



Office for Democratic Institutions and Human Rights

REPUBLIC OF ESTONIA
PARLIAMENTARY ELECTIONS
4 March 2007

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

15-17 January 2007



Warsaw
31 January 2007

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Minister of Foreign Affairs of the Republic of Estonia to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 4 March 2007 elections to the Riigikogu (Parliament), the OSCE/ODIHR undertook a Needs Assessment Mission (NAM) from 15 to 17 January 2007. The Needs Assessment Mission was composed of Mr. Gerald Mitchell, Head 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 Riigikogu election, and to advise on the modalities for a possible OSCE/ODIHR election observation activity with regard to the upcoming election.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs of the Republic of Estonia for its assistance and cooperation in organizing the Needs Assessment Mission. The OSCE/ODIHR would also like to thank the National Election Committee, as well as representatives of State institutions, political parties, media and civil society who took the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The 4 March 2007 Riigikogu election is the first to be held since Estonia's accession to the European Union. The Riigikogu is a unicameral Parliament, composed of 101 seats. Members are elected from 12 multi-seat constituencies for four-year terms through a proportional, open-list system.

The OSCE/ODIHR last observed the Riigikogu election held on 7 March 1999. In its Final Report, the OSCE/ODIHR concluded that the "elections were held in accordance with Estonia's OSCE commitments and with Estonian law." The OSCE/ODIHR conducted a NAM in advance of the 7 March 2003 Riigikogu election but did not subsequently conduct an election observation activity.

A new feature of the upcoming election is the use of remote voting by internet as an alternative voting method. Previously used in the 2005 local elections in Estonia, the planned use of remote internet voting in the Riigikogu election would be the first countrywide use of the internet as a voting method in a parliamentary election in an OSCE participating State.

Any eligible Estonian citizen with an Estonian ID card enabled with a digital authentication capability will be able to cast his or her vote over the internet during a three day period in advance of election day. The vote is changeable either by casting

subsequent ballots by internet or by casting a paper ballot at a polling station during the advance voting period.

Two political parties represented in the current Riigikogu opposed the introduction of remote internet voting. Their concerns included the limitations on transparency due to the inherent difficulties of observing voting in an uncontrolled environment, the potential for violations of the secrecy of the vote, and the potential for coercion of voters or buying of votes.

Some concerns were raised by political parties about the security of the internet as a voting method, although no political parties fundamentally questioned the security of Estonia's internet voting system. The National Election Committee, which appears to enjoy broad public confidence, informed the NAM that a number of safeguards have been implemented in order to ensure the security of the internet voting system and the anonymity of the voter.

The legal framework of Estonia overall provides for the conduct of democratic elections. The campaign environment, including the electronic and print media, is free and pluralistic. However, an amendment to the Riigikogu Election Act prohibits outdoor political advertising during the campaign period, raising concerns related to disproportionate restriction on free speech.

Estonia has a significant national minority population and has taken some measures to include national minorities in the political process. One element of this is that resident stateless persons, who comprise 9.2 per cent of the total population, have the right to participate in Estonia's local elections, although do not have the right to vote in Riigikogu election. Despite the ongoing naturalization process, a considerable number of persons remain stateless.

The OSCE/ODIHR recommends the deployment of an Election Assessment Mission (EAM). The Mission should be deployed approximately two weeks before election day, until shortly thereafter. No systematic or comprehensive election day observation of polling station procedures is envisaged.

III. BACKGROUND

The 4 March 2007 Riigikogu election is the 5th since the restoration of independence and is the first parliamentary election to be held since Estonia's accession to the European Union. The Riigikogu is a unicameral Parliament, composed of 101 seats. Members are elected from 12 multi-seat constituencies for four-year terms through a proportional, open-list system. There is a five per cent threshold at the national level.

Currently, there are five political parties represented in the Riigikogu: the Estonian Reform Party, the Estonian Centre Party and the Estonian People's Union, which together form the government; and the Social Democratic Party and the Union of Pro

Patria and Res Publica¹ in opposition. There are also a number of other political parties not represented in parliament which will compete in the election, including the Green Party, a recent addition to the political landscape.

The OSCE/ODIHR previously observed Riigikogu elections held on 5 March 1995 and 7 March 1999. After the 7 March 1999 elections, the OSCE/ODIHR concluded that the “elections were held in accordance with Estonia’s OSCE commitments and with Estonian law.” The OSCE/ODIHR conducted a NAM in advance of the 7 March 2003 Riigikogu election but did not subsequently conduct an election observation activity.

IV. FINDINGS

A. LEGISLATIVE FRAMEWORK

The legislative framework of Estonia generally provides for the conduct of elections in accordance with the 1990 Copenhagen commitments and other international standards.

Parliamentary elections are primarily regulated by the Riigikogu Election Act, but also under the Political Parties Act, Broadcasting Act and other legislation. Under the Riigikogu Election Act, voting rights in parliamentary elections are extended to Estonian citizens aged 18 and older, who have not been divested of legal capacity. Persons convicted of a criminal offense and serving a sentence of imprisonment do not have the right to vote. The right to be a candidate is extended under the same requirements, except that the minimum age for candidacy is 21 years of age. Candidates may be nominated on a party list by political parties which are registered with the Ministry of Justice or may register as independent candidates.

Several amendments have been made to the Riigikogu Election Act since the 2003 parliamentary election. The amendments include provisions for electronic voting by internet, changes to campaign financing, and a prohibition on political outdoor advertising during the campaign period (see sections “Remote Voting by Internet” and “Campaign” respectively.)

The Riigikogu Election Act provides for observation of elections, requiring that the National Election Committee establish regulations regarding the rights of observers.

B. ELECTION ADMINISTRATION

Election administration is carried out by a three-tiered election commission structure – the National Election Committee (NEC), county and city election committees (CEC), and division committees (DC).

¹ Union of Pro Patria and Res Publica is a merger of two parties represented in parliament, the Pro Patria Union and Res Publica Union, which took place since the 2003 parliamentary election.

The NEC is composed of seven members as follows: a judge of a court of first instance, a judge of a court of appeal, an advisor to the Chancellor of Justice, an official of the State Audit Office, a public prosecutor, an official of the Chancellery of the Riigikogu, and an official of the State Chancellery. Each member is appointed by the respective relevant authority (i.e., the judges are appointed by the Chief Justice of the Supreme Court, the public prosecutor is appointed by the Chief Public Prosecutor, etc.). The Chairperson and Deputy Chairperson are elected by the NEC itself.

The CECs consist of up to 13 members. The County Secretary serves as CEC chairman, and the county Governor appoints the remaining members on the proposal of the Secretary. For the cities of Tallinn and Tartu, the CEC Chairman is the corresponding City Secretary, and the other members are appointed by the city council upon the proposal of the City Secretary, as are four alternates.

The division committees are responsible for the administration of the elections at polling station level. While the NEC and CEC composition is based on the non-partisan and professional model, DCs are multi-party commissions. DCs may have up to nine members; the chairman and members are appointed by resolution of the local government council. Half of the members are nominated by the political parties participating in the elections and half are nominated by the municipal or city secretary.

There appears to be broad public confidence in the impartial and professional administration of elections in Estonia.

C. VOTING SYSTEM

Estonia provides for a wide range of voting methods for voters. In all paper voting methods, the voter writes the registration number of his/her preferred candidate on the ballot.

Voters in Estonia may vote by paper ballot on election day at the polling division where they are entered on the voter list, or they can apply for supervised home voting. Voters in Estonia may also vote in advance of election day by paper ballot. Advance voting is held from 13 to 9 days before election day at a polling division designated by the respective CEC, and from six to four days before elections at all polling divisions and at custodial institutions. Voters may vote in advance at polling divisions outside their assigned polling division and outside their constituency, and advance home voting for voters outside their polling division may be conducted through application.

Voters in Estonia may also vote in advance by internet from six to four days prior to election day (see below).

The Riigikogu Election Act provides for voting by Estonian citizens permanently residing or temporarily staying in a foreign state, and extensive efforts are made by the Ministry of Foreign Affairs and the NEC to enable their participation. All voting in foreign states is conducted in advance of election day. In general, these voters may vote by paper ballot in person at Estonian embassies and consulates, by post, or by internet.

Voters registered as permanently residing outside Estonia may also vote in Estonia by advance voting at a designated polling division or by internet.

The numerous voting options require detailed verification procedures on the part of the election administration to ensure that each voter is able to vote only once.

D. REMOTE VOTING BY INTERNET

1. Background

The planned use of remote internet voting in the Riigikogu election would be the first countrywide use of the internet as a voting method in a parliamentary election in an OSCE participating State. The introduction of remote internet voting has generated interest and some political controversy within Estonia.

Legislation enabling remote voting by internet in local elections was originally passed in 2002. In the months prior to the 16 October 2005 local elections, specific legislation was adopted in the Riigikogu regulating the introduction of remote internet voting. One of the primary reasons given by supporters for its introduction was to increase participation in elections, especially by younger voters. The use of remote internet voting was not supported by all political parties in parliament.

The President of Estonia at the time, Mr. Arnold Rüütel, refused to promulgate the law. He eventually referred the issue to the Constitutional Court, after the Riigikogu passed the legislation on three occasions. The President's challenge was based on the argument that permitting voters who voted electronically to change their vote put them in a situation of inequality compared to voters who voted only by paper ballot, as the latter could not change their votes. The Constitutional Court, supported by an opinion of the Chancellor of Justice, found that since all voters have the possibility to vote electronically, the law did not violate the equality of voters.² After this decision, the President promulgated the amendments. This was the only legal challenge to remote internet voting in Estonia.

A system enabling internet voting was developed and used in the 2005 local elections on a nationwide scale. Use of the internet voting system was relatively low - some 9,287 voters cast valid ballots using the system (1.85 per cent of valid votes cast). There were no reports of significant disruptions in the functioning of the system, although voting was interrupted for a brief period. No official complaints were made regarding the system after the local elections.³

2. Internet Voting System

The Riigikogu Election Act was subsequently amended to enable the use of remote internet voting for the 4 March 2007 parliamentary election. The legislation provides

² Judgment of the Constitutional Review Chamber of the Supreme Court number 3-4-1-13-05, "Petition of the President of the Republic to declare the Local Government Council Election Act Amendment Act, passed by the Riigikogu on 28 June 2005, unconstitutional," 1 September 2005.

³ Report on Internet Voting at the Elections of Local Government Councils on October 2005, by Ülle Madise, Priit Vinkel and Epp Maaten. Available at www.vvk.ee/engindex.html

that voters may vote by internet from six to four days before election day if they have an Estonian identity document permitting digital authentication.

The system requires that a voter use a special ID card reader. The voter then uses a PIN number to access the electronic ballot and votes by marking the name of her or his preferred candidate. The voter then uses a second PIN number to encrypt the ballot prior to its transmission to the NEC server. During the period of advance voting, the voter may change the electronic vote by voting again electronically; this may be done as often as the voter likes. The voter may also change the electronic vote by casting a paper ballot during advance voting; in this case, the paper ballot is counted as valid and the electronic ballot will be annulled during the verification process.

The system is designed to protect the anonymity of the voter through a “double envelope,” in which the content of the voter’s electronic ballot is not de-encrypted until it is separated from the voter’s identity, after the expiration of the electronic voting period.

The internet voting system was originally developed by a private company through a public tender process. The system was tested prior to the local elections by the NEC, but there has been no subsequent separate testing. There is no provision for certification of the system. Prior to the local elections an individual expert contracted by the NEC reviewed the source code developed by the contracting company.

The Estonian People’s Union and the Estonian Centre Party informed the NAM that they oppose the use of remote internet voting primarily due to concerns regarding secrecy of the vote. These parties expressed concerns that the unsupervised nature of remote voting makes it impossible to observe, thereby creating the potential for illegal pressure, coercion or inducement of voters. They noted that such occurrences could potentially take place in a voter’s home or workplace, and additionally stated that any person with a laptop computer and ID card reader could travel to residences and “collect” votes.

Political parties in favor of remote internet voting cited advantages in making voting easier for voters and the possibility of increasing participation. They noted that electronic voting is an additional method of voting and is not obligatory. They stated that the provision for recasting a ballot, either electronically or by paper ballot, alleviated concerns regarding secrecy, as anyone coercing a voter or buying a vote could not be sure that the voter would not change his or her vote. Regarding observability of ensuring the secrecy of the vote, these parties stated that remote voting by internet was similar to remote postal voting in this respect.

No interlocutors expressed concern over the NEC’s administration of the internet voting system, yet all acknowledged that they are placing a high degree of trust in the NEC on this issue. The NEC stated that all facets of the implementation of the system are open to political parties and observers; however, only a few of the political parties with whom the NAM met seemed to be following this aspect of the process closely. The NEC will conduct training on the system for political parties and observers prior to initiating electronic voting procedures on 12 February (software installation, generation of the encryption keys, test voting and counting, transport of servers and other).

The security of the Estonian internet voting system was not fundamentally questioned by political parties or other interlocutors during the NAM. However, some concerns were expressed regarding the security of the internet as a method of voting in general, including references to the 2004 SERVE report on a proposed internet voting system in the United States of America, which had negative conclusions regarding the security of the internet as a voting channel.⁴

The NEC stated that they had taken a number of steps to safeguard the system from internal manipulation and from external attack, which the NAM did not address in detail. Interlocutors stated that denial of service attacks would not disenfranchise voters living in Estonia, since electronic voting is conducted only in advance of election day.

In the absence of an independent paper record, it is unclear how a recount could be conducted in the event of challenge. The Riigikogu Election Act permits the NEC to invalidate the electronic voting before election day and to invite voters to vote at their polling stations, although it does not specify the grounds for invalidation. In general, the NEC has the right to invalidate the election if a violation significantly affected or could have significantly affected the voting results.

E. CAMPAIGN

Estonian legislation and implementation during previous elections overall provides sufficient guarantees for the freedoms of speech and assembly fundamental to the conduct of democratic elections. However, the Riigikogu Election Act was amended in 2006 to prohibit political outdoor advertising during the campaign period, which begins the day after the last day of candidate registration.⁵ The provision was described to the NAM as an attempt to create a level playing field for all political parties and candidates and as a response to public opinion allegedly opposed to widespread political advertising.

However, this provision is of concern as a possibly disproportionate restriction on free speech. It would particularly affect political parties and candidates new to the political scene. Moreover, the extent of the measure's applicability and its enforcement are unclear. The Chancellor of Justice informed the NAM that his office had sent a letter to parliament raising the possibility that the measure might be unconstitutional and asking parliament to review the legislation.

All political parties consulted during the NAM expressed either opposition to the above-mentioned provision or a view that it should be modified. One unintended

⁴ "A Security Analysis of the Secure Electronic Registration and Voting Experiment (SERVE)," by Dr. David Jefferson, et al. Commissioned by the Federal Voting Assistance Program for the Department of Defense of the United States of America. 21 January 2004.

⁵ Article 5. "*Prohibition of political outdoor advertising*. Advertising an independent candidate, political party or person who runs as party nominated candidate, electoral coalition or person who runs as candidate in the list of electoral coalition, or their logo or other sign or programme on a building, facility, inner or outer side of public transport vehicle or taxi, or any other political outdoor advertising shall be prohibited during the active election campaigning period."

consequence is that outdoor political advertising now takes place prior to the start of the campaign, as evidenced in Tallinn during the NAM visit. Additional concerns were that the prohibition could lead to increased spending on media advertising and to possible efforts to circumvent the prohibition through hidden advertising.

A bill to amend the legislation is under consideration in parliament, although there is no agreement as to how the legislation should be changed. Most political parties stated that it is unlikely that the legislation will be changed prior to election day.

Another piece of legislation under consideration in parliament would increase the transparency and accountability of campaign financing by requiring political parties to report to an independent body and in greater detail. At present, political parties must report their campaign financing and expenditure to a parliamentary committee within one month of election day. Anonymous campaign contributions are prohibited.

F. MEDIA

The media environment in Estonia is open and pluralistic. There are three nationwide terrestrial television broadcasters, including public television. Except for the public broadcasters Eesti Televisioon and Eesti Raadio, which are supervised by the Estonian Broadcasting Council, media in Estonia are largely unregulated with respect to elections and election campaigns.

The Broadcasting Council consists of nine members appointed by the Riigikogu, with five members being MPs from different political parties and four members being recognized experts in the field of media. There is currently a proposal in parliament to change the structure such that all members would be from political parties. The NAM heard concerns that this could over-politicize the Broadcasting Council.

On 27 November 2006, the Broadcasting Council adopted by consensus regulations for the coverage of the election campaign by public television and radio. The regulations specify that news coverage of the campaign must be unbiased. Government officials should be covered in their official capacity in the news only if unavoidable. Reporters who are candidates are not permitted to work in this capacity during the duration of the campaign. There is no structured monitoring of the public broadcasters; this would only be done in response to a complaint.

The Broadcasting Council has no role with regard to private broadcasters, and the campaign regulations do not apply to private broadcasters.

For the election campaign, a schedule of seven live debates has been set for public television. Political parties with at least 101 candidates are invited to take part in the debates, with one of the debates set aside for independent candidates and parties with less than 101 candidates on their lists. A similar schedule has been set for public radio.

Advertising is prohibited on public television and radio, but political advertising is largely unrestricted in the private media. However, broadcasters granting time to

political parties must grant similar opportunities for other political parties.⁶ There is no provision for free air time for political advertising.

There are several daily and weekly newspapers published in Estonia with broad readership, in both Estonian and Russian languages. *Postimees* is the largest non-tabloid publication, with an estimated readership of 237,000, followed by *Eesti Päevaleht*. The *Molodjuz Estonii*, *Vesti Dnja* and the Russian language version of *Postimees* are the most popular Russian language newspapers published in Estonia. No license or permit is required to publish a newspaper in Estonia.

V. NATIONAL MINORITIES

Estonia has a significant population of national minorities, some 32 per cent of the total population. The largest of these groups is the Russian minority (approximately 25.7 per cent).⁷ Estonia has made efforts to integrate national minorities, and most political parties are not formed on a national or ethnic basis but attempt to include minorities to various degrees.

There are some issues which continue to divide the Estonian and Russian populations, including citizenship and naturalization, history, and education. Some concerns were raised with the NAM with regard to participation of minorities in the election process.⁸

There do not appear to be any obstacles to official bodies such as the NEC to publish voter information material in Russian or for political parties and candidates to produce campaign materials in the Russian language.

Estonia is a signatory of the Framework Convention for the Protection of National Minorities. Its ratification contained a declaration limiting its effect to citizens of Estonia, among other conditions. However, the Advisory Committee on the Framework Convention stated in its 2005 report that Estonia has adopted an inclusive approach regarding the applicability of the Framework Convention and that the declaration has only limited practical impact.⁹

A. PERSONS WITHOUT CITIZENSHIP

Estonia has a population of “stateless persons” or “persons with undetermined citizenship,” stemming from the period of its annexation into the Soviet Union. Stateless persons are largely those who migrated from Russia and other parts of the Soviet Union after World War II, and their children, who did not obtain the citizenship of any State after the re-establishment of Estonian independence.

⁶ Article 6 of the Broadcasting Act.

⁷ Ministry of Foreign Affairs of Estonia at www.vm.ee/estonia/kat_399/pea_172/4305.html

⁸ In one example related to the 2005 local elections, an electoral coalition was apparently denied registration under the name “Klenski’s List”, which was written in Russian language but in Latin script. The coalition was able to register under the Estonian language version of the same name.

⁹ Advisory Committee on the Framework Convention For the Protection of National Minorities, Second Opinion on Estonia. Adopted on 24 February 2005.

There are 125,799 stateless persons in Estonia, 9.2 per cent of the total population of 1,368,300. In addition, there are almost 104,000 citizens of third countries (7.6 per cent of the total population), mainly of the Russian Federation. In 2006, 4753 persons were naturalized as citizens.¹⁰ The Advisory Committee noted in 2005 that the number of persons without citizenship remains high and encouraged the Estonian authorities to take additional steps to make the naturalization process more accessible.

Stateless persons do not have voting rights in Riigikogu elections. However, permanent residents, including stateless persons, are eligible to vote in local elections in Estonia. In addition to enabling participation in local government, this measure can affect the indirect election of the President, as in certain circumstances (including in the 2006 presidential election) the body electing the President includes representatives of local authorities.

VI. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the findings described above, and in accordance with the invitation issued by the Republic of Estonia on 14 December 2006, the OSCE/ODIHR recommends the establishment of an Election Assessment Mission for the parliamentary election for a period of two weeks prior to election day.

Given conclusions reached in previous OSCE/ODIHR observation missions and given the confidence of political parties in the election administration, no systematic or comprehensive election day observation of polling station procedures is envisaged.

¹⁰ Statistics of the Citizenship and Naturalization Board as of 1 January 2007.

ANNEX

LIST OF MEETINGS

Monday, 15 January 2007

Ministry of Foreign Affairs

Undersecretary on Legal and Consular Affairs, Mrs. Aino Leppik von Wirén
Director General of Consular Department, Mr. Jaanus Kirikmäe

Minister of Foreign Affairs, H.E. Mr. Urmas Paet

***Postimees* Newspaper**

Mr. Priit Rajalo, Chief Redactor of the News Department

Estonian Broadcasting Council

Mr. Jaak Allik, Vice-Chairman

Mr. Hagi Šein, Member

Mrs. Silvia Tomingas, Member

Mr. Ainar Ruusaar, Chairman of the Board of Eesti Televisioon

Eesti Televisioon (Public Television)

Mr. Ainar Ruusaar, Chairman of the Board

Legal Information Centre for Human Rights (NGO)

Mr. Aleksei Semjonov, Director

Mr. Vadim Poleshchuk, Advisor

Tuesday, 16 January

Estonian Centre Party Faction of the Parliament

Mr. Ain Seppik, MP

Mr. Enn Eesmaa, MP

Mr. Vladimir Velman, MP

Mr. Lauri Laasi, MP

Mr. Toivo Tootsen, MP

Mrs. Inara Luigas, MP

Mr. Arnold Kimber, MP

Chairman of the Riigikogu, Mr. Toomas Varek

National Election Committee

Mr. Heiki Sibul, Chairman of the National Election Committee

Mrs. Epp Maaten, Secretariat of National Election Committee

Mr. Tarvi Martins, E-Voting Project Manager, National Election Committee

Estonian People's Union Faction of the Parliament

Mr. Jaanus Männik, MP

Mr. Villu Reiljan, MP

Mr. Jaak Allik, MP

Mr. Toomas Alatalu, MP

Demonstration of Internet Voting Procedure

Mrs. Epp Maaten, Secretariat of National Election Committee

Pro Patria Union Faction of the Parliament

Mr. Andres Herkel, MP

Mr. Mart Nutt, MP

Citizenship and Migration Board

Mrs. Mari Pedak, Director General

Mrs. Ene Rebane, Deputy Director General

Wednesday, 17 January

Social Democratic Party Faction of the Parliament

Mr. Jarno Laur, MP

Estonian Reform Party Faction of the Parliament

Mr. Silver Meikar, MP

Office of the Chancellor of Justice

Mr. Allar Jõks, Chancellor of Justice

Mr. Alo Heinsalu, Director

Mr. Mikhel Allik, Adviser