



Office for Democratic Institutions and Human Rights

**REPUBLIC OF TURKEY**  
**EARLY PARLIAMENTARY ELECTIONS**  
**22 July 2007**

**OSCE/ODIHR Election Assessment Mission Report**



Warsaw  
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**I. EXECUTIVE SUMMARY**

In response to an invitation from the Ministry of Foreign Affairs of the Republic of Turkey, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 22 July 2007 elections to the Turkish Grand National Assembly (TGNA).

The overall conduct of the elections represents a notable achievement against a background of political tensions which arose in the spring of 2007, following the failure by parliament to elect a new president. The elections demonstrated the resilience of the election process in Turkey, characterized by pluralism and a high level of public confidence.

The registration of political parties and independent candidates was generally inclusive, offering voters a wide and genuine choice. Parties had sufficient ability to convey their messages to the voters, although the campaign took place in a polarised atmosphere. Turkey's diverse and vibrant media provided broadly balanced coverage of electoral issues, enabling voters to make informed choices.

Turkey has a comprehensive legal framework for elections, conducive overall to the delivery of a democratic process. However, political campaigning, and in a broader context freedom of expression, are constrained by a number of restrictions in the Penal Code, Law on Political Parties, and media laws which create the potential for uncertainty and scope for arbitrary interpretation. The legal framework would benefit from review to further promote respect for fundamental civil and political rights.

Additionally, aspects of the legislation could be reviewed in order to enhance transparency and ensure equitable conditions for all election contestants, including campaign finance and the length of the official campaign period. The 10 percent threshold for political party representation in the allocation of seats in the TGNA is unusually high and remains the highest in the OSCE region.

The OSCE/ODIHR noted the positive efforts made to enhance the participation of Turkish citizens of Kurdish origin in political life. Legislation, however, continues to prohibit the use of languages other than Turkish in the election campaign.

The overarching body administering the elections, the Supreme Board of Elections (SBE) composed of senior judges, commands widespread confidence and respect, underscored by the transparent, professional and efficient performance of the election administration as a whole. However, decisions of the SBE cannot be appealed.

Voting and counting took place in a generally calm and orderly manner nationwide. The limited numbers of voters allocated to polling stations, and the effective range of

procedural transparency mechanisms and safeguards, including the marking of voters' fingers with indelible ink, enhanced the confidence of both contestants and voters in the process. Turnout was reported at 84.25 per cent.

In keeping with its OSCE commitments, Turkey invited the OSCE/ODIHR to observe these elections. The OSCE/ODIHR EAM was granted access to all levels of the election administration, including polling stations on election day. In order to remove any uncertainty and to comply fully with OSCE commitments, it is desirable that the law specifically provide for access for international and domestic non partisan observers to all stages of the electoral process.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of the Republic of Turkey and a Needs Assessment Mission<sup>1</sup> conducted from 29 May to 1 June, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for the 22 July 2007 parliamentary elections to the Turkish Grand National Assembly (TGNA).

The OSCE/ODIHR EAM was deployed from 25 June to 26 July 2007. It was led by Mr. Julian Peel Yates and consisted of 15 election experts from 14 OSCE participating States. In addition to experts based in Ankara, the OSCE/ODIHR EAM deployed teams to Istanbul, Izmir, Antalya, Adana, Erzurum, Diyarbakir, and Van and visited a total of 25 of the 81 provinces. The OSCE/ODIHR EAM also contained a media monitoring component.<sup>2</sup>

In line with standard OSCE/ODIHR practice, the deployment of the OSCE/ODIHR EAM did not encompass systematic or comprehensive observation of voting and counting procedures, although the OSCE/ODIHR EAM visited a limited number of polling stations on election day.

The OSCE/ODIHR wishes to thank the Ministries of Foreign Affairs and Interior, the Supreme Board of Elections, provincial and district authorities and election boards, candidate headquarters and political parties, and representatives of the media and civil society, for the co-operation and assistance extended to the OSCE/ODIHR EAM during the course of the mission.

## III. BACKGROUND

At the beginning of May 2007 the TGNA voted to hold early parliamentary elections on 22 July 2007. The decision followed the deadlock which had developed over the failure by the TGNA to elect a new president of Turkey to succeed Mr. Ahmed Necdet Sezer, before the expiry of his single 7 year term on 16 May 2007. The roots of the crisis lay in underlying tensions between secularist and Islamist influences in Turkey. The early elections were called at the behest of the governing Justice and Development Party

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<sup>1</sup> The Needs Assessment Mission Report is available at [www.osce.org/odihr-elections](http://www.osce.org/odihr-elections).

<sup>2</sup> The Parliamentary Assembly of the Council of Europe deployed an ad hoc Committee to conduct a short-term election observation mission from 18 to 23 July 2007. Its report is available at <http://assembly.coe.int>

(AKP) in accordance with constitutional provisions requiring the holding of elections forthwith where the TGNA is unable to elect a president.<sup>3</sup> Elections were otherwise ordinarily due to take place on 4 November 2007.

The first round of voting by the TGNA for the presidency took place on 27 April. It was boycotted by the opposition, with the Republican People's Party (CHP), the principal opposition party, complaining at the lack of prior discussion and consultation and the announcement of the AKP's candidate, the foreign minister, Mr. Abdullah Gul, only shortly before the legal deadline. Political tensions rose markedly at once thereafter with the army issuing a memo on its website later the same day. Mass demonstrations followed in Istanbul and other major cities. The election failed after the Constitutional Court ruled on 1 May, on application by the CHP, that the first round of voting was invalid, on the grounds that a quorum of two-thirds of the membership of the TGNA was necessary in the first round of voting, which was not achieved because of the opposition boycott.

The candidature of Mr. Abdullah Gul was withdrawn, and the prime minister, Mr. Recep Tayyip Erdogan, promptly submitted a package of constitutional amendments to the TGNA for, inter alia, the direct election of the president by popular vote, and a reduction in the length of the parliamentary term from five years to four. The opposition and many secularist supporters complained that there was inadequate preparation and discussion for such proposals which would have far reaching consequences, affecting complex constitutional balances.

President Ahmet Necdet Sezer subsequently used his constitutional powers to reject the measures, which were again approved by the TGNA on 31 May. The president could not again veto the package, but submitted it to the Constitutional Court, which in early July upheld the constitutionality of the proposed measures. The package of amendments was also submitted to a national referendum on 21 October.

In setting the parliamentary elections date of 22 July, the Constitutional Commission of the TGNA approached the Supreme Board of Elections (SBE) for guidance as to the earliest possible date, and the SBE advised a shortened 80 day minimum campaign period beginning on 4 May. The campaign began in a substantially polarised atmosphere, and against a background of an upsurge in terrorist attacks in southeastern provinces of Turkey from the late spring.

The OSCE/ODIHR deployed an OSCE/ODIHR EAM for the previous parliamentary elections in November 2002.<sup>4</sup> Several recommendations of that previous OSCE/ODIHR EAM have been implemented or partially implemented in the intervening period.

## **IV. LEGAL FRAMEWORK**

### **A. GENERAL OVERVIEW**

Turkey has a comprehensive legal framework for the conduct of parliamentary elections, conducive overall to the delivery of a democratic process. Fundamental civil

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<sup>3</sup> Article 102 of the Constitution.

<sup>4</sup> The 2002 Election Assessment Mission report is available at [www.osce.org/odihr-elections](http://www.osce.org/odihr-elections).

and political rights, such as the right to vote and be elected, and to engage in political activity are enshrined in the Constitution. The Constitution also establishes key elements for the election administration, including tasking the judiciary with the responsibility of administering the elections and defining the composition of the supreme electoral body, the SBE.<sup>5</sup> Following amendments to the Constitution of 22 May 2004, duly enacted international agreements in the area of fundamental rights and freedoms, in case of divergence, take precedence over domestic legislation.

The general provisions on elections and voter registration are codified in Law No. 298 'On Basic Provisions on Elections and Voter Registers' (LBPEVR) of 24 April 1961. Law No. 2839 'On Parliamentary Elections' (LPE) of 10 October 1983 is a *lex specialis* for elections to the TGNA and takes precedence over the LBPEVR. Both laws have been amended on a number of occasions, most recently in June 2005 (LBPEVR) and October 2006 (LPE). Other relevant legislation, with respective amendments, includes Law No. 2820 'On Political Parties' (LPP), Law No. 2911 'On Assemblies and Marches', Law No. 3984 'On the Establishment and Broadcasting of Radio Stations and TV Channels' (LEBRTV), and pertinent provisions of the 2005 Penal Code. The primary electoral legislation is supplemented by regulations and decisions of the SBE.

The 2006 amendments to the LPE lowered the age for candidates' eligibility for parliamentary elections from thirty to twenty five years, in line with good practice,<sup>6</sup> and introduced a joint ballot paper for political parties and independent candidates alike.<sup>7</sup>

Article 67 of the Constitution prohibits enforcement of amendments to the legal framework if elections are held within one year following the amendments' enactment. However, with regard to the joint ballot paper, the TGNA adopted a provisional article to the Constitution, which allowed this amendment to take effect in time for these parliamentary elections.<sup>8</sup>

*The legal framework for elections could benefit from overall review and updating, with a view to consolidating all recent amendments and newly adopted legislation.*<sup>9</sup>

## B. SPECIFIC ISSUES

Whilst Article 67 of the Constitution provides that 'Elections and referenda shall be held ... in accordance with the principles of free, equal, secret and direct, universal suffrage ...', the same article introduces a prohibition on voting for military conscripts, including students in military schools.<sup>10</sup> The OSCE/ODIHR EAM heard opinions expressed that such restrictions were aimed at preventing possible undue influence on conscripts and at upholding, in the context of the current system for seat allocation,<sup>11</sup>

<sup>5</sup> Articles 75-79 of the Constitution (see Section VI, Election Administration, below).

<sup>6</sup> Council of Europe, Opinion no 190/2002, 'Code of Good Practice in Electoral Matters', I, 1.1.a.iii, CDL-AD (2002) 23 rev.

<sup>7</sup> For parliamentary elections, there was previously a ballot paper for the political parties and separate ballot papers for each independent candidate.

<sup>8</sup> Law No. 5659 'On Adding Provisional Articles to the Constitution of the Republic of Turkey' of 10 May 2007.

<sup>9</sup> For example, paragraph 4 of Article 11 of the LPE and Article 156 of the LBPEVR, which refer to articles of the old Penal Code.

<sup>10</sup> The legislation provides a more detailed description of these restrictions related to various military ranks which remain beyond the scope of this report.

<sup>11</sup> See Section V Electoral System.

the authenticity of local choices. However, these restrictions disenfranchise a significant number of citizens. *Consideration should be given to extending voting rights to conscripts to promote universal suffrage in the context of Article 67 of the Constitution and Paragraph 7.3 of the 1990 OSCE Copenhagen Document.*

Article 67 of the Constitution sets the context for the regulation of voting by Turkish citizens residing abroad, the rules for which lie in Article 94 of the LBPEVR and SBE Regulation No. 282 of 27 May 2007. The existing system allows for voting only at specified customs areas.<sup>12</sup> Those eligible to vote in such places were Turkish citizens who have resided abroad for at least six months, whose names are not on the voter register, and who crossed the border during the period 25 June to 22 July 2007. *Further ways for facilitating voting by Turkish citizens residing abroad, and those absent from their places of permanent residence on polling day, would enhance the enfranchisement of a significant number of potential voters.*

The legislation requires that political parties respect simultaneously two conditions in order to nominate candidates for parliamentary elections: parties should have registered an organisation in at least half of the 81 provinces of Turkey<sup>13</sup> and in one third of the districts in each of these provinces including the central district, and secondly parties should hold a grand congress at least six months prior to the elections or have a parliamentary group in the outgoing TGNA. *Consideration could be given to relaxing the preconditions for nomination of party candidates to further strengthen pluralism.*<sup>14</sup>

Political campaigning and, in a broader context, freedom of expression are constrained by a number of legal provisions, which are open to wide interpretation concerning the definition of terms such as ‘insult’, ‘national minority’, and ‘terrorism’. Such provisions include, but are not limited to:

- Article 301 of the Penal Code envisaging imprisonment for insulting Turkishness, the republic, and state bodies and institutions;<sup>15</sup>
- Article 216 of the Penal Code, which criminalizes “inciting enmity or hatred among the population”;
- Article 81 of the LPP prohibiting political parties from promoting the idea of the existence of national minorities and the use of languages other than Turkish in their activities;<sup>16</sup>
- Article 7 of Law No. 3713 ‘On Anti-Terrorism’ prohibiting propaganda of a terrorist organisation; and

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<sup>12</sup> According to the SBE, polling took place at 14 customs areas at airports, ports and land crossings. Statistics for entries and exits at border crossings during May and June for the last three years were taken as criteria for providing polling facilities at these places. Voting was held in customs areas where at least 5,000 crossings were registered. As an exception, polling was allowed in Çeşme in Izmir Province, where 1,000 border crossings were registered.

<sup>13</sup> See Section V Electoral System.

<sup>14</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document commits participating States to ‘respect the rights of citizens to seek political or public office ... as representatives of political parties ... without discrimination.’

<sup>15</sup> The OSCE Representative on Freedom of the Media and the Parliamentary Assembly of the Council of Europe, among others, have called on Turkey to repeal Article 301.

<sup>16</sup> The prohibition on use of languages other than Turkish in political campaigning is also included in Article 58 of the LBPEVR.

- Article 4 of the LEBTVR prohibiting ‘violating the existence and independence of the Turkish Republic, the territorial and national integrity of the State, the reforms and principles of Atatürk’. A similar prohibition, on ‘insulting the memory of Atatürk, the founder of the Turkish Republic’, was introduced by Law No. 5651 ‘On Prevention of Crimes in the Computer Domain’ adopted on 4 May 2007.

*Provisions in the aforementioned legislation should be amended or repealed in order to ensure full respect for freedom of expression, in line with the 1990 OSCE Copenhagen Document, recommendations of the OSCE Representative on Freedom of the Media, and other international standards for democratic elections.<sup>17</sup>*

Article 16 of the LPE states that ‘political parties cannot present joint candidate lists’. In conjunction with the ten per cent threshold, the prohibition on joint candidate lists constitutes an obstacle to pluralism.<sup>18</sup> *The authorities could consider amending the first paragraph of Article 16 of the LPE to further enhance pluralism.*

In the interests of equality and the secrecy of the ballot, the OSCE/ODIHR EAM recommended in its 2002 Final Report that consideration should be given to introducing a joint ballot paper for political parties and independent candidates, and allowing the independent candidates to use a symbol. This recommendation was partially addressed by an amendment to the relevant provisions of the LPE of 12 October 2006, and the names of independent candidates were put on the same ballot paper as political parties. However, the independent candidates remained in a disadvantageous position vis-à-vis the political parties as there were no special signs on the ballot next to their names<sup>19</sup> to facilitate identification by voters, and independent candidates’ names were printed in considerably smaller fonts than those used for political parties. *The authorities should consider all possibilities for extending equal opportunity to political parties and independent candidates running for seats in the TGNA.*

While the legal framework for elections permits observation by political parties’ and independent candidates’ representatives, it contains no specific provisions permitting possible observation of elections by international observers and domestic non-partisan groups. Respecting the commitments under Paragraph 8 of the 1990 OSCE Copenhagen Document, the authorities invited the OSCE/ODIHR to observe the 2007 TGNA elections. The OSCE/ODIHR EAM was granted access to all levels of the election administration including polling stations on election day and was provided with a number of electoral documents. *Despite the access enjoyed by the OSCE/ODIHR EAM, in order to remove any possible uncertainty the authorities should amend the legal framework for elections to provide explicitly for access to all stages of the election process by international observers and for domestic non partisan observer groups.*

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<sup>17</sup> See also Media, Section VIII below.

<sup>18</sup> See European Court of Human Rights, case of *Yumak and Sadak v. Turkey* (application no. 10226/03), Judgment, points 26, 53 and 72, Strasbourg, 30 January 2007.

<sup>19</sup> Article 78 of the LBPEVR allows for special signs for independent candidates.



## V. ELECTORAL SYSTEM

The TGNA comprises 550 members. According to Article 67 of the Constitution, 'Electoral laws shall ... reconcile the principles of fair representation and consistency of administration'. The LPE provides that seats in the TGNA are allocated through proportional representation, without preferences, based on regional candidate lists.

Political parties eligible for seat allocation are those which are registered to contest the election and which receive at least 10 percent of the valid votes cast nationwide. The size of the threshold in Turkey is unusually high and is the highest in the OSCE region.<sup>20</sup> Candidates may compete as individuals and are not subject to the 10 percent threshold.<sup>21</sup>

For administrative purposes, Turkey is divided into 81 provinces. Each province is further divided into districts, 923 in total.<sup>22</sup> For electoral purposes, Turkey is divided into 85 constituencies<sup>23</sup>. The borders of the electoral constituencies are generally based on the provinces' borders, with each province returning at least one member to the TGNA. Based on population data from the last census in October 2000, the remaining 469 seats are allocated to the 81 provinces proportionally to the number of citizens in each province. A province that is allocated up to 18 seats is considered as one electoral constituency. A province that is allocated between 19 and 35 seats is split into two electoral constituencies, and one that receives more than 35 seats is divided into three.<sup>24</sup> Division of provinces to form electoral constituencies generally respects district borders.

The allocation of parliamentary seats to eligible electoral contestants comprises two steps. First, all valid votes cast for political parties registered to contest the election are aggregated nationwide in order to determine which of the contesting parties would be eligible for allocation of seats.<sup>25</sup> Those parties which received less than 10 percent of the valid votes are excluded from the allocation process. Second, in each constituency, separately from all remaining constituencies, the eligible party lists and the 'independent' candidates<sup>26</sup> are allocated seats proportionally to the numbers of valid votes cast for them using the D'Hondt method.<sup>27</sup>

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<sup>20</sup> Votes cast for parties which were unable to surpass the threshold remain without representation in the TGNA. The 2002 parliamentary elections left some 45 per cent of the valid votes cast without representation in the TGNA. For the 2007 elections this percentage was some 12 per cent.

<sup>21</sup> Independent candidates won 27 seats in the TGNA in this election.

<sup>22</sup> In previous OSCE/ODIHR reports, [www.osce.org/odihr-elections/14656.html](http://www.osce.org/odihr-elections/14656.html), instead of districts these administrative units were referred to as 'counties'.

The largest constituency in Turkey, Istanbul-3, returns 25 members to the TGNA; in total the three constituencies of Istanbul return 70 members. There are 10 constituencies which return 2 members each, and 20 constituencies returning 3 members each. In total, 68 out of the 85 constituencies return between 2 and 9 members to the TGNA.

<sup>24</sup> The cities of Ankara and Izmir are split into two electoral constituencies, while the city of Istanbul is split into three.

<sup>25</sup> The numbers of seats to be allocated to eligible parties are not determined at this stage.

<sup>26</sup> Considered as one-candidate party lists.

<sup>27</sup> The D'Hondt method is known also as the method of the largest divisor.

Votes cast for political parties during early voting at customs areas are aggregated to the national total for the calculation of the 10 percent threshold.<sup>28</sup> In addition, parties' totals for each constituency are respectively increased in specific proportions to the number of votes received by the party at customs areas.<sup>29</sup> Thus, votes cast in customs areas are utilized in proportions rather than individually in the allocation of seats in the constituencies. Whilst voters voting in customs areas do not know in which constituency their votes will be counted, such 'anonymous' votes could impact on local choices.<sup>30</sup> *In order to further enhance transparency, consideration could be given to reviewing the procedures for aggregation of votes cast in customs areas.*

This system for seat allocation provides for the numbers of representatives elected in each constituency to be proportional to the numbers of votes cast for the eligible parties and candidates in that constituency. However, proportionality could be somewhat distorted nationwide, to further benefit parties which receive high numbers of votes. This results largely from the existence of constituencies that return a low number of members of the TGNA and therefore have high 'natural' thresholds.<sup>31</sup> While Article 4 of the LPE specifically requires that electoral constituencies shall be formed in such a way that each constituency elects an equal number of deputies or as close as possible thereto, it appears that this article relates mostly to the division of large provinces into electoral constituencies. *Consideration could be given to applying Article 4 of the LPE to the whole territory of Turkey.*

The electoral system has twofold consequences for the participation of 'independent' candidates. On the one hand, the procedure for seat allocation in the individual constituencies could facilitate the election of 'independent' candidates due to the exclusion of the votes cast for parties which failed to surpass the nationwide 10 percent threshold.<sup>32</sup> On the other hand, in constituencies that return less than 10 members to the TGNA, the 'natural threshold' exceeds 10 percent which has the potential to make the election of 'independent' candidates less likely. In addition, 'independent' candidates are disadvantaged by the vote in customs areas, as ballots in customs areas may only be cast for political parties.

In a resolution of the Parliamentary Assembly of the Council of Europe (PACE) following the 2002 parliamentary elections, which also underscored OSCE/ODIHR concerns, a recommendation was made to '... amend the electoral code to lower the 10 percent threshold...'.<sup>33</sup> This recommendation was reiterated by the Council of Europe's Ad-Hoc Committee observing the 22 July elections.

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<sup>28</sup> Please see Section IV B, Legal Framework.

<sup>29</sup> Article 94 of LBPEVR.

<sup>30</sup> This would appear to have been the case in the constituency of Hakkari. Please see also Section XII C.

<sup>31</sup> In each constituency, the 'natural threshold' can be approximated, in percent, by the quotient of 100 divided by the number of members returned by the constituency.

<sup>32</sup> This increases the relative weight of the votes of those who remain in the contest, including votes cast for 'independent candidates.

<sup>33</sup> PACE, Resolution 1380 (2004), 'Honouring of Obligations and Commitments of Turkey', points 6 and 23.ii. The PACE recognized that '... Turkey is a functioning democracy with a multiparty system, free elections and separation of powers...', but the PACE also considered that '... requiring parties to win 10 percent of the votes cast nationally before they can be represented in parliament is excessive ...'. [www.coe.int](http://www.coe.int)

The European Court of Human Rights recently decided a case dating from the 2002 parliamentary elections of two applicants who had argued that Turkish electoral law limited political participation in contravention of Article 3 of Protocol No 1. The Court ruled that although it would be desirable for the threshold to be lowered, ‘it is important in this area to leave sufficient latitude for national decision makers’. The Court concluded, by five votes to two, that ‘there has been no violation of Article 3 of Protocol N 1.’<sup>34</sup> On 13 July 2007, the Grand Chamber of the Court accepted an appeal against the decision and is expected to review the case in November 2007.

*The Turkish authorities could usefully consider all possibilities to further enhance the compliance of the current electoral system with the combined objectives of Article 67 of the Constitution. This should include reconsideration of the current 10 per cent threshold.*

## VI. ELECTION ADMINISTRATION

### A. ELECTION BOARDS

Articles 67 and 79 of the Constitution stipulate that elections in Turkey are held under the general administration and supervision of the judiciary. All election administration bodies, except those that administer polling and counting at the ballot box level, consist of or include senior judges. The election administration as a whole enjoys a high level of public confidence due to its professional, transparent and efficient performance.

The election administration is funded by the state budget, and funds are administered by the SBE. The structure of the election administration reflects the administrative division of the country. Governors of provinces and towns, mayors and all public servants are tasked to support electoral activities ‘without delay when requested by the electoral boards’<sup>35</sup>. While such an arrangement does indicate that procurement and logistics functions are tasked to the public administration, the responsibilities of the election administration go beyond pure adjudication and preserve substantive administrative functions.

The SBE represents the highest level of the election administration. There are 81 Provincial Election Boards (PEBs), forming the second tier. If a province is split into two or three electoral constituencies, all of these are administered by the respective PEB. Under each PEB, composing the third level, there are District Election Boards (DEBs), one for each administrative district.<sup>36</sup> Finally, polling procedures are administered on election day by Ballot Box Committees (BBCs), which represent the fourth tier.

The SBE is a permanent body consisting of seven members and four substitutes; all of them are senior judges.<sup>37</sup> Six are elected by the Plenary Assembly of the High Court of

<sup>34</sup> European Court of Human Rights, case of *Yumak and Sadak v. Turkey* (application no.10226/03), Judgment, Strasbourg, 30 January 2007.

<sup>35</sup> Article 9 of the LBPEVR.

<sup>36</sup> For more densely populated districts, the law allows for formation of temporary district electoral boards to facilitate election logistics.

<sup>37</sup> The seniority of judges is determined pursuant to Law No. 2820 ‘On Judges and Prosecutors’.

Appeals and five are elected by the Plenary Assembly of the Council of State,<sup>38</sup> from among their respective members by secret ballot. The SBE members serve for six years. The members of the SBE elect their chairman and his or her deputy by secret ballot. Resolutions are approved by absolute majority; in case of a tie, the chairman's vote is decisive. Resolutions are published in the Official Gazette. The SBE has a broad ranging and final authority, and full responsibility for the conduct of elections.

The PEBs are composed of senior judges, with the most senior judge in the province presiding. Members serve two-year terms. Political parties may appoint non-voting members to PEBs. In addition to their role in adjudicating on electoral complaints, chairmen of PEBs determine the elected candidates in their respective provinces, and serve as conduits for the allocation of resources to the DEBs and consolidation of returns from them.

DEBs consist of six regular members and six substitutes, and serve two year terms. DEB chairmen are the most senior judges in the respective districts; for the district including the administrative centre of the province, the chairman is the second senior judge of the province. The chairman appoints two members from amongst civil servants. The four political parties which received the highest numbers of votes in the district during the last election may appoint a member and a substitute provided they are running in the election. If these parties fail to provide members, the free positions are filled by other parties competing, based on drawing lots. If vacancies still remain, they are filled by civil servants based on their seniority. The DEBs are the key link in the hierarchy of the election administration in running day-to-day business in the pre-election period with regard to preparations for election day.

The BBCs are appointed by the respective DEBs and include five party representatives and their substitutes plus one member and his or her substitute who are members of the local administrative ward in which the respective polling station is located, otherwise known as the Eldermen's council of the ballot box area. The parties which received the highest number of votes in the last parliamentary election are eligible to nominate members to BBCs. If vacancies remain, the DEBs can fill them with eligible voters.

Each BBC is responsible for the election day processing of up to 200 registered voters, in accordance with Article 5 of the LBPEVR. The SBE has regulated that this number can be increased to 300,<sup>39</sup> although the legislative framework does not appear to provide the SBE with the authority to modify legal provisions, as it remains an implementation agency.<sup>40</sup> Such low numbers of registered voters per BBC allow for prompt processing of voters, shorter voting hours and fast counting. *After the introduction of the online system linking district administrations, including DEBs, the numbers of voters per BBC could be increased further.*

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<sup>38</sup> The Council of State is the last instance for reviewing decisions and judgements given by administrative courts.

<sup>39</sup> SBE Regulation 10/2007, Article 17.

<sup>40</sup> The SBE also lowered the fine for nonparticipation of eligible voters from 10 Turkish Lira, as provided by Article 63 of the LPE, to 5 Lira.

## B. ELECTORAL DISPUTES

Pursuant to Article 79 of the Constitution, final decisions concerning the electoral process are taken by the SBE and cannot be appealed to any domestic authority. Thus, potential complainants are left with a single recourse for seeking legal remedy, the European Court for Human Rights.

The SBE decides on objections or complaints against (a) lower-level electoral boards' decisions or actions and (b) its own decisions or actions taken in its capacity to implement the election legislation. The mechanisms for granting legal remedy to election stakeholders are therefore either exhausted at the level of the SBE if they originated at a lower level, or cannot be initiated at all<sup>41</sup> in the context of Article 79 of the Constitution.

It would appear that the rationale for this arrangement, whereby elections are administered by the judiciary and their decisions are final, is twofold: (a) it ensures prompt and definitive decision-making avoiding protracted court cases, and (b) all final decisions are made by representatives of the judiciary who are presumed to be independent of the other branches of government and political influences.

Notwithstanding the high level of public confidence in the objective performance of the election administration which the OSCE/ODIHR EAM witnessed in the framework of its activities in Turkey, it would be good practice to allow the possibility for some form of review of decisions of the SBE.<sup>42</sup> Moreover, a number of judicial interlocutors indicated their support for such review. The desirability of a mechanism for review of SBE decisions was illustrated by a complaint by a political party which was heard and decided upon by the SBE.<sup>43</sup> *The OSCE/ODIHR EAM reiterates the recommendation of the OSCE/ODIHR 2002 Final Report that the authorities should consider the possibility of establishing judicial appeal of the decisions of the SBE.*

## C. VOTER REGISTRATION

Voter registration is regulated by the LBPEVR, Chapter 3, Part 1. As voter registration is based on registration of identity<sup>44</sup> and residence address, it should be considered also in the context of Law No 5490 'On Population Services' of 29 April 2006. For voter registration purposes, the record of each voter comprises (a) personal information

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<sup>41</sup> The SBE may consider some complaints against its own decisions. For example, the SBE is a forum for complaints on formation of PEBs.

<sup>42</sup> Council of Europe, Opinion no 190/2002 'Code of Good Practice in Electoral Matters', I, 3.3.a, CDL-AD (2002) 23 rev.

<sup>43</sup> The SBE denied registration of certain candidate lists to the Liberal Democratic Party for the 22 July elections and the party shared its concerns with the OSCE/ODIHR EAM indicating that it would file an appeal with the European Court for Human Rights. The OSCE/ODIHR EAM was informed that a female applicant for candidacy attempted to register simultaneously in two electoral constituencies, under her maiden name in one and under her current family name in the other. Article 16 of the LPE stipulates that 'It is not allowed to stand for elections as the candidate ... at more than one constituency for the same election.' Whilst the OSCE/ODIHR EAM was not in a position to assess the case in its entirety, the enforcement of Article 16 alone did not necessitate denial of registration of the prospective candidate(s) as it would have been sufficient to instruct her to choose in which of the two constituencies she would be willing to run and remove her name from the list in the other constituency.

<sup>44</sup> Civil registration.

including a voter registration number, name, family name, mother's and father's name, place and date of birth, and (b) permanent residence address information including district name, *muchtarlik*<sup>45</sup>, street name and house number.

Regulations on voter registration are detailed and mostly appropriate. However, some of the existing regulations appear to be already out of use due to innovations in the system. For example, in accordance with Provisional Article 22 of the LBPEVR, Article 36 of the same law appears to be provisionally suspended. *Consideration could be given to reviewing the relevant provisions of Chapter 3, Part 1 of LBPEVR in the context of these innovations.*

The key innovation represents the implementation of the nationwide system for registration of personal identity. According to representatives of the Ministry of Interior and local and regional authorities, the system has been operational since 2000. The system operates online, linking all 923 districts of Turkey, and the information of the population database is available for official use to some 300 public institutions. It is based on an 11-digit unique personal identity number assigned to each citizen at birth. While representatives of the authorities informed the OSCE/ODIHR EAM that all citizens of Turkey have already been registered in the system,<sup>46</sup> other interlocutors indicated that in some areas of southeastern Turkey considerable numbers of the population may need still to be registered.

A project for development of a nationwide address registration database is ongoing and intended to complement the system for registration of personal identity. When finalized, the new address registration system would improve the quality of voter registration. New legislation on registration of residence addresses is anticipated to be adopted later in 2007.

Citizens currently register their residence address with the *muchtar* (head of the *muchtarlik*) who report registrations to district offices of the Ministry of Interior. Upon change of residence, citizens are obliged to report such a change to the *muchtar* at the previous address. This *muchtar* provides the citizen with a document that certifies departure, which the citizen should present to the *muchtar* of the new residence, constituting registration of the new address.

When elections are called, *muchtars* receive from the chairman of the DEB the draft voter lists for individual ballot box areas, which should be provided for public scrutiny for 13 days.<sup>47</sup> During this period voters can request updates for the draft voter lists but only for his/her record.

During the period for public scrutiny, the *muchtar* has to approve the requested updates, send them on a daily basis to the DEB and, after expiry of this period, return the voter lists to the chairman of the DEB, who makes the final decision on each request. Changes approved by the chairman of the DEB are introduced in the voter register for the district and sent for cross check against possible multiple registrations to the SBE.

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<sup>45</sup> This is the smallest administrative-territorial unit; in rural areas it coincides with the village, while in urban areas it is called 'mahalla'.

<sup>46</sup> According to representatives of the authorities, the system includes some 100 million records of citizens including also records of the deceased.

<sup>47</sup> The chairman of the DEB is simultaneously the Head of the District Voter Registration Office.

According to representatives of the authorities, for the 22 July elections there were 1,232,875 newly registered voters and the records of 1,584,038 voters were updated nationwide.

After the expiry of the period of public scrutiny, changes in voter lists are not permitted. Exceptions are possible in cases where changes have been requested within legal deadlines and are necessary to remedy administrative human error. Such cases are adjudicated by the chairman of the DEB. While representatives of the authorities indicated that there exist both administrative and judicial avenues to tackle human error, Article 34 of LBPEVR does not refer to them.

Voters are not eligible to receive ballots if their names are not included in the respective ballot box voter lists. Voters are not eligible to have their names on voter lists if they have not received their personal identity number, which serves as a major safeguard against possible multiple registrations. These regulations seem restrictive since they do not provide for remedy, on election day, for voters in case of administrative error. *Consideration could be given to providing legal guarantees for voters who have met their civil obligations to be able to vote but who are omitted from the ballot box voter lists due to administrative error.*

## VII. CAMPAIGN ENVIRONMENT

### A. POLITICAL PARTIES

A total of 14 of the more than 50 political parties in Turkey were registered for these elections.<sup>48</sup> The establishment and organization of political parties is regulated by the LPP. The law also includes two chapters on prohibitions and grounds for banning parties, including somewhat vague concepts related to the principles of Atatürk and the basic foundations of the republic.<sup>49</sup> Provisions in part IV of the LPP prohibit campaigning using other languages than Turkish, and parties that claim to represent minority interests may be banned. No parties were banned in the run-up to these elections. In practice, political debate and campaign messages extend beyond the strict limits of the LPP, which points to a relaxation in enforcement of rigid regulations for political discourse in Turkey.

Recent years have seen many efforts to reform the LPP. Despite the fact that the law has been amended 19 times, efforts to achieve a more substantive review have stalled. *In particular, consideration could be given to reviewing the prohibitions listed in part IV of the LPP. The rules regulating the banning of political parties and party finance would also benefit from revision.*

The OSCE/ODIHR EAM heard numerous concerns about the top-down manner in which candidates' lists had been drawn up. Partly due to the limited timeframe available before these early elections, parties did not hold pre-elections or primaries, but reportedly determined candidates by decision of the party leaders. This led to

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<sup>48</sup> The total number of candidates was 7,535.

<sup>49</sup> Articles 78 to 97.

frequent calls for more internal party democracy, a principle generally laid out in the LPP.<sup>50</sup>

In addition to the political parties, 699 independent candidates competed. While many of these did not have party affiliation, a considerable number were fielded by political parties that did not expect to reach the 10 percent threshold. This approach was used throughout Turkey – for example by the ‘Great Union’ and ‘Motherland’ parties – but was widely used by politicians based in the Kurdish community in southeast Turkey. The Democratic Society Party (DTP), which had participated in 2002 as DEHAP but failed to pass the threshold, ran only through ‘independent’ candidates in this election.

## **B. CAMPAIGN**

The campaign was conducted in a polarised atmosphere with marked party differences. Generally, all contestants had ample opportunity to reach voters with their political platforms and messages, with the media playing a particularly important role<sup>51</sup>. Campaign outreach also included classical forms of street canvassing, rallies and door to door campaigning. During the official campaign period of the last ten days before election day, parties and independent candidates were assigned locations and time slots for campaign rallies by the electoral authorities. Despite minor complaints, parties and independent candidates had fair access to these campaign slots.

Campaigning takes a number of forms in Turkey. Apart from rallies, the most visible aspect of the campaign is the widespread decoration of public places and streets with flags and party banners. Parties put up these flags by themselves after receiving permission from the relevant DEBs. On occasion, controversy ensued from the perceived or actual violation of relevant regulations. All these flags had to be removed on the eve of election day.

Of the principal competing parties, the ruling AKP organized its campaign around a large number of campaign rallies, covering almost all provincial capitals and mobilizing its formidable membership and local branches to maximize grassroots’ reach across the country. In rallies and campaign messages, the AKP underlined its record of economic stabilization and improvement in living standards, as well as infrastructure development, in particular in rural areas. At times, this appeared to blur the distinction between government, public funds and institutions and the ruling party itself.

The main opposition party, the CHP, avoided major rallies and based its campaign on the argument that the incumbent government had used its powers to erode the basic principles of the Atatürk republic. The CHP had formed a pre-electoral alliance with the Democratic Left Party (DSP) and included a number of DSP candidates in its lists. The CHP evoked the spirit of the mass rallies which had taken place in May 2007, which had been organized by civil society groups close to the party’s ideology of strict application of the secularist and republican principles of Mustafa Kemal Atatürk.

The Nationalist Movement Party (MHP), which failed to clear the 10 percent threshold in 2002, based its campaign on a platform of populist nationalism with xenophobic overtones, with a particular focus on the issue of terrorism. Its most publicized

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<sup>50</sup> Article 93 of the LPP.

<sup>51</sup> See Section VIII.



campaign contribution was the display of a noose in campaign rallies, combined with accusing the AKP government of not having executed Abdullah Öcalan.<sup>52</sup>

The 57 'independent candidates' associated with the Democratic Society Party (DTP) targeted the votes of citizens of Kurdish origin in 44 provinces. While the party did not campaign as such, independent candidates of the DTP had joined an ad hoc alliance with other smaller parties, whose representatives were also running as independent candidates. This platform, called '1000 hopes', used joint websites, logos and campaign materials across the country. In order to maximize their number of seats, the DTP made a major effort to minimise lost votes cast for their sponsored independent candidates.<sup>53</sup>

Less influential parties, including the Democrat Party (DP) and the Young Party (GP), which both had received state funds for their campaigns, as well as the Felicity Party (SP), were also very visible during the campaign period, through the appearance of party leaders on television, in rallies, and through campaign materials, flags and posters across the country.

The official campaign period begins ten days before election day. The principal purpose of this provision appears to be to set the context for the enforcement of the prohibition for incumbent office-holders from using state-owned resources, staff and facilities for campaigning, and official ceremonies for the purposes of electioneering.<sup>54</sup> These actions become an offence only during the ten days before election day. In the context of months-long campaign periods, such restrictions for only ten days may be of limited value. *The limitation of the official campaign to a ten day period could usefully be reviewed with a view to ensuring as equitable conditions as possible for all electoral contestants.*

### C. CAMPAIGN FINANCING

Whilst the financing of political parties is regulated in the LPP, there are no legal provisions for separate regulation of campaign-related finances of political parties and independent candidates, and expenditures for election campaigns are not limited. In practice, candidates are expected to finance a considerable amount of their campaign expenses either out of their own assets or through funds they gather from other sources.

Among the various sources of funding for political parties, state funding provided by law through the general budget represents the most significant. Parties which achieved at least seven percent of the total vote in the previous elections are eligible to receive state funds on an annual basis, and special payments are made in election years. The funds are distributed in proportion to the size of the vote of the party. An additional rule which had allowed parties with more than 20 seats in parliament to receive state funding (such as those which formed a caucus through post-election changes to the party affiliation of parliamentary deputies) was abolished shortly before the election.

<sup>52</sup> Abdullah Öcalan is the imprisoned former leader of the PKK, who was sentenced to death in 1999 for terrorist offences. PKK is the Turkish abbreviation of the 'Kurdistan Workers Party'.

<sup>53</sup> Their strategy was to split electoral constituencies informally into sub-areas, often equating to administrative districts, with each 'independent' candidate campaigning mostly in one such sub-area. The strategy tried to ensure that each 'independent' candidate received as many votes as was sufficient for his or her election, rather than risking popular candidates gaining excessive numbers of votes, thus depriving less popular ones from sufficient support to gain election.

<sup>54</sup> Articles 64, 65 and 66 of the LBPEVR.

This effectively prevented the ANAVATAN party from obtaining this resource. The party based its decision to withdraw from the elections partly on this factor.<sup>55</sup>

Political parties are bound by the provisions of the LPP as regards the general sources of their incomes and purposes of expenditures. The Constitutional Court is responsible for receiving annual financial statements from the parties, but has no means of auditing actual party finances in an effective manner. There is also no provision for financial accountability, transparency or audit for independent candidates. The absence of an effective mechanism of thorough financial audit, transparency of party finances or campaign expenditures leads to uncertainty with regard to the sources, channels and purposes of election related expenditures. *Consideration should be given to further regulating campaign finance and putting in place effective and transparent audit mechanisms, which would contribute to ensuring equitable conditions for all electoral contestants.*

## VIII. MEDIA

### A. REGULATORY FRAMEWORK

Turkey has dynamic and diverse broadcast media. There are currently 23 national, 16 regional and 212 local television enterprises broadcasting terrestrially, together with 1084 radio broadcasters. The LBPEVR and LEBRTV establish the basic legal framework for media coverage of the elections.

The LEBRTV tasks the SBE to regulate broadcasters during the campaign and to set out parameters and procedures for the coverage of the elections in the electronic media. In line with the regulations, on 4 May 2007 the SBE issued a decision reiterating the broadcasting standards in Article 4 of the LEBRTV, which require, *inter alia*, equality of opportunity for political parties and unbiased coverage. Broadcasters are also forbidden from violating ‘the existence and the independence of the Turkish Republic, the territorial integrity of the State, the reforms and principles of Ataturk’.<sup>56</sup>

*Article 4 of the LEBRTV lays down a wide range of broadcasting restrictions, which provide opportunities for arbitrary interpretation and lack of clarity in the meaning of the law. Restrictions on the content of what may be broadcast should be more clearly defined to avoid uncertainty and be limited to a necessary minimum.*

Specific rules for the allocation of free airtime are determined by the LBPEVR. Starting from the seventh day before polling the public broadcaster Turkish Radio and Television Corporation (TRT) is required to provide each party contesting the elections with the opportunity to broadcast two 10 minute slots free of charge on radio and television, to be used on separate days. Parties having a group in the TGNA are entitled to an additional 10 minute slot, with a further 20 minutes allocated to the party in power or senior partner in coalition government and 15 minutes for minor partners. The main opposition party has the right to an additional 10 minute slot. Allocation of free airtime for independent candidates is not envisaged in the regulations. Paid advertisements for

<sup>55</sup> While the ANAVATAN had not obtained sufficient votes to surpass the 10 percent threshold in 2002, it had formed a group in the outgoing parliament due to defections from other parties.

<sup>56</sup> Article 4a of LEBRTV and see Section IV B above.

parties and candidates in the electronic media are prohibited during the election period which began on 4 May.

The OSCE/ODIHR EAM received allegations from a number of contestants that some local media asked for payments to grant news coverage.

Throughout the election period, the broadcasting authority, the Radio and Television Supreme Council (RTÜK), is tasked with monitoring national private broadcasters for infringements, including unbalanced coverage. Local TV and radio stations are overseen by personnel at the Ministry of Interior's Provincial Security Directorates. The RTÜK monitoring department reports on violations to the SBE, which is empowered to impose sanctions on national broadcasters, whilst PEBs can sanction local TV and radio stations, when receiving details of an infringement. The SBE and the PEBs also act upon complaints by candidates and parties.

Since May 2002 the responsibility for monitoring TRT has been transferred to the internal Broadcast Control Board of TRT, which applies a pre-broadcast control mechanism, rather than post facto monitoring of programming.

As a result of its monitoring, RTÜK reported on a number of violations to the SBE, which issued warnings and imposed programme suspensions on national broadcasters in accordance with Article 149a of the LBPEVR. Besides the decisions taken on the basis of RTÜK reports, the SBE received and considered complaints from political parties on unbalanced or illegal coverage.

At the national level 12 TV channels received a warning for violations, all of them for biased and unbalanced coverage or for broadcasting political advertisements during the campaign period. Of the 12 broadcasters warned, 7 were sanctioned with programme suspensions due to repetitions of the violations. A few local broadcasters received sanctions from the relevant DEBs. *For future elections the RTÜK should consider publishing reports of media monitoring to enhance confidence and transparency.*

As with other decisions of the SBE, those concerning broadcasting cannot be contested through a judicial appeal mechanism (see Election Administration, Section V. B).

Print media are free from any regulation on campaign coverage or access obligations and the majority of regulatory measures apply solely to the audiovisual media, including the ban on paid political advertising.

## **B. FREEDOM OF EXPRESSION AND THE MEDIA**

A number of interlocutors from the media expressed concern to the OSCE/ODIHR EAM about the impact on media freedom of the legal provisions contained in Article 301 of the Turkish Penal Code concerning the denigration of Turkishness, the Republic and the foundations and institutions of the state, the violation of which may lead to up to three years imprisonment. Although the OSCE/ODIHR EAM did not receive any direct reports alleging intimidation or pressure on journalists during the election campaign, the threat of sanctions under Article 301 contributes to an environment in which journalists are likely to exercise self-censorship, and generally constrains freedom of expression. *Restrictions on freedom of expression should serve a legitimate*

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*purpose and be proportionate to it. Legal provisions should not leave margins of interpretation which might lead to self-censorship.*<sup>57</sup>

Shortly before election day the press freedom organization BIA<sup>58</sup> issued its quarterly media report on legal actions against journalists indicating that ahead of the elections (from April to June 2007) 12 court cases under Article 301 were ongoing, five cases were brought under Article 216 (“inciting enmity or hatred among the population”) and four cases under Article 7 of the Law on Anti-Terrorism for spreading propaganda for a terrorist organization. In mid-July BIA reported on the case of a pro-Kurdish newspaper *Gündem* which was closed for 15 days for spreading PKK propaganda in an article on the pre-election period in Batman, a province in the southeast of Turkey.

### C. MEDIA MONITORING

On 30 June, the OSCE/ODIHR EAM commenced monitoring of the major broadcasters, covering the prime-time broadcasts of TRT1, and of four private national stations (three mainstream channels ATV, Kanal D and Show TV, and the news channel NTV).

The private TV channels which were monitored covered the campaign predominantly in their news output, with few other informative political programmes. The news channel NTV provided broader coverage of the elections, offering a wider range of formats, including political talk shows and panel discussions with experts. These programmes principally tended to be a forum for representatives of parties which were expected to pass the 10 percent threshold.

There was no televised debate between the main political leaders on the monitored national channels. Media representatives suggested that some politicians were reluctant to participate in televised debates, particularly the prime minister who declined their invitations for a final debate with other political leaders.

The public broadcaster TRT complied with the legal provisions for allocation of free airtime. Outside the free airtime and the coverage provided in its newscasts, TRT offered an election programme on its second channel, which consisted of interviews with political leaders and candidates. Voter education spots prepared in co-operation with the SBE were aired shortly before election day on the TRT channels.

In its distribution of time in news reporting, TRT1 gave 40 per cent of its political coverage to the ruling party AKP, including to members of the government in their capacity as ministers. The channel provided 23 per cent of its political news coverage to the principal opposition party CHP, while the MHP and DP respectively received 14 per cent and 16 per cent respectively.

In their news programmes, NTV, ATV and Kanal D paid the highest attention to the representatives of the ruling party/government (respectively NTV 49 per cent, ATV 46 per cent and Kanal D 44 per cent). The second most-featured political party by the three

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<sup>57</sup> See Section IV B above.

<sup>58</sup> BIA is a project initiated in 2003 and funded mainly by the European Union’s Initiative for Democracy and Human Rights. The purpose of the project is establishing a countrywide network in Turkey for monitoring and covering media freedom and independent journalism.

channels was the CHP, with NTV giving the party 21 per cent of its political time, ATV 20 per cent and Kanal D 15 per cent. The MHP and DP were the third and the fourth parties in terms of attention received.

The privately owned broadcaster Show TV displayed a different pattern in its news coverage, devoting 61 per cent of its time to the AKP/government (including a long interview with the prime minister aired in its newscast), 9 per cent to the independent candidates collectively, and 7 per cent to the GP. The DTP, CHP and MHP each received 5-6 per cent of the political coverage in the prime time news. The tone of news coverage in the private broadcast media was predominantly neutral.

Throughout the election period on the private channel ATV, Ibrahim Tatlıser, a popular presenter and a candidate for the GP, continued his weekly entertainment show, the Ibo Show. Mr. Tatlıser's case was not an isolated one. The RTÜK, after consultation with the SBE, stated that appearances by actors, singers or other entertainers as candidates presenting programmes could continue, but no political communication on election-related issues or propaganda was to be allowed. *Actors, presenters or other media professionals presenting TV programmes whilst running for elections, should be assigned such duties as not to gain unfair advantage from their media exposure.*

The print media published columns and commentaries containing a wide range of political opinions. Newspapers provided voters with information on campaign activities and events, as well as interviews with leading political figures. Parties and candidates placed paid political advertisements in the newspapers, with some of the parties engaging in negative campaign advertisements.

Information about parties and candidates was also available in internet versions of newspapers and on main news portals. Electoral contestants used the web to convey their messages and political advertisements were posted extensively on web pages. Numerous videos were posted on the popular video-sharing website YouTube, including clips promoting parties and parodies mocking parties' leaders. Apart from some criminal provisions, the use of the internet for the electoral campaign is unregulated and unmonitored.

## IX. PARTICIPATION OF MINORITIES

This assessment of the participation of minorities in the electoral process is conducted in line with the OSCE/ODIHR guidelines.<sup>59</sup>

The Constitution of Turkey makes no reference to minorities. Turkey recognises religious minorities, in line with its interpretation of the 1923 Treaty of Lausanne, and it grants the status of 'minority' only to its non-Muslim population, interpreted as Orthodox Christians who are largely Greeks and Armenians, and Jews.<sup>60</sup> Turkish citizens of Kurdish origin and other ethnic, linguistic or cultural minorities are not recognized as such under Turkish law. With regard to the OSCE, Turkey has made the

<sup>59</sup> OSCE/ODIHR Guidelines to assist national minority participation in the electoral process, Warsaw 2003. These guidelines are elaborated on the basis of the 1999 Lund recommendations on the Effective Participation of National Minorities in Public Life.

<sup>60</sup> According to unofficial estimates there are some 60,000 Armenian Orthodox Christians, 26,000 Jews and 5,000 Greek Orthodox Christians in Turkey.

reservation that the term ‘national minorities’ used in key OSCE instruments for the protection of minority rights should refer only to those recognized under the Treaty of Lausanne.<sup>61</sup>

Since the official population census in Turkey does not include questions on ethnicity or language, there is no statistical data available on the size of such minorities or their whereabouts. Unofficial estimations vary significantly, but there is agreement that Turkish citizens of Kurdish origin comprise the largest group, centred in eastern and southeastern Turkey.<sup>62</sup> Other groups include the Roma, the Laz, the Circassians and the Alevi.<sup>63</sup>

The OSCE/ODIHR EAM met Roma and Assyrian organizations and interviewed a number of candidates of Kurdish origin. While all independent candidates affiliated with the pro-Kurdish DTP clearly identified themselves as Kurds, Turkish citizens of Kurdish origin also ran as candidates in other mainstream parties.

The OSCE/ODIHR EAM noted some positive efforts to enhance participation of Turkish citizens of Kurdish origin in political life. These included non-enforcement of restrictive legal provisions banning political parties which advocate minority rights,<sup>64</sup> and the introduction of amendments to the Broadcasting Law adopted in 2002 and 2003 permitting broadcasting in languages other than Turkish on public and private television stations.<sup>65</sup>

The legislation, however, continues to prohibit the use of languages other than Turkish in the election campaign. Article 81 of the LPP prohibits the use of any other language than Turkish ‘in written material and publications, in statutes and programmes, at party conferences and meetings in the public or closed space, at rallies or in their campaign’. It is explicitly forbidden ‘to use or distribute flags, posters, records, sound and movie tracks, leaflets and announcements’ in minority languages, and political parties ‘may not be indifferent to such acts and practices committed by others’.

These restrictions were widely enforced during the campaign. Independent candidates affiliated with the DTP expressed concerns to the OSCE/ODIHR EAM that the prohibition on the use of languages other than Turkish created unfair campaign conditions for their candidates. Candidates of Kurdish origin from other parties, however, did not seem to share these concerns and preferred to use Turkish in their campaign.

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<sup>61</sup> These instruments include OSCE Commitments under the 1990 Copenhagen Document, in particular Section IV, Paragraph 32, and the OSCE Hague, Oslo and Lund recommendations.

<sup>62</sup> According to unofficial estimates the number of Turkish citizens of Kurdish origin may be up to some 15 million people.

<sup>63</sup> According to unofficial estimates Turkey has some 500,000 Roma, 500,000 Laz, 2 million Circassians and 12 to 15 million people belonging to the religious community of the Alevi.

<sup>64</sup> According to Article 81a of the LPP, no political party may advocate minority rights (‘claim the existence on Turkish territory of a minority’) or promote the use of a minority language.

<sup>65</sup> On 25 January 2004 a directive issued by RTÜK came into force further detailing the implementation of the reforms. The directive establishes time restrictions for broadcasts in other languages, limiting broadcasting to a maximum of one hour per day and not exceeding a total of five hours per week for radio, while for TV channels a broadcast maximum of 45 minutes daily and a total of 4 hours per week is permitted. The directive also restricts the right to broadcast in languages other than Turkish to national public and private broadcasters and does not allow regular regional and local broadcasts before the completion of a survey on the audience profile.

During the elections, TRT continued broadcasts of radio and TV programmes in five languages and dialects other than Turkish including Bosniac, Arabic, Circassian and the Kurdish dialects of Kirmanci and Zaza. These broadcasts consisted of short news, documentaries, sport and music.

The OSCE/ODIHR EAM met the private broadcaster the Diyarbakir-based Gün TV, one of 4 local media which had obtained a licence to broadcast in the Kurdish language. During the election period Gün TV broadcast editorial news, TV debates among candidates and ran a special programme devoted to women's participation in the elections. Gün TV offered broadcast time to the Diyarbakir PEB for airing voter education programmes in the Kurdish language, but the election authorities declined the offer.

More generally there are no national voter education programmes undertaken in Kurdish or other minority languages.

In the Diyarbakir and Batman provinces, the OSCE/ODIHR EAM noted the use of Kurdish lyrics in songs accompanying campaign messages from loudspeakers of campaign vehicles and at openings of campaign events. Electoral authorities at the district level confirmed to the OSCE/ODIHR EAM that limited use of Kurdish in the campaign was widely accepted 'as long as nobody complained'. However, some candidates reported to the mission that the police in a few instances attempted to confiscate campaign compact discs from candidates because of the use of Kurdish lyrics in their campaign messages.<sup>66</sup>

*Efforts should be continued to further enhance the participation of persons belonging to minorities in political life. Consideration should be given to reviewing legislation to comply fully with OSCE Commitments, and endorsement of other relevant international instruments could enhance minority participation in the electoral context.*

## **X. PARTICIPATION OF WOMEN**

Turkey ratified the UN Convention on the Elimination of Discrimination Against Women (CEDAW) in 1985 with some reservations. While significant improvements have been made with regard to relevant constitutional, civil and penal law provisions in recent years, women's representation in the TGNA had remained extremely low. Since women were granted the rights to vote and to be elected in 1934, the average representation in the parliament was some 2 per cent.

In this context, one of the notable outcomes of the elections was the doubling of the number of women members of the TGNA from 24 to 50 (from 4.3 per cent to 9.1 per cent). Whilst still low by international comparison, the figure represents significant progress. The campaign saw frequent discussion of women's interests and contributions, and women candidates were given high visibility during the campaign

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<sup>66</sup> One such incident took place 6 July 2007 in the Ergani district of the Diyarbakir province during the campaign of independent candidate Mr. Demirtaş. Later the same day police returned the compact discs to his lawyers at their request and the candidate was able to continue airing Kurdish lyrics. Another case was reported in the local press in Diyarbakir on 12 July.

period. The role of women's organisations and advocacy groups appears to have made a significant contribution.

Some 4,912 women (19 per cent of the total number of applicants), applied to political parties for candidacy, and 1,261 (18 per cent of the total number of candidates) were selected. These figures indicate that the interest among Turkish women in entering politics is significantly higher than their actual level of representation. There appears to be potential for raising women's participation in politics to the levels attained by women in other sectors of Turkey's society.

Some political parties made efforts to increase the numbers of female candidates elected, although few were placed in the first three ranks on the respective constituency candidate lists. The AKP had 62 women candidates (11 per cent of the total number of its candidates) with 12 women candidates in the top three positions on its constituency lists. The AKP increased its number of women MPs from 13 to 30. The DTP, participating indirectly through 'independent candidates', adopted a quota for women and did not charge a registration fee for women candidates; approximately a third of its newly elected MPs are women. CHP had 52 women candidates (9 per cent), and 10 won mandates. However, MHP had only 34 women as candidates (6 per cent) and only two of MHP's 70 MPs are women.<sup>67</sup>

In the electoral administration, there is no female member of the SBE. Women appear to be better represented in the DEBs, and well represented at the BBC level, in particular in western regions and urban areas.

With regard to voting, most women can make their choice freely and in secret. In rural areas, and some urban areas, women's dependency on male family members is often high. This can at times be reflected in the manner of voting, in particular where women are challenged by high levels of illiteracy, and family voting reportedly remains a common practice in some areas. *It is recommended that voter education and the training of BBC members be undertaken to eradicate the practice of family voting and ensure that women voters can make an informed choice which protects the secrecy of their vote.*

## **XI. CIVIL SOCIETY ORGANIZATIONS AND DOMESTIC OBSERVATION**

Civil society organizations participated in the wider electoral process in a variety of ways. A number of NGOs implemented programmes related to the elections, such as voter education and political awareness. NGOs including the Human Rights Association (HRA), Turkish Economic and Social Studies Foundation (TESEV), Turkish Democracy Foundation (TDV), the Turkish Parliamentary Monitoring Committee (TUMIKOM), the women's organization KA-DER, Young Civilians and the ARI Movement are working in the direction of strengthening democratic governance in the country, increasing citizens' participation in public affairs and the promotion of political stability.<sup>68</sup>

<sup>67</sup> Figures provided by the NGO KA-DER.

<sup>68</sup> The ARI movement carried out a campaign 'This is my vote' aimed at young people and first time voters, and also offered an interactive "vote matcher" on the internet, an innovation in Turkey.



A number of advocacy groups also contributed to the public debate on issues ranging from health and education to children's rights or environmental issues, seeking to remedy the larger parties' perceived neglect of such policy issues. In addition to these groups, a number of civil society organizations also acted in a more or less openly partisan fashion. These ranged across the political spectrum, and included Kemalist and military-affiliated formations, think tanks, religious communities and human rights groups.

Election law enables observers of political parties and independent candidates to follow the process of voting on election day, the counting and tabulation of votes, and the announcement of results but does not provide for domestic non-partisan observers. At the same time, the NGO community in Turkey seem to take little interest in conduct non-partisan observation. Many attribute this to the notable public confidence in the election administration and procedures. *However, the 1990 Copenhagen Document clearly acknowledges the benefits deriving from domestic observation, and Turkey is encouraged to consider introducing relevant provisions to this effect.*

Civil society organizations could also play a crucial role in further expanding efforts on voter education and assistance, in particular with regard to voters who have weak literacy or linguistic skills. In this context, it was noted that the existing cooperation of the election administration with relevant NGOs with a view to providing voter education to young voters and women is limited. *It is therefore recommended that additional opportunities be created for cooperation between the electoral administration and relevant civil society organizations in order to enhance voter education for categories of voters in need.*

## **XII. VOTING AND COUNTING**

### **A. VOTING**

Although the OSCE/ODIHR EAM did not conduct systematic observation of polling and counting procedures on election day, the OSCE/ODIHR EAM did visit more than 65 BBCs in both urban and rural areas in the provinces of Adana, Ankara, Diyarbakir, Istanbul, and Van. Overall, the atmosphere was calm, and voters were processed efficiently, although queues were common during the early hours of voting.

BBC presidents received guidelines from the SBE covering regulations and duties, training was conducted, and voting materials were received in advance of election day. All levels of the election administration appeared prepared for their role in the election process, and many interlocutors told the OSCE/ODIHR EAM they had previous election experience. Confidence in the role of the judiciary in the conduct of elections was frequently mentioned as a positive attribute.

Computerized voter lists were posted at most ballot box locations. As a voter entered the ballot box area, identity documents were presented and the voter's name was located on the register. A ballot and 'evet' (yes) stamp were given to the voter, who proceeded to the voting booth. After marking the ballot with the stamp, the voter folded the ballot, placed it in an official envelope, and deposited the envelope in the ballot box.

Before leaving, the voter's finger was marked with indelible ink and identity documents were returned.

While some BBCs were better organized and processed voters quickly, others had difficulty locating voters' names on the list. Some voters voted while committee members were still trying to locate their names on the list. *The format of the voter register used on election day could be reviewed to allow BBC's to locate voters' names in a more efficient manner, possibly by compiling the list in alphabetical order by surname.*

In some ballot box locations the voter signed the list before voting, while the LBPEVR explicitly provides that voters sign the polling station voter lists after they have inserted their ballots in the ballot boxes.<sup>69</sup> While there did not appear to be any intent to ignore the procedure or the voter register, the LBPEVR seems to assume that the material evidence for a vote cast is the voter signature on the polling station voter list rather than the envelope in the ballot box.

The LBPEVR includes a specific provision to address the situation during counting in a polling station where there are more envelopes in the ballot box than there are signatures on the polling station voter list.<sup>70</sup> If a discrepancy remains after a number of specific checks, the BBC is required arbitrarily to select a number of envelopes equal to the excess of envelopes over signatures and destroy them by burning, although these might be valid votes. Furthermore, the law does not address the situation where there could be more signatures on the voter list than envelopes in the ballot box. *Consideration could be given to reviewing Article 98 of the LBPEVR to address these issues.*

Certain omissions in the election process should also be noted, specifically the lack of any voter education instructional materials at any ballot box location. Although committee members provided verbal instructions upon request from voters, consistent instructions to voters in the form of signs would improve the election process.

Special assistance for elderly and disabled voters could have received more consideration, in particular when there are physical obstacles, such as stairs, which prevent the voter from entering the ballot box location. Exclusion of assistance to illiterate voters is another matter that could receive more focused attention, particularly in an effort to ensure equal access and information to the electorate.

## **B. COUNTING**

With a maximum number of voters per BBC of 300, counting of the ballots, in most locations, was relatively fast. Even with a turnout of more than 80 per cent, most BBCs finalized their vote counts within an hour of the polls closing. The counting process was open and transparent, with BBCs reconciling unused ballots and envelopes, the number of names signed on the registry, and ballots cast. BBC members appeared to check for invalid ballots while observers watched. Some 2.7 per cent of ballots were invalid overall. However, in a number of instances in which the EAM was present at counting, voter intent as indicated on the ballot was clear, and as allowed in the electoral law, the

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<sup>69</sup> Article 93 of the LBPEVR.

<sup>70</sup> Article 98 of the LBPEVR.

ballot should not have been rejected. *Consideration could be given to reviewing ballot design and conducting more voter education to reduce the numbers of invalid and spoiled ballots in future elections.*

The counting process at the ballot box level required that protocols be signed and sealed in the appropriate envelope for transport to the DEB. However, the OSCE/ODIHR EAM noted occasions where BBC members pre-signed the protocols before any totals were entered. Protocols were also sealed in the bag with the ballots, which created confusion at the DEBs. *Consideration should be given to reviewing procedures for completing the official protocols and training BBCs accordingly.*

All BBC presidents were required to transport the ballots and protocols to the relevant DEB for consolidation of vote totals. Interlocutors at the centres assured the OSCE/ODIHR EAM that the process was secure, but there appeared to be a lack of consistent procedures or security amongst the districts and the computer centres.

*Consideration could be given to reviewing security guidelines and procedures in order to avoid the use of open internet connections at both DEBs and PEBs, to ensure that election results cannot be compromised by potentially unauthorised intervention.*

### C. ANNOUNCEMENT OF RESULTS

Announcement of the results after the counting process is first administered at the DEB level, though BBCs post a copy of the protocol at the entrance of their premises. The protocols of the BBCs are accumulated in the respective DEB. The data of the protocols is processed by the IT centre of the DEB and cross-checked by means of a computer programme. The processed data is automatically integrated into the central system. The updated announcement of the results is therefore done in the press-room of the DEB equipped with a PC and display screen. It is supposed to be integrated into the SBE online server that would allow the display of the updated results on the SBE webpage.

The PEB receives the results from the DEBs by midnight and announces the preliminary results for the province at the beginning of the day after the elections, with a printed protocol of the results for the province posted in the premises of the PEB.

Preliminary results for the electoral constituencies, before votes cast in customs areas were integrated, were posted on the SBE website on 24 July. However, when the SBE published final results for the electoral constituencies on 31 July, it did not provide (a) their breakdown by ballot boxes, and (b) the votes cast for the individual 'independent' candidates.<sup>71</sup> All final results were published in full on the SBE website on 14 August, including by ballot box and administrative district, to complement the 31 July results for the electoral constituencies. *Consideration should be given to providing the final election results in sufficient detail to allow electoral stakeholders to follow the process of review of the preliminary electoral results until final results are determined, in a fully transparent and timely manner.*

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<sup>71</sup> Only the total of all votes cast for 'independent' candidates was provided for each electoral constituency, as opposed to the votes cast for political parties, which were provided for each individual party ([www.y.sk.gov.tr/ysk/index.html](http://www.y.sk.gov.tr/ysk/index.html)). Notably, the preliminary results for the electoral constituencies, announced on 24 July, did include the votes cast for each 'independent' candidate separately, although a breakdown by ballot boxes was not available.

## ANNEX I: RESULTS

### Official Final Election Results including Early Voting at Customs Areas

Total number of registered voters	42,799,303
Total number of votes cast	36,056,293
Total number of valid votes	35,049,691
Total number of invalid votes	1,006,602
Estimate of turnout (percentage)	84.25

### Distribution of valid votes to the political parties and percentages

Name of Party	Vote	Percentage
Bright Turkey Party (ATP)	100,982	0.29
Independent Turkey Party (BTP)	182,095	0.52
Felicity Party (SP)	820,289	2.34
Labour Party (IP)	128,148	0.37
Republican People's Party (CHP)	7,317,808	20.88
The People's Ascent Party (HYP)	179,010	0.51
Freedom and Solidarity Party (ÖDP)	52,055	0.15
Young Party (GP)	1,064,871	3.04
Democrat Party (DP)	1,898,873	5.42
Liberal Democrat Party (LDP)	35,364	0.10
Nationalist Movement Party (MHP)	5,001,869	14.27
Justice and Development Party (AKP)	16,327,291	46.58
People's Labour Party (EP)	26,292	0.08
Turkish Communist Party (TKP)	79,258	0.23
Independent Candidates	1,835,486	5.24

Source: SBE decision #739 of 30 July 2007 as published in the Official Gazette #2659830 of 30 July

### Allocation of Parliamentary Seats

AKP	341
CHP (including DSP)	99
MHP	70
Independents (including DTP)	27
Total	550

## 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](http://www.osce.org/odihr)).