



Office for Democratic Institutions and Human Rights

# PORTUGAL

## PRESIDENTIAL ELECTION

24 January 2021

### ODIHR Election Expert Team Report



Warsaw  
7 June 2021

## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY</b> .....	<b>1</b>
<b>II.</b>	<b>INTRODUCTION AND ACKNOWLEDGMENTS</b> .....	<b>3</b>
<b>III.</b>	<b>BACKGROUND AND POLITICAL CONTEXT</b> .....	<b>3</b>
<b>IV.</b>	<b>ELECTORAL SYSTEM AND LEGAL FRAMEWORK</b> .....	<b>4</b>
<b>V.</b>	<b>ELECTION ADMINISTRATION</b> .....	<b>5</b>
<b>A.</b>	<b>ELECTION MANAGEMENT BODIES</b> .....	<b>5</b>
<b>B.</b>	<b>VOTER REGISTRATION</b> .....	<b>7</b>
<b>C.</b>	<b>CANDIDATE REGISTRATION</b> .....	<b>9</b>
<b>D.</b>	<b>VOTING METHODS</b> .....	<b>10</b>
<b>E.</b>	<b>ELECTION OBSERVATION</b> .....	<b>12</b>
<b>VI.</b>	<b>CAMPAIGN FINANCE</b> .....	<b>13</b>
<b>A.</b>	<b>POLITICAL PARTY AND CANDIDATE INCOMES</b> .....	<b>13</b>
<b>B.</b>	<b>CAMPAIGN EXPENSES</b> .....	<b>14</b>
<b>C.</b>	<b>REPORTING AND OVERSIGHT</b> .....	<b>15</b>
<b>VII.</b>	<b>MEDIA</b> .....	<b>17</b>
<b>A.</b>	<b>LEGAL FRAMEWORK</b> .....	<b>17</b>
<b>B.</b>	<b>COVERAGE OF THE ELECTION CAMPAIGN</b> .....	<b>19</b>
<b>VIII.</b>	<b>RECOMMENDATIONS</b> .....	<b>21</b>
<b>A.</b>	<b>PRIORITY RECOMMENDATIONS</b> .....	<b>21</b>
<b>B.</b>	<b>OTHER RECOMMENDATIONS</b> .....	<b>22</b>
	<b>ANNEX I: FINAL ELECTION RESULTS</b> .....	<b>23</b>
	<b>ABOUT ODIHR</b> .....	<b>24</b>

**PORTUGAL**  
**PRESIDENTIAL ELECTION**  
**24 January 2021**

**ODIHR Election Expert Team Report**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Permanent Representation of Portugal to the OSCE and based on the findings and conclusions of the Needs Assessment Mission (NAM) conducted from 18 to 20 November 2020, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET) to follow the 24 January 2021 presidential election in Portugal. The ODIHR EET focused its work on the legal framework and practices related to election administration and voter registration, the regulation of campaign finance, and electoral coverage and regulation of media.

The election took place under a state of emergency declared by the incumbent president on 6 November 2020, which was continuously extended, due to the COVID-19 pandemic. The government further regulated the state of emergency to introduce additional lockdown measures, closing non-essential services and recommending citizens to stay and work from home, but also established and communicated measures which exempted campaign and electoral activities from restrictions on movement and assembly, to allow the uninhibited conduct of the electoral campaign and the voting process.

The president is elected by a universal, direct, and secret ballot in a single constituency. If no candidate receives at least 50 per cent of valid votes cast, a run-off is held in 21 days between the two candidates that received the most votes. The electoral legal framework is comprehensive, and adequately governs elections, but the election norms are fragmented across a significant number of laws, potentially leading to inconsistent implementation of the legislation and complexities for its review processes. The legal framework was last amended on 11 November 2020 to expand options for early voting and those in self-confinement, which was viewed positively by election stakeholders, despite the adoption close to election day.

Elections are administered by several institutions on the central, district and local levels of public administration together with a three-tiered structure of election commissions. While the Ministry of Internal Administration (MoIA) manages the administrative and logistical preparations for elections, the National Election Commission (NEC) supervises the legality and equity of the overall process. NEC sessions are not public, but the NEC publishes its decisions and detailed meeting minutes. Elected mayors have full discretion in forming polling station commissions (PSCs), without sufficient mechanisms in place to safeguard the impartiality of the selection process. However, ODIHR EET interlocutors did not observe any politicization of PSC member appointments, and reported that mayors took efforts to identify persons with experience. Some municipalities experienced difficulties identifying enough qualified candidates, citing concerns related to the COVID-19 pandemic. PSCs are *ad hoc* bodies and their members did not receive any trainings. Despite these challenges, the election authorities acted professionally and efficiently in organizing the various phases of the process, including novelties introduced amid the pandemic.

The voter register is administered by the MoI, and local registration commissions are responsible for producing voter lists for each precinct. On 9 January, the MoIA published that a total of 10,865,010 voters were registered, of which 1,550,063 (14 per cent) were registered abroad. Since 2018, citizens residing abroad are automatically registered but may opt out of registration. In general, ODIHR EET interlocutors were confident in the accuracy and inclusiveness of the voter register, which benefited from a high level of transparency. However, the law retains provisions

which disenfranchise persons on the basis of intellectual or psycho-social disability, contrary to international obligations.

Candidates can only stand individually, on the basis of supporting signatures from at least 7,500 citizens; political parties and other associations may not formally nominate candidates but may provide financial and other support. The election stakeholders generally perceived the candidate registration process as inclusive and transparent. However, due to overlapping administrative deadlines, the ballot included an unregistered candidate, which could have potentially confused voters. To run for president, the law requires prospective candidates to be of Portuguese descent or certain other conditions of birth, which is at odds with international standards.

Candidates can finance their campaigns from the resources of political parties, from individual donations, and from funds acquired through fundraising activities. The majority of political parties rely predominantly on public financing; donations from legal entities and foreign sources are prohibited. Recent legislative amendments removed income limits from party fundraising events, and the origins of funds accrued at these events are not subject to disclosure, which potentially undermines limits on private donations and detracts from transparency and effective oversight. However, candidates generally avoided organizing such events in this election, due to health concerns related to the COVID-19 pandemic.

All expenses incurred for campaign purposes within the period of six months before elections are considered as campaign costs and must be processed through a dedicated bank account. However, candidates must have a special tax number, issued only after candidate registration, which challenges compliance with reporting procedures. The legality of revenues and expenses must be verified by the oversight entity within one year, but such a prolonged time for verification hinders transparency and public oversight, contrary to international good practice. The oversight entity informed the ODIHR EET that its limited resources do not correspond to the volume of its institutional responsibilities, an assessment which was also shared by several interlocutors.

The media environment is pluralistic and trust in news media remains high. The Constitution protects the freedoms of expression and of the press, envisages equitable coverage of contestants in election campaigns, and contains provisions meant to prevent the concentration of media ownership and to guarantee the independence of public broadcasters. Contrary to international standards, defamation, insult, and slander are considered criminal offences and incur higher penalty if the injured party is a state official or an elected politician.

ODIHR EET interlocutors from political parties and the media evaluated the campaign coverage as generally fair. However, while the special law on electoral coverage aims to protect editorial freedom, in practice it interferes to a significant degree. Overall, the law is overly restrictive and contains unclear and contradictory provisions regarding election coverage and debates.

Many journalists raised significant concerns about statements from a candidate which spread disinformation, promulgated personal attacks against opponents on the basis of their appearance, and constituted derogatory statements about Roma communities and persons living on state subsidies. These inflammatory statements, some of which were described by interlocutors as bordering on hate speech, presented challenges to media in factually reporting on the process and potentially negatively impacted citizens' electoral participation.

Voters had multiple possibilities to cast their ballots; various forms of early and mobile voting were available both in-country and abroad. Most ODIHR EET interlocutors stated that election authorities acted professionally and efficiently in organizing various stages of the process. All voters registered in the country could vote early in any of the 308 municipalities, a week prior to

election day, without providing justification. Some municipalities experienced logistical difficulties in organizing new temporary measures that enabled homebound voting for voters in mandatory self-confinement. Through a last-minute decision by the government, those residing in rest homes were provided a possibility for mobile voting, similarly to those in confinement.

## II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Permanent Representation of Portugal to the OSCE and based on the findings and conclusions of the Needs Assessment Mission (NAM) conducted from 18 to 20 November 2020, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET) to follow the 24 January 2021 presidential election. The ODIHR EET consisted of three experts drawn from three OSCE participating States.

The ODIHR EET focused its work on the legal framework and practices related to election administration and voter registration, regulation of campaign finance, and electoral coverage and regulation of media. Therefore, the report is limited in scope and does not offer an overall assessment of the electoral process. Specific areas under review were assessed for their compliance with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. In line with the ODIHR methodology, the ODIHR EET did not undertake a comprehensive and systematic observation of the election day procedures. This final report should be read in conjunction with the 2020 ODIHR NAM report and a previous ODIHR Election Assessment Mission report which provide additional detail and recommendations on the electoral process in Portugal.

ODIHR wishes to thank the Ministry of Foreign Affairs (MFA), National Election Commission (NEC), Constitutional Court (CC), Ministry of Internal Administration (MoIA), Entity for Political Finance and Accounts (EPFA), and the Regulatory Authority for Media for their assistance and cooperation. The ODIHR EET also wishes to express gratitude to representatives of political parties, media and civil society for sharing their views.

## III. BACKGROUND AND POLITICAL CONTEXT

Portugal is a semi-presidential republic, with legislative powers vested in a unicameral parliament comprising 230 deputies elected for four-year terms.<sup>1</sup> Executive powers are exercised by the government, which also has certain legislative powers, such as exclusive competence to legislate on matters concerning its own organization and functioning. The president, who represents the Portuguese Republic, has certain significant powers, including the discretionary power to dismiss the government, to dissolve the parliament, and to veto legislation, and is the supreme commander of the armed forces.<sup>2</sup> Other competences of the president include submitting issues of national interest to a referendum, declaring a state of emergency, granting pardons and commuting sentences, and requesting the CC to examine the constitutionality of legal norms.

Following the 2019 parliamentary elections, the ruling Socialist Party received the most votes and retained a majority in the parliament with 108 seats, followed by the Social Democratic Party in

---

<sup>1</sup> The two autonomous regions of Azores and Madeira have directly elected assemblies and regional governments appointed by the ‘Representatives of the Republic’ (who are themselves appointed by the president), in accordance with the political composition of the two regional assemblies. The prime minister appoints governors in the 18 mainland districts.

<sup>2</sup> The president’s veto can be overruled by a qualified majority in the parliament.

opposition with 79 seats. The six other parties represented in the parliament were also in opposition and included the Left Bloc (19 seats), the Communist Party (10 seats), the Democratic and Social Centre – People's Party (5 seats), People-Animals-Nature Party (3 seats), Ecologist Party "The Greens" (2 seats), *Chega* (1 seat) and Liberal Initiative (1 seat), as well as two that discontinued affiliation with their nominating parties. In the current parliament, 92 of 230 members (40 per cent) are women.<sup>3</sup>

The election took place under a state of emergency declared by the president on 6 November 2020 due to the worsening of the COVID-19 pandemic, for the duration of two weeks and repeatedly renewed, including on 13 January, during the election campaign. The government further regulated the state of emergency to introduce some lockdown measures, closing non-essential services and recommending citizens to stay and work from home, but also established and communicated measures to allow the uninhibited conduct of the electoral campaign and for voters to freely go to the polls.<sup>4</sup>

ODIHR previously deployed an Election Assessment Mission to the 2009 parliamentary elections in Portugal, which concluded that “the elections were conducted in a manner which reflected Portugal’s established democratic tradition, respect for political pluralism and fundamental freedoms as well as a high level of public confidence in the overall process. Voters enjoyed a wide and genuine choice of political parties. Some aspects of the political system may nevertheless merit review”.<sup>5</sup>

#### IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

The incumbent president establishes the date of the presidential election at least 60 days prior to the election day, which must fall within 60 days of the end of incumbent’s term.<sup>6</sup> The president is elected by a universal, direct, and secret ballot in a single nationwide constituency. If no candidate receives at least 50 per cent of valid votes cast, a run-off between the two candidates which received the most votes is held in 21 days; the candidate who receives the most votes is elected.

Portugal is a party to major international and regional instruments related to the holding of democratic elections.<sup>7</sup> The Constitution guarantees the freedoms of expression, assembly and association and the right to communication and exchange of information. Presidential elections are primarily regulated by the 1976 Constitution and the 1976 Law on the Election of the President of the Republic (LEPR), last amended on 11 November 2020.<sup>8</sup> Other relevant laws include the Law on the National Election Commission, on the voter register, on out-of-country voting, on political parties, on funding political parties and campaigns, on the right of assembly, on the format of

---

<sup>3</sup> In addition, 4 of 16 government ministers and 17 of 40 state secretaries are women.

<sup>4</sup> See the 14 January 2021 government [decree](#) (in Portuguese) that details the lockdown measures including during the election period, in line with the [presidential decree passed in November 2020 and last renewed on 13 January 2021](#).

<sup>5</sup> See prior [ODIHR election-related reports](#) in Portugal.

<sup>6</sup> The Constitution stipulates that in case of a vacancy, the election shall take place within 60 days of the date of vacancy, but not 90 days before or after the election of the parliament.

<sup>7</sup> Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD). Portugal is also a member of the Council of Europe’s European Commission for Democracy through Law (Venice Commission) and Group of States against Corruption (GRECO) and is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Framework Convention on the Protection of National Minorities (FCNM).

<sup>8</sup> The LEPR has since been amended 22 times, most recently in November 2020.

political campaigns on opinion polls, on the rules for public officials, on organization and functioning of the CC, on news coverage and media advertising, as well as administrative and penal legislation. The electoral legal framework is comprehensive and adequately governs elections but is fragmented across a number of laws, directly or indirectly applicable to the presidential election.<sup>9</sup> Due to this fragmentation, there are instances of identical or similar provisions which could potentially lead to inconsistencies in implementation.<sup>10</sup>

ODIHR has previously recommended that the election legislation be consolidated in order to provide ease of access to the norms and a complete legislative overview and thus increase transparency. Although both the NEC and the Ministry of Internal Administration (MoIA) maintain comprehensive online repositories that, among other election resources, include all applicable legislation, many ODIHR EET interlocutors suggested that the consolidation of election legislation would reduce unnecessary complexities that can complicate the process of reviewing and updating the laws and their implementation.<sup>11</sup>

*The authorities should consider consolidating the election legislation to avoid inconsistencies and to increase its accessibility and transparency.*

On 11 November 2020, legislative changes were introduced which expanded the possibilities for early voting and allowed for voting in self-confinement (see *Election Management Bodies and Voting Methods*). While these changes were made less than two weeks before the election was called and well into the pre-election period, most ODIHR EET interlocutors regarded the changes positively and deemed them necessary to adapt procedures to the COVID-19 pandemic.

Some prior ODIHR recommendations, including those applicable to the presidential election, remain unaddressed, including the disenfranchisement of persons with intellectual and psychosocial disabilities, lack of timely remedy for media-related complaints, and lack of provisions for citizen and international observation of the work of election management bodies and the polling process.

## **V. ELECTION ADMINISTRATION**

### **A. ELECTION MANAGEMENT BODIES**

The election was administered by several institutions on central, district and local levels of public administration and by a three-tiered structure of election commissions. The General Secretariat of the MoIA manages the logistical preparations for elections, and maintains various administrative management systems, including for voter registration and election results management. The MoIA is also responsible for providing public information, including voter education spots and information to voters about unimpeded access to polling stations despite general limitations on movement due to the COVID-19 pandemic, which according to many ODIHR EET interlocutors, was effectively disseminated through media. It also produced and disseminated manuals for use by polling station commissions (PSCs) related to early voting and election day processes. The MoIA

---

<sup>9</sup> For example, 12 different laws were taken into account in order to establish the [election calendar](#) for this election.

<sup>10</sup> For instance, certain provisions governing candidate registration are included in both the LEPR and the Law on Constitutional Court. In another example, some campaign finance provisions are both in the Law on Financing of Political Parties and Campaigns and the Law on the Organization and Functioning of the Campaign Finance Supervisory Body.

<sup>11</sup> In February 2021, after the reporting period of the ODIHR EET, the parliament initiated a working group for the consolidation of electoral legislation, comprising representatives of parliamentary political parties.

informed the ODIHR EET of some organizational challenges due to the COVID-19 pandemic, but interlocutors generally reported that these did not lead to any significant issues. The MoIA also reported that it dispatched substantial and sufficient quantities of election supplies and personal protective equipment to polling locations in-country and abroad, and, positively, conducted extensive public outreach related to the extraordinary measures in place to enhance the safety of the voting process amid the pandemic. Overall, the election authorities acted professionally and efficiently in organizing the various stages of the process.

The NEC is an independent body tasked with supervising the legality of the overall election process and ensuring that equal opportunities for all election contestants are safeguarded. It also has certain duties in administering elections, including determining the allocation of airtime in broadcast media, promoting voter participation, and publishing the final election results. The NEC is chaired by a Supreme Court judge and includes a representative of each of the parliamentary groups represented in the parliament, as well as representatives of the MoIA, Ministry of Justice and the media regulator.<sup>12</sup> The current NEC was formed in February 2020, following the 2019 parliamentary elections, and has 11 members, including 4 women.

During the election period, the NEC met regularly and considered a variety of issues, often including methodological explanations or interpretations of the election law in response to requests from various election stakeholders. NEC sessions were not public, and meeting agendas were not published in advance, but the NEC published detailed minutes of its meetings on its website (including records of any dissenting opinions), contributing to the transparency of the process.<sup>13</sup> Given the reportedly high level of collegiality among the NEC members and their informative website, NEC members informed the ODIHR EET that they see no additional benefits in holding public sessions. However, given the lack of possibility for observation by the civil society, as well as representatives of candidates who do not have representation in any of the parliamentary groups, open sessions should be considered to allow for full transparency (see also *Election Observation*).

*The NEC should consider meeting in sessions that are open to the public. The NEC could also consider publishing the draft agendas of their sessions.*

Entities responsible for the conduct of polling procedures include 308 municipal authorities and a total of 12,287 PSCs (including 160 PSCs in 150 consular departments abroad); tabulation is done at the district level by 22 Tabulation Centre Commissions (TCCs). PSCs and TCCs are *ad-hoc* bodies formed only for the election period. Each TCC is chaired by a judicial representative and comprises a non-voting secretary appointed by the chairperson and 11 members, including 2 jurists appointed by the chairperson, 2 mathematicians appointed by the Ministry of Education and Culture, and 6 chairpersons of PSCs of the respective constituencies, selected by the district court. No formal criteria are in place for selecting these six PEC chairpersons and the practice varies; according to TCCs met by the ODIHR EET, persons with previous election experience are generally selected.

TCCs receive results protocols and other election materials and tabulate the results starting from 09:00 AM on the day after election day; the process may be observed only by candidates or their representatives. TCCs may be established up to one day before they first meet and do not receive any training. Two TCCs informed the ODIHR EET that their first meeting in advance of the

---

<sup>12</sup> Currently, there are seven parliamentary groups in the parliament.

<sup>13</sup> Paragraph 81 of the Explanatory Report of the [2002 Venice Commission Code of Good Practice in Electoral Matters](#) prescribes that “[t]he meetings of the central electoral commission should be open to everyone, including the media (this is another reason why speaking time should be limited)”.



tabulation session was on 25 January, the day after the election, to agree on the process of determination of validity of any contested ballots.<sup>14</sup>

PSCs are comprised of a chairperson, a deputy and three members: a secretary and two clerks. Unlike the parliamentary election law which provides for the nomination of PSC members by political parties, the appointment of PSCs (as well as PSC chairpersons) for presidential elections is the sole discretion of municipal mayors, themselves politically elected.<sup>15</sup> Some ODIHR EET interlocutors described varying practices used by mayors to staff PSCs, including informally consulting political parties or organizing recruitment processes. No interlocutors expressed concerns related to the potential politicization of the process, although some acknowledged insufficient safeguards against such a situation.<sup>16</sup> According to the MoIA, NEC and other interlocutors, the mayors generally took efforts to identify at least one person with previous electoral experience, regardless of the source of their nomination in previous elections, which was aggravated by the fact that such experience is correlated with the risk of COVID-19 due to age.

The law does not require that PSC members receive any form of training related to election day procedures. While most ODIHR EET interlocutors maintained that there would be no significant benefit from trainings, as PSCs received comprehensive manuals, others noted that trainings would benefit less experienced PSCs or new members, and would help PSCs prepare for exceptional events during the polling process and in avoiding technical mistakes in filling out results protocols.

By law, citizens who are appointed as PSC members may not refuse the duty, unless they are over 65 years of age or have a valid justification provided at least three days before the election day.<sup>17</sup> Some ODIHR EET interlocutors alleged several instances in which those serving as PSC members in previous elections were appointed without being initially asked to participate. According to the MoIA, some municipalities experienced difficulties identifying sufficient numbers of qualified candidates for PSC members, mostly due to the health crisis, but also due to the fact that the number of polling stations increased since the last elections, as the maximum number of voters per polling station was reduced from 1,500 to 1,000.<sup>18</sup> On 22 January, the government reported that 15 municipalities reported issues with forming all PSCs.<sup>19</sup> However, according to information provided by the NEC, all polling stations managed to open on election day.<sup>20</sup>

*In order to maintain the impartiality and professionalism of polling station commissions (PSCs), the authorities should review the process of their appointment. Specific measures could be considered, such as mechanisms for mayors to maintain a roster of qualified persons, trainings for prospective PSC members, and eliminating the obligation of citizens to serve on PSCs without prior consent.*

## **B. VOTER REGISTRATION**

All citizens who have reached 18 years of age are eligible to vote, as well as non-citizens who have obtained full political rights of another state in which Portuguese is the official language, unless

---

<sup>14</sup> In Porto and Lisbon.

<sup>15</sup> The PSCs members should be appointed 22 day before election day.

<sup>16</sup> Names of all PSC members are posted at the parish premises within two days of appointment.

<sup>17</sup> Including a confirmed illness, change of residence to another municipality, travel abroad (with proof), or unavoidable professional duty confirmed by the employer.

<sup>18</sup> The total number of polling stations increased by 2,087. According to the information from the NEC, each PSC member received a compensation of EUR 51.93

<sup>19</sup> See for example [an article](#) on the government reporting problems on the formation of polling stations.

<sup>20</sup> By law, the polling process may proceed with a minimum of three members present at all times. By law, in case polling does not occur for any reason, it is organized and conducted the next day.

this right is explicitly revoked by a final court decision for certain grave criminal offenses.<sup>21</sup> The LEPR allows for disenfranchising persons on the basis of intellectual or psychosocial disability.<sup>22</sup>

*The legal framework should be harmonized with international standards by removing any restrictions on electoral rights based on intellectual or psychosocial disability.*

Voter registration is passive for all citizens. The voter registration database (BDRE) is administered by the general secretariat of the MoIA.<sup>23</sup> The BDRE is updated continuously, but it is not possible to update voters' place of registration if they move in the last 60 days before election day.<sup>24</sup> Following 2018 amendments, those residing abroad are also automatically included in the voter register, but may opt out.<sup>25</sup> On 9 January, the MoIA published that a total of 10,865,010 voters were registered, including 1,550,063 (14 per cent) abroad. In general, ODIHR EET interlocutors expressed a high level of confidence in the accuracy and inclusiveness of the voter register.

By law, responsibility for the voter lists for each precinct within a parish lies with a registration commission, which comprises parish council members and designates of political parties represented in the parliament and in the respective parish assembly.<sup>26</sup> However, all changes must be made through an online tool maintained by the MoIA to ensure the consistency of data, interoperability with other source registers, and personal data protection.<sup>27</sup> Voters could check their registration status and the location of their polling station in person at the parish council or by Internet, phone or SMS at any time. Voter lists were also displayed at the parish council office from 39 to 34 days prior to election day. Those who detected an irregularity in their voter records could request a change no later than 34 days prior to the election. Political parties and candidates could request information pertinent to the registration process from the registration commissions and the MoIA and receive electronic or paper copies of the voter lists at their own expense. These combined measures contributed to a high level of transparency in the voter registration process.

---

<sup>21</sup> Reciprocally, citizens of other Portuguese-speaking countries who permanently reside in Portugal may become registered voters and vote in presidential elections. By law, Brazilian citizens who have acquired identity cards as permanent residents are automatically included in the voter register. According to [official data](#), in 2019 151,304 Brazilian citizens were permanent residents of Portugal.

<sup>22</sup> Article 3.2(b) of LEPR disenfranchises persons “who clearly have a limitation or seriously impaired mental functions, even if they are not subject to monitoring, when they are admitted to a psychiatric establishment or declared as such by a board of two doctors”. Paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011 provide that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability”. Paragraph 55 of the [2016 CRPD Concluding Observations on Portugal](#) states that “[t]he Committee is seriously concerned that in the State party there are persons with disabilities, especially those who are deprived of their legal capacity or live in psychiatric institutions, who are deprived of their right to vote or prevented from exercising this right in elections...”. See also articles 12 and 29 of 2006 CRPD.

<sup>23</sup> The voter register is continuously updated based on data from the national civil identification system and data from the Immigration and Borders Service (pertaining to citizens residing abroad). Its maintenance is overseen by the National Data Protection Commission.

<sup>24</sup> In non-election years, the MoIA publishes the voter list totals and breakdown by parishes on 1 March.

<sup>25</sup> All citizens over the age of 17 residing in Portugal are included in the BDRE. Citizens residing abroad (and foreign citizens registered to vote in Portugal) are removed from the register if their citizen’s card expires and not renewed within two years. Citizens abroad can opt out (or opt in if they previously opted out) at the time of obtaining or renewing their citizen’s card.

<sup>26</sup> Parishes are the lowest administrative unit foreseen by the Constitution. Since 2013, there are 3,092 parishes in Portugal. The function of registration commissions abroad is performed by officials of diplomatic representations as organized by the MFA.

<sup>27</sup> Including the security of central servers, data carriers used in the premises of the registration commissions where data is maintained, and access to the premises itself.

### C. CANDIDATE REGISTRATION

Citizens of Portuguese origin at least 35 years of age and registered to vote in the country or abroad are eligible to stand for president.<sup>28</sup> The requirement of descent or specific related conditions for otherwise eligible citizens to stand for president are at odds with international standards.<sup>29</sup>

*To fully adhere to international standards, restrictions on candidacy based on descent or birth should be removed.*

Candidates can only stand individually; political parties and other associations may not formally submit candidacies but may provide financial and material support to candidates' campaigns (see *Campaign Finance*). To be registered, candidates must collect and submit at least 7,500 and not more than 15,000 citizen support signatures to the CC. By the deadline of 24 December 2020, ten prospective candidates submitted their candidacies to the CC.

The support signatures were verified manually by CC staff, by checking a sample.<sup>30</sup> The Court initially rejected two applications: one for being sent informally (over the e-mail) and both for lacking the requisite number of signatures. One of the applicants submitted additional signatures within 24 hours and the other prospective candidate, who initially submitted a total of 11 support signatures, did not submit any additional signatures and was therefore not registered.<sup>31</sup> The rejected candidate had a possibility to appeal the decision but did not do so.<sup>32</sup>

On 28 December, the CC determined the order of the eight prospective candidates on the ballot by drawing lots and communicated this order to the NEC and MoIA. In accordance with the law, this process was conducted before the CC scrutinized the applications and established whether the prospective candidates submitted sufficient numbers of valid support signatures. The same day, the MoIA initiated the process of printing ballot papers, despite the fact that the registration process was ongoing. The MoIA argued that it had to produce the ballots in time for them to be delivered

---

<sup>28</sup> The 1981 Law on Nationality (last amended in November 2020) defines citizens as Portuguese “in origin” based on the parents or grandparents being born in Portugal, citizens of Portugal, or long-term residents of Portugal at the time of the child’s birth, or if the individual in question was born in Portugal to a legally resident parent (or a parent born in Portugal), or was born with no other nationality.

<sup>29</sup> Article 2 paragraph 1 of the [ICCPR](#) guarantees “to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 25 of the ICCPR defines that “[e]very citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions [b] To vote and to be elected at genuine periodic elections [...]”. Paragraph 3 of the [1996 UN Human Rights Committee \(CCPR\) General Comment No. 25](#) on Article 25 of the ICCPR states that “[d]istinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with article 25”. Paragraph 15 states that “persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation”.

<sup>30</sup> For this election, the signatures were collected for each supporter or at minimum for each household on separate sheets to reduce the possibilities for the spread of COVID-19 infection. The Constitutional Court, by its own methodological discretion, decided on a methodology to check 50 per cent of support signatures before accepting an application.

<sup>31</sup> By law, the court had three days to review the formal requirements and establish the list of prospective candidates within 24 hours. Rejected applicants had two days to correct any procedural mistakes or to complete the required documentation, from the moment they were notified.

<sup>32</sup> Rejected applications can be appealed first to the same presiding judge who rendered the decision, which within one day of receiving a notification on non-registration (latest by 5 January for this election). This can be further appealed to the full panel of the court within one day after receiving the final judgement of the presiding judge (latest by 7 January).

for early voting abroad (that started on 12 January) and that they could not wait for the review of applications and the potential complaints and appeals process to be concluded, which could have been as late as 11 January, if all deadlines were fully exhausted. On 4 January, the CC published the final list of seven registered candidates, comprising five men and two women.<sup>33</sup>

ODIHR EET interlocutors generally perceived the candidate registration process as inclusive and transparent, but some stakeholders criticized the fact that the ballot contained an unregistered candidate, which may have confused voters. The NEC and the MoIA explained that this anomaly occurred due to procedural and logistical constraints prescribed by the LEPR.<sup>34</sup> At the same time, they noted that, by law, the ballot could also contain unregistered candidates in case of withdrawals or cancellations.<sup>35</sup>

*The law should prevent possibilities of unregistered candidates being included on the ballot, to reduce the potential for inadvertent invalidation of ballots by voters and voter confusion at the polls. This could be achieved by adjusting electoral or administrative timelines or allowing ballots to be printed on demand in certain cases, such as for early voting abroad.*

#### **D. VOTING METHODS**

Voting in presidential elections is conducted in-person, and voters had multiple possibilities to cast their ballots. In addition to election-day voting at polling stations, early and mobile voting options were available both in-country and abroad.<sup>36</sup>

Following the November 2020 amendments to the election law, municipal authorities were obliged to organize at least one polling station for early voting, with each location serving up to 500 voters.<sup>37</sup> All voters registered in-country (excluding those registered as permanently residing abroad) could vote early in any of the 308 municipalities, without providing a justification, if they completed a request (submitted online or by post) between 10 and 14 of January. According to several ODIHR EET interlocutors, this method of voting was particularly popular among citizens temporarily residing away from their place of permanent registration, especially amid movement restrictions due to the COVID-19 pandemic. However, voters registered as permanently residing abroad, if staying in Portugal during the election period, did not have any possibility to vote.

According to the MoIA, 675 polling stations were organized for 246,922 voters who requested to vote early. Early voting took place on 17 January with a high turnout and in a well-organized fashion, although ODIHR EET interlocutors noted some instances in which voters queued for long periods, sometimes without an understanding or confirmation of the polling station in which they were assigned to vote (i.e. whether they were queuing correctly).<sup>38</sup> Some municipal representatives informed the ODIHR EET that the organization of early voting was challenging due to the short timeframe (three days) between the deadline to apply and the voting day, as they could not anticipate how many polling stations would be required.

---

<sup>33</sup> See the [specimen ballot](#) containing eight names including an unregistered candidate and the [final list of seven candidates](#).

<sup>34</sup> For example, the order of candidates on the ballot is determined prior to establishing whether conditions to stand were met, as well as MoIA imperatives to print and deliver ballots in time for early voting, including abroad.

<sup>35</sup> Candidates could withdraw by 20 January. In case an unregistered candidate was listed on the ballot, a note to that effect was to be posted at the entrance or inside the polling station.

<sup>36</sup> Voting with a postal ballot is available to voters abroad only for parliamentary elections.

<sup>37</sup> In the 2019 parliamentary elections, early voting was organized only in regional capitals, at a total of 29 locations.

<sup>38</sup> Early voting turnout was reported at 80.1 per cent.

Election-day voting for those registered abroad was organized on two days, on 23 and 24 January. Since November 2020, consulates could use electronic voter lists which simplified the handling of voter lists while reducing the ecological impact. In addition, citizens permanently or temporarily residing abroad could also vote early in Portuguese consulates from 12 to 14 January.<sup>39</sup>

On 11 November, in response to the COVID-19 pandemic, temporary provisions were introduced to allow those who have been ordered to enter a compulsory self-confinement in a non-hospital environment to be able to vote through homebound voting. Some municipalities experienced logistical difficulties to organize this process, taking into account complex requirements due to health precautions. Positively, the MoIA provided informational webinars for representatives of municipalities in order to clarify provisions related to early voting, including for these categories of voters.

To vote in confinement (i.e., homebound), voters could register online or at the parish council office through a power of attorney from 14 to 17 January; the voting took place on 19 and 20 January. Voting was made available only to those in self-confinement in the same or a neighbouring municipality of their place of permanent registration. Only voters whose requisite self-confinement period did not expire by election day were given the opportunity to register to vote in this way.<sup>40</sup> However, following a reduction in the period of compulsory self-confinement from 14 to 10 days, and a rudimentary online notification system that did not disclose details in case of a refusal to register, ODIHR EET interlocutors reported some confusion among voters about eligibility. According to the MoIA, of up to some 200,000 citizens in self-confinement, only 12,906 registered for homebound voting. The election administration adopted recommendations from the Directorate General of Health related to disinfecting and transferring the respective ballots and other election materials.

Voters in hospitals and prisons could apply until 4 January to vote in a period from 11 to 14 January.<sup>41</sup> On 8 and 9 January, the incumbent president and the MoIA stated that the government would be announcing a legal and practical possibility for elderly voters residing in residential facilities to vote under the same conditions as those in compulsory confinement; on 15 January, four days before this voting took place, the government formalized the decision. According to the MoIA, up to some 100,000 voters were positively affected by the decision.<sup>42</sup> However, some voters experienced problems registering to vote in this manner due to the late introduction.<sup>43</sup>

*Any measures impacting the exercise of voting rights and the conduct of voting procedures, including with respect to temporary measures such as health-related adjustments, should be adopted well in advance of elections.*

---

<sup>39</sup> A total of 29,153 voters voted abroad, including some 5,400 voters that actively registered as temporarily residing abroad.

<sup>40</sup> To be eligible to register for homebound voting, voters needed to be included on a list provided by the Ministry of Health to the MoIA.

<sup>41</sup> The election process at hospitals and prisons was conducted by mayors or their designated representatives. The MoIA reported a significant increase in participation rates among these categories of voters in this election.

<sup>42</sup> This process was formalized through a [decision](#) of the Ministry of Health which stated that for the purpose of voting, citizens in residential facilities are considered to be in prophylactic isolation as in the case of mandatory self-confinement.

<sup>43</sup> According to the MoIA, some rest homes did not include residents as social security beneficiaries prior to early voter registration, failed to register residents on their behalf, or could not for technical reasons, such as differing addresses for the purpose of social security or for the *de facto* location of the rest home.



Voters that required assistance in casting a ballot due to a physical disability or limited mobility could request assistance from another voter of their choice. Some ODIHR EET interlocutors criticized the legal authority of PSCs to request a doctor's confirmation of disability in order to allow assisted voting, noting this posed an inappropriate burden and could potentially be applied discriminatorily. Since 2018, polling stations must be equipped with Braille ballot guides to facilitate autonomous voting by persons with visual impairments. However, the Braille guide contains only the reference to the candidates (e.g., candidate1, candidate2, etc), requiring that voters are also provided a separate look-up list, with names of candidates.<sup>44</sup> The NEC explained difficulties fitting all ballot information in Braille on a standard-sized ballot. However, limited space for handling multiple sheets behind a voter booth, as well as the additional complication stemming from an unregistered candidate listed on the ballot, limited the possibility for autonomous voting by persons with visually impairments and could have led to errors. Additionally, some ODIHR EET interlocutors noted instances of inadequate physical infrastructure for independent wheelchair access. They also stressed a general lack of information about the electoral process in accessible formats, including a lack of information about contestants adequately presented for persons with intellectual disabilities.<sup>45</sup>

*The election authorities should continue to improve voting conditions for persons requiring accessibility options, for example by introducing specialized equipment and installing high quality ramps for autonomous physical access.*

*In line with the objectives of the CRPD, the election authorities should provide detailed information about the election process, including the rights of voters and candidates, in formats accessible to persons with various categories of disability.*

## **E. ELECTION OBSERVATION**

While candidate representatives may observe the polling, counting and tabulation procedures, the LEPR does not explicitly provide for observation of any stage of the work of election management bodies and election proceedings by civil society organizations or by international observers.<sup>46</sup> The lack of guarantee of observation rights, and limitations thereon, is contrary to international standards and OSCE commitments.<sup>47</sup> Some ODIHR EET stakeholders considered such observation activities as redundant due to the high level of trust of the electorate in the integrity of the election process.

*The authorities should amend the election legislation to guarantee access for citizen and international observers to follow all stages of the election process. The National Election*

---

<sup>44</sup> The law does not include this resource but it was observed in the few polling stations visited by the ODIHR EET.

<sup>45</sup> Article 21 of the 2006 CRPD foresees that States parties should “provid[e] information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost”; Article 29 requires States parties to “[...] ensur[e] that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use”. Paragraph 7.4.2 of the [PACE Resolution 2155\(2017\)](#) calls the participating states to “[e]nsure the provision of information about electoral processes, voting procedures and political programmes in accessible formats, including in easy-to-read and easy-to-understand versions, with sign interpretation when required, subtitles for videos and Braille versions”.

<sup>46</sup> The LEPR provides that citizens who are not voting and are not candidates or their representatives should be asked to leave the polling station, with the exception of media who enter polling stations for reporting purposes.

<sup>47</sup> Paragraph 8 of the [1990 OSCE Copenhagen Document](#) stipulates that participating States will “invite observers from any other [O]SCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law”.

*Commission could consider raising election stakeholders' awareness of the benefits of permitting non-partisan observation of elections as an additional safeguard for the overall integrity of the process.*

Despite the lack of legal guarantees, the ODIHR EET received full collaboration from the MFA, MoIA, and NEC; the authorities also facilitated the EET's observation of polling procedures during early voting and on election day. In line with ODIHR's methodology for EETs, the mission did not systematically observe polling stations across the country, but visited a small number of polling stations in Lisbon and surrounding municipalities. The process, as observed, took place in a calm and orderly environment and voters and election officials appeared knowledgeable of the process.

## VI. CAMPAIGN FINANCE

Political party and campaign finance is regulated primarily by the 2003 Law on Financing Political Parties and Election Campaigns (LFPPEC) and the 2005 Law on the Organization and Functioning of the Entity on Political Finance and Accounts, each amended in 2018. The 2018 amendments augmented the oversight powers of the EPFA with the right to issue sanctions, mandated the CC as the appeal body for the EPFA decisions on legal compliance of the accounts of political parties and electoral campaigns, and introduced an obligation for the CC to publish its decisions on these matters, in line with a prior ODIHR recommendation. While political parties do not formally nominate presidential candidates, most candidates were *de facto* party representatives, and received substantial support from political parties, in line with the law.

### A. POLITICAL PARTY AND CANDIDATE INCOMES

The LFPPEC allows for the funding of political parties from both public and private sources. Parties represented in the parliament or those that received at least 50,000 votes in the last parliamentary elections receive annual public funding proportionate to the number of votes received.<sup>48</sup> Furthermore, political parties can receive donations from natural persons, conduct fundraising activities, generate income through owned assets, and take loans. Donations from legal entities and foreign sources are prohibited. The limit of an annual donation from a private person cannot exceed 25 social support indexes, or EUR 10,970. The 2018 amendments to the LFPPEC removed income limits from party fundraising events. While political parties are obliged to report on the revenues from each fundraising activity, the origins of funds accrued at fundraising events are not subject to disclosure, which several interlocutors noted could undermine the limits on private donations, as well as transparency and effective oversight. Still, the majority of political parties met by the ODIHR EET indicated that they rely predominantly on public financing.<sup>49</sup>

Candidates can finance their campaigns from the resources of the party that presents or supports them, from donations from individuals, and from funds acquired through fundraising activities.<sup>50</sup> An individual can donate to a campaign up to 60 social support indexes, or EUR 26,328. Financing

---

<sup>48</sup> The public grant amounts to 0.7 per cent of a Social Support Index (IAS) for each vote obtained in the last parliamentary elections. The IAS, equal to EUR 438.81 in 2021, is a reference value established annually by the government and used for the determination of such contributions, pensions and other social benefits. Parliamentary groups and MPs also receive subsidies, for advisory services, political and party activities and for other operating expenses.

<sup>49</sup> Except the Communist Party, which estimated that public funding constitutes some 15 per cent of its income.

<sup>50</sup> While loans are not explicitly listed as a legally permitted form of campaign income, the law provides that the accounting regime for campaign accounts is the same as in the case of political parties. No candidates reported taking loans for this election.

of political parties and campaigns by third parties is not regulated, but the majority of interlocutors were of the opinion that this issue is addressed by the prohibition of donations from legal entities.<sup>51</sup>

Presidential candidates relied primarily on financing from the political parties that supported them. Of the seven contestants, only one ran without political party endorsement or support. The incumbent president was endorsed by the Social Democratic Party (PSD) but did not request their financial support, whereas Ana Gomes, whose campaign budget also did not include party funding, developed an online fundraising platform for individual donations of up to EUR 100.<sup>52</sup> Most ODIHR EET interlocutors noted that although the most common form of raising private campaign money in Portuguese elections are fundraising lunches and dinners, candidates generally avoided organizing such events, along with any other in-person campaign events in the framework of this election due to concerns related to the COVID-19 pandemic. Generally, donations from private individuals were reported as a minor source of campaign incomes.

## **B. CAMPAIGN EXPENSES**

Presidential candidates were obliged to submit their campaign budget estimates to the EPFA by the deadline for submission of candidatures, i.e. 30 days before the election. These submissions constitute an approximation of candidates' incomes and expenditures, to which they were not obliged to adhere. Many ODIHR EET interlocutors underlined that the budget estimates for this election were very low, owing to the advantage of the incumbent president in pre-election polls, combined with expectations of fewer campaign events due to the COVID-19 pandemic. Whereas the LFPPEC establishes a ceiling for campaign expenses at 10,000 social support indexes per contestant (or EUR 3,510,480), the budget with the highest estimated costs amounted to EUR 450,000.<sup>53</sup>

In order to ensure that costs incurred by the candidates are neither below nor above the market value, the EPFA publishes a list of indicative market prices for goods and services that can be purchased in the course of the campaign. A candidate's failure to provide a justification for the value of acquired goods or services is subject to a fine ranging from 1 to 80 social support indexes (from EUR 438.81 to EUR 35,104.80). Some ODIHR EET interlocutors noted that the list of market prices did not take into consideration the difference of rates in rural and urban areas, and changes in prices due to COVID-19 restrictions.<sup>54</sup>

Paid political advertising in media as well as on the Internet and in social networks, with the exception of announcements of campaign events, was prohibited from the announcement of the election on 24 November 2020. The candidates informed the ODIHR EET that they incurred most costs for advertisement of campaign events and for direct streaming of events on social media platforms.

---

<sup>51</sup> For example, a corporation providing office space free of charge is considered to be illegal financing.

<sup>52</sup> Ms. Gomes is a member of the Socialist Party but was not endorsed by the party in this election and did not receive its financial support. She was endorsed by Livre Party and People-Animals-Nature Party.

<sup>53</sup> The tentative budgets were posted on the [EPFA webpage](#). The estimated campaign expenses of the presidential candidates were as follows: for Marisa Isabel dos Santos Matias – EUR 256,617, Marcelo Nuno Duarte Rebelo de Sousa – EUR 25,000, Tiago Pedro de Sousa Mayan Gonçalves – EUR 38,450, André Claro Amaral Ventura - EUR 160,000, Vitorino Francisco da Rocha e Silva – EUR 16,000, João Manuel Peixoto Ferreira – EUR 450,000, Ana Maria Rosa Martins Gomes EUR 53,500.

<sup>54</sup> The indicative list of prices for campaign methods is available on the EPFA [webpage](#).



All expenses incurred for campaign purposes within the period of six months before elections are considered as campaign costs and must be processed through a dedicated bank account.<sup>55</sup> Each candidate must designate a financial mandatory, who manages the campaign account and finances. For accounting purposes, each candidate receives a designated Tax Identification Number (TIN) after registration. However, by law, the candidate registration process occurs within the last 30 days before the election (see *Candidate Registration*). In order to resolve the contradictory legal requirements, the EPFA indicated on its website that the personal TIN of a candidate or of their financial mandatory should be used until the new TIN number is issued. Some financial mandatories informed the ODIHR EET that they obtained the TIN from the Institute of Registries and Notaries months before the candidate registration. Nevertheless, they posited that the lack of a clearly regulated possibility for prospective candidates to obtain a TIN number creates confusion both in the campaign accountancy and in personal tax reports of candidates and mandatories.<sup>56</sup>

*The legislature should consider harmonizing the timelines for obtaining the special tax identification number and for opening the campaign bank account.*

Candidates who received at least five per cent of valid votes are entitled to state subvention of campaign expenses. The base amount of state subvention is equal to the expenditure limit per contestant, or EUR 3,510,480, of which 20 per cent is divided equally between the entitled contestants and the remainder allocated proportionally based on election results. However, the granted amount may not exceed the incurred expenses. Furthermore, the revenue from fundraising activities undertaken by the candidates must be deducted from the amount of expenses eligible for state reimbursement, whereas the costs incurred for design, production and display of the outdoor advertisement cannot exceed 25 per cent of the total expenses paid from the subvention. Only three candidates passed the threshold of five per cent of votes to qualify for the state subvention that would reimburse their campaign costs.<sup>57</sup> No ODIHR EET interlocutors raised concerns about the existing system of state subvention.

### C. REPORTING AND OVERSIGHT

Candidates must submit their campaign account reports within 60 days of the disbursement of the state subvention, which, according to the EPFA, typically occurs some two months after the election. Subsequently, the EPFA has one year to verify the legality of revenues and expenses and the accuracy of the submitted accounts. The prolonged timeframe for the submission of campaign finance reports and their subsequent verification hindered the transparency and the effectiveness of oversight, contrary to international good practice.<sup>58</sup>

*Consideration should be given to shortening the time limits for submission and verification of campaign finance reports to reflect international good practice.*

Accounting of campaign revenues and expenses should be done in accordance with the Accounting Standardization System, with adaptations and simplifications appropriate to the nature of political

---

<sup>55</sup> Cash payments are allowed for purchases of a value less than one social support index (EUR 438.81). The total amount of cash payments cannot exceed 2 per cent of the total of the expenditure limit, i.e. EUR 70,209.

<sup>56</sup> The financial mandatory of Tiago Mayan Gonçalves informed the ODIHR EET that the lack of clarity regarding the procedures for obtaining the dedicated TIN number delayed the launch of campaign activities.

<sup>57</sup> Marcelo Nuno Duarte Rebelo de Sousa, Ana Maria Rosa Martins Gomes, and André Claro Amaral Ventura.

<sup>58</sup> According to Article 7.3 of the [2003 UN Convention Against Corruption](#), “[e]ach State Party shall also consider taking appropriate legislative and administrative measures, (...) to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.” According to paragraph 200 of the [2010 ODIHR and Venice Commission Guidelines on Political Party Regulation](#), the deadline for submission of campaign finance reports should not exceed 30 days.

financing.<sup>59</sup> On 10 September 2020, the EPFA published a set of recommendations for presidential candidates, which included templates for reporting on campaign finance.<sup>60</sup> Many EET interlocutors stated that the required system of reporting is too complex, whereas the format of the submitted reports, published in the form of scanned documents, hindered effective analysis and oversight.<sup>61</sup>

*To increase the transparency and public oversight of political and campaign finance, the Entity on Political Finance and Accounts should consider establishing an online system of reporting that allows for data analysis.*

Oversight of political and campaign financing is conducted by the EPFA, composed of a President and two members appointed by the CC.<sup>62</sup> The EPFA is responsible before the CC for actions undertaken in the course of exercising their functions. The audit of campaign and party accounts is done by external auditors, whereas for the period of election campaigns, the EPFA employs special monitors, who follow campaign expenditures to verify the veracity of candidates' reporting. Due to epidemiological concerns amid the COVID-19 pandemic, the EPFA decided not to actively monitor the 2021 presidential campaign, also noting that the scale of campaign activities was significantly reduced due to the pandemic. The majority of political parties met by the ODIHR EET positively assessed the professionalism of the oversight body, but some raised concerns about its capacity.

The EPFA is authorized to initiate inspections and audits of political party and campaign accounts. Over the election campaign period, several media outlets published investigative materials related to the financing of the Chega party and of its leader, who was a candidate in the presidential election.<sup>63</sup> The materials alleged illegally-sourced financing of the party, lack of accounting for in-kind donations, and cash payments exceeding the legally established limit. However, these reports did not lead to inspection of the Chega party's financing.<sup>64</sup>

Since 2018 amendments to the law on the EPFA, the body has the mandate to issue administrative sanctions for violations of political and campaign finance provisions. The decisions of the EPFA can be appealed to the CC. While this change granted the right to appeal to a court, it also resulted in an increase in the EPFA workload and created a substantial backlog. In some cases the delay in auditing and issuing decisions led to the expiry of legal timeframes for sanctioning the respective offences, which detracted from the effectiveness of oversight.<sup>65</sup> The EPFA president informed the

---

<sup>59</sup> The Accounting Standardization System was approved by the Portuguese Accounting Committee in July 2009, pursuant to EU regulations on the application of international accounting standards, which required all firms on the European regulated market to prepare consolidated accounts in accordance with the [International Financial Reporting Standards](#) (IAS/IFRS).

<sup>60</sup> Recommendations for Presidential Candidates are available on the EPFA [webpage](#).

<sup>61</sup> Paragraph 263 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#), states that "(...) reports need to contain enough details to be useful and understandable for the general public and [fulfilment of this requirement] can be facilitated through digitalization of the process".

<sup>62</sup> The candidatures for the EPFA members can be drawn from the civil service, judiciary, academia, as well as from public or private companies, but at least one member must be a licensed auditor.

<sup>63</sup> See, *inter alia*, an 18 January 2021 [article](#) published by *VISÃO* and an 11 January 2021 [article](#) published by *SIC Notícias*.

<sup>64</sup> According to the LFPPEC, obtaining funds from illegal sources is subject to a criminal sanction of one to three years of imprisonment.

<sup>65</sup> An administrative offence procedure expires as soon as the timeframe of the misdemeanour has elapsed, which is either five years in the case of an administrative offence for which an imposed fine amounts to EUR 49,879.79 or more; or, three years in the case of an administrative offence for which an imposed fine ranges from EUR 2,493.99 to EUR 49,879.79; or, one year in all other cases. Paragraph 261 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#), "[t]he deadline for submitting the final report to the oversight body should (...) to allow the oversight body to undertake a thorough and expedient auditing and, where necessary, initiate proportionate and timely sanctions". Article 16 of the Council of Europe's

ODIHR EET that its human resources are limited and do not correspond to the volume of its institutional responsibilities. In 2018, the parliament increased the CC annual budget by EUR 1.169 million, which was disbursed to the EPFA.<sup>66</sup> The latter informed the ODIHR EET that it could not fully capitalize on the budget increase as, having no administrative and financial autonomy from the CC, the EPFA was unable to manage the budget and thus commit the money for additional human resources.<sup>67</sup> The EPFA president assessed that had it been possible to implement the EUR 1.169 million in accordance with the entity's discretion, outstanding needs could have been met.

*In order to allow the Entity on Political Finance and Accounts to perform its oversight role in an effective and timely manner, and to ensure a clear division between the oversight body and its appellate instance, consideration should be given to granting it institutional and financial autonomy.*

## VII. MEDIA

The media environment is pluralistic and trust in news media remains high.<sup>68</sup> Television is considered the primary source for political information, with private national networks *SIC* and *TVI* having the largest audiences. The public broadcaster, *Radio e Televisao de Portugal*, includes nationwide TV channels *RTP1*, *RTP2*, and *RTP3*, two regional channels airing in the autonomous regions of Azores and Madeira, and three national and six regional radio stations. The state owns 50.1 per cent of the capital of *Lusa*, the major national news agency which supplies news to most national and regional media. Portugal has more than 300 radio stations, most of which operate locally. The newspaper market is in decline, and the most popular outlets are owned by large media groups.

### A. LEGAL FRAMEWORK

Freedoms of expression and of the press are enshrined in the Constitution and are generally respected, with isolated and exceptional incidents.<sup>69</sup> The Criminal Code specifically protects journalists against threats and physical assaults by considering these as serious crimes with higher penalties. Contrary to international standards, defamation, insult, and slander are considered criminal offences and incur a higher penalty if the injured party is a state official or an elected

---

Committee of Ministers Recommendation [Rec\(2003\)4](#) to member states on common rules against corruption in the funding of political parties and electoral campaigns provides that States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to effective, proportionate and dissuasive sanctions.

<sup>66</sup> See the [State Budget for 2019](#).

<sup>67</sup> According to the Article 14 of Council of Europe Committee of Ministers Recommendation [Rec\(2003\)4](#) to member states on common rules against corruption in the funding of political parties and electoral campaigns, the “[s]tates should provide for independent monitoring in respect of the funding of political parties and electoral campaigns”. Paragraph 267 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) recommends “a clear delineation of which bodies are responsible for different aspects of implementing regulations on political parties, as well as clear guidelines establishing their functions and the limits of their authority”.

<sup>68</sup> See, for example, the [2019 Digital News Report](#) by the Reuters Institute for the Study of Journalism.

<sup>69</sup> Notably, on 13 January 2021, media reports revealed information about a Lisbon public prosecutor ordering the surveillance of several journalists between April and May 2018, who were at the time investigating and reporting on a corruption case. The journalist community evaluated this incident as an unprecedented act threatening the freedom of the press and breaching constitutionally-protected secrecy of sources. On 14 January, 2021, the prosecutor general opened an investigation to determine whether the local prosecutor overstepped their powers.

politician.<sup>70</sup> Since 2010, the European Court of Human Rights (ECtHR) has ruled that Portugal has breached freedom of expression in 13 cases, most recently in 2019.<sup>71</sup>

*Criminal prosecution for defamation, libel, insult, and slander should be repealed in favour of civil sanctions with a reasonable financial penalty.*

The Constitution further envisages equitable coverage of contestants in the election campaign, and contains provisions aimed at preventing the concentration of media ownership and at guaranteeing the independence of the public broadcasters. Several different laws further regulate the conduct of traditional and online media during campaigns, including the LEPR and Law on Media Coverage of Elections. These laws provide for the fair and equitable treatment of candidates in the news and prohibit unequal attitudes by private and public entities; the latter law bans state-sponsored advertisements except in case of urgent need from the day election is called. Paid political advertising is also prohibited, although there remains a lack of clarity whether this ban applies to radio, online publications and social networks.

The Law on Media Coverage of Elections aims to protect editorial freedom but, in practice, interferes to a significant degree. Restrictive and insufficiently clear provisions resulted, at times, in media making arbitrary decisions on debate formats, which in turn led to complaints to the media regulator. The two leading TV broadcasters, *SIC* and *TVI* organised the debates among candidates before the official two-week campaign period when, in their interpretation, the equitable coverage demands are not strictly applied and allowed for more freedom in programming. Additionally, the requirement for using previous presidential election results as the main criteria for invitation to the debates created legal uncertainty, as in this election only two of the seven contestants had previously run. Both the media and media regulator described the law to the ODIHR EET as outdated, confusing and overly restrictive on editorial freedom.<sup>72</sup>

*Authorities should revise the legal framework on media coverage of elections to guarantee editorial freedom while respecting the right of all candidates to present their platforms.*

The oversight of all types of media is entrusted to the Regulatory Entity for Social Communication (*Entidade Reguladora para a Comunicação Social*, or “ERC”), with a broad set of responsibilities from ensuring media pluralism to preventing the concentration of media ownership. The ERC continuously monitors selected TV and radio coverage, but its monitoring reports are published no sooner than two months after the elections, depending on its resources to produce the findings. Some ODIHR EET media interlocutors noted that the effectiveness of the ERC is reduced due to a lack of expediency in their work.

Complaints over media coverage can be submitted to both the ERC and NEC; if the latter, the NEC should forward the complaint to the ERC within 48 hours, accompanied by its own opinion on the matter. However, the division of authority between the two institutions is not always clear; in some

---

<sup>70</sup> Paragraph 47 of the [2011 UN Human Rights Committee \(CCPR\) General Comment 34 on Article 19 of the ICCPR](#) states that “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” Paragraph 17.1 of the [2007 Parliamentary Assembly of the Council of Europe \(PACE\) Resolution 1577](#) calls for the immediate abolition of prison sentences for defamation. Paragraph 17.6 calls on member states to “remove from their defamation legislation any increased protection for public figures”.

<sup>71</sup> Six of the cases involve journalists being convicted of libel and defamation, or having excessive financial fines imposed on them. See the ECtHR’s [overview of cases and judgements delivered](#).

<sup>72</sup> Paragraph I.3 of the [Council of Europe’s Committee of Ministers’ Recommendation CM/Rec\(2007\)15](#) states that “[r]egulatory frameworks on media coverage of elections should respect the editorial independence of the media”.

cases the NEC may decide to consider cases directly, if it deems that the case can be reviewed according to general provisions in the LEPR, such as on equal treatment of contestants. For example, on 29 December 2020, the NEC ordered the RTP to include the candidate Vitorino Silva in the planned debates based on the legal principle of neutrality and impartiality by public entities. An identical complaint was received about private *TVI* and *SIC*, but the NEC forwarded this complaint to the ERC, explaining that those entities are not public enterprises and in their case only rules on fair journalistic treatment are applied, and thus should be considered by the ERC.

The review of complaints by the ERC can take 120 days or longer, but in cases deemed urgent, the regulator can issue an immediate decision to stop potential violations without a hearing of the interested parties. Its decisions can be appealed to the Administrative Court, but without the possibility of an expedited procedure, regardless of the election campaign period and other deadlines. The available set of fines is inadequate as it covers only illicit advertising and refusal to provide information. Overall, the appeals system for media-related complaints does not provide for clear and effective redress within a reasonable time period, and does not guarantee a clear division of decision-making authority, contrary to international good practice.<sup>73</sup>

*Consideration should be given to designate a single authority to decide on media-related complaints. The law should define a reasonable timeframe for consideration of complaints and appeals and a set of sanctions in case of major distortions in media coverage.*

## **B. COVERAGE OF THE ELECTION CAMPAIGN**

Overall, political parties and media stakeholders met by the ODIHR EET evaluated the campaign coverage as mostly fair. Due to the restrictions on in-person gathering during the COVID-19 pandemic, much of the campaign emphasis shifted to televised debates. The leading national TV channels organised 21 one-to-one discussions between the candidates, culminating with the joint debate on *RTP*. The public broadcaster, *SIC* and *TVI* agreed among themselves who would organize which debate, and all footage was available free of charge to each of them. As the agreement was made before the end of candidate registration, one of the contestants, Mr. Silva, was initially not included. After public pressure and an instruction issued by NEC, the *RTP* organised a set of debates with each of the candidates, while *SIC* and *TVI* did not show the debates with Mr. Silva, citing a limited public interest for such debates.<sup>74</sup> Overall, as Mr. Silva was able to debate with the others on public TV and was included in the all-candidate debate on the public radio, voters seemed to have an adequate chance to evaluate his candidacy. All candidates, including Mr. Silva, could use the free airtime as stipulated by law.

---

<sup>73</sup> The 15 May 2009 [joint statement](#) by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE RFoM, the Organization of American State's Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights' Special Rapporteur on Freedom of Expression and Access to Information provides that "[the] oversight of any rules relating to the media and elections should be vested in an independent administrative body which should address any complaints promptly". Paragraph II.3.3.c of the Explanatory Report of the Venice Commission's Code of Good Practice in Electoral Matters specifies that "[t]he appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body".

<sup>74</sup> One of the regional stations, Porto Canal, proposed a separate series of debates for Mr. Silva, to address what they perceived as an injustice. The ERC banned it as a prospective violation of equal treatment. Upon receiving information about it, the ERC issued an interim ban on holding these debates on 8 January 2021, followed by a formal decision on 13 January, after receiving an opinion by the NEC a day before. ERC explained the speed of the decision by the fact that the first debate was planned on 15 January.



Several journalists met by the ODIHR EET described a previously unseen hostility towards the media during the campaign events of one of the candidates, the leader of the Chega party, André Ventura. On 17 January 2021, a conflict between the supporters of Mr. Ventura and journalists following his campaign activities resulted in a physical altercation and verbal threats made against journalists. The Professional Licensing Association of Journalists (CCPJ) issued a statement on 21 January condemning these events.<sup>75</sup> Many journalists also raised significant concerns about Mr. Ventura's statements insulting his political opponents on the basis of their appearance, promulgating disinformation, and issuing derogatory statements on social media about Roma or people living on state subsidies. Journalists noted that such statements posed a challenge to factual reporting and generated an atmosphere conducive to xenophobic rhetoric and hate speech, which could potentially impact the electoral participation of already vulnerable groups.

The law does not define hate speech as a separate crime but includes it under the prohibition on racial discrimination.<sup>76</sup> Since 2017, the Commission for Equality and Against Racial Discrimination (*Comissão para a Igualdade e Contra a Discriminação Racial* or “CICDR”) has been tasked by law to investigate possible administrative offences and issue fines, but the most serious cases are covered in Criminal Code and dealt by law enforcement.<sup>77</sup> CICDR explained to ODIHR EET that the number of complaints is rising every year, but partially attributed it to better awareness of the society in understanding hate speech and citizens’ rights. On 10 December 2020, the CICDR fined Ventura EUR 3,370 for ethnic discrimination in the form of harassment which “instigated and enhanced hate speech”, based on a 2017 Facebook post about the Roma community.<sup>78</sup> The CICDR explained to the ODIHR EET that the late decision was due to difficulties to engage him in legal proceedings. By March 2021, in total, the CICDR received five complaints about possible ethnic discrimination and hate speech during the campaign, including an instance in which Mr. Ventura called an opposing candidate “a gypsy candidate”.<sup>79</sup> The complaint was forwarded to the public prosecutor to determine whether it qualifies as a criminal offence.<sup>80</sup>

*While the freedom of speech must be guaranteed, the authorities should promptly and diligently investigate all allegations of hate speech during the election period that may lead to intolerance and infringement of basic citizen and electoral rights.*

---

<sup>75</sup> See the [statement](#) by the CCPJ.

<sup>76</sup> In its [2018 monitoring report](#), the Council of Europe’s European Commission Against Racism and Intolerance (ECRI) concluded that “[t]he definition of hate speech and hate crimes used by Portugal’s law enforcement is too narrow, and the vast majority of incidents go underreported. Far-right and neo-nazi groups spread hate speech on the Internet and threaten migrants and the organisations working to uphold their rights, among others”.

<sup>77</sup> In 2019, a total of 82 hate crimes were recorded by police and only a few led to prosecution and sentencing.

<sup>78</sup> In January 2020, the public prosecutor opened a criminal investigation into Mr. Ventura’s Facebook post in which, reacting to a statement of MP Joacine Katar Moreira, Ventura suggested she should be “returned to her country of origin”. Ms. Moreira was born in Guinea-Bissau.

<sup>79</sup> Paragraph 43 of the 24 March 2021 [Memorandum of the Council of Europe on combating racism and violence against women in Portugal](#) “urges the Portuguese authorities in particular to firmly and publicly condemn all instances of hate speech by actively disseminating the message among the general public that hate speech cannot be tolerated in a democratic society”. Paragraph 44 “calls on Portuguese political leaders to refrain from using or tolerating racist rhetoric as, by using it, they are contributing to trivialising and normalising racist hate speech in Portuguese society”.

<sup>80</sup> Paragraph 40.1 of the 1990 OSCE Copenhagen Document commits participating States to “take effective measures, including the adoption, in conformity with their constitutional systems and their international obligations, of such laws as may be necessary, to provide protection against any acts that constitute incitement to violence against persons or groups based on national, racial, ethnic or religious discrimination, hostility or hatred, including anti-Semitism”.

## VIII. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in Portugal and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations from the 2009 Final Report, which remain to be addressed. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.<sup>81</sup>

### A. PRIORITY RECOMMENDATIONS

1. The authorities should consider consolidating the election legislation to avoid inconsistencies and to increase its accessibility and transparency.
2. In order to maintain the impartiality and professionalism of polling station commissions (PSCs), the authorities should review the process of their appointment. Specific measures could be considered, such as mechanisms for mayors to maintain a roster of qualified persons, trainings for prospective PSC members, and eliminating the obligation of citizens to serve on PSCs without prior consent.
3. Any measures impacting the exercise of voting rights and the conduct of voting procedures, including with respect to temporary measures such as health-related adjustments, should be adopted well in advance of elections.
4. The authorities should amend the election legislation to guarantee access for citizen and international observers to follow all stages of the election process. The National Election Commission could consider raising election stakeholders' awareness of the benefits of permitting non-partisan observation of elections as an additional safeguard for the overall integrity of the process.
5. Consideration should be given to shortening the time limits for submission and verification of campaign finance reports to reflect international good practice.
6. In order to allow the Entity on Political Finance and Accounts to perform its oversight role in an effective and timely manner, and to ensure a clear division between the oversight body and its appellate instance, consideration should be given to granting it institutional and financial autonomy.
7. Criminal prosecution for defamation, libel, insult, and slander should be repealed in favour of civil sanctions with a reasonable financial penalty.
8. Authorities should revise the legal framework on media coverage of elections to guarantee editorial freedom while respecting the right of all candidates to present their platforms.

---

<sup>81</sup> In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. See also the [ODIHR electoral recommendations database](#).

9. While the freedom of speech must be guaranteed, the authorities should promptly and diligently investigate all allegations of hate speech during the election period that may lead to intolerance and infringement of basic citizen and electoral rights.

**B. OTHER RECOMMENDATIONS**

10. The NEC should consider meeting in sessions that are open to the public. The NEC could also consider publishing the draft agendas of their sessions.
11. The legal framework should be harmonized with the international standards by removing any restrictions on electoral rights based on intellectual or psychosocial disability.
12. To fully adhere to international standards, restrictions on candidacy based on descent or birth should be removed.
13. The law should prevent possibilities of unregistered candidates being included on the ballot, to reduce the potential for inadvertent invalidation of ballots by voters and voter confusion at the polls. This could be achieved by adjusting electoral or administrative timelines or allowing ballots to be printed on demand in certain cases, such as for early voting abroad.
14. The election authorities should continue to improve voting conditions for persons requiring accessibility options, for example by introducing specialized equipment and installing high quality ramps for autonomous physical access.
15. In line with the objectives of the CRPD, the election authorities should provide detailed information about the election process, including the rights of voters and candidates, in formats accessible to persons with various categories of disability.
16. The legislature should consider harmonizing the timelines for obtaining the special tax identification number and for opening the campaign bank account.
17. To increase the transparency and public oversight of political and campaign finance, the Entity on Political Finance and Accounts should consider establishing an online system of reporting that allows for data analysis.
18. Consideration should be given to designate a single authority to decide on media-related complaints. The law should define a reasonable timeframe for consideration of complaints and appeals and a set of sanctions in case of major distortions in media coverage.



---

**ANNEX I: FINAL ELECTION RESULTS<sup>82</sup>**

**Turnout Information**

		% of registered voters
Registered voters	10,847,434	
Voters who voted	4,258,356	39.3
		% of all votes
Valid votes	4,173,174	98.0
Invalid votes (blank ballots)	47,164	1.11
Invalid votes (other)	38,018	0.89

**Votes for Candidates**

	Votes	%
Marisa Isabel dos Santos Matias	165,127	4.0
Marcelo Nuno Duarte Rebelo de Sousa	2,531,692	60.7
Tiago Pedro de Sousa Mayan Gonçalves	134,991	3.2
André Claro Amaral Ventura	497,746	11.9
Vitorino Francisco da Rocha e Silva	123,031	2.9
João Manuel Peixoto Ferreira	179,764	4.3
Ana Maria Rosa Martins Gomes	540,823	13.0

---

<sup>82</sup> Source: [National Election Commission](#)

## ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is 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.

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 150 staff.

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 obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, 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. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

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 people, 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**, 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. 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.

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)).