



Office for Democratic Institutions and Human Rights

# REPUBLIC OF AUSTRIA

## PRESIDENTIAL ELECTION

24 April 2016

### OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

22-24 February 2016



Warsaw  
17 March 2016

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**REPUBLIC OF AUSTRIA**  
**PRESIDENTIAL ELECTION**  
**24 April 2016**

**OSCE/ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation from the Austrian Federal Ministry for Europe, Integration, and Foreign Affairs (MFA) to observe the 24 April 2016 presidential election, and in accordance with its mandate, the OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Vienna from 22 to 24 February. The NAM included Dr. Richard Lappin, OSCE/ODIHR Senior Election Adviser, and Mr. Alexey Gromov, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the election. Based on this assessment, the NAM recommends whether to deploy an OSCE/ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with officials from federal institutions and the election administration, as well as representatives of political parties, media, and civil society. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the MFA for their assistance in organizing the visit. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

**II. EXECUTIVE SUMMARY**

Austria is a federal republic consisting of nine provinces. The federal president is the head of state and is directly elected for a six-year term, with a limit of two consecutive terms. The government called the presidential election for 24 April. If no candidate obtains a majority of valid votes, a second round will take place on 22 May.

Presidential elections are primarily regulated by the constitution and the laws on presidential and parliamentary elections. The OSCE/ODIHR has previously assessed the legal framework as providing a sound basis for the conduct of democratic elections. Since the 2010 presidential election, the authorities have addressed a number of OSCE/ODIHR recommendations. However, some are yet to be addressed, including those related to the composition and activities of election boards, the ease of candidate registration procedures, measures to strengthen campaign finance rules, limitations on complaints and appeals, and a lack of provisions for citizen election observers.

Presidential elections are administered by a five-tiered system of election boards and administrative authorities, headed by the Federal Election Board with support from the Ministry of Interior. Election boards at all levels include representatives of parliamentary and non-parliamentary parties. All OSCE/ODIHR NAM interlocutors expressed full confidence in the election administration.

There are some 6.4 million registered voters. All citizens over 16 years of age have the right to vote, except those disenfranchised by an individual court decision for committing specific crimes. Voter registration is passive and administered at the municipal level. Despite the lack of a fully centralized voter register, no concerns were expressed regarding the overall accuracy and inclusiveness of the voter lists.

Eligible voters over 35 years of age may stand for the presidency. Candidates can be nominated by political parties or run independently. Prospective candidates must be supported by at least 6,000 voters. Each voter can only sign in support of one candidate and must do so in person at a municipal office, with a record kept so as to avoid multiple endorsements. Several OSCE/ODIHR NAM interlocutors expressed concerns that the procedure is overly burdensome and may have a dissuasive or intimidating effect on some voters, especially in smaller municipalities.

Election campaigning is largely unregulated at the federal level. Four prospective candidates have signed a voluntary code of conduct by which they committed themselves to limit the period and scale of the campaign, as well as refrain from negative campaigning. No parties raised concerns about their ability to campaign freely, although several interlocutors noted that inflammatory speech targeting national minorities, migrants, and asylum seekers may occur, particularly on social media.

Legislation regulating political party and campaign financing was adopted in 2012. The parties receive significant annual public subsidies, which may be used to finance presidential campaigns. In contrast, independent candidates are not entitled to public funding. Several OSCE/ODIHR NAM interlocutors assessed the EUR 7 million campaign expenditure limit as unduly high and potentially contributing to an uneven playing field. The four candidates have committed themselves to disclose donations before election day and provide a final campaign finance report soon after election.

The media offers a diverse range of views. The media is largely self-regulated with regard to campaign and political coverage. The independent regulatory authority, KommAustria, decides on complaints related to public and private broadcasters. The public broadcaster, enjoying the largest audience share, plans to organize a series of debates among the candidates and provide them with regular opportunities to present their views. Most OSCE/ODIHR NAM interlocutors expressed overall satisfaction with media access and coverage during elections, although some concerns were noted regarding an increased concentration of media ownership.

There are few formal procedures for the submission of complaints to election administration bodies and, in general, complaints can only be resolved after the announcement of final results. Challenges to election results can be filed to the Constitutional Court only by candidate representatives. Notwithstanding, all OSCE/ODIHR NAM interlocutors expressed overall confidence in the impartiality of the complaints and appeals system, positively noting existing checks and balances.

All OSCE/ODIHR interlocutors expressed full confidence in the electoral process and the ability of the election administration to conduct professional and transparent elections. While all OSCE/ODIHR NAM interlocutors welcomed a possible election observation activity, no new issues have been identified since the last elections that would benefit from an assessment by the OSCE/ODIHR. Although some concerns were raised on specific issues of campaign finance and candidate registration, these were not considered by electoral stakeholders as significantly impacting the upcoming election.

Based on this, the OSCE/ODIHR NAM does not recommend deploying an election-related activity for the 26 April presidential election. The OSCE/ODIHR, however, reiterates that a number of its previous recommendations remain valid and stands ready to offer its assistance upon request in a post-electoral follow-up process.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

Austria is a federal republic consisting of nine provinces. The federal president is head of state and formally holds significant powers. Among other responsibilities, the president appoints the federal chancellor and ministers, has the right to dissolve the parliament, and is the commander-in-chief of the armed forces. In practice, however, the president is often expected to follow the recommendations of the government, to act in a consultative manner, and provide moral leadership to the country. The parliament is a bicameral body with a first chamber (*Nationalrat*) composed of 183 deputies, directly elected for five-year terms and a second chamber (*Bundesrat*) of 61 deputies who are indirectly elected via provincial legislatures.

On 28 January, the federal government in agreement with the parliament called the presidential election for 24 April. The last presidential election was held in 2010, when Heinz Fischer was re-elected for a second term in office. The last parliamentary elections were held in 2013 and resulted in six parties elected to the *Nationalrat*: the Social Democratic Party (SPO) with 52 seats, the Peoples Party (OVP) with 47 seats, the Freedom Party (FPÖ) with 40 seats, the Greens with 24 seats, Team Stronach with 11 seats, and the New Austria and Liberal Forum (NEOS) with 9 seats.

Some 30 per cent of members of the *Nationalrat* (MPs) are women, including its president, as are 4 out of 14 ministers. Women have run several times previously for the presidency, but no woman has been elected. Similarly, no woman has served as federal chancellor.

The SPO and OVP have historically dominated the political scene in Austria. All presidents since 1945 have represented one of these two parties or were ran independent candidates. In addition, the majority of the governments formed after 1945 were grand coalitions between these two parties or majority and minority governments of one of the two.

The OSCE/ODIHR previously deployed an Election Expert Team for the 2013 parliamentary elections, an Election Assessment Mission for the 2010 presidential election, and visited the country in the context of the 2009 European Parliament elections.<sup>1</sup>

#### B. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

The president is directly elected for a six-year term, with a limit of two consecutive terms. The president is elected in a two-round majoritarian system; if no candidate obtains a majority of valid votes in the first round, a second round will take place on 22 May between the two candidates who receive the largest number of votes.

The legal framework for presidential elections consists primarily of the 1929 Constitution (last amended in 2014), 1971 Presidential Election Law (PEL, last amended in 2015) and 1992 Parliamentary Election Law (last amended in 2015), as well as several other laws.<sup>2</sup> The 2010 and 2013 OSCE/ODIHR final reports assessed the legal framework as providing a sound basis for the conduct of democratic elections. Recent amendments to legislation were passed with broad parliamentary support and addressed a number of prior OSCE/ODIHR recommendations, including

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<sup>1</sup> See all previous [OSCE/ODIHR election-related reports on Austria](#).

<sup>2</sup> Other relevant laws are the 1953 Constitutional Court Act, the 1947 Prohibition Act, the 1973 Act on the Electoral Register, the 1974 Penal Code, the 2012 Political Parties Act, and the 2012 Federal Act on Financing of Political Parties (FPPA).

new regulations on transparency and accountability of political party and campaign financing; extension of candidacy rights to descendants of formerly regnant families; additional measures to prevent potential abuse of voting cards; and a possibility to appeal administrative decisions related to voter registration to a court. The 2015 amendments also changed the rules related to the return of postal ballots to electoral authorities (see *Voting Methods*).

However, a number of recommendations are yet to be addressed, including those related to the composition of election boards, the transparency of Federal Election Board meetings, the ease of candidate registration procedures, additional measures to strengthen campaign finance rules, and limitations on pre-electoral complaints and appeals. In addition, while election observation by candidate representatives and international organizations is permitted, the law does still not allow citizen observation, at odds with OSCE commitments.<sup>3</sup>

### C. ELECTION ADMINISTRATION

Presidential elections are administered by a five-tiered system of election boards and administrative authorities, which mirrors the governance structure. The system of election boards includes the Federal Election Board (FEB), 9 Provincial Election Boards (PEBs), 117 District Election Boards (DEBs), 2,100 Municipal Election Boards (MEBs), and some 11,000 Polling Station Boards (PSBs). All the boards are permanent and convene as necessary to administer all types of elections. Parliamentary parties can appoint election board members, while non-parliamentary parties that participated in the previous parliamentary elections are entitled to nominate observers. The law does not provide measures to promote balanced gender representation in election boards. All OSCE/ODIHR NAM interlocutors expressed full confidence in the work of the election administration at all levels.

The FEB is an independent body composed of 17 members, each having a substitute, and chaired by the Minister of Interior. Two members are judges and the remaining members are nominated by the parliamentary parties, in proportion to their number of MPs. Only three women are members of the FEB, including the chairperson. The FEB members are appointed for five years and cannot be members of any other election board. The OSCE/ODIHR NAM was informed that three members of the FEB as well as three substitute members are current MPs. The OSCE/ODIHR has previously recommended restricting elected officials from directly serving on election boards, in order to safeguard the impartiality of the election administration.

The FEB is responsible for registering candidates, supervising the work of all other election boards, and announcing the final election results. Contrary to a prior OSCE/ODIHR recommendation, FEB sessions are not public, which limits the transparency of its work. However, those potentially concerned by a certain decision are invited to attend the respective session. The most relevant decisions are published in the official gazette.

The PEBs, DEBs, and MEBs all consist of nine members and a chair, and PSBs are composed of three members and a chair, each with substitute members. The members are appointed by the legislature or council at their respective level, and the number of members of each party reflects the results obtained locally in parliamentary elections. The chair of each board is the head of the respective local government, except for the PSBs, where the chairs are nominated by the mayor, generally from the municipal administration. The chair of a board is a non-voting member unless

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<sup>3</sup> Paragraph 8 of the 1990 OSCE Copenhagen Document provides that “the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place”.

required to break a tied vote. The PEBs' primary role is to compile the election results. DEBs are responsible for counting postal votes. MEBs certify candidate support documentation, compile the results from polling stations and oversee voter registers. The PSBs organize voting and counting of votes.

Civil servants at each level of government provide assistance to their respective election boards. The Federal Ministry of Interior (MoI) plays a significant role, acting as the secretariat for the FEB. The MoI takes the lead on technical preparations, including producing ballots and other election materials, issuing guidance and training manuals for electoral authorities, and preparing voter education materials. The MFA informs citizens abroad about postal voting. Municipal authorities maintain voter registers and provide operational support for most election day activities.

In order to promote inclusive participation, the authorities undertake specific arrangements for voters with disabilities. People with disabilities can be assisted in the polling stations by a person of their choice in casting their vote. According to the law, at least one barrier-free polling station should be arranged in every municipality (in Vienna, every district), where technically feasible. The MoI and municipalities will prepare special templates for marking the ballots for visually impaired voters and adapt voter education materials to easy-to-read format and sign language. Several OSCE/ODIHR NAM interlocutors commended efforts in Vienna municipality to improve accessibility of polling stations for persons with disabilities, but expressed concerns over access in the rest of the country as well as a lack of campaign materials adapted for people with disabilities.<sup>4</sup>

#### D. VOTING METHODS

Voters can cast their vote in-person at their assigned polling station on election day or by postal ballot from within or outside the country. Addressing a prior OSCE/ODIHR recommendation, the law was amended in 2011 to ensure that postal ballots must be returned by 17.00 on election day. Postal ballots can be returned by mail, in-person or by a person of trust and, since 2016, they can be returned to any PSB or DEB in the country on election day, significantly expanding their potential use. Voters residing abroad may return their ballot by post or deposit it at their embassy or consular representation for return to Austria.<sup>5</sup> Mobile voting is also permitted at prisons, hospitals and for homebound voters.

In order to be able to vote outside of a regular polling station, a voter has to apply for a voting card at the local municipality. While the law obliges the voter to specify a reason for requesting a voting card, the municipalities do not have to verify this reason. After the card is issued, the voter list is marked and the voter is then only allowed to cast a ballot with the voting card. Voters sending their ballot by mail are further required to accompany the ballot with an affidavit attesting that their vote was made personally, confidentially, and without influence.

Alternative voting mechanisms enjoy a high level of trust and popularity in Austria.<sup>6</sup> While potential risks of voting in an uncontrolled environment were recognised by some OSCE/ODIHR NAM interlocutors, no fundamental objections were raised about their use in the upcoming election.

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<sup>4</sup> See also, UN Committee on the Rights of Persons with Disabilities (CRPD) [Concluding Observations on the Initial Report of Austria](#) (13 September 2013), CRPD/C/AUT/CO/1, paragraph 48.

<sup>5</sup> If voters wish to use diplomatic channels for posting back their votes, their ballots are to be delivered to the diplomatic representation at least six days prior to election day for residents in the European Economic Area or Switzerland, or at least nine days prior to election day for the rest of the world.

<sup>6</sup> In the 2013 parliamentary elections, some 635,000 voting cards were issued, and some 574,000 were cast, including some 31,000 from abroad.

## E. VOTER REGISTRATION

According to the constitution, all citizens who have reached the age of 16 by election day have the right to vote provided that they have not had their suffrage rights suspended by an individual court decision.<sup>7</sup> There are no restrictions based on disability.

There are approximately 6.4 million registered voters, including some 40,000 registered abroad. Registration is passive and based on extracts from a Central Population Register that is administered and updated at the municipal level.<sup>8</sup> A government initiative to introduce a centralized voter register has not yet received parliamentary support; however, legal amendments in 2015 did grant the MoI powers to access municipal voter registers, thereby allowing the detection of possible duplicate entries that can be forwarded to the municipalities for their action. While several OSCE/ODIHR NAM interlocutors stated that a fully centralized voter registration system would improve efficiency, no concerns were expressed regarding the overall accuracy and inclusiveness of the voter lists.

For the upcoming election, voter lists will be publicly posted from 15 March for a 10-day period when voters can contest any entry on the list. In case there are mistakes, voters may make a claim at their respective municipality and further appeal a decision to the Federal Administrative Court. The voter lists should be finalized by 5 April. Political parties and representatives of prospective candidates may obtain copies of the voter lists in each municipality for a fee covering their production costs.

There are some 1.2 million non-citizens resident in the country who are not entitled to vote in the election, with those without European Union citizenship also excluded from voting in local elections.<sup>9</sup> Although citizenship is an admissible restriction on suffrage for national elections, there is an emerging trend to grant voting rights for local elections to long-term residents who are not citizens.<sup>10</sup> While the issue is politically divisive, several OSCE/ODIHR NAM interlocutors raised concerns that restrictive rules concerning the acquisition of citizenship and local voting rights leaves a considerable number of non-citizens without effective political representation.

## F. CANDIDATE REGISTRATION

Eligible voters over 35 years of age may stand for the presidency, with the exception of those convicted of a crime and sentenced to prison for more than one year<sup>11</sup> as well as those who have

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<sup>7</sup> This followed the 2010 European Court of Human Rights ruling on the case *Frodl v. Austria*. An Austrian voter may be disenfranchised if imprisoned for more than one year for an offence against the state, army, and supreme state bodies, for electoral fraud, or if imprisoned for more than five years for any crime.

<sup>8</sup> Voters residing abroad can apply for registration until 24 March, and their registration is valid for 10 years.

<sup>9</sup> See data on migration at: [www.statistik.at/web\\_en/statistics/PeopleSociety/population/migration/index.html](http://www.statistik.at/web_en/statistics/PeopleSociety/population/migration/index.html).

<sup>10</sup> See paragraph 3 of the 1996 UN Human Rights Committee General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights. Also, section I.1.1.b of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that “it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence”.

<sup>11</sup> The people, convicted for prison sentence exceeding one year cannot stand as a candidate during the sentence as well as during six months after its completion.



committed an act against the Prohibition Law.<sup>12</sup> Since 2011, in line with a prior OSCE/ODIHR recommendation, descendants of formerly regnant families are no longer excluded from eligibility.

Political parties and groups nominating prospective candidates have to submit an application by 18 March supported by 6,000 registered voters and a payment of EUR 3,600 to partially cover print costs. The FEB will then review the applications and certify that the conditions for nomination are met. The candidates are given three days to correct certain errors or omissions found in the documents. At the time of the OSCE/ODIHR NAM visit, some 20 candidates had declared their intention to stand for election, including 3 women and 3 candidates nominated by parliamentary parties. Several OSCE/ODIHR NAM interlocutors anticipated a competitive election given the wide range of candidates and the lack of an incumbent candidate.

Voters who wish to support a candidate must verify their identity and sign a candidate support form at a municipal office.<sup>13</sup> They then pass the form to their candidate to submit in a package. Each voter can only sign in support of one candidate and the voter register at the municipality will be marked accordingly to avoid multiple endorsements. Most OSCE/ODIHR NAM interlocutors supported the signature threshold as a means to exclude frivolous candidates. However, some expressed concerns that the procedure is overly burdensome and the requirement to visit a municipal office may have a dissuasive or intimidating effect on some voters, especially in smaller municipalities. The OSCE/ODIHR has previously recommended that the candidate nomination process be made more accessible and avoid the possible stigmatization of candidate supporters.

## G. ELECTION CAMPAIGN

Election campaigning is largely unregulated at the federal level. There is no official campaign period and few limitations on campaign methods. The constitution guarantees freedoms of association and assembly, but no one is permitted to make public statements or engage in activities that violate the Prohibition Law. Candidates and political parties should notify local authorities of public events in advance so that adequate security can be provided. Four prospective candidates have signed a voluntary code of conduct for the upcoming election by which they commit themselves to restrict intensive campaigning to the four weeks before election day, limit the number of campaign billboards, and refrain from negative campaigning.<sup>14</sup>

Political parties informed the OSCE/ODIHR NAM that they have already initiated preparations for the upcoming election, with campaign offices operational and campaign strategies being developed. Parties intend to convey their campaign messages via political discussion in traditional and social media, televised debates, and advertisements, as well as through small meetings and canvassing. While presidential campaigns in Austria tend to be more personality-based rather than issue-based, several interlocutors noted that the current influx of migrants may become a central issue. No parties raised concerns about the ability to campaign freely, although several interlocutors noted that inflammatory speech targeting national minorities, migrants and asylum seekers may occur, particularly on social media.<sup>15</sup>

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<sup>12</sup> The 1947 Prohibition Law forbids public expression of pro-Nazi sentiments, display of Nazi symbols or denial of Nazi atrocities. The Constitutional Court has determined that this should be taken into account during the registration of candidates and political parties.

<sup>13</sup> For non-resident citizens, the same procedure applies at embassies and consulates.

<sup>14</sup> On 22 February, the code of conduct was signed by four out of five candidates leading the polls. The FPO candidate declined to sign the code. See: <http://orf.at/stories/2325863/>.

<sup>15</sup> See also, UN Human Rights Committee [Concluding Observations on the Fifth Period Report of Austria](#) (3 December 2015), CCPR/C/AUT/CO/5, paragraph 15.

## H. CAMPAIGN FINANCE

Political party and campaign finance is regulated by the 2012 FPPA and the subsequently aligned PEL, which provide for public and private financing. The parties receive significant annual public federal subsidies totalling some EUR 30 million, which may be used to finance presidential campaigns.<sup>16</sup> In contrast, independent candidates are not entitled to public funding for presidential elections.<sup>17</sup> Parties and candidates may receive donations, monetary and in-kind, from citizens or legal entities, as well as take loans. There is no limit on the amount that can be donated, although certain types are prohibited including anonymous donations exceeding EUR 1,000, foreign and cash donations over EUR 2,500, and any donations from public bodies or state-affiliated entities. Total campaign expenses should not exceed EUR 7 million. Several OSCE/ODIHR NAM interlocutors stated that this limit is unduly high for a presidential election and can contribute to an uneven playing field.

According to the law, candidates and supporting groups are required to submit reports on their campaign income to the Court of Audit no later than three months after election day, while donations above EUR 50,000 have to be publicly disclosed at least one week before election day. As part of the aforementioned code of conduct, some candidates have further committed themselves to disclose donations above EUR 3,500 before election day and to provide a final campaign finance report no later than two weeks after election day as a means to enhance transparency. Political parties supporting a candidate are also required to submit a separate report on their campaign finances related to this election by 30 September 2017, as part of their annual statement of accounts.

The Court of Audit has limited authority to review the reports, although it may require a further independent audit if it considers a report to contain incorrect or inaccurate information. The Court of Audit's findings are forwarded to an Independent Political Parties Transparency Panel (IPPTP), situated within the Federal Chancellery, which is mandated to impose monetary penalties and fines in case of violations. Decisions of the IPPTP can be appealed to the Federal Administrative Court, with the Constitutional Court acting as final instance.

Most OSCE/ODIHR NAM interlocutors considered the FPPA to establish a comprehensive framework for promoting transparent campaign financing and that it addresses some initial recommendations made by the Council of Europe's Group of States against Corruption (GRECO).<sup>18</sup> However, it was widely acknowledged that more could be done to tighten the law and to address prior OSCE/ODIHR and current GRECO recommendations, particularly in respect of rules governing loans and donations from third parties, introducing more timely reporting on campaign financing, strengthening the investigative powers of the Court of Audit and IPPTP, and ensuring an effective and proportionate sanctioning regime.

## I. MEDIA

The media environment offers a pluralistic and diverse range of views. The media is largely self-regulated, including with regard to the coverage of political parties and election campaigns. The main source of information is television and the public Austrian Broadcasting Corporation (ORF) has the largest television market share. It is followed by a number of German channels, and by the

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<sup>16</sup> See: [https://www.bka.gv.at/Docs/2016/2/23/Parteiengesetz\\_2005\\_2015.pdf](https://www.bka.gv.at/Docs/2016/2/23/Parteiengesetz_2005_2015.pdf).

<sup>17</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document commits participating States to "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination".

<sup>18</sup> See the 2011 GRECO [Evaluation Report on Austria on the Transparency of Party Funding](#) and the 2015 GRECO [Compliance Report on Austria](#).

privately-owned ATV and Puls4. Newspapers play an important role in framing political coverage and enjoy wide circulation. The most read dailies include *Kronen Zeitung*, *Kleine Zeitung Österreich*, and *Kurier*. Regional newspapers are also popular in most provinces. The internet and social media are increasingly being used as sources of political information.

The activities of broadcast and print media are mainly regulated by the 1981 Federal Act on the Press and Other News Media, 1984 Federal Act on ORF, 2001 Audio-visual Media Services Act, 2001 Private Radio Act, 2001 Exclusive Television Rights Act, and 2001 Federal Act on the Austrian Communications Authority. While none of these laws provides specific rules regarding media access and coverage during an election, collectively they require public and private media to comply with fundamental principles concerning freedom of expression, objective news coverage, respect for diversity of opinions, and independence of journalists.

ORF has a general obligation to provide fair and balanced political coverage and plans to cover the upcoming campaign on the basis of newsworthiness. ORF does not offer paid advertising or provide free airtime to contestants, but it will organize a series of debates among the candidates and provide them with an opportunity to present their views during news and political programmes. According to ORF, it will regularly publish data regarding the amount of airtime each candidate and political party receives during the campaign. The independent media regulatory authority, KommAustria, decides on complaints related to public and private broadcasters, which can be appealed to the Federal Administrative Court.

Most OSCE/ODIHR NAM interlocutors expressed overall satisfaction with media access and coverage during elections, although some concerns were noted regarding an increased concentration of media ownership and the impact this may have on the diversity of political views in the media.

## **J. COMPLAINTS AND APPEALS**

The complaints and appeals process is regulated by electoral law, the Constitutional Court Law, and the Administrative Court Proceedings Law. There are few formal procedures for the submission of complaints to election administration bodies and, in general, complaints can only be resolved after the announcement of final results. Notwithstanding, all OSCE/ODIHR NAM interlocutors expressed overall confidence in the impartiality of the complaints and appeals system, positively noting existing checks and balances.

Voter registration is the only area where election-related complaints are allowed prior to election day. These complaints should be submitted to the respective municipal administration by 24 March and resolved by 30 March. Following recent amendments and in line with prior OSCE/ODIHR recommendations, such decisions can be appealed to the Federal Administrative Court within two days, with a final decision made within four days.<sup>19</sup> The OSCE/ODIHR has previously recommended that additional election-related complaints be open to judicial review prior to the announcement of the final results.<sup>20</sup>

Challenges to the election results can be made to the Constitutional Court within one week of their announcement. Such complaints can only be filed by candidate representatives, which is at odds

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<sup>19</sup> A complaint on voter registration issues can be additionally filed to the Constitutional court if it is framed as a violation of a fundamental right, but this can only be done after the election.

<sup>20</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”.

with a prior OSCE/ODIHR recommendation.<sup>21</sup> The Constitutional Court shall decide on a complaint within four weeks and its decisions are final. A challenge of election results will only be granted if the violation affected the outcome of the election; in this case the only available remedy is to annul election results partially or fully. The Constitutional Court informed the OSCE/ODIHR NAM that it has never accepted challenges against presidential election results but had cancelled a number of local elections when it found that irregularities affected the election results.

#### **IV. CONCLUSION AND RECOMMENDATION**

All OSCE/ODIHR interlocutors expressed full confidence in the electoral process and the ability of the election administration to conduct professional and transparent elections. While all OSCE/ODIHR NAM interlocutors welcomed a potential election observation activity, no new issues have been identified since the last elections that would benefit from an assessment by the OSCE/ODIHR. Although some concerns were raised on specific issues of campaign finance and candidate registration, these were not considered by electoral stakeholders as significantly impacting the upcoming election.

Based on this, the OSCE/ODIHR NAM does not recommend deploying an election-related activity for the 26 April presidential election. The OSCE/ODIHR, however, reiterates that a number of its previous recommendations remain valid and encourages the authorities to also consider the issues raised by interlocutors in discussions with the OSCE/ODIHR NAM. The OSCE/ODIHR stands ready to offer its assistance upon request in a post-electoral follow-up process.

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<sup>21</sup> Section 3.3.f of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that “all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections”.

## **ANNEX: LIST OF MEETINGS**

### **Federal Ministry for Europe, Integration, and Foreign Affairs**

H.E. Ambassador Christian Strohal, Head, Permanent Mission of Austria to the OSCE  
Martin Hojni, Deputy Head, Permanent Mission of Austria to the OSCE  
Georg Christian Lack, Head, Human Rights Unit  
Karl Russmann, Specialist, Expatriates Abroad  
Ruth Gursch-Adam, Senior Assistant, Permanent Mission of Austria to the OSCE

### **Federal Ministry of Interior**

Robert Stein, Head of Department, Electoral Affairs  
Gregor Wenda, Deputy Head of Department, Electoral Affairs  
Sylvia Sostero, Senior Specialist, Electoral Affairs  
Renate Strohmaier, Senior Specialist, Electoral Affairs  
Oliver Wrabec, Specialist, Electoral Affairs

### **Federal Election Board**

Raphael Sternfeld, Member of the Board  
Werner Zögernitz, Member of the Board  
Peter Dachsbacher, Substitute Member of the Board  
Erich Enengl, Substitute Member of the Board  
Bernhard Peer, Substitute Member of the Board  
Robert Schick, Substitute Member of the Board  
Rudolf Schicker, Substitute Member of the Board

### **Constitutional Court**

Stefan Leo Frank, Deputy Director General

### **Provincial Election Board for Vienna**

Christine Bachofner, Head of Department, Vienna Election Registry  
Otto Gmoser, Head of Unit, Vienna Election Registry

### **Independent Political Parties Transparency Panel**

Michael R. Kogler, Deputy Director, Constitutional Service

### **Political Parties**

Mathias Euler-Rolle, Head of Communications, Social Democratic Party of Austria  
Gernot Maier, Political Director, Austrian People's Party, Member of the Federal Election Board  
Johannes Hübner, MP, Freedom Party of Austria, Member of the Federal Election Board  
Gregor Amhof, Freedom Party of Austria  
Stefan Wallner, Secretary General, Green Party  
Christoph Vavrik, MP, New Austria and Liberal Forum  
Karl-Arthur Arlamovsky, New Austria and Liberal Forum, Member of the Federal Election Board

### **Austrian Broadcasting Corporation (ORF)**

Thomas Langpaul, Deputy Head of Department, Internal political affairs

### **Civil Society**

Tina Rametsteiner, Austrian Disability Association  
Konrad Becker, Institute for New Culture Technologies  
Hubert Sickinger, Deputy President, Transparency International – Austrian Chapter