



Office for Democratic Institutions and Human Rights

PORTUGAL

PRESIDENTIAL ELECTION

24 January 2021

ODIHR NEEDS ASSESSMENT MISSION REPORT

18-20 November 2020



Warsaw
17 December 2020

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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an official invitation to observe the 24 January presidential election in Portugal, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 18 to 20 November 2020. The NAM included Alexander Shlyk, Head of the ODIHR Election Department, and Keara Castaldo, ODIHR Election Adviser.

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

ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and co-operation in organizing the NAM. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and for sharing their views.

II. EXECUTIVE SUMMARY

Portugal is a semi-presidential republic, with legislative powers vested in the unicameral parliament. Executive powers are exercised by the government, led by the prime minister, as well as by the directly-elected president, who has limited but important executive functions, including to veto legislation and to dissolve the parliament. The president may serve up to two consecutive terms.

ODIHR has previously recommended the consolidation of the electoral legal framework, which comprises several pieces of legislation regulating specific aspects of the process. Amendments to the election law adopted on 11 November 2020 expanded the number of early voting sites and introduced temporary measures for mobile early voting in order to facilitate the participation of persons who are homebound; these amendments were welcomed by ODIHR NAM interlocutors. Certain prior ODIHR recommendations remain unaddressed, such as on the disenfranchisement of persons with intellectual and psycho-social disabilities, and the lack of timely remedy for media-related complaints. The election law lacks any provisions related to citizen and international observers, but the ODIHR NAM was informed that an ODIHR observation activity would be enabled by the authorities.

The National Election Commission (NEC) supervises the overall electoral process, while the Ministry of Internal Affairs (MoIA) and regional and local government structures play significant logistical and administrative roles. Amendments to the election law in November 2020 reduced the maximum number of voters per polling station, increasing the number of polling stations, which in conjunction with practical adjustments related to the COVID-19 pandemic, has resulted in additional logistical and financial needs. All ODIHR NAM interlocutors conveyed a high level of trust in the integrity and professionalism of the election administration, including in the conduct of election day procedures and alternative voting methods, though some noted that certain legal and practical safeguards related to the storage of election materials could be improved.

All citizens who have reached 18 years of age are eligible to vote, unless explicitly revoked of this right by a court decision for a criminal offence. Although authorities informed the ODIHR NAM that restrictions on suffrage on the basis of intellectual or psycho-social disability are no longer in force, the election law retains these restrictions. The MoIA maintains a permanent, centralized electronic voter register based on population registers and other institutional data that is routinely updated. The Ministry of Foreign Affairs (MFA) maintains a newly established electronic register of eligible voters residing abroad which is automatically updated. ODIHR NAM interlocutors generally expressed a high level of confidence in the accuracy and inclusiveness of the voter registers.

Citizens of at least 35 years of age with voting rights, including nonresident citizens, are eligible to stand individually as presidential candidates. Political parties and other associations may not nominate candidates but may provide financial and organizational support to candidates' campaigns. Prospective candidates must submit 7,500 supporting signatures to the Constitutional Court at least 30 days prior to election day; rejected applications can be appealed and opportunities exist to remedy errors or omissions. ODIHR NAM interlocutors were generally confident in the integrity of the candidate registration process.

ODIHR NAM interlocutors expressed confidence in the ability of contestants to campaign freely, despite the anticipated continuation of limitations on assembly imposed by the government during the pandemic. The official campaign period commences 14 days prior to and ends at midnight on the day prior to election day. The election law foresees equal allocation of public spaces for campaign purposes. The ruling Socialist Party (SP) announced that they would not be supporting a candidate in the election, including financially.

The law on funding political parties provides for both public and private funding to election campaigns. Contestants must submit campaign finance reports to the Entity on Political Finance and Accounts within 90 days of the publication of official election results. ODIHR NAM interlocutors generally expressed confidence in the Entity's impartiality and professionalism, but noted that it has an insufficient mandate and resources to conduct proactive monitoring, and that the legal framework requires further revision to ensure timely disclosure and enforcement.

The media environment is pluralistic, and television is considered the primary source of political information. ODIHR NAM interlocutors noted some political bias in media, but generally expected coverage of the presidential election to provide sufficient information for voters and expressed confidence in the impartiality and effectiveness of oversight by the media regulator. The legal framework protects freedoms of expression and of the press, elaborates on equitable coverage of contestants, and contains provisions meant to prevent concentration of media ownership. However, some stakeholders, including the media regulator, noted some regulations on the role of media in election campaigns would merit review and revision.

Legal provisions with regard to election dispute resolution are dispersed across different laws and regulations. The NEC, vested with oversight of the electoral rights of citizens and contestants, has a broad possibility to receive complaints and to issue sanctions. Registered voters and candidates' delegates can file complaints concerning election day proceedings to the respective polling station commission, if the alleged violation impacted the complainant's personal electoral rights. Decisions of the election administration may be appealed to the Constitutional Court, which is the final instance. The NEC informed the ODIHR NAM that certain cases might be more efficiently handled if filed directly with other institutions, such as media-related complaints, which the NEC receives and forwards to the ERC. Notwithstanding, interlocutors expressed overall confidence in the availability of legal remedy.

The ODIHR NAM noted full stakeholder confidence in the integrity of the electoral process, including election day procedures, and in the impartiality of the election administration and other relevant authorities. Interlocutors noted the value of an external review of existing electoral legislation and practices, but generally held the opinion that an ODIHR observation activity for the presidential election was unnecessary. Recent amendments to the election law were supported by interlocutors as necessary adjustments which enhanced the inclusiveness of the electoral process. Nevertheless, some prior ODIHR recommendations remain unaddressed, and some interlocutors identified specific areas that would merit attention. Considering recent changes to the legal framework, the ODIHR NAM sees benefit in undertaking a more in-depth assessment of the administration of the election as well as the regulatory framework for campaign finance and media.

On this basis, the ODIHR NAM recommends deploying an Election Expert Team (EET) for the upcoming presidential election to assess the administration of the elections and the regulation of campaign finance and electoral coverage in media. ODIHR also encourages the authorities to consider previous recommendations that remain unaddressed.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Portugal is a semi-presidential republic, with legislative powers vested in the unicameral parliament. Executive powers are exercised by the government, led by the prime minister, as well as by the directly-elected president, who has limited but important executive functions, including to veto legislation and to dissolve the parliament. The president may serve up to two consecutive five-year terms, but there is no limit on the number of presidential terms an individual serves.

Following the most recent parliamentary elections on 6 October 2019, the ruling Socialist Party (SP) received the most votes (36.4 per cent) and retained majority representation in the parliament, followed by the Social Democratic Party (SDP, 27.8 per cent). In addition to other opposition parties such as the Communist Party, the Left Bloc and the People-Animals-Nature Party, The elections notably resulted in the inclusion in the parliament of new parties that had not won seats in the previous convocation: Chega, FREE party and Liberal Initiative. In the current parliament, 92 of 230 (40 per cent) members are women.

The incumbent President Marcelo Rebelo de Sousa, a member of the SDP, won the 24 January 2016 presidential election in the first round, with 52 per cent of the vote. Many ODIHR NAM interlocutors did not expect the election for the president to be highly competitive, describing the office as less politicized and noting that all previous presidents in Portugal have been elected for a second term. The ruling SP announced that they would not be supporting a candidate in the election, including financially.

ODIHR previously observed the 2009 parliamentary elections in Portugal.¹ The Election Assessment Mission 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”. The final report,

¹ See [prior ODIHR election-related reports on Portugal](#).

issued in December 2009, contains 14 recommendations for the authorities to improve electoral process and bring it closer in line with OSCE commitments.²

B. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

The incumbent president establishes the date of the presidential election at least 60 days prior to the voting day, which must fall within 60 days of the end of the incumbent's term. On 24 November 2020, President Marcelo Rebelo de Sousa announced that elections would be held on 24 January 2021. Presidential elections are conducted in a single nationwide constituency. If no candidate receives more than 50 per cent of valid votes, a second round is held within two weeks between the two candidates which received the most votes; the candidate who receives the most votes in the run-off is then elected.

Presidential elections are regulated by the 1976 Constitution and the 1979 Law on Presidential Elections ("election law", last amended in November 2020). ODIHR has previously recommended the consolidation of the electoral legal framework, which comprises several pieces of legislation regulating specific aspects of the process, such as the law on the National Election Commission (NEC), the law on the voter register, the law on out-of-country voting, the law on political parties, the law on the funding of political parties and campaigns, the law on the right of assembly, the law on media coverage of elections, the law on the format of political campaigns, and the law on opinion polls. These are frequently supplemented by administrative acts, including the subsidiary regulations and rules of internal procedure of the NEC. Portugal is a party to major international and regional instruments related to the holding of democratic elections.³

The electoral legal framework has been revised since the previous presidential election. Amendments to the election law adopted on 11 November 2020 expanded the number of early voting sites and introduced temporary measures for mobile early voting in order to facilitate the participation of persons who are homebound, including in relation to the COVID-19 pandemic. Previous amendments introduced to the election law and the voter register law in August 2018 expanded opportunities for early voting, automatic voter registration for citizens residing permanently abroad, and requisite Braille ballot guides in polling stations, among other technical changes.

Most ODIHR NAM interlocutors welcomed these amendments, which were viewed as necessary and enjoyed broad consensus. However, certain prior ODIHR recommendations remain unaddressed, such as on the disenfranchisement of persons with intellectual and psycho-social disabilities, and lack of timely remedy for media-related complaints. The election law lacks any provisions related to citizen and international observers, but the ODIHR NAM was informed that an ODIHR observation activity would be enabled by the authorities.⁴

C. ELECTION ADMINISTRATION

² 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](#).

³ 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).

⁴ Each candidate may appoint one delegate and one alternate delegate to be present in each polling station.

The NEC supervises the overall electoral process, while the Ministry of Internal Affairs (MoIA) and regional local government structures play significant logistical and administrative roles. Entities responsible for the conduct of election day procedures include 22 Tabulation Centre Commissions (TCCs), 308 municipal authorities, and some 13,000 polling station commissions (PSCs). Amendments to the election law in November 2020 reduced the maximum number of voters per polling station from 1,500 to 1,000, resulting in an increased number of polling stations, which ODIHR NAM interlocutors noted would require increased human and financial resources. The MoIA informed the ODIHR NAM that sufficient additional funds were allocated for the conduct of the presidential election to accommodate additional staff and supplies, including additional personal protective equipment (PPE) in relation to the COVID-19 pandemic. All ODIHR NAM interlocutors conveyed a high level of trust in the integrity and professionalism of the election administration, including in the conduct of election day procedures.

The NEC oversees the application of the election law and the equal treatment of voters and contestants, provides civic education related to the electoral process, and is responsible for the publication of final results. The NEC comprises a Supreme Court judge who serves as the chairperson, as well as representatives of the MoIA, Ministry of Justice, and the media regulator. Additional members are appointed anew by the parliamentary groups represented in each legislature. The NEC currently comprises 11 members, of whom 4 are women. There is no gender-disaggregated data collected on the representation of each gender in the election administration, including in leadership positions.

TCCs are primarily responsible for the tabulation of results. Each TCC is chaired by a judicial representative and comprises a secretary and 11 members, including two lawyers appointed by the chairperson, two mathematicians or other teachers appointed by the Minister of Education and Culture, and six chairpersons of PSCs of the respective constituency, selected by the district court.

The mayor of each parish determines the delimitation of polling station precincts and organizes the appointment of PSC members to administer the voting and counting procedures in each precinct. Each PSC comprises five members, including a chairperson and deputy. Many ODIHR NAM interlocutors acknowledged that, given the legal entitlement of political parties to nominate PSC members for other types of elections, mayors generally coordinate with political parties in recruiting PSC members for presidential elections. Although this practice is extra-legal, interlocutors expressed confidence in the integrity and professionalism of PSC members and of mayors in co-ordinating their recruitment. No formal training is provided to PSC members prior to election day, although the MoIA and NEC provide guidance documents on election day procedures.

By law, PSCs have up to 24 hours to submit election materials to the respective TCC following the completion of the vote count, and tabulation procedures may not begin until 09:00 on the day following the election. The final tabulation is conducted by the Constitutional Court together with mathematicians appointed by the Ministry of Education and Culture, and final results are proclaimed by the incumbent president.

Since 2018, most voters may register for early voting, which is conducted on the Sunday one week prior to election day at designated polling stations throughout the country, including in hospitals and prisons.⁵ The names of voters who cast early ballots is recorded, and if such voters choose to cast a new ballot on election day, only the latter vote is counted.⁶ Amendments to the election law in November 2020 expanded the number of special polling stations at which early voting is administered, from 29 regional

⁵ The election law does not directly provide for universal eligibility for early voting but provides an exhaustive list of eligible reasons, including private affairs.

⁶ For ballots cast early, a secrecy envelope protects the content of the vote after the confirmation of eligibility.

capitals to a total of 308 (one per municipality). Additionally, in response to the pandemic, temporary provisions enable the participation of homebound voters through mobile voting with advance application. Election materials, including ballots cast during early and mobile voting, are stored by the mayor of the respective municipality. All ODIHR NAM interlocutors expressed trust in the new and temporary measures related to special voting arrangements and the storage of election materials, though some noted that legal and practical safeguards related to this storage could be improved.

Voters that require assistance in casting a ballot due to a physical disability or limited mobility may request assistance from another voter of their choice. Since 2018, polling stations must be equipped with Braille ballot guides to facilitate autonomous voting by persons with visual impairments. ODIHR NAM interlocutors welcomed the steps taken to promote the autonomous participation of persons with disabilities but noted that persistent problems such as inadequate physical infrastructure continue to hinder the autonomous exercise of voting rights. A national committee, designated to ensure and coordinate compliance of state institutions and activities with the CRPD, has yet to convene. In addition, interlocutors stressed a general lack of information about the electoral process in formats accessible for persons with visual impairments, intellectual disabilities or who possess other communications requirements.

In April 2019, the government in coordination with the National Cyber Security Centre and the NEC organized tests and a crisis management exercise, related to ICT security infrastructure and coordination among state institutions in responding to cyber security incidents or targeted disinformation campaigns. The exercise resulted in recommendations on mitigating risks in the electoral infrastructure.

D. VOTER REGISTRATION

All citizens who have reached 18 years of age are eligible to vote, unless explicitly revoked of this right in a court decision for a criminal offence. Although the authorities informed the ODIHR NAM that restrictions on suffrage on the basis of intellectual or psycho-social disability are no longer in force, the election law retains these restrictions.⁷

Voter registration is passive. A centralized electronic voter register is maintained permanently by the MoIA based on data from the national citizen population register and a national noncitizen population register, a process which is supervised by the National Data Protection Commission. This data is further updated on the basis of information from the MFA regarding citizens residing abroad and the Ministry of Internal Audit regarding certain categories of ineligibility. ODIHR NAM interlocutors generally expressed a high level of confidence in the accuracy and inclusiveness of the voter register.

The voter register is updated the day following the announcement of an election (60 days prior to election day), and citizens who change their residence after this update must vote in their place of prior residence. Citizens who detect an irregularity in their voter record may request a change no later than 34 days prior to the election. Registration commissions, comprising parish council members and designates of political parties represented in the national or local assembly, are responsible for finalizing individual voter lists for each parish precinct. Political parties are also entitled to receive electronic or

⁷ Article 3.2(b) of the election law 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 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 the [2020 UN Human Rights Committee Concluding Observations](#).

paper copies of the voter lists on request. Citizens can review their registration details throughout the year and can review their inclusion on the voter list in a six-day period (39 to 34 days prior to election day). If any irregularity is detected in the lists during this review period, changes can be made by filing a complaint to the registration commission. Voters can confirm the location of their polling station in person at their parish council or by Internet, phone or SMS. In order to receive a ballot in polling stations, voters must present a national identity document, or be vouched by the recognition of two other registered voters, or by all members of the PSC.

Since 2018, eligible citizens with registered residence abroad are automatically included in special voter lists and may vote in-person at diplomatic missions on the day prior to and on election day. Amendments to the election law in November 2020 dematerialized these special lists and established an electronic register of out-of-country voters. Results of votes cast abroad are counted at consulates, compiled by the national embassy and sent by post to Lisbon. According to the MoIA, there are currently some 10.7 million registered voters, including some 1.5 million residing abroad.

E. CANDIDATE REGISTRATION

Citizens of at least 35 years of age with voting rights, including nonresident citizens, are eligible to stand individually as presidential candidates; political parties and other associations may not nominate candidates but may provide financial and organizational support to candidates' campaigns. Certain public officials cannot stand for parliament, including the president, judges, members of the NEC, and active military and diplomatic personnel. The law does not provide for independent candidates, contrary to a prior ODIHR recommendation.

Prospective candidates must submit 7,500 supporting signatures to the Constitutional Court at least 30 days prior to election day.⁸ Signatures are verified manually by staff of the Court; in case of detection of possible irregularities, a sample is investigated. In case of other irregularities or omissions in the application, applicants may submit a corrected application within 24 hours. The Court has three days from submission deadline to verify the signatures and render a decision on candidacy. Rejected applications can be appealed to the same presiding judge who rendered the decision and further appealed to the full court. The Court also determines, by drawing lots, the order of candidates on the ballot. ODIHR NAM interlocutors were generally confident in the integrity of the candidate registration process.

F. ELECTION CAMPAIGN

The official campaign period commences 14 days prior to and ends at midnight on the day prior to election day, during which the rules on media access and coverage apply. The run-off campaign begins the day following the announcement of results and likewise ends a full day prior to voting. The electoral silence period also precludes the dissemination of campaign content on the Internet. Political parties must declare their support for a candidate in order to campaign for the election of that candidate.⁹ The election law foresees equal allocation of public spaces for campaign purposes, which is supervised by parish councils and mayors, and political rallies in such spaces do not require prior notification; the law prohibits advertising on certain public or religious premises. On 30 November, the NEC adopted a resolution related to limitations on assembly in line with existing government decisions on preventing

⁸ As a safety measure during the COVID-19 pandemic, the Court instructed that a separate piece of paper be used for each household in the signature collection process.

⁹ The election law does not specify any formal procedure for declaring such support.

the spread of COVID-19.¹⁰ ODIHR NAM interlocutors expressed confidence in the ability of contestants to freely campaign, despite the anticipated continuation of limitations on assembly imposed by the government during the pandemic.¹¹

Campaigning by public officials and entities is prohibited. Additionally, institutional publicity, such as the inauguration of public works or state advertising in traditional and social media, is prohibited following the announcement of elections, except in cases of urgent public need. The NEC does not actively monitor violations of this rule but may react to complaints, and violations can be sanctioned by a fine of between EUR 15,000 and EUR 75,000.

ODIHR NAM interlocutors pointed to some instances of racist, xenophobic, and other derogatory rhetoric, including against Roma, by political figures.¹² Hate speech on the basis of race and other categories is subject to a fine, but interlocutors pointed to instances which demonstrate that the fine is not sufficiently dissuasive.¹³

G. CAMPAIGN FINANCE

The law on funding political parties provides for both public and private funding to election campaigns. Candidates who receive at least 5 per cent of the vote are entitled to limited state subvention of campaign expenses. The base amount of state subvention is equal to the expenditure limit per contestant, totalling EUR 3,510,480, of which 20 per cent is divided equally to eligible contestants, and the remainder allocated proportionally based on election results. Additionally, annual public funding is allocated to parties represented in parliament or that received at least 50,000 votes in the previous election.

Private donations may be made by individuals, political parties and from a candidate's own funds. Donations from legal entities and foreign or anonymous sources are prohibited. Individuals may donate up to 60 minimum monthly salaries, or EUR 26,328.60. In-kind contributions should be accounted under these limits. Amendments to the political finance law in 2018 removed income limits on party fundraising events, and the origins of funds accrued at fundraising events are not subject to disclosure, which several ODIHR NAM interlocutors noted could undermine limits on private donations, as well as transparency and effective oversight.

The expenditure limit for campaigns amounts to 80 per cent of ten thousand minimum monthly salaries, or some EUR 3,510,480, per contestant. In the second round, an additional EUR 877,620 (80 per cent of 2,500 minimum monthly salaries) is added to the total limit. Third party spending toward political campaigns is not regulated.

¹⁰ Specifically, the resolution notes that even during a state of emergency fundamental political rights such as equality of opportunity of candidates must be protected, but describes a duty of political parties to protect the right to health and life of citizens by following the guidance of national health authorities. The resolution also notes a responsibility on organizers of campaign activities to ensure adequate implementation of personal protection, social distancing, disinfection, and ventilation.

¹¹ The Constitution permits the government to declare a state of emergency for a maximum period of two weeks, which can be extended for subsequent two-week periods. The current state of emergency includes a curfew on nights and weekends for specific municipalities.

¹² Previously, paragraph 14 of its [2012 CERD concluding observations](#) raised concern related to “incidence of racist and xenophobic speech emanating from a few extremist political parties”.

¹³ See also the [2020 UN Human Rights Committee Concluding Observations](#), which states that “the Committee is concerned about reports of intolerance, prejudice, hate speech and hate crimes against vulnerable and minority groups, including Roma, African descendants, Muslims and lesbian, gay, bisexual and transgender persons, particularly in the media and on social networks. The Committee is further concerned at the low number of complaints and lack of information on convictions of hate crimes and information on penalties imposed, which is covered by the State party statistical secrecy policy”.

All donations and expenses must be incurred through a designated bank account. Contestants must submit campaign finance reports within 60 days of the receipt of entitled public subvention to the Entity on Political Finance and Accounts, which is administered legally by the Constitutional Court but operates independently. This Entity confirms compliance of report submissions with legal obligations but does not undertake proactive monitoring of campaign expenditures and possible violations. The Entity must audit campaign finance reports within one year of receipt, and contestants have 30 days to respond to requests for clarification. The Entity has six months to verify the parties' annual financial reports. Decisions of the Entity can be appealed to the Constitutional Court, which is the final instance. Sanctions for violations of campaign finance rules include fines and prison terms of up to three years; non-disclosure of campaign incomes or expenditures is subject to a fine of EUR 35,104.80 (80 minimum monthly salaries). ODIHR NAM interlocutors generally expressed confidence in the Entity's impartiality and professionalism but noted that it has insufficient resources and capacity to conduct proactive and investigative monitoring, and that legal framework requires further revision to ensure effective and timely disclosure and enforcement.

H. MEDIA

The media environment is pluralistic, and television is considered the primary source of political information. The public broadcasters, *Radio e Televisao de Portugal*, includes national television channels *RTP1*, *RTP2*, and *RTP3*, as well as two additional regional channels broadcast in the autonomous regions of Azores and Madeira, as well as three national and six regional radio stations. The major private national television networks include *CMTV*, *SIC*, and *TVI*. ODIHR NAM interlocutors noted some political bias in media, but generally expected coverage of the presidential election to provide sufficient information for voters and expressed confidence in the impartiality and effectiveness of media oversight.

The Constitution protects freedoms of expression and of the press, elaborates on equitable coverage of contestants in election campaign, and contains provisions meant to prevent concentration of media ownership and to guarantee the independence of the public broadcasters. Several different laws further regulate the conduct of traditional and online media, including the election law as well as a law on electoral coverage in media adopted in 2015. The latter provides for equitable coverage of contestants during election campaigns, protects the editorial freedom of media including in determining the format of political debates, and regulates commercial and institutional advertising during the pre-election period. Although the law prescribed a review of these regulations to take place within one calendar year of its adoption, no such review has taken place. Some ODIHR NAM interlocutors, including the media regulator, noted that some aspects of the law would merit revision, including a requirement that amounts of coverage of contestants be determined by the results of previous elections.

Since February 2018, the Criminal Code contains special protections for journalists, against whom threats or physical assaults are treated as serious crimes with higher penalties. However, the Code also retains criminal penalties for defamation, despite several decisions of the European Court of Human Rights (ECtHR) which found Portugal in violation of Article 10 of the ECHR, most recently in 2017.¹⁴ In defamation cases, higher fines may be imposed if the injured party is a state official.

The national media regulator (ERC) oversees the compliance of broadcast and print media with election-related rules and obligations and conducts systematic monitoring of major television networks. The ERC can also issue directives and guidelines to media outlets which are not legally binding. The ERC

¹⁴ [Tavares De Almeida Fernandes and Almeida Fernandes v. Portugal](#), Application no. 31566/13, 17 January 2017. See also the [2020 UN Human Rights Committee Concluding Observations](#).

comprises four members appointed by the parliament and a fifth chairperson selected by its members. The NEC receives and forwards media-related complaints to the ERC. While the law provides that the NEC accompanies the complaint with an opinion on its merits, some of the ODIHR NAM interlocutors noted that this is sometimes not the case. The ERC's decisions can be appealed to administrative courts, which are not subject to expedited timelines in an election period. By law, the ERC can initiate investigations but cannot issue sanctions during the two-week campaign period.

Public and private television and radio broadcasters are required to reserve certain amounts of primetime and weekend coverage for the potential free airtime of contestants (ranging from 15 to 60 minutes on public broadcasters and constituting 30 and 60 minutes daily on regional and national private broadcasters, respectively).¹⁵ On the final day of the campaign period, each contestant is entitled to a ten minute intervention on the public radio and television broadcasters. Debates aired on public television include sign language interpretation for hard-of-hearing voters.

I. COMPLAINTS AND APPEALS

Legal provisions with regard to election dispute resolution are dispersed across different laws and regulations. The NEC, vested with oversight of the electoral rights of citizens and contestants, has a broad possibility to receive complaints and to issue sanctions. Registered voters and candidates' delegates can file complaints concerning election day proceedings to the respective PSC, if the alleged violation impacted the complainant's personal electoral rights. TCCs verify all decisions of complaints submitted to PSCs. Decisions of the NEC and of TCCs can be appealed to the Constitutional Court, whose rulings are final. Final election results can also be appealed to the Constitutional Court, which is the same body that conducts the national tabulation. Cases of a criminal nature are referred to the prosecutors and the police for investigation. Violation of campaign and media regulations are subject to administrative fines and in some cases criminal penalties. The NEC informed the ODIHR NAM that certain cases might be more efficiently handled if filed directly with other institutions, such as media-related complaints, which the NEC receives and forwards to the ERC. Notwithstanding, interlocutors expressed overall confidence in the availability of legal remedy.

IV. CONCLUSIONS AND RECOMMENDATIONS

The ODIHR NAM noted full stakeholder confidence in the integrity of the electoral process, including election day procedures, and in the impartiality of the election administration and other relevant authorities. Interlocutors noted the value of an external review of existing electoral legislation and practices, but generally held the opinion that an ODIHR observation activity for the presidential election was unnecessary. Recent amendments to the election law were supported by interlocutors as necessary adjustments which enhanced the inclusiveness of the electoral process. Nevertheless, some prior ODIHR recommendations remain unaddressed, and some interlocutors identified specific areas that would merit attention. Considering recent changes to the legal framework, the ODIHR NAM sees benefit in undertaking a more in-depth assessment of the administration of the election as well as the regulatory framework for campaign finance and media.

On this basis, the ODIHR NAM recommends deploying an Election Expert Team (EET) for the upcoming presidential election to assess the administration of the elections and the regulation of campaign finance and electoral coverage in media. ODIHR also encourages the authorities to consider previous recommendations that remain unaddressed.

¹⁵ This allocation is reduced by a third during the second round campaign period.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Paulo Santos, Director for International Political Organizations
Lúcia Portugal Nuncio, OSCE Desk Officer
Ambassador Júlio Vilela, Director-General
Isabel Martins, Coordinator of the Organizing Committee for Voter Registration

Ministry of Internal Affairs

Joaquim Morgado, Deputy Secretary-General for Electoral Management
Paula Vasco, Electoral Information Systems Division
Sofia Teixeira, Legal and Electoral Studies Division
Nuno Miguel e Silva, Superintendent

National Election Commission

José Vitor Soreto de Barros, President
Cristiana Vera Mendes Romeira Alves dos Santos Penedo
Marco Paulo Teles Gonçalves Fernandes
João Tiago Machado
João Manuel Rosa de Almeida

Constitutional Court

João Pedro Barrosa Caupers, Vice-president

National Cybersecurity Centre

Alexandre Leite, Legal Adviser
João Alves, Coordinator of the Regulation, Supervision and Certification Department
Nuno Marques, Coordinator of the Operations Department

Regulatory Authority for Media (ERC)

Paulo Barreto, Chief of Cabinet
Tânia de Morais Soares, Head of Media Analysis Department

Public Broadcaster

José Lopes de Araújo, Director of Public and International Affairs and Archive

Political Parties¹⁶

Luis Graça, MP, Socialist Party

Academia and Civil Society

Jorge Silva, Vice-President, National Confederation of Disabled Persons' Organizations
Susana Coroado, Chair of the Board, Transparency International Contact Point for Portugal
Luís Macedo Pinto de Sousa, Political Science Research Fellow, University of Lisbon

¹⁶ ODIHR offered meetings to all parliamentary political parties.