



Office for Democratic Institutions and Human Rights

REPUBLIC OF FRANCE

PRESIDENTIAL ELECTION

22 April and 6 May 2007

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

12-14 March 2007



Warsaw
3 April 2007

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**Needs Assessment Mission Report
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I. INTRODUCTION

Following an invitation from the Minister of Foreign Affairs of the Republic of France to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 22 April and 6 May 2007 presidential elections, the OSCE/ODIHR undertook a Needs Assessment Mission (NAM) to Paris from 12 to 14 March 2007. The Needs Assessment Mission was composed of Mr. Konrad Olszewski and Mr. Nicolas Kaczorowski, Deputy Heads of the OSCE/ODIHR Election Department, and Mr. Jonathan Stonestreet, OSCE/ODIHR Election Adviser.

The purpose of the OSCE/ODIHR NAM was to assess the pre-electoral environment and the preparations for the presidential elections, and to advise on the modalities for a possible election observation activity with regard to these elections.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs of France for its assistance and cooperation in organizing the Needs Assessment Mission. The OSCE/ODIHR would also like to thank the Ministry of Interior, as well as representatives of many other State institutions, local authorities, and candidate representatives who took the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The first round of the presidential elections in France will be held on 22 April 2007, with a likely second round to be held on 6 May. The *Conseil Constitutionnel*, the Constitutional Court of France, has registered a total of 12 candidates.

The overall election process appears to enjoy a high level of public confidence and offers a number of transparency mechanisms and other safeguards for the overall conduct of elections in accordance with OSCE commitments and international standards. Both campaign representatives with whom the NAM was able to meet expressed full confidence in the election administration at all levels.

The electoral process is administered and controlled by a number of state and municipal institutions as well as independent administrative agencies, under the overall supervision of the *Conseil Constitutionnel*, which is tasked with ensuring the regularity and fairness of presidential elections. These institutions appear to follow the principle of impartiality, and key decisions related to the campaign environment are consulted with candidates. Furthermore, the judiciary oversees all stages of the process.

The legal framework provides a relatively tight timeframe for the conduct of the presidential elections, although amendments since the 2002 presidential elections have expanded the election calendar to increase the amount of preparation time for the election administration bodies. The law requires that potential candidates obtain the signatures of at least 500 elected officials throughout France in order to be registered.

Voter registers are compiled at the municipal rather than national level, and citizens must actively register themselves in order to vote. The deadline for voter registration is set on 31 December of the year before an election. Persons who have no fixed domicile, including *gens du voyage* (travellers), who are largely of Roma ethnicity, register to vote under different legal provisions than persons with fixed residence.

Electronic voting is permitted if the local authorities so wish and if the machines have been certified by accredited certification agencies. Voting machines will be in use in polling stations covering approximately two to three per cent of the total electorate.

The campaign process is highly regulated to ensure equal treatment of candidates by the State. Several independent oversight bodies ensure that legal provisions are adhered to regarding the format and display of campaign materials, campaign finance, the publication of opinion polls, the coverage of candidates in electronic media, and the appearance of State-produced television spots. These aspects of the campaign are closely monitored by the respective control bodies.

To guarantee a level-playing field, each candidate receives the same support for his or her election campaign on the part of the State, including identical amounts of time on TV and radio, as well as equal access to places for meetings and to dedicated locations for posters. The legislation also strictly regulates the format and production of television campaign spots, posters and other campaign materials. Paid campaign advertising is prohibited.

The electronic media are obliged to ensure equal treatment of all candidates in their election coverage during the official campaign. The print media, however, is largely unregulated in order to respect the principle of freedom of expression.

The French broadcasting authority, the *Conseil Supérieur de l'Audiovisuel*, issued an advisory notice to all electronic media that there was excessive "bipolarization" in the coverage of the candidates but informed the NAM that the situation had since been corrected. The campaign of one of the candidates stated that this issue was still of concern and that more efforts by the media to ensure equity were needed.

Overall, interlocutors expressed their confidence in the electoral process, and no immediate issues were brought to the attention of the NAM that would necessitate OSCE/ODIHR involvement. However, the OSCE/ODIHR NAM considers that the deployment of an Election Assessment Mission could be useful in assessing particular aspects of the election process, including voter registration, the implementation of electronic voting in some localities, as well as the unique election regulatory framework. On this basis, an OSCE/ODIHR Election Assessment Mission will be deployed.

III. BACKGROUND

The President of France is elected for a five-year term by direct universal suffrage by an absolute majority of the valid votes. If such a majority is not obtained on the first ballot, a second round is held two weeks later. Only the two candidates who received the greatest number of votes in the first ballot stand in the second ballot. The presidential elections will be followed by parliamentary elections, scheduled for 10 and 17 June 2007. The current President, Mr. Jacques Chirac, publicly declared that he would not seek another term in office.

For the previous presidential elections in 2002, the OSCE/ODIHR deployed an Assessment Mission. The mission noted the public confidence in the election process in France, as well as the overall transparency and accountability of the election administration. The 2002 Assessment Mission identified as an issue the registration in the voters lists of the *gens du voyage* (“travellers”, who are often ethnically Roma). The mission also recommended that the authorities consider amending legislation to allow for the registration of voters closer to the election day and to further clarify the rights of international and domestic observers.¹

IV. FINDINGS

A. LEGAL FRAMEWORK

The legal framework for the election of the President of France is complex and includes the 1958 Constitution, the 1962 Law on the Election of the President of the Republic, as well as other laws, decrees, decisions, instructions, and recommendations addressing different aspects of the electoral process, such as voting abroad, the registration of candidates, and campaign financing. In addition, certain provisions of the comprehensive Electoral Code apply to the presidential elections. The official election campaign is also strictly regulated by law and monitored by different institutions and bodies, including the *Conseil Constitutionnel*, the *Commission Nationale de Contrôle de la Campagne Électorale* (CNCCEP), and the French broadcasting authority – the *Conseil Supérieur de l’Audiovisuel* (CSA).

Following each election, the *Conseil Constitutionnel*, the *CNCCEP*, and the *CSA* publish reports including recommendations for changes to the election process. In response to recommendations made by these bodies after the 2002 presidential elections, there have been several amendments to the legal framework. These include:

- An expanded election calendar will allow for more time between the registration of candidates and the start of the official campaign;
- The time period for the collection of signatures for candidate registration has been extended by one week;
- Decisions regarding approval of candidates’ campaign accounts will be taken by the *Commission nationale de contrôle des comptes de campagne et des*

¹ OSCE/ODIHR Assessment Report on the 21 April 2002 Presidential Election in the Republic of France, 4 June 2002. Available at www.osce.org/odihr-elections/14458.html

financements politiques (CNCCFP) as the first instance body, rather than by the *Conseil Constitutionnel*, which previously had this role;

- The *commissions locales de contrôle* established at the *department* level will no longer be responsible for the posting of candidates' campaign materials;
- Voting times for some overseas departments and territories have been changed in order to ensure that election results are announced only after all polling stations are closed. This required an amendment to the legal framework to permit voting on Saturday in these areas.

Candidate observers and representatives of official bodies controlling the election process are permitted to observe in polling stations, as is any interested voter. In addition, candidate representatives can also directly participate in the work of polling stations as poll workers. There are no specific legal provisions related to international election observers or to domestic non-partisan observer organizations. There are also no provisions that would prevent or restrict such organizations from observing.

French law makes no provision for a recount of votes in the event of a dispute. The *Conseil Constitutionnel* is empowered to annul the results in polling stations or in the entire country in the event of significant irregularities. The *Conseil Constitutionnel* often acts as the first and last instance in electoral matters.

B. ELECTION ADMINISTRATION

The presidential elections in France are administered at several levels. The *Ministère de l'Intérieur et de l'Aménagement du Territoire* (Ministry of Interior) is the state body in charge of the technical preparations for the elections. The Ministry issues instructions on legal and organizational matters to the *prefectures* (representation of the State at the *department* level), which in turn coordinate the work of the approximately 36,600 *mairies* (the town/local administrations). There are approximately 65,000 polling stations operated by the *mairies*.

The administration of the presidential elections as a whole is overseen by the *Conseil Constitutionnel*, which is tasked under Article 58 of the Constitution with ensuring the regularity and fairness of elections. The *Conseil Constitutionnel* is composed of nine members who serve for non-renewable nine-year, staggered terms. Three members are appointed by the President of the Republic, three by the President of the National Assembly, and three by the President of the Senate. The *Conseil Constitutionnel* reviews and advises on all election-related legal texts, acts as the complaint and appeal body for all election-related matters, and also has a direct role in the registration of candidates and the announcement of results. It also ensures the orderly conduct of election day through its delegates.

In a significant change since the 2002 presidential elections, the law was amended to provide for a greater period of time between the announcement of the list of registered candidates and the start of the official campaign (20 days). This change was made in response to a recommendation by the *Conseil Constitutionnel* in order to facilitate the work of the administration in preparing the elections and controlling the conduct of the campaign. Previously, the election calendar provided for the end of candidate

registration only three days prior to the start of the official campaign and less than three weeks prior to election day.

In the system of voting in France, each candidate's name is printed on a separate ballot. The voter chooses a ballot in secret and places it in an envelope, which is then deposited in the transparent ballot box. Voters discard remaining ballots. The envelopes, rather than the ballots, are considered sensitive documents and are accounted for. In accordance with the law, the *commissions locales de contrôle*, with the support of the prefectures, must mail ballots for all candidates, together with campaign materials, to all registered voters by 18 April 2007. Some interlocutors raised questions as to whether the mailing of ballots should be continued considering the high cost and the logistical challenge it presents. The ballot papers must also be made available at polling stations.

There appears to be a high level of confidence in the administration of the elections in France. Representatives of the two campaign organizations with whom the NAM was able to meet indicated their full confidence in the election administration. The *Conseil Constitutionnel* acknowledged that there has been a degree of controversy in the media over the fact that the current Minister of Interior, Mr. Nicolas Sarkozy, was seeking to be a candidate in these elections while remaining in his position as Minister, but stated that the strong oversight of the Ministry's election activities by the courts, the independent control bodies and by other candidates would ensure a fair administration of the election. A representative of Mr. Sarkozy's campaign informed the NAM that he had declared his intention to step down as Minister prior to the start of the official campaign period, which he subsequently did, on 26 March.

Election administration arrangements for the 1.6 million voters living in nine French departments and territories overseas are made by the respective *prefectures* and *mairies*, overseen by the *Ministère de l'outre-mer* (Ministry of Overseas France). These arrangements are complicated due to the remoteness of some of the areas and the time difference with continental France.

Concerns arose after the first round of the 2002 presidential election that preliminary results for continental France were made public while polling stations in the Antilles and other areas were still open, which could therefore jeopardize the equality of the vote and influence the voters. The National Assembly changed the law in 2006 to permit voting on Saturday, so that citizens in these territories and departments could vote prior to citizens in continental France.

By law, official election materials can only be in the French language. The same is true for campaign materials, except in French Polynesia and in the Alsace region, where they may also be in the local language.

C. VOTER REGISTRATION

All French citizens who have turned 18 years of age by election day, who enjoy their civil and political rights, and who are not incapacitated as established by relevant legal provisions, are eligible to vote.

Citizens must be registered on the voter register in order to be able to vote. Voter registration is not done automatically but requires the active request of the individual to be included in the list.² Once registered, a voter remains on the list in the municipality as long as he/she maintains the same address. A change of residence requires the voter to change his/her voter registration in order to be able to vote. The deadline for citizens to present their applications for inclusion in the voter register expired on 31 December 2006. With some exceptions, citizens who register after this date will not be eligible to vote until 2008. Approximately 44.5 million voters have been registered.

There is no unified voter register at the state level. Voter registers are compiled at the local level and updated annually. Administrative commissions formed in each municipality by the mayor, the *préfet* and a representative of the judicial authority share the responsibility for revisions. The lists are submitted to the National Statistics Institute (*Institut National de la Statistique et des Études Économiques* – INSEE), which ensures that there are no duplicate entries.

The issues related to the ability of the *gens du voyage* to register to vote do not appear to have changed appreciably since the 2002 presidential elections. Following those elections, the OSCE/ODIHR Assessment Mission reported that these persons, who have no permanent domicile, fall under different legal provisions with regard to voter registration. The *gens du voyage* can apply for a circulation permit which “connects” them to a municipality of their choice, although they do not reside there. After this connection has been maintained for three years, the *gens du voyage* are registered to vote in the municipality. Those persons with a fixed residence are eligible to register after 6 months of residence in a municipality.

The Ministry of Interior stated that the *gens du voyage* will in the future be able to avail themselves of provisions of recent legislation that facilitates the registration of homeless persons. These provisions were adopted by the National Assembly in March 2007 and are not applicable for the upcoming presidential or parliamentary elections.

A citizen convicted of a crime does not automatically lose the right to vote, as this can only be removed by a judge as part of an individual’s specific sentencing. Registered voters who have not had the right to vote removed as part of their sentence and who are imprisoned on election day are entitled to vote by proxy.

D. CANDIDATE REGISTRATION

Persons eligible to be elected President can become a candidate upon the fulfilment of registration requirements. The most significant of these requirements is that potential candidates must obtain the signatures of at least 500 elected officials, called *parrains*,³ which can only be provided on official support forms. By signing a support form, a

² Those citizens who turn 18 are included automatically at their last known address; however, if these persons change address in the meantime, they must re-register in order to continue to be able to vote.

³ Although there approximately 48,000 such positions, due to the possibility to hold multiple mandates there are actually about 42,000 persons who can provide such signatures. Each *parrain* may sign a support form for only one candidate, which cannot be revoked.

parrain presents a candidate that she or he deems credible to contest the elections. These support forms must come from at least 30 different *departments* of France, with no more than ten per cent coming from any one *department*. The category of *parrains* include all mayors, departmental and regional councillors, as well as parliamentarians in the National Assembly and French deputies in the European Parliament.

The support forms had to be received by the *Conseil Constitutionnel* by 16 March. After checking the submitted forms, the *Conseil Constitutionnel* announced on 19 March that 12 candidates had been registered. None of the candidates who presented at least 500 support forms was rejected.

The *Conseil Constitutionnel* published the names of a random sample of 500 *parrains* who provided support forms for each candidate. In previous elections, the names of all *parrains* who provided signatures in support of candidates were made public. After the 2002 elections, the *Conseil Constitutionnel* recommended that the legislation be amended to require public display of the names of all those who supported each candidate. As the National Assembly did not do so, the *Conseil Constitutionnel* considers that it does not have a mandate to publish more than the 500 names provided for by the law.

There has been discussion in France regarding the candidate nomination process. Some potential candidates have objected to the requirement on the grounds that they may find it difficult to obtain 500 *parrains* despite having significant popular support. Another view is that the process now permits too many candidates to be registered. After the 2002 elections in which 16 candidates were registered, the *Conseil Constitutionnel* recommended that the National Assembly could consider tightening the existing requirements if it considered that the increased number of candidates created inconveniences for the organization and control of the election process. The National Assembly did not change the requirement for the upcoming elections.

E. ELECTRONIC VOTING

The Election Code permits the use of voting machines for *communes* that have at least 3500 inhabitants. Voting machines must meet 114 requirements listed in a technical decree from the Ministry of Interior in order to be certified by the accredited certification agencies. Currently, three types of machine are officially permitted – two are Direct Recording Electronic voting systems (DREs) and one is a mechanical push button system.

The source code for the machines is not public but is provided to the certification body. There is no requirement for a voter-verified auditable paper trail.

According to the Ministry of Interior, the machines were used in 55 *communes* in the 2005 referendum on the European Constitutional Treaty, covering some 900 polling stations with approximately one million voters. The Ministry expects that these numbers will increase for the upcoming presidential elections. Media reports indicate that some candidates and political parties have raised questions about the use of electronic voting systems.

F. CAMPAIGN AND CAMPAIGN FINANCING

In France, the conduct of election campaigns is strictly regulated in order to ensure the equal treatment of each candidate on the part of the State, a principle that is prescribed by law. The *Commission Nationale de Contrôle de la Campagne Électorale (CNCCEP)*, a five-member commission presided by the Vice-President of the *Conseil d'Etat* (the highest administrative court in France), is the body charged with ensuring that the principle of equality for all candidates is duly respected. The *CNCCEP* works closely with the *Conseil Supérieur de l'Audiovisuel*, which regulates and monitors the conduct of the campaign in the media; with the *Commission nationale de contrôle des comptes de campagne et des financements politiques (CNCCFP)*, which monitors and approves the financial accounts of the candidates' campaigns; with the *Commission des Sondages*, which monitors opinion polls; as well as with the *Conseil Constitutionnel* and with the relevant ministries involved in the conduct of the elections.

Candidates and parties must submit all campaign materials to the *CNCCEP* before these can be distributed in order to verify their conformity with legal provisions. Campaign posters must have the same content throughout France and may only be placed in locations designated by local authorities. At the local level, and subordinate to the *CNCCEP*, 105 *commissions locales de contrôle* made up of magistrates ensure that regulations regarding campaigning are followed and inform the *CNCCEP* in case of violations. These commissions are also responsible for the mailing of ballots and campaign materials to each voter in advance of election day. Candidate representatives can participate in the work of the commissions.

The decisions of the *CNCCEP* are not legally binding on candidates. However, decisions regarding the campaign are made in consultation with the respective campaign organizations, and these decisions are adhered to by the campaigns. Should a candidate not be satisfied with the *CNCCEP* decision, she or he can refer the case to the courts.

Campaign spending and political party financing are also strictly regulated in France and are also designed to create equal conditions for all candidates. For the first round of the 2007 presidential elections, the campaign spending limit is 16,166,000 Euro.⁴ Campaign donations may be received from individuals (limited to 4,600 Euro per person) and from political parties (up to 7,500 Euro). Donations are prohibited from legal entities. Candidates who obtain at least 5 per cent of the vote in the first round are eligible to receive reimbursement for their campaign expenses up to 8,083,000 Euro; those who do not pass the 5 per cent threshold may be reimbursed up to 808,300 Euro. Some costs are directly covered by the State, for example, TV spots.

For the first time, the *Commission nationale de contrôle des comptes de campagne et des financements politiques (CNCCFP)* is in charge of reviewing and approving campaign accounts for presidential elections. Campaign spending is closely monitored during the campaign, with the support of the *Conseil Constitutionnel*. In order to obtain a partial refund of campaign expenditures, a candidate must submit a post-election report to the *CNCCFP* for the year prior to the election. If accounts are not

⁴ The total limit for the two candidates reaching the second round is 21,594,000 Euro each.

submitted on time or if the *CNCCFP* does not approve the accounts, no reimbursement of campaign expenses is provided. For presidential elections, this is the only enforcement mechanism available should a candidate spend more than the established limits.

This role filled by the *CNCCFP* was previously undertaken by the *Conseil Constitutionnel*, which is now the appeal body in the event that campaign accounts are rejected by the *CNCCFP*.

G. MEDIA

The role of the electronic media, both public and private, is strictly regulated in the official election campaign and in the period prior to the start of the official campaign. The principles used are “equality”, which refers to numeric equality in terms of the number of minutes, and “equity”, which refers to proportional treatment of potential candidates relative to their significance as determined by a formula based on previous election results and other factors.⁵

The specific rules are determined by the French Broadcasting Authority – *Conseil Supérieur de l’Audiovisuel (CSA)* – which also monitors broadcasts to ensure that the rules are respected and has the power to penalize broadcasters who violate the rules. The *CSA* monitors the largest television broadcasters directly and requires the others to submit reports.

During the official campaign period, from 9 – 20 April, electronic media are required to provide all candidates with equal conditions, both in terms of direct speech⁶ and of coverage in news broadcasts and other political programs. From the date of the registration of candidates until the beginning of the official campaign, electronic media must provide registered candidates with equal direct speech time and equitable time with regard to their coverage in news and other political programs. This period in the presidential election timeline is new since 2002, and derives from the increase of time between the registration of candidates and the start of the official campaign.

Prior to the registration of candidates, electronic media must provide those who have indicated their intention to become candidates with equitable time regarding direct speech and coverage in news broadcasts and other political programs.

The *CSA* informed the NAM that it had issued a general notice to the electronic media during the pre-campaign period that there had been an excessive “bipolarization” in the treatment of candidates, specifically to the benefit of Mrs. Segolene Royal and Mr. Nicolas Sarkozy. The *CSA* stated that since issuing this notice, the situation had improved and that media treatment of other candidates was more equitable.

The campaign organization of Mr. Francois Bayrou informed the NAM that the principal concern about the current election process is the coverage of Mr. Bayrou on television, as compared to the coverage of Mrs. Royal and Mr. Sarkozy. While Mr. Bayrou’s campaign has not made a formal complaint about equitable treatment in the electronic media, it has discussed the issue with the *CSA*. The campaign

⁵ Results of opinion polls are not taken into account in determining equity.

⁶ This includes speech from candidate’s supporters.

representative acknowledged the difficulties inherent in defining equitable treatment but stated that despite some improvement after the CSA's advisory, the electronic media still needed to make additional efforts to ensure equitable treatment.

Paid advertisements for candidates are prohibited, but each television broadcaster must provide a set amount of time for each candidate to broadcast pre-recorded election spots (45 minutes per candidate per broadcaster). The CSA is responsible for providing equipment and cameramen for recording these spots in order to ensure equal opportunities for candidates. In response to previous criticism that these spots were uninteresting and did not facilitate voter participation, spots are no longer required to be filmed in a studio. The CSA does not interfere with the content of the spots but has in past elections required their editing for violation of technical rules or violations of regulations regarding the use of symbols, such as the flag of France.

In respect of freedom of expression, print media is unregulated with respect to the conduct of presidential elections, except for a prohibition on paid advertisements.

V. CONCLUSIONS AND RECOMMENDATIONS

The overall election process in France appears to enjoy a high level of public confidence and offers a number of transparency and accountability mechanisms and other safeguards for the conduct of democratic elections, including the oversight of the courts during the election process. No immediate issues were brought to the attention of the NAM that would necessitate OSCE/ODIHR involvement. However, the NAM considers that the deployment of an Election Assessment Mission could be useful, in particular with regard to assessing aspects of voter registration, the implementation of electronic voting in some localities, as well as the unique election regulatory framework. On this basis, an OSCE/ODIHR Election Assessment Mission will be deployed.

ANNEX: List of Meetings

Ministère des affaires étrangères

- M. Camille GRAND, sous-directeur du désarmement

Mairie de Paris (service des élections)

- M. Philippe BAILLET, chef du service des élections.
- Mme LEIBNITZ, chef de la section électorale de la mairie du 4^e arrondissement de Paris

Ministère de l'outre-mer

- M. Frédéric POTIER, chef du bureau des affaires politiques et des libertés publiques

Conseil Supérieur de l'Audiovisuel

- Mme Sylvie Genevoix, Membre du CSA
- M. Laurent AMAR, Directeur des affaires européennes et internationales

Préfecture de Paris

- M. Philippe BENOIST, chef du bureau des élections

Conseil Constitutionnel

- Mme Jacqueline de GUILLENCHMIDT, membre du conseil constitutionnel

Ministère de l'intérieur (bureau des élections)

- M. Stanislas BOURRON, chef du bureau des élections et des études politiques
- M. Marc PICHON DE VENDEUIL, adjoint du chef du bureau des élections

Commission nationale de contrôle de la campagne électorale

- M. Jean-Marc SAUVÉ, président, and all members of the commission

Commission des sondages

- M. Jean-Michel GALABERT, président
- M. Jean-Pierre PILLON, secrétaire permanent

Commission nationale de contrôle de la campagne électorale

- M. Gilles BACHELIER, Rapporteur général

Campagne de M. Nicolas SARKOZY

- M. Pierre REGENT, Adjoint au Conseiller Diplomatique

Commission nationale de contrôle des comptes de campagne et des financements politiques

- M. Jean-Louis MERE, chef du service juridique
- Mmes Anne-Laure VIGNAL et Ghislaine SANDJO

Campagne de M. Francois BAYROU

- M. Pierre-Emmanuel PORTHERET, Adjoint à la directrice de campagne