTORAL FRAMEWORK

The legal framework for elections was extensively modified after the 2006 elections to the House. Most notably, due to concerns raised about potential risks to the integrity of the vote and secrecy of the vote posed by electronic voting, regulations permitting municipalities to use voting machines were withdrawn. This decision followed recommendations made by two

⁵ Electoral Council, www.kiesraad.nl/nl/English/English-News/English-News-News/English-News-News-2010/Results_of_the_9_June_2010_House_of_Representatives_elections.html.

⁶ The Elections Act is formally called the “Act of 28 September 1989 containing new provisions governing the franchise and elections”, <http://english.minbzk.nl/subjects/@2036/elections-act>. It covers elections to the Senate and the House, to the provincial and municipal councils, and to the European Parliament. Only Water Management Boards elections are governed by a specific law.

⁷ Despite the possibility, only Dutch nationals over the age of 18 are eligible to vote in elections to the House. See section C. Right to Vote.

commissions set up to review electronic voting and other aspects of the election process.⁸ These reviews took into account the recommendations made in the report of the OSCE/ODIHR EAM for the 2006 parliamentary elections.

A number of additional changes were introduced in the Elections Act in October 2009, generally aimed at increasing the possibilities for voter participation and at introducing additional safeguards for the integrity of the electoral process. They include the repeal of the disenfranchisement of persons legally incapacitated for mental disability; an increase in the number of candidates that may appear on an electoral list in an electoral district; and a requirement for a voter casting a proxy vote on behalf of another voter to provide a copy of that person's identity document. Overall, the amendments were the result of broad agreement among Dutch electoral stakeholders.

An additional set of changes allowed voters to vote at any polling station in their municipality.⁹ This system increased access for voters and eliminated the need for voter lists in polling stations. In order to ensure the integrity of the process under this system, a requirement for voter identification was introduced and voting procedures were changed. This system also made it possible to institute a mandatory quota of 25 per cent of the polling stations to be accessible for physically disabled persons, whereas the previous provision referred to "as many as possible". This is a commendable amendment promoting the exercise of voting rights of physically disabled voters.

C. RIGHT TO VOTE

In general, Dutch nationals who have reached 18 years of age on the day of candidate nomination are eligible to vote for elections to the House. However, Dutch nationals residing in the Netherlands Antilles or Aruba are not eligible to vote for the House, with certain exceptions.¹⁰ The exclusion is based on the fact that the Netherlands Antilles and Aruba have their own representative bodies. In addition, persons convicted of certain serious offences and sentenced by a final court decision to a term of imprisonment of one year or more can be disqualified from voting. The disenfranchisement must be pronounced by the court and can never be an automatic consequence of a conviction.

The Constitution and the Elections Act were amended to repeal the disenfranchisement provision for citizens deprived of legal capacity due to mental disability. This was a result of a 2003 decision of the Administration Jurisdiction Division of the Council of State, which declared that disenfranchisement in specific cases could be an unreasonable restriction on the right to vote, although it does not in general contravene international human rights law.¹¹ The

⁸ The Voting Machines Decision-Making Commission report (Hermans report) is available in Dutch at www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2007/04/17/stemmachines-een-verweesd-dossier.html. The Election Process Advisory Commission report "Voting With Confidence" is available at www.kiesraad.nl/Publications_Kiesraad.html.

⁹ This system was already in place in most municipalities in 2006 but was formalized in 2010.

¹⁰ The exclusion does not apply to "Dutch nationals who have been resident in the Netherlands for at least 10 years", or to "Dutch nationals employed in the Dutch public service in the Netherlands Antilles or Aruba and their Dutch spouses or partners and children, in so far as they have joint households." Section B 1, para 2 of the Elections Act.

¹¹ The United Nations International Covenant on Civil and Political Rights (ICCPR), Article 25 which provides that "Every citizen shall have the right and the opportunity, without [...] unreasonable restrictions [...] to vote and to be elected ... guaranteeing the free expression of the will of the electors...". See also General Comment 25 of the ICCPR, available at:

expansion of the franchise to persons declared incapable for reasons of disability is consistent with OSCE commitments regarding the universality of the franchise, the European Convention on Human Rights,¹² as well as the UN Convention on the Rights of Persons with Disabilities.¹³

In this respect, the authorities stated that many individuals who are declared as lacking legal capacity are not necessarily incapable of making voting decisions. They also noted that in order to ensure that the will of voters is respected and to protect the integrity of the process, the law requires that voters must vote unassisted, with the only exception being a voter with a physical disability. However, the free expression of the will of citizens with a severe mental disability could be at risk in some circumstances, in particular in view of the current legal provisions for proxy voting.

Consideration could be given to introducing additional safeguards to ensure the integrity of the exercise of the right to vote by persons deprived of legal capacity for severe mental disability, particularly as relates to proxy voting.

D. PROXY VOTING

The Elections Act provides for the practice of proxy voting¹⁴ as a means to facilitate participation by voters who expect that they would otherwise be unable to cast a ballot. The law states that “a voter who does not expect to be able to vote in person may vote by proxy...” but does not require that the voter provide any justification or delegate in advance the right to vote.¹⁵ In practice, this means that any voter can vote by proxy.¹⁶

In the Netherlands, proxy voting is a longstanding practice and is considered a method of ensuring the universality of the vote.¹⁷ The OSCE/ODIHR EAM found widespread support for proxy voting for those who cannot vote on election day. Although it has never been calculated on a national level, election authorities estimate that proxy votes represent some 10 to 15 per cent of all votes cast at each election.¹⁸ The Ministry of Interior and Kingdom Relations (MoIKR) stated that it would attempt to establish the total number of proxy votes cast in these elections as part of its post-election review process.

¹² [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/d0b7f023e8d6d9898025651e004bc0eb?Opendocument). The case Alajos Kiss v. Hungary found that disenfranchisement, imposed because of being under partial guardianship for a psychiatric condition, constituted an unjustified deprivation of his right to vote; see <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=kiss%20%7C%20Hungary&sessionid=58599672&skin=hudoc-en>

¹³ The Convention entered into force on 3 May 2008. It has been signed but not yet ratified by the Netherlands. Article 29 of the Convention sets forth the political rights of persons with disabilities, including specific voting rights. www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx.

¹⁴ Proxy voting takes place when a voter (the voter) delegates, for a given election, the right to cast a ballot to another voter (the proxy).

¹⁵ Section L 1 of the Elections Act.

¹⁶ Prison inmates are allowed to vote only by proxy.

¹⁷ Report of the Election Process Advisory Commission, “Voting With Confidence”, 27 September 2007, p.15. “Voters should be enabled as far as possible to participate directly in the election process. If this is impossible, there must be a way of taking part indirectly, i.e. by proxy.” Available at www.kiesraad.nl/Publications_Kiesraad.html.

¹⁸ Research conducted after the 2006 parliamentary elections by the official government body Statistics Netherlands found that 12 per cent of voters had requested that someone else cast a ballot on their behalf. This figure reached 25 per cent among some groups of voters www.cbs.nl/en-GB/menu/themas/overheid-politiek/publicaties/artikelen/archief/2009/2009-2802-wm.htm.

The Elections Act provides for two methods to vote by proxy. In the most commonly used method, the voter can authorize another voter from the same municipality to be his or her proxy, up to and including election day. In order to cast a proxy vote, the proxy must present at the polling station his or her identity document, the voter's authorization, and a copy of the voter's identity document. Alternatively, the voter may apply in writing, no later than 14 days before election day, to the mayor of his or her municipality, designating a proxy who must confirm his or her agreement in writing. In this case, the proxy does not have to reside in the same municipality as the voter. On election day, a copy of the voter's identification document is not necessary; the certificate of authorization issued by the mayor is sufficient to cast a proxy vote.

Some safeguards have been introduced to limit the potential for abuse of proxy voting. A proxy can cast a maximum of two proxy votes, which can be cast only at the same time as the proxy casts his or her own vote. As the proxy needs the original, signed voter card¹⁹ of the voter (or the certificate of authorization) in order to cast a proxy vote, it is not possible for a voter to appoint more than one proxy. It is not permitted to request that a voter give a proxy vote; this must be the initiative of the voter. Finally, the requirement for the proxy to have a copy of the voter's identification document was adopted in 2009, to prevent the use of stolen voter cards.

The OSCE/ODIHR EAM noted that the Netherlands has considered the issue of proxy voting since the 2006 parliamentary elections as part of its "Voting With Confidence" review²⁰ and made changes to the legislation to increase safeguards. Despite these safeguards, proxy voting presents challenges to principles for democratic elections, especially given the apparent scale in which it is used in the Netherlands. As acknowledged in the "Voting With Confidence" review, the secrecy of the vote is not ensured in proxy voting, since the voter normally discloses his or her intended choice to the proxy.²¹ In some circumstances, proxy voting could lead to some voters being pressured or intimidated. Proxy voting could also undermine the equality of the vote, since the proxy has up to three votes. Finally, there is no guarantee that the proxy will cast the vote as intended or even that the proxy will cast the vote at all. This makes it impossible to ensure that the voter's political choice was respected.

Although no allegations of abuse of proxy voting were brought to the attention of the OSCE/ODIHR EAM in the 9 June parliamentary elections,²² the fact remains that OSCE commitments and other international standards for democratic elections require ensuring the secrecy and equality of the vote and respect for voters' choices.²³ If proxy voting is to be retained, it could be appropriate to limit the practice to the stated purpose in the law of

¹⁹ Please see Election Administration, Voter Registration.

²⁰ Report of the Election Process Advisory Commission, "Voting With Confidence", 27 September 2007. Available at www.kiesraad.nl/Publications_Kiesraad.html.

²¹ "Voting With Confidence", op.cit. p.23, "Secret suffrage is not safeguarded in the case of proxy voting. The voter appointing the proxy 'voluntarily' waives this right by telling the proxy how he or she wants the latter to vote. There is no way of checking whether the proxy does actually vote that way, a risk that the voter implicitly accepts."

²² Attempts of abuse were reported during the 3 March 2010 municipal elections in a few municipalities, notably Rotterdam, and proven cases of fraud have occurred in previous municipal elections (see OSCE/ODIHR EAM Report on the Parliamentary Elections of 22 November 2006, p. 10).

²³ See paragraphs 5.1, 7.3 and 7.4 of the 1990 OSCE Copenhagen Document; Article 25 of the ICCPR; General Comment to Article 25, paras 20-22; the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, Article 3.

facilitating the participation of voters who do not expect to be able to go to a polling station on election day. This could be accomplished, for example, through requiring in-person application to the municipality prior to election day or by allowing for absentee voting before election day.

Consideration should be given to exploring alternative voting methods for those who are away on election day or to further regulating voting by proxy so as to bring legislation more fully in line with OSCE commitments and other international standards for democratic elections. In this respect, the intention of the Ministry of Interior and Kingdom Relations to compile and publish official data on the extent of proxy voting would be a welcome step.

E. OUT-OF-COUNTRY VOTING

Voters residing outside of the Netherlands on election day may vote by post. To do so a voter applies for a postal vote certificate through the mayor of The Hague. PEC 12, set up especially for to handle postal voting, is responsible for registration of out-of-country voters, and the count and tabulation of out-of-country votes. The voter must apply no later than six weeks before the election, and must ensure that the postal vote is received by 15.00 on election day. Both PEC 12 and the MoIKR considered that the current legal deadlines in relation to out-of-country voting carry a risk that postal votes are not received on time to be counted.

Consideration could be given to reviewing the deadlines for postal voting to ensure that voters residing out of the Netherlands are able to have their vote counted.

F. ADMISSION OF ELECTED CANDIDATES TO THE HOUSE

There are almost no requirements in order to be a candidate for elections to the House, except that a prospective candidate must be at least 18 years old by the end of the parliamentary term and must submit proof of consent to run, together with valid proof of identity. In order to actually take the seat in the House, however, the rules are different. The Constitution provides that to be eligible for membership of the House, one has to be a Dutch national, must have reached 18 years of age and must not have been disqualified from voting. Further to that, the Constitution establishes a series of incompatibilities with the office of a member of the House and provides for an Incompatibilities Act.

At the time of registration of the lists of candidates, the relevant electoral committees do not verify whether candidates included in the lists, if elected, will be eligible to become members of House.²⁴ Such verification takes place only after the publication of the official election results. As a result, it is possible that a person elected by gaining the number of votes required by law is not admitted to membership in House.

In order to ensure full compliance with Paragraph 7.9 of the 1990 OSCE Copenhagen Document, which calls on states to ensure that those “candidates who obtain the necessary number of votes required by law are duly installed in office”, consideration could be given to reviewing the procedures for nomination of candidates with a view to ensuring that

²⁴ Please see the “Election Administration” section. Review of the lists with the view to remove non-eligible candidates at the time of their registration is described by Section I 6 of the Elections Act.

prospective candidates comply with the legal requirements to become members of the House before being placed on the ballot.

The final authority on the membership of the new House is the outgoing House. As the House is a political body rather than an independent election administration body, such an arrangement may create a perception of a potential conflict of interest, in particular in the absence of possibilities for a judicial review of the final decision of the outgoing House.²⁵

G. RESOLUTION OF ELECTORAL DISPUTES

The legal framework only allows for election-related complaints on a limited number of issues specified in the Elections Act.²⁶ In these cases, complaints are heard by the Administrative Jurisdiction Division of the Council of State, and its decisions are final. Such a system appears unusually restrictive, both in limiting the issues which can be submitted for complaint and in the inability to appeal the decision made.

Moreover, the General Administrative Law Act explicitly excludes from any judicial review decisions related to “the numbering of the lists of candidates, the validity of electoral alliances, the conduct of voting, the counting of votes, the determination of results and the appointment to vacant seats.”²⁷ Any objection lodged with the electoral committee at a polling station must be decided by the committee itself and entered into the protocol. Such objections are reviewed by the outgoing House in process of validation of results and are also forwarded to the Electoral Council.

Consideration should be given to extending the right of complaint to at least all issues related to the exercise of the rights to vote and to stand for office.

In accordance with the Constitution and the Elections Act, the review of objections or complaints related to the conduct of elections or to the results is vested in the outgoing House and is conducted in line with the House’s rules of procedure. The House has the responsibility to validate the results and to settle any dispute related to the election. The preparatory work is conducted by the House’s Credentials Committee. The House has the power to order partial or full recounts or invalidation of the results with subsequent repeat elections.²⁸

Representatives of the authorities indicated that this system ensures the separation of powers and is based on centuries of tradition and practice. However, the general framework for election-related complaints and appeals is not fully reconcilable with OSCE commitments and international standards for democratic elections which require timely and effective remedy to administrative decisions as well as judicial review of such regulations and decisions.²⁹

²⁵ Please see next section on “Resolution of Electoral Disputes”.

²⁶ Complaints may be filed on refusals to register a voter, to register the name of a political group, to recognize the validity of a list of candidates, to issue a voter’s pass to vote in another municipality, to issue a certificate of authorization to vote by proxy, or to issue a postal vote certificate.

²⁷ Article 8.4 (g) of the Act.

²⁸ The Electoral Council also has the power to order recounts, see “Election Administration” section.

²⁹ Paragraphs 5.7 and 5.10 of the 1990 OSCE Copenhagen Document; Paragraph 18.4 of the 1991 OSCE Moscow Document; Article 2, para 3 and Article 14, para 1 of the ICCPR; General Comment 13 of the ICCPR, para 2; Article 6, para 1 of the 1950 Convention for Protection of Human Rights and

Consideration should be given to introducing a possibility for appeal to a judicial body of all election-related complaints, including those related to results and installation in office.

The OSCE/ODIHR EAM was informed that for these elections, the Administrative Jurisdiction Division of the Council of State had received three complaints. Two were related to the validation of lists of candidates, and in both cases the appellants decided to withdraw their appeal. The third case, filed by a voter living abroad, was related to the rejection of registration for out-of-country voting due to failure to produce a copy of his passport within the deadline. The appeal was dismissed.

VI. ELECTION ADMINISTRATION

A. OVERVIEW

The election administration in the Netherlands is characterized by its decentralization, with responsibility for administering the elections shared among governmental entities at national and local level and the electoral committees. This includes the Ministry of Interior and Kingdom Relations (MoIKR) who oversee the conduct of elections at the national level and the municipalities who are responsible for the administration of elections in its jurisdiction. It also includes the Electoral Council (EC), the 19 Principal Electoral Committees (PEC) and some 10,000 polling station electoral committees (PSECs).

The MoIKR oversees the conduct of elections at the national level. It is responsible for proposing legislation and for issuing regulations related to the electoral process. In practice, however, the MoIKR does not have direct authority over the other election administration bodies. The MoIKR also conducts a review after each election to identify areas of potential improvement.

The EC is a permanent body of seven members appointed through an open recruitment procedure for a four-year term, renewable twice. The EC is an independent body, except with regard to allocation of human and financial resources, which are under the authority of the MoIKR. The meetings of the EC related to the numbering of the lists and to the final results are open to the public; other meetings are closed.

For elections to the House, the EC has the responsibility to register the names of the political parties, to number the lists of candidates, and to establish the final results of the elections and allocate mandates. The EC may decide, either on its own initiative or in response to a request from a voter, to conduct a recount for one or more polling stations if there are serious grounds for suspicion that errors or misconduct in the count may have affected the results. There is no right of appeal against its decision regarding the results, although the outgoing House has the final authority concerning the results. It also acts as an advisory body to the government and the House on election related matters, and plays an important role in public information. It has no authority over the lower level electoral administration bodies.

The Credentials Committee of the House is composed of three parliamentarians appointed by the House which recommends the certification of those elected to the House. It reviews all results protocols and verifies the qualifications of those elected against constitutional and legal requirements. It may recommend to parliament recounts or repeat voting.

The PECs are composed of five members and three substitutes appointed by the MoIKR and serve a four year-term term. PECs are chaired by the mayor of the municipality in which they are located. Their responsibilities are to receive or reject the lists of candidates and to tabulate, announce and forward on the results from the municipalities under their jurisdiction. PEC 12 in The Hague is additionally responsible for the registration of the out-of-country voters, postal voting (from out-of-country voters) and the registration of most candidate lists.

Each municipality is responsible for the administration of voter registration and the elections in its jurisdiction. The municipality decides the number, location and type of polling stations, and appoints and trains the some 10,000 polling station electoral committees (PSEC), which conduct the voting and counting process.

Municipalities have substantial discretion in implementing their responsibilities. The OSCE/ODIHR EAM noted this in the considerable diversity of ways and means the municipalities put in place for the training of the PSECs. For example, the MoIKR invested considerable efforts in the production of training materials for the PSECs, and public information materials for the media as well as for public display. However, some municipalities chose not to use them or decided to produce their own materials. In some municipalities visited by the OSCE/ODIHR EAM, the training of all the members of PSECs was mandatory,³⁰ whereas in others only the chair and vice-chair persons were obliged to attend the training sessions, and the other members were given a compact disk for self-training.³¹

The autonomy granted to municipalities in administering the elections was seen by most interlocutors as an important feature of the Dutch system, especially to avoid unnecessary bureaucracy. Nevertheless, many interlocutors noted a need for some harmonization of electoral practice. In particular, differences in training and in the organization of the work of PSECs may have contributed to disorganization in some counting processes where the OSCE/ODIHR EAM was present (see section “Election Day”).

An evaluation of the different local practices for the organization and conduct of the election day procedures could provide the opportunity to regulate some practices in order to further uphold equal treatment of voters. In this context, it could also be useful to implement a mechanism for exchange of information and best practices among election administration bodies at all levels.

The current framework for the administration of the elections in the Netherlands overall works well and enjoys a high level of public confidence. It is positive that there is nevertheless an ongoing discussion of electoral reform in order to further improve the process. One element of this discussion is whether a central authority should have a role in overseeing certain aspects of the organization of the elections. This issue was considered in the “Voting With Confidence” report and is the subject of draft legislation by the MoIKR.

³⁰ For example, in Assen, Groningen, Rijswijk and Utrecht.

³¹ In Rotterdam, Dordrecht, Tilburg, Arnhem, Doetinchem, Leeuwarden and The Hague.

Both the MoIKR and EC seemed to agree this would be a positive development, but there are differing views as to where such overall responsibility over the election process should be assigned. Many other OSCE/ODIHR EAM interlocutors, especially at the local level, felt that there was no need to give any central institution more authority over the electoral process in view of the broad public confidence in the current framework.

Should there be a reform of the election administration, in order to improve accountability, consideration could be given to specifying in law the overall responsibility for ensuring the integrity of the election process.

B. VOTER REGISTRATION

The registration of voters is based on population registers maintained at the municipal level. These registers are based on residence in the municipality and represent the key instrument to provide a number of services to residents. Registers are maintained in the form of both paper documentation and digital databases. The OSCE/ODIHR EAM was informed that as of 1 January 2010, a state-wide population database became operational. According to the EC, there were 12,524,152 registered voters for the 9 June elections for the House.³²

The voter register is essentially an extract of the municipal population register which includes the records of all eligible voters in the municipality as of nomination day. Based on this extract, the municipality mails a voter card to each voter, at least two weeks before election day. A voter card is required in order to vote. The voter card is personalized and has security features to deter fraud. If a voter does not receive a voter card or loses it, he or she may request a new voter card. The municipality can also issue special voter cards to voters allowing them to vote in any polling station in the country, if a request is lodged two weeks prior to election day.

The maintenance of the municipal population registers and the distribution of voter cards through the postal service appear to be very well organized, and the OSCE/ODIHR EAM was not informed of any concerns related to voter registration. In one instance, a small number of voters received duplicate voter cards, but this was quickly corrected.

C. VOTER IDENTIFICATION

As part of the legal changes to allow voters to vote at any polling station in their municipality, a requirement for voters to show valid identification was introduced in 2010. In order to vote on election day, voters are now obliged to identify themselves in the polling station with a valid identification document (ID), including a passport, national identity card or driver's license.³³ The MoIKR conducted a public information campaign to inform voters of the new requirements as this had been identified as a challenge during the March local elections.

While the introduction of mandatory voter identification seemed generally accepted, in the course of the election campaign at least one political party raised the issue of possible disenfranchisement of some voters. These were mainly elderly people who were not in

³² Information available at www.kiesraad.nl/English-Home.html.

³³ Pursuant to the Mandatory Identification Act, Dutch citizens of the age of 14 or more must carry an ID.

possession of a valid ID, or in some cases of any ID at all. The OSCE/ODIHR EAM was informed that there were a few thousand persons in the latter category across the country. Most of the municipalities visited by the OSCE/ODIHR EAM had sent a letter to such voters to inform them of the new mandatory identification policy. Some municipalities informed elderly voters without IDs that they could vote by proxy if they sent a request to the mayor.

With a view to ensuring that voters with expired IDs would not lose their right to vote, the Minister of Justice issued a regulation allowing for voter identification in the polling stations with an expired ID, as long as the ID had expired within the last five years. The MoIKR indicated that this regulation made such IDs valid on election day for the sole purpose of voting and therefore did not contradict the law.

If the use of expired identification documents for the purpose of voter identification is to be retained, consideration should be given to harmonizing the law with the regulation.

D. REGISTRATION OF PARTIES AND CANDIDATE LISTS

The Election Act does not refer to political parties but provides for the registration of a “political grouping,” which is defined as an association with legal capacity as established by a notary on the basis of the group’s charter. Such a group may register its name³⁴ with the EC up to 43 days prior to nomination day.³⁵ It is not necessary, however, to be registered in order to submit a list of candidates for election to the House. In practice, lists and registered groups are usually political parties, but non-party (independent) candidates are also able to contest.

A contesting group or party can submit lists of candidates to the PECs in each of the 19 electoral districts. However, this is not the usual practice. If a party is contesting the election in all electoral districts with identical lists of candidates³⁶ including over 30 names, the lists may be submitted to PEC 12 in the Hague. Likewise, a party that was allocated seats in the House in the previous election may submit its lists to PEC 12, if its lists are identical for all electoral districts.

A list may include a maximum of 50 candidates per constituency, whose order is determined by the party. For parties that obtained more than 15 seats in the outgoing House, the maximum number of names is 80 per constituency. The registration of a list which is not already represented in the outgoing House requires declarations of support by at least 30 eligible voters of the respective electoral district, a deposit of 11,250 Euro, and written consent of all candidates. The deposit will be returned if the list is not registered or if the list obtains at least 75 per cent of the votes constituting the electoral quota.

These rules indicate that parties represented in the outgoing House enjoy some privileges over non-parliamentary parties in terms of streamlined registration procedures. Although representatives of non-parliamentary parties did not express specific concerns to the OSCE/ODIHR EAM with regard to the legal framework, they stated that implementation

³⁴ “Appellation by which it wishes to be known on the list of candidates”; Elections Act, Section G 1.

³⁵ The day on which registered parties’ candidate lists are being considered and approved; for the 9 June 2010 parliamentary elections, nomination day was 27 April.

³⁶ Section H 12 of the Elections Act; a set of identical lists is a set of lists which are identical in terms of numbers of candidates included, names of the candidates and their order. A group of lists comprises lists that differ only in the names of the last five candidates; the rationale is that the last five candidates are local to the respective electoral districts.

could be improved. In particular, one list complained of inconsistent application of procedures in some municipalities and, an occasional lack of knowledge of the rules.

There were 18 sets of identical lists registered to contest the 2010 elections for the House. One list was not registered due to late submission. Two of the registered lists were without names. Two lists did not contest seats in all 19 electoral districts; one of these because it submitted insufficient supporting signatures in seven districts.

E. REVIEW AND CANCELLATION OF ELECTRONIC VOTING

Electronic voting (DRE) machines were extensively used in elections in the Netherlands from the 1980s through 2006. During the 2006 parliamentary elections, however, the use of electronic voting machines was called into question due to concerns about the potential for violation of secrecy of the vote and the lack of guarantees regarding the integrity of the vote.³⁷ These issues were brought to the forefront of public discussion by the Dutch NGO “We do not trust voting computers”, and significant security gaps were confirmed by the state security service. After measures to address the secrecy problems created by “tempest” emissions³⁸ and after enhancing physical security, DREs made by the private vendor NEDAP were allowed to be used in the 2006 elections. The certification of a machine made by the private vendor SDU was suspended, and 22 municipalities using those devices switched back to paper ballots; another ten moved to NEDAP machines.

Following the 2006 elections, the Minister of Government Reform and Kingdom Relations appointed two independent commissions at the request of Parliament. The Voting Machines Decision-Making Commission (also called the Hermans Commission) examined how the process of voting machine certification and approval had been conducted in the past and what lessons could be learned. The commission, in its report published on 16 April 2007, identified an inappropriate degree of trust and dependence of the MoIKR towards the vendors and the testing authority performing the certification process.³⁹ Lacking in-house IT capacity, the ministry trusted the vendors’ assurances that their systems were sufficiently secure. The vendor claims were backed up by certification by TNO/BrightSight, a technical organization with close ties to the State.⁴⁰ TNO/BrightSight had certified Dutch voting machines as secure following outdated standards that had been developed during the introduction of electro-mechanical voting machines. These standards focused principally on physical security,⁴¹ not on security against hacking or other IT threats, and were not updated to take account of the changing nature of security requirements. The modalities and specific results of each analysis and subsequent certification were not made public, so that non-governmental organizations and academia did not have an opportunity to verify the analyses independently.

³⁷ See the OSCE/ODIHR EAM report from the 2006 parliamentary elections, *op. cit.*

³⁸ “Tempest” refers to electromagnetic, emissions unintentionally transmitted by computers, which if intercepted and analyzed, may disclose the original data. In the case of the electronic voting machines, it was found to be possible to identify the content of a vote through these emissions.

³⁹ The Hermans report is available in Dutch at www.rijksoverheid.nl/documenten-en-publicaties/rapporten/2007/04/17/stemmachines-een-verweesd-dossier.html.

⁴⁰ BrightSight was spun-off in 2002 from TNO, a government-funded scientific organization. TNO retains ownership of BrightSight.

⁴¹ Fire and electrical safety, vote retention at power cuts, sturdiness against mechanical damage, etc.

The Election Process Advisory Commission (also called the Korthals-Altes Commission) was tasked with analyzing the organization of the electoral process and making proposals for improvement where necessary. The commission's 27 September 2007 report, "Voting With Confidence",⁴² The Korthals-Altes Commission, looking into the future, recommended the abolition of the DRE voting machines in use on the grounds of their insufficient transparency to the voter and the impossibility to recount votes.⁴³ The commission recognized the concerns over staff workload and the possibility for human error in manual counting processes and recommended introducing ballot printers and electronic vote counters. The commission stated that this system would provide the advantages of using machines to count but would provide a voter verifiable paper trail that could be recounted.

Going beyond the recommendations of the Korthals-Altes Commission, the government decided on 16 May 2008 to abolish electronic voting for the time being and that elections in the Netherlands would be held using paper ballots and red pencil only.⁴⁴ Development of new voting computers was rejected, the main argument being the lack of solutions to the "tempest" problem. Furthermore, internet voting for voters abroad was abandoned, in part due to reasons of cost.

Parallel to this process, the District Court of Amsterdam decertified all NEDAP voting computers in use in the Netherlands on 1 October 2007, as a result of an administrative law procedure started by "We do not trust voting computers". On 21 October 2007 the State Secretary for the Interior withdrew the 'Regulation for approval of voting machines 1997', and ministerial competences to issue new regulations for the approval of voting machines were removed. Thus, the legal basis for the use of electronic voting in the Netherlands was eliminated.

The first elections to be held using only paper ballots again were the European Parliament elections in 2009. Despite initial concerns that the return to paper could bring chaos, these elections went relatively smoothly. In contrast, the March 2010 municipal elections were marked by significant election day problems in some municipalities, and recounts were conducted in 15 municipalities. The recounts were not primarily caused by the return to paper ballots, however; some recounts were conducted due to errors in tabulation, the closeness of the results or, in Rotterdam, allegations of family voting and other misconduct related to voting procedures.

The cancellation of electronic voting was generally supported by political parties met by the OSCE/ODIHR EAM. Most acknowledged secrecy and security issues but supported a return to electronic voting as soon as it could be made secure and electoral integrity guaranteed. However, the cancellation was unpopular with the majority of municipal officials met by the EAM, with the main complaint being the long hours occasioned by manual counting. Some of these officials felt that concerns regarding electronic voting were exaggerated and considered its elimination unnecessary.

⁴² The report "Voting With Confidence" is available at www.kiesraad.nl/Publications_Kiesraad.html.

⁴³ DREs with added-on printers to create a voter-verified paper audit trail (VVPAT) were also rejected since the storage method of the votes would still be electronic and non-transparent to the voter. Ballot scanners were rejected as well because of problems observed elsewhere with incorrectly marked ballots being a source of scanning errors, as well as the large size of the Dutch ballot paper.

⁴⁴ Available at www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2008/05/16/brief-aan-tweede-kamer-over-inrichting-verkiezingsproces.html. In Dutch only.

The decision to cancel electronic voting was a positive and appropriate measure in view of the serious challenges to electoral integrity that were identified. Moreover, the thorough and transparent process through which the issue was considered further contributed to maintaining public confidence during this major change to the election process. Despite objections from some municipalities, the transition back to paper ballots appears to have generated few significant problems.

VII. CAMPAIGN ENVIRONMENT

Election campaigns are almost completely unregulated in the Netherlands. There is no official campaign period, but campaigning traditionally begins some four weeks in advance of election day and may take place up to and including election day. For these elections, the major political parties informally agreed to delay the start of their campaigns due to a plane crash with Dutch casualties in mid-May, reducing the campaign period to three weeks.

Despite its brevity, the election campaign was characterized by its openness, vitality and high visibility. The campaign fully allowed for parties and candidates to present their views to voters without restriction and for voters to learn about and discuss these views. There were no reports of obstacles to campaigning. Over the past years election campaigning in the Netherlands has increasingly shifted to electronic media. Most parties focused their efforts on obtaining free publicity from coverage in the diverse electronic and print media.⁴⁵ All parties met by the OSCE/ODIHR EAM placed great importance on the widely followed television debates among the main party leaders throughout the campaign, including one on the eve of election day. The internet is increasingly important for reaching voters, including interactive social networking sites.

To some extent, parties still used traditional outreach methods. Party activists canvassed at public places on weekends, and used direct mail based on door-to-door surveys. Parties used the unregulated billboard space provided by municipalities actively, pasting over each others' posters, at times daily. Local debates among candidates were also organized and were reportedly well-attended.

Due to the economic crisis, the focus of the campaign was on the economic programmes of the political parties and on the leadership qualities of the potential candidates for Prime Minister. The predominant issues in televised debates were whether to continue tax deductions for mortgage payments and whether to increase the retirement age. Since the Netherlands has always been governed by coalitions, the question of which parties could form coalitions after the elections and under what conditions played a role in the campaign. The immigration and integration issues still present in Dutch public discourse were not major issues in the debates; however, the PVV focused on these issues in its campaign, at times with harsh rhetoric, drawing considerable media attention.

The Dutch electorate made extensive use of internet vote adviser programmes, especially the *Stem Wijzer* (Vote Adviser) of the non-profit Institute for Political Participation (IPP) and the new, private *Kieskompas* (Election Compass). By asking users to respond to 30 statements on a range of issues, the programs attempted to help users understand the extent to which the

⁴⁵ For example, the Party for Animals obtained national coverage by seeding a large field near Schiphol airport with a giant logo of the party, creating an ad visible only from the air.

positions of the parties corresponded to their own views, as well as to identify which parties were overall closest to their views.⁴⁶

An unusual feature of the campaign was the involvement of the Central Planning Bureau (CPB) in scrutinizing the potential economic impact of political party programmes. The CPB is an independent State body which *inter alia* provides assessments of the potential economic impact of draft legislation by parliamentary parties. Political parties told the OSCE/ODIHR EAM that the CPB's analyses of party programmes played an important role in influencing the debate during the campaign.

All political parties represented in Parliament or expected to gain at least one seat according to opinion polls were eligible to have their programmes analyzed by the CPB, and almost all submitted their programmes. The platform of new political parties complained to the MoIKR about the exclusion of their parties from CPB analysis. The CPB informed the OSCE/ODIHR EAM that it took this approach due to a lack of capacity to provide analysis for all programmes.

The CPB's assessments are highly trusted, and the analysis of the CPB appears to play a positive role in informing voters of the economic trade-offs of policy options. However, the exclusion of some parties from this important State-funded instrument on the basis of opinion polls conducted before the start of the campaign could be construed as being inconsistent with the principle of fair treatment of election contestants.

Consideration could be given to setting formal criteria for participation in the Central Planning Bureau's analyses of electoral programmes. Such criteria could include, for instance, presentation of a candidate list in all electoral districts and/or payment of a deposit.

VIII. CAMPAIGN FINANCE

The approach to campaign finance regulation in the Netherlands arises from the understanding that political parties essentially are private associations, primarily accountable to their members. The Constitution does not refer to the role of political parties in the democratic system. Moreover, transparency and accountability requirements for political finance have previously been regarded as interference with the right of the freedom of association, as set forth in Article 8 of the Constitution.

In the past, political parties in the Netherlands have been primarily financed from an annual public subsidy, membership fees and, as practiced by one party, salaries of affiliated elected officials. The fact that campaigns are relatively inexpensive, the absence of scandals and a general mutual trust among the parties have all led to a sense that there is no urgency for more stringent regulations. Yet recently there have been reports of parties receiving large private donations, allegedly including from foreign sources, and the campaign environment has been increasingly focused on electronic media presentation, raising questions about the

⁴⁶ The *Kieskompas* included only parties represented in Parliament or obtaining at least one seat in opinion polls, while *Stem Wijzer* included these parties automatically in the analysis and additionally offered users the option of including other parties. The platform of new political parties complained to the MoIKR that the *Stem Wijzer* should treat all parties competing in the elections equally. The IPP told the OSCE/ODIHR EAM that the *Stem Wijzer* presentation of parties responded to user demand.

continued efficacy of Netherlands' campaign finance regulatory structure. This has led to an emerging consensus on the need for stricter regulations.

The only legal act that refers to political party finances is the Political Parties Subsidization Act of 1999 (PPSA). It deals exclusively with the parties that qualify for the public subsidy. Under the PPSA, political parties are free to use the public subsidy for broadly defined activities and beginning in 2005, also for campaign purposes.⁴⁷ A draft Financing of Political Parties Act has been in circulation since 2006, but it has not yet passed into law.

The total annual subsidy to all political parties during recent years has been approximately 15 million EUR. In order to receive the annual subsidy, political parties must have at least one seat in parliament and at least 1,000 members each contributing 12 EUR annually to the party. Furthermore, they must file an activities plan, a budget, and a specification of their membership figures to the MoIKR. They must also report how the subsidy was used.

Parties are permitted to raise additional campaign funds from private sources, essentially unrestrained by regulation. Although parties are required to report donations of over 4,537 EUR when submitting their annual reports, the donation can be described in general terms if a donor refuses to have his or her identity disclosed. Due to a lack of detail as to what must be reported, parties provide varying degrees of detail on their private donations, including occasions when only lump sums or totals of private donations are reported.

Although the MoIKR generally applies a stricter approach to political party finances than to other public expenditures, independent audits have been infrequent. In addition, the MoIKR does not verify or audit donation reports. Review of political party donation and expenditure reports may be requested, and these reports can be released to the public, if the party in question consents to the disclosure.

The report of the Council of Europe's Group of States Against Corruption (GRECO) of 2008 noted issues of transparency in party funding and recommended that stricter regulations be implemented. In response, the draft Financing of Political Parties Act was further amended and most interlocutors had expected it to be passed into law in 2010. However, with the dissolution of parliament in February 2010, the passage stalled. An updated GRECO report issued in June 2010 reiterated its concerns and recommendations.⁴⁸

The enactment of the draft Financing of Political Parties Act would be a first step in improving accountability and transparency in campaign financing. Additional measures that could be considered for inclusion in the draft are the extension of the law to regional and local party organizations, the addition of a publication or public inspection requirement, the assurance of application of the Act to all electoral lists standing for parliamentary elections, and a process for lodging of citizen complaints requiring timely response.

⁴⁷ According to Article 5 of the PPSA, the activities defined are *inter alia* political education and training activities, provision of information, and contacts with sister organizations outside the Netherlands.

⁴⁸ GRECO country reports on political party and campaign financing are available at www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp.

IX. MEDIA

A. OVERVIEW

There are numerous information outlets in the Netherlands presenting a diversity of views, enabling the public to be well informed about political developments. The pluralistic and overall professional media has a tradition of editorial independence and operates largely on the basis of self-regulation.

Currently, there are almost 600 TV, radio and cable companies. There are three public TV channels and seven public radio stations operating nationally, 13 radio and/or TV channels on the regional level, and numerous local radio and TV stations. Commercial radio and TV broadcasting is available primarily on the national level. The most popular private broadcasters are RTL Group, with four TV channels, and SBS Broadcasting, which operates three channels.

There are nine national, 18 regional and three free daily newspapers published in the Netherlands. There is a high level of newspaper readership; despite a decline in recent years, almost 70 per cent of the adult population reads the daily press.⁴⁹ More than two million people (some 15 per cent of the population) read the most popular daily paid newspaper, *De Telegraaf*. Free newspapers *Metro* and *Spitz* reach 13 and 12 per cent of population, respectively. The use of Internet information sources is also increasingly popular.

B. LEGAL FRAMEWORK

The Constitution guarantees freedom of expression and freedom of the press and bans prior censorship of the content of TV and radio broadcasts. The Media Act is the key legislation defining the framework for the activities of the public and private broadcasters and cable operators. The administrative body overseeing implementation of the media law is the Media Authority (Commissariaat voor de Media), founded in 1988. It licenses the private broadcast media, and has the power to impose fines. While the Media Authority does conduct some monitoring activities, these generally focus on compliance of commercial advertising with the law, not on the content of produced programs.

Other than the provision of the Media Act on allocation of free airtime in public media to each electoral list which fields candidates in all 19 electoral districts, there is no regulation of campaign coverage on public or private media. Each of the 16 parties running in all constituencies in these elections was given 20 minutes on radio and 18 minutes on public television.⁵⁰ The Media Authority drew lots to set the order in which the contesting lists should be aired in the public media. The spots were aired on radio between 6 May and 5 June, and on TV from 17 May through 6 June. Besides the allocation of free airtime during the elections, the political parties represented in parliament are entitled to get free airtime in the public media on annual basis.⁵¹

The Press Council, a body founded by the Union of Journalists, the Society of Editors-in-Chief and other media organizations, was initially established as a disciplinary council, but

⁴⁹ "NOW Print Monitor" www.nommedia.nl/docs/Bereikscijfers%20NPM%202009-I%202009-II.pdf.

⁵⁰ The quantity of free time for election coverage was decided by the Ministry of General Affairs.

⁵¹ The total time allocated to the parties for 2010 is 8 hrs 30 min. on TV and 35 hrs on Radio.

now examines complaints against violations of good journalistic practice; its non-binding opinions are published on its website and are discussed in the media. The Press Council told the OSCE/ODIHR EAM that it receives very few complaints related to coverage of politics.

C. PUBLIC BROADCASTING

The public broadcasting system is composed of 23 independent organizations contributing jointly to the broadcasts of three TV and seven radio channels under the umbrella of NPO (*Nederlandse Publieke Omroep*), which coordinates the overall program structure and distributes the program slots among the broadcasters. Currently, the group of public broadcasters consists of ten member-based associations producing programs partially reflecting views of their members. There are two key general broadcasters, NOS (*Nederlandse Omroep Stichting*) and NPS (*Nederlandse Programma Stichting*), established to provide news, sport, culture or education programs of common public interest. There are also small broadcasting companies producing religion and belief programs.⁵²

This model produces a variety of views in a large number of programs. In the absence of outside regulations, the broadcasters allocate the time according to their editorial decisions. Some broadcasters apparently retain links to various political parties, giving the potential for some parties to have more airtime than others. However, the broad range of programmes results in an overall fair public broadcasting environment for elections.

D. MEDIA COVERAGE OF THE ELECTIONS

Campaign related information was widely accessible through regular news and current affairs programmes, and there were also many special elections programmes and debates. Broadcast and print media organized numerous debates at national and regional level and aired interviews with representatives of parties. Consequently, voters had full access to political views and information allowing them to make an informed choice.

Given the large number of electoral lists competing in the elections, the broadcast media faced challenges in creating formats for the debates which would be fair but remain attractive for viewers. Opinion polls appeared to be the primary criteria for the decisions of media in deciding which lists should be included in debates. NOS organized the last TV debate of the campaign on 8 June with eight leaders of the political parties ranked highest in the polls, and a separate debate for three party leaders representing less popular parties was aired earlier on the same day. RTL Nederland organized two key debates between the leaders of the electoral lists, inviting the leaders of the four parties leading the polls for the first debate and eight for the second debate.

Most parties were generally satisfied with the extent of their coverage in the media, although the platform of new parties stated that it was difficult for them to gain access to media coverage. These parties also objected to the special coverage of the activities of one list by the youth-oriented public broadcaster BNN, claiming that this represented preferential treatment. This list of young candidates had been selected through a competition organized on a BNN broadcast. BNN justified its focus on one electoral list as a form of education for youth about the political process.

⁵² Buddhist, Hindu, Humanist, Jewish, Muslim, Protestant, and Roman Catholic.

X. PARTICIPATION OF MINORITIES

The Frisian national minority, composed of some 450,000 persons, is an indigenous minority located in the north of the Netherlands. They have specific rights under the Charter and under agreements between the government of the Netherlands and the province of Friesland.⁵³ In addition to the Frisian language, the Netherlands has declared that the regional or minority languages⁵⁴ covered by the Council of Europe Charter for Regional or Minority Languages (ratified by the Netherlands in 1996) are Low Saxon and the Limburger language (Limburgish). The non-territorial languages in the Netherlands are Romanes, spoken by the Sinti and Roma, and Yiddish.⁵⁵

The Netherlands has been a prime destination of immigrants to Europe in the past decades. According to official statistics, of the 16,600,000 people living in the Netherlands 20 per cent have an immigrant background, defined as either being born outside the Netherlands (1.66 million residents) or being the second generation to live in the Netherlands (1.63 million residents). Statistics Netherlands further differentiates these 3.3 million people between the 1.8 million residents with a “non-western” background and the 1.5 million with a “western” background.⁵⁶

Many political parties make efforts to attract voters with immigrant background, both through direct campaigning at community events and through inclusion of candidates with an immigration background on electoral lists. Although the voter turnout among citizens with a “non-western” immigration background is still lower than the average, politicians from these communities have made careers in most parties. None of the electoral lists participating in the elections considered itself as an ethnic party or was seen as only appealing to a particular ethnic group.

There is no official voter information in languages of immigrant communities, although some municipalities worked with associations of immigrants to make such information available. Official statistics from the 2006 parliamentary elections showed that voters with a “non-western” immigrant background were twice as likely to vote by proxy as voters without an immigrant background.⁵⁷ This figure was particularly high among women voters with a “non-western” immigrant background (25 per cent).

⁵³ See also the OSCE/ODIHR Election Assessment Mission report from the 2006 parliamentary elections, pp. 22-22, for more information about the Frisian minority.

⁵⁴ “Regional or minority languages” are defined by the Charter as languages that are traditionally used within a given territory of a State by nationals of that State who form a group numerically smaller than the rest of the State’s population; and different from the official language(s) of that State.

⁵⁵ “Non-territorial languages” are languages used by nationals of the State which differ from the language or languages used by the rest of the State’s population but which, although traditionally used within the territory of the State, cannot be identified with a particular area thereof.

www.coe.int/t/dg4/education/minlang/Report/EvaluationReports/NetherlandsECRML3_en.pdf

⁵⁶ According to CBS Statistics Netherlands, as of May 2010,
<http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLen&PA=37943eng&LA=EN>.

⁵⁷ According to information of CBS Statistics Netherlands, at www.cbs.nl/en-GB/menu/themas/overheid-politiek/publicaties/artikelen/archief/2009/2009-2802-wm.htm.

XI. PARTICIPATION OF WOMEN

Most interlocutors of the OSCE/ODIHR EAM, including womens' organizations, considered that the level of participation of women in political life is high and does not need to be regulated, and that parties should be free to choose their candidates. However, a document from 2000 by the Ministry of Social Affairs called the "Emancipation Policy" set the equal representation of men and women in assemblies at all levels as a goal for 2010. This goal was not met.

Out of 676 candidates for the 9 June elections, 222 were women (32.8 per cent). The percentage of representation of women on the lists of the ten parties represented in the outgoing House varied substantially, from 52.8 per cent for PvdA to 0 for the SGP.⁵⁸ The Green Left and the Party for Animals lists were headed by a woman. In total, 61 women were elected, representing 40.6 per cent of the composition of the House, an increase from the outgoing House whose proportion was 36.7 per cent. The outgoing government attained the targeted 40 per cent of representation of women as Ministers and State Secretaries.

Despite the general tendency not to regulate the participation of women, a case decided by the Supreme Court on 9 April 2010, *Clara Wichmann Institute vs. the State*, will oblige the next government to take action in this respect. The case concerned the policy of the SGP not to permit the participation of women as members or as candidates,⁵⁹ based on an interpretation of the Bible. The argumentation of the Institute was partly based on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) which says that States must eliminate discrimination against women in the political life of the country and ensure that women are eligible for election on equal terms with men.⁶⁰ The State noted that a number of constitutional freedoms, including the freedom of association, were also at stake. The Supreme Court ruled that the State must act in a reasonable time and take appropriate and proportional measures in order to eliminate such discrimination without curtailing the rights and freedoms of religion, expression and association of the party.

The MoIKR informed the OSCE/ODIHR EAM that no decision had been taken yet and that several possible solutions were still under consideration. The SGP informed the OSCE/ODIHR EAM that it may appeal to the European Court of Human Rights.

XII. ELECTION DAY

In accordance with standard practice, OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner; however, mission members visited a few polling stations in Amsterdam, Arnhem, Groenlo, Groningen, The Hague, Haarlem,

⁵⁸ The Party for Animals had 47 per cent female candidates, the Green Left 46.6 per cent, CDA and the Socialist Party 36 per cent each, D66 had 34 per cent, VVD 31.5 per cent, the Christian Union 22 per cent and PVV 18.7 per cent. The PvdA systematically alternates men and women candidates on its lists.

⁵⁹ After a decision of the District Court in 2006, SGP amended its statutes in order to allow women to be members. Nevertheless, women still cannot stand as candidates.

⁶⁰ Article 7 of the CEDAW says that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;..."

Renkum, Rotterdam and Utrecht. The voter turnout in these elections was registered at 75.4 percent.⁶¹

In the polling stations visited by the OSCE/ODIHR EAM, voting was well-organized and the process was transparent. Polling stations visited were adequately set up and convenient for voting, with a few exceptions. To increase accessibility for voters, some municipalities also created mobile polling stations in buses. There were also a number of special polling stations that were opened in places of transit, such as train stations and shopping malls, or in homes for the elderly. Polls generally opened at 7:30 and closed at 21:00, although the hours of special polling stations varied. The number of polling station staff varied in different municipalities, ranging from three to six, with members replacing each other during the day. In Rotterdam, staff membership changed completely with a second shift in the afternoon. In a few cases, the necessary handover process seemed to create some logistical problems.

Since voters may vote in any polling station within the municipality of his/her registration, some polling stations had significantly high turnout in comparison with others. Most municipalities provided polling stations with ballot papers based on turnout figures from previous elections and were prepared to provide more upon request. Also as a result of this legal change, voter lists are no longer used in the polling stations. Instead, a voter must show identification to a PSEC and hand in his or her voter card. In each polling station, there is a list of invalid voter cards for the municipality which the PSEC checks before giving the voter a ballot. This arrangement expedites voting procedures for both voters and PSEC members alike. In some instances, however, the OSCE/ODIHR EAM noted that not all voter cards were checked against the list of invalid serial numbers.

Given the number of electoral lists and the number of candidates per list, printing the names of all candidates in a given electoral district on the ballot necessitated a ballot paper of considerable size, at times in excess of half a square meter, printed in small size font. In turn, this created difficulties for some voters to mark their choices and for electoral committee members to process the ballots during the count.

Consideration could be given to reviewing the format of the ballots to make them easier for the voter to identify candidates and for polling officials to conduct the count process.

The count was generally conducted transparently in the few polling stations visited. Given the high level of confidence in the election process, there was no systematic observation by political parties or civil society, but voters observed the count in some polling stations. The counting process has three phases after the opening of the ballot box. The number of ballots in the ballot box is determined; the ballots are then sorted by electoral list and counted; and finally, the number of votes for each candidate is determined.

Since the shift from mainly electronic voting to paper ballots, efforts have been made to ensure an effective and transparent counting process. Extra staff were assigned to join the polling station commissions for the count in many municipalities. In Rotterdam, following problems with the quality of the count in the local elections of March 2010, particular emphasis was made on supervision and control of the process by multiple checking of protocols. The model protocols prepared by the MoIKR were well-designed.

⁶¹ See www.kiesraad.nl/nl/English/English-News/English-News-News/English-News-News-2010/Results_of_the_9_June_2010_House_of_Representatives_elections.html.

Some OSCE/ODIHR EAM teams noted that the counting process was somewhat unorganized and/or did not adhere to the procedures outlined in the law. For instance, there were PSECs which did not pack voting cards or unused ballots before opening the ballot box, or which did not reconcile the numbers of issued ballots, voter cards, and unused ballots. After the opening the ballot box, the three counting phases were in some cases conducted simultaneously, resulting in discrepancies which made final reconciliation time-consuming. In some cases, PSECs did not properly unfold the ballot papers, making it impossible for those present in the room to verify which candidate's name was marked. These problems were in part attributable to the large ballot paper and to lack of familiarity with hand counting. However, a key factor appeared to be differences in the extent of training provided by municipalities to PSECs regarding the counting procedures.

In view of the transition from electronic to manual counting, consideration should be given to reviewing and standardizing the training on counting procedures provided to PSEC members.

ANNEX: RESULTS

List Number	Name of List	Total Valid Votes	Total Seats
4	VVD	1,929,575	31
2	Partij van de Arbeid (P.v.d.A.)	1,848,805	30
5	PVV (Partij voor de Vrijheid)	1,454,493	24
1	Christen Democratisch Appèl (CDA)	1,281,886	21
3	SP (Socialistische Partij)	924,696	15
8	Democraten 66 (D66)	654,167	10
6	GroenLinks	628,096	10
7	ChristenUnie	305,094	5
10	Staatkundig Gereformeerde Partij (SGP)	163,581	2
9	Partij voor de Dieren	122,317	2
13	Trots Op Nederland Lijst Rita Verdonk	52,937	0
14	Partij voor Mens en Spirit (MenS)	26,196	0
18	Piratenpartij	10,471	0
17		7,456	0
12	Nieuw Nederland	2,010	0
16	Partij één	2,042	0
15	Heel NL	1,255	0
19		924	0
	Total	9,416,001	150
	Blank Ballots	8,829	-
	Invalid Ballots	18,147	-

Based on the official results provided by the Electoral Council at
www.kiesraad.nl/nl/Verkiezingen/Verkiezingen-Verkiezingsuitslagen.html

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).