



Office for Democratic Institutions and Human Rights

REPUBLIC OF AUSTRIA

PRESIDENTIAL ELECTION

9 October 2022

ODIHR NEEDS ASSESSMENT MISSION REPORT

13-16 June 2022



Warsaw
27 July 2022

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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation to observe the 2022 presidential election and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Austria from 13 to 15 June.¹ The NAM included Alexey Gromov, ODIHR Senior Election Adviser, and Kakha Inaishvili, ODIHR Election Adviser.

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

ODIHR would like to thank the Federal Ministry for European and International Affairs (MFA) for their assistance in organizing the visit. ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM and to share their views.

II. EXECUTIVE SUMMARY

Austria is a federal republic consisting of nine provinces. The federal president is the head of state and is directly elected for a six-year term, with a limit of two consecutive terms. If a candidate obtains an absolute majority of valid votes in the first round is elected president; otherwise, a second round between the two candidates with the largest number of votes takes place in four weeks. The government called the presidential election for 9 October 2022.

The legal framework governing the conduct of the election has remained largely unchanged after the previous election. As a result, most previous ODIHR recommendations remain unaddressed, including those related to criminal liability for defamation, the lack of possibility of citizen election observation and limitations on access to remedies for election disputes. All ODIHR NAM interlocutors consider the legal framework conducive to holding democratic elections.

The presidential election is administered by a five-tiered system of election boards and administrative authorities, headed by the Federal Election Board and supported by the Ministry of Interior. Election boards at all levels include representatives of political parties. Voters have several options to exercise their right to vote, including in-person at their polling stations, by postal ballot and through mobile voting. Alternative voting mechanisms enjoy a high level of popularity, and all ODIHR NAM interlocutors expressed full confidence in the effectiveness, impartiality and transparency of the election administration.

Austrian citizens aged 16 or older are entitled to vote, and there are some 6.4 million registered voters. Citizens may be disenfranchised by an individual court decision for committing specific crimes. Voter registration is passive, except for citizens residing abroad who must actively register. Several ODIHR

¹ On 18 July 2022, ODIHR received an official invitation to observe the presidential election.

NAM interlocutors positively assessed the Central Voter Register, and no concerns were expressed regarding the overall accuracy and inclusiveness of the voter lists.

Eligible voters over 35 years of age may stand for president. Candidates can be nominated by political parties or run independently. Prospective candidates must be supported by at least 6,000 voters, and each voter can only sign in support of one candidate. Some ODIHR NAM interlocutors expressed concerns that the requirement for voters to visit a municipal office in order to sign in support of a candidate may have a dissuasive or intimidating effects. Nonetheless, no concerns were raised regarding the inclusiveness of the candidate registration process.

Women comprise 40 per cent of all current members of parliament and a half of federal ministers. While several political parties met with said apply they internal rules for the promotion of women within their parties, some ODIHR NAM interlocutors noted that more resolute efforts could be done to enhance the participation of women in political life. At the time of release of this report all known candidates were men.

Election campaigning is largely unregulated. Still, no ODIHR NAM interlocutors raised concerns about ability of candidates to campaign freely, although some anticipate negative campaigning against major candidates and the use of inflammatory language, especially on social networks.

The law sets limits for campaign expenditures and provides reporting and disclosure requirements. Election campaigns may be financed from private funds. Political parties may also use significant public funds to finance presidential campaigns. While the Court of Audit has limited authority to review campaign finance reports, it may also order a further independent audit in case they determine further review is necessary. Many ODIHR NAM interlocutors shared the view that the reporting and sanctioning mechanisms for campaign finance, especially of third parties, could be further tightened.

Media is largely self-regulated and offers a diverse range of views. Most ODIHR NAM political party interlocutors expressed overall satisfaction with their access to media, although some noted that the right of access to information has not always been guaranteed. Concerns were also expressed regarding the lack of transparency on allocating the state contracts to different media. Defamation and libel remain criminal offenses despite previous ODIHR recommendation.

Complaints about the election process are generally only considered as part of challenges to the election results that are reviewed by the Constitutional Court after the announcement of results. Only candidate representatives can file such challenges to the election results. All ODIHR NAM interlocutors expressed an overall confidence in the Court's impartial handling of election disputes and positively noted the effectiveness of existing checks and balances.

All ODIHR NAM interlocutors expressed full confidence in the electoral process and the ability of the election administration to professionally and transparently administer the election. While most ODIHR NAM interlocutors welcomed a potential election observation activity, no new issues were identified since the last elections that would benefit from further assessment by ODIHR. Based on this, the ODIHR NAM does not recommend deploying an election-related activity for the upcoming 2022 presidential election. ODIHR, however, reiterates that many of its previous recommendations remain valid and stands ready to offer its assistance in a post-electoral follow-up process.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Austria is a federal parliamentary republic consisting of nine provinces. The federal president is the head of state and formally holds significant powers, but in practice, the role is more ceremonial, and the government is consulted on policy decisions. Many ODIHR NAM interlocutors noted an increased political role of the president during recent years. The Chancellor, usually leader of the largest parliamentary party, is the head of the government and is appointed by the president following each parliamentary elections. Legislative powers are vested in a bicameral parliament - the 183-member National Council (*Nationalrat*, lower chamber), directly elected for a five-year term, and the 61-member Federal Council (*Bundesrat*, upper chamber), indirectly elected by the provincial legislatures.

The last parliamentary elections were held early and took place on 29 September 2019 as a result of a government crisis and the collapse of the ruling coalition related to the so-called Ibiza affair. The early elections resulted in a new coalition composed of the Austrian People's Party (ÖVP) and the Greens (GRÜNE), with Sebastian Kurz as the Chancellor.² Less than two years later the ensuing corruption investigations forced Chancellor Kurz to resign, and former foreign minister Alexander Schallenberg succeeded him as a Chancellor, although for only two months. In December 2021, Minister of Interior Karl Nehammer became the new Chancellor.

The presidential election will be held on 9 October 2022. The current president, Alexander Van der Bellen, elected in 2016, announced he is standing for re-election. Several parliamentary political parties have endorsed his candidacy and hence will not nominate their own candidates.

In the current government 6 out of the 12 ministers are women. Overall, 40 per cent of all current members of parliament in both chambers are women, including the vice president of the National Council and the president and vice president of the Federal Council.³ While several political parties met with said they apply internal rules for the promotion of women within their parties, some ODIHR NAM interlocutors noted that more resolute efforts could be done to enhance the participation of women in political life. At the time of release of this report all known candidates were men.

ODIHR has previously observed four elections in Austria.⁴ Most recently, ODIHR deployed an Election Assessment Mission to the 2017 early parliamentary elections. The final report stated that “[t]he elections reflected Austria’s vibrant democracy. The campaign was lively, with civil and political freedoms fully respected. The media provided extensive and varied coverage that enabled voters to make an informed choice. Although aspects of election-related legislation could be improved, the election was effectively administered and enjoyed a high level of public confidence”.

² The 2019 elections resulted in five parties in the National Council: ÖVP received 71 seats, the Social Democratic Party (SPÖ) – 40, the Freedom Party (FPÖ) – 31, GRÜNE – 26, and the New Austria and Liberal Forum (NEOS) – 15 seats.

³ The UN Committee on the Discrimination against Women, in its 2019 [concluding observations on the ninth periodic report of Austria](#), has previously welcomed the measures adopted by the State party to advance the participation of women in political and public life. However, it further recommended the State party to “[s]trengthen its efforts to increase the number of women in decision-making bodies at the federal, *Länder* and municipal levels, in both elected and appointed positions, with a view to achieving the equal representation of women and men in political and public life”. See Paragraphs 26 and 27.

⁴ See all [ODIHR election-related reports on Austria](#).

The final report, issued in February 2018, contains 17 recommendations, including 4 priority ones, for the authorities to improve electoral process and bring it closer in line with OSCE commitments.⁵

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework for presidential elections consists primarily of the 1929 Constitution (last amended in 2020), the 1971 Presidential Election Act (PEL, last amended in 2018) and the 1992 Parliamentary Election Act (last amended in 2018), the 2018 Voter Registration Act as well as several other laws.⁶ The ODIHR NAM was informed that in July the National Council plans to adopt a few amendments to election laws, that would include the requirement that municipalities publish precinct level results, thus potentially addressing a prior ODIHR recommendation. Austria is party to the key international human rights instruments pertaining to the holding of democratic elections.⁷

Overall, the legal framework governing the conduct of the election has remained largely unchanged, leaving most of the previous ODIHR recommendations unaddressed, including those related to the composition of election boards, the transparency of Federal Election Board meetings, the ease of candidate registration procedures, and limitations on access to remedies for election disputes. In addition, while election observation by candidate representatives and international organizations is permitted, the law still does not allow citizen observation, at odds with OSCE commitments.⁸ Nonetheless, all ODIHR NAM interlocutors expressed confidence in the legal framework and regarded it as conducive to holding democratic elections.

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

C. ELECTION ADMINISTRATION

The election administration has five levels, reflecting the country's governance structure. It is comprised of the Federal Election Board (FEB), 9 Province Election Boards (PEBs), over 100 District Election Boards (DEBs), over 2,000 Municipal Election Boards (MEBs), and around 12,000 Polling Station Boards (PSBs). All the boards are permanent and convene as necessary to administer all types of elections. Despite previous ODIHR recommendations, the law continues to lack measures to promote gender-balanced representation on election boards, and gender disaggregated data is not systematically collected and readily available.⁹

⁵ 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 ODIHR Electoral Recommendations Database at [Paragraph25.odihr.pl](#).

⁶ Other relevant laws are the 1953 Constitutional Court Act, the 1947 Prohibition Act, the 1973 Act on the Electoral Register, the 1974 Penal Code, the 2012 Federal Support of Political Parties Act, and the 2012 Federal Act on Financing of Political Parties (FPPA).

⁷ Including [the 1966 International Covenant on Civil and Political Rights \(ICCPR\)](#), [the 1965 International Convention on the Elimination of All Forms of Racial Discrimination](#), [the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women](#), [the 2003 UN Convention against Corruption](#), [the 2006 UN Convention on the Rights of Persons with Disabilities](#), and [the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms](#). Austria is a member of the Council of Europe's Venice Commission and GRECO.

⁸ Paragraph 8 of the [1990 OSCE Copenhagen Document](#) provides that "the participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place".

⁹ Article 48d of the [CEDAW General Recommendation No. 23](#), requires state parties to provide "statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights".

Civil servants at each level of government assist their respective election boards. The MoI plays a significant role, acting as the secretariat for the FEB. The MoI is in charge of technical preparations, including producing ballots and other election materials, issuing guidance and training manuals for electoral authorities, and preparing voter education materials. The MFA informs citizens abroad about postal voting. Municipalities maintain voter registers and provide operational support for most election day activities.

The MoI informed the ODIHR NAM that for the upcoming election it plans to launch an e-learning tool for board members to provide step-by-step guidance. In addition, printed manuals, standardised forms for minutes and checklists will also be available for poll workers as well as for members of the PEBs, DEBs and MEBs. The MoI plans to establish a call centre with a dedicated hotline for voters and provide pertinent voter information also on social network platforms.

The FEB is composed of 17 members (of whom 5 are women), each having a substitute, and chaired by the Minister of Interior (MoI).¹⁰ Two members are judges and the remaining members are nominated by the parliamentary parties, in proportion to their number of seats in parliament.¹¹ Six members of the FEB and two substitutes are current elected deputies in the federal or regional parliaments. ODIHR has previously recommended restricting elected officials from directly serving on election boards.

The FEB is responsible for registering candidates, supervising the work of lower election boards, and announcing the final election results. Despite previous ODIHR recommendation, FEB meetings continue to take place behind closed doors, which limits the transparency of its work. Those potentially concerned by a certain decision are, however, invited to attend the respective session.

All PEBs, DEBs, and MEBs are composed of nine members and a chair. These chairs are usually the heads of the respective local government (governors, heads of districts, mayors). Other election board members represent parliamentary parties in proportion to their share of the local votes in the last parliamentary elections.¹² The PSBs consist of three members nominated by parties and a chair appointed by the mayor from the municipal administration. Members of all boards are appointed for a five year term.

The PEBs' primary role is to compile the election results. The DEBs are responsible for counting postal votes. The MEBs compile the results from polling stations and oversee the voter registers. The PSBs organize voting and the counting of votes.

Several ODIHR NAM interlocutors noted that political parties often face difficulties in identifying a sufficient number of citizens willing to serve as polling staff, and many PSBs consist of only one or two members on election day.¹³ All ODIHR NAM interlocutors expressed full confidence in the work of the election administration at all levels.

D. VOTING METHODS

Voters have several options to exercise their right to vote besides casting their ballots in-person at their respective polling stations. Eligible voters who are not able to vote in-person, for reason of

¹⁰ The FEB members are appointed for five years and cannot be members of any other election board. The current FEB was appointed in 2019.

¹¹ Non-parliamentary parties that participated in the previous parliamentary elections may nominate observers.

¹² Members of the PEBs, DEBs and MEBs are appointed by the legislature or council at the respective level.

¹³ The law allows for the possibility of the PSBs made up of members of only one party.

health or absence from the country, have the right to vote by a postal ballot (voting card). Voters in prisons, detention centres, care homes and hospitals, as well as homebound voters may also use postal voting. Postal ballots should be returned by mail, in-person or by a person of trust to any PSB or DEB in the country by 17.00 on election day.¹⁴ Voters residing abroad may return their ballot by post or deposit it at their embassy or consular representation. Mobile voting is also permitted at prisons, hospitals and for homebound voters.

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

In Vienna and 14 other statutory cities, voters can also use a voting card as a *de facto* method of advance voting by applying for and completing a voting card at the same time at a municipal office prior to election day. ODIHR has previously recommended ensuring the equality of voting conditions within Austria by standardising the voting operations throughout the country.

Alternative voting mechanisms enjoy a high level of trust and popularity in Austria.¹⁵ While potential risks of voting in an uncontrolled environment were recognised by some ODIHR NAM interlocutors, no fundamental objections were raised about their use in the upcoming election.

Persons with disabilities can be assisted in casting their vote in the polling stations by a person of their choice. According to the law, at least one barrier-free polling station should be arranged in every municipality, where technically feasible. According to the MoI some three fourths of all polling stations are accessible to voters with reduced mobility; nevertheless, some ODIHR NAM interlocutors expressed concerns over accessibility in regions other than Vienna and Tyrol and rural areas as well as a lack of party campaign materials adapted for people with disabilities. The MoI and municipalities will prepare special templates for marking the ballots for visually impaired voters and adapt voter education materials to easy-to-read and easy-to-understand formats and sign language.

E. VOTER REGISTRATION

All citizens 16 years or older as of election day have the right to vote, unless their suffrage rights have been suspended by an individual court decision on limited grounds.¹⁶

There are approximately 6.4 million registered voters, including some 580,000 living abroad and some 62,000 registered to vote from abroad. Registration is passive, and voters are automatically included in the voter lists by municipal authorities according to their main place of residence, except citizens living abroad who have to actively register.¹⁷ Each municipality maintains its own permanent voter register on a continuous basis. These registers are interconnected to the Central Voter Register, based on which the voter lists are generated before each election.

¹⁴ According to the MoI, on the day before election day, the postal service should empty all post boxes and forward all postal ballots to the respective DEBs.

¹⁵ In the 2019 parliamentary elections, more than 1 million voters applied for voting cards.

¹⁶ Citizens may be disenfranchised if convicted of a criminal offence under the Prohibition Act, imprisoned for more than one year for an offence against the state, army, and supreme state bodies, for electoral fraud, or imprisoned for more than five years for any crime.

¹⁷ The MFA informed the ODIHR NAM that a new self-check-in system would be applied for this election.

Voter lists are posted for a 10-day scrutiny period when voters can request corrections in the voter lists at their respective municipality and further appeal the decision of the municipality to the administrative court. Political parties and representatives of prospective candidates may obtain copies of the voter lists in each municipality for a fee covering their production costs.

While overall accuracy and inclusiveness of the voter lists was not questioned, several ODIHR NAM interlocutors raised concerns regarding restrictive rules concerning the acquisition of citizenship, which prevent a considerable number of non-citizens from the electoral process, including those without European Union citizenship for local elections.¹⁸ Citizenship is an admissible restriction on suffrage for national elections; however, there is an emerging trend to grant voting rights for local elections to long-term residents.¹⁹

F. CANDIDATE REGISTRATION

Every voter aged 35 years or older on election day is eligible to stand for the election, with the exception of those convicted of a crime and sentenced to prison for more than one year²⁰ as well as those who have violated the Prohibition Act.²¹ Although no ODIHR NAM interlocutors raised concerns about equal opportunities for women to participate in political life, most interlocutors did not expect women to stand this time for president.

Political parties and groups nominating prospective candidates have to submit an application supported by 6,000 registered voters no later than 37 days before election day and pay EUR 3,600 to partially cover printing costs. The FEB reviews the applications and certifies that the conditions for nomination are met. The candidates are given three days to correct errors or omissions found in the documents. Most ODIHR NAM interlocutors considered reasonable the requisite number of signatures as a means to exclude potential candidates without serious intention.

Voters who wish to support a candidate must verify their identity and sign a candidate support form at a municipal office.²² Each voter can only sign in support of one candidate, and the voter register at the municipality will be marked accordingly to avoid multiple endorsements.²³ Some ODIHR NAM interlocutors expressed concerns that the requirement to visit a municipal office may have a dissuasive or intimidating effect on some voters, especially in smaller municipalities. Others have opined that there is a lack of political will to introduce submission of electronic signatures for presidential elections, an option currently used for referendums and other public initiatives. ODIHR has previously recommended that the candidate nomination process be made more accessible and avoid possible stigmatization of candidate supporters. Overall, no concerns were raised regarding the inclusiveness of the candidate registration process.

¹⁸ According to the [Statistics Austria data](#), there are 1.3 million non-citizens resident in the country.

¹⁹ See Paragraph 3 of the 1996 UN Human Rights Committee General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights. Also, Section I.1.1.b of the 2002 [Venice Commission Code of Good Practice in Electoral Matters](#) recommends, “it would be advisable for foreigners to be allowed to vote in local elections after a certain period of residence”.

²⁰ The people, convicted for prison sentence exceeding one year cannot stand as a candidate during the sentence as well as during six months after its completion.

²¹ The 1947 Prohibition Act forbids public expression of pro-Nazi sentiments, display of Nazi symbols or denial of Nazi atrocities. The Constitutional Court has determined that this should be taken into account during the registration of candidates and political parties.

²² For non-resident citizens, the same procedure applies at embassies and consulates.

²³ Paragraph 96 of the 2020 [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) (Guidelines on Political Party Regulation) recommend that “legislation should not limit a citizen [...] to signing a supporting list for only one party”.

G. ELECTION CAMPAIGN AND CAMPAIGN FINANCE

The legislation does not contain detailed provisions on the election campaign. There is no official campaign period. Few limitations are in place with regard to campaign methods. Contestants must notify the authorities 48 hours before holding a public assembly so that adequate security can be provided. The constitution guarantees freedoms of association and peaceful assembly, and none of the ODIHR NAM interlocutors noted any concern with regard to their ability to campaign freely.

Some ODIHR NAM interlocutors perceive the upcoming election as not competitive but rather a referendum in support of the incumbent president if he stands for re-election. Other interlocutors expect the campaign to focus on inflation, migration, restoration of confidence in political establishment, climate change, and post-COVID economic recovery. Presidential campaigns in Austria tend to be more personality-based rather than issue-based, and several ODIHR NAM interlocutors opined that some candidates might use negative campaigning against major opponents and inflammatory language, especially on social networks.

Political party and campaign finance is regulated by the 2012 FPPA and the relevant provisions of the PEL, which provide for public and private financing. Political parties receive significant annual public federal subsidies of jointly some EUR 30 million, which may be used to finance presidential campaigns. Independent candidates are not entitled to public funding for presidential elections.²⁴

Parties and candidates may receive donations, both monetary and in-kind, from citizens or legal entities, as well as take loans. There is no limit on the amount that can be donated, although certain types of donations are prohibited, including anonymous donations exceeding EUR 1,000, foreign and cash donations over EUR 2,500, and any donations from public bodies or state-affiliated entities. Donations exceeding EUR 3,500 have to be disclosed in campaign finance reports, while donations above EUR 50,000 have to be publicly disclosed at least one week before election day by posting on the campaign website or on the website of the donor stating the name and address of the donor. Total campaign expenses for the campaign of a candidate may not exceed EUR 7 million.

According to the law, candidates and supporting groups are required to submit reports on their campaign income to the Court of Audit no later than three months after election day. Political parties supporting a candidate are also required to submit a separate report on their campaign finances related to the election, as part of their annual statement of accounts.

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

Many ODIHR NAM interlocutors shared the view that the reporting and sanctioning mechanisms for campaign finance, especially of third parties, could be further tightened, and the mandate of the Court of Auditors should be extended to allow for the direct audit of party finances. Several ODIHR NAM interlocutors noted that a draft bill on the revision of campaign finance rules was being prepared in the parliament.

²⁴ Paragraph 185 of the 2020 [Guidelines on Political Party Regulation](#) recommends that “[w]here political parties are provided with state support, such as the provision of public media airtime or campaign finance, there should also be a system of support for independent candidates to ensure that they are awarded equitable treatment in the allocation of state resources”.

H. MEDIA

The Austrian media landscape includes a range of public and private television (TV) and radio stations, print media outlets and online media. The main source of political information is TV. Newspapers, social networks and online media play an important role in framing political coverage and enjoy a growing audience.²⁵

Despite a previous ODIHR recommendation, defamation, libel, insult, and slander have not been decriminalized and are punishable with a fine or imprisonment from 3 up to 12 months.²⁶ Media outlets and journalists may also be prosecuted for such offenses under the Media Services Act, with fines up to EUR 50,000.

The activities of broadcast and print media are regulated by the 1981 Federal Act on the Press and other News Media, the 1984 Federal Act on ORF, and the 2001 Audio-visual Media Services Act. The legal framework obliges media outlets to comply with principles of editorial independence, objectivity and diversity of opinions. There are no specific regulations for election campaign coverage, and the media is largely self-regulated.

The public Broadcasting Corporation (ORF) is Austria's largest media provider, operating 4 national TV and 12 radio channels, as well as a range of websites. By law, public service media are obliged to cover political issues in an impartial manner. Although ORF is not legally restricted from airing paid political advertisements, this practice is prohibited by internal regulations. The parliamentary parties receive coverage in both public and private broadcasting media in various formats, including news programmes, TV debates, current affairs programmes, and political talk shows. Almost all political parties met by the ODIHR NAM expressed overall satisfaction with the campaign coverage by ORF and access to media in general. Several interlocutors noted certain bias against some parliamentary parties, limited access to the media for new and smaller parties as well as undue influence of the ruling political parties in the recent appointment of the ORF director.

Several ODIHR NAM interlocutors expressed concerns over the lack of transparency of the allocation of the state contracts to different media and noted that such contracts could influence the editorial policies of the media.²⁷ Furthermore, the extraordinary public support provided to media to mitigate the economic impact of the COVID-19 pandemic has also raised questions regarding fair distribution.

Austria is a party to international treaties encompassing the right of access to information. The Constitution, however, does not explicitly guarantee the freedom of access to information.²⁸ Several ODIHR NAM interlocutors noted that in practice, public authorities do not always respect the right of access to information.²⁹ The ODIHR NAM was informed that a new bill on Freedom of

²⁵ [Internet penetration in Austria](#) stands at 89 per cent.

²⁶ According to the Paragraph 47 of the [2011 CCPR General Comment No. 34](#) to the ICCPR "States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty".

²⁷ Article 2 of the [Federal Act on Transparency in Media Cooperation](#) requires that the government, public bodies and state-owned corporations disclose their media collaborations if the total amount of payments exceeds EUR 5,000 per quarter of a year. Public advertising contracts beyond this threshold are not publicised. See also [European Commission 2021 Rule of Law Report](#), Country Chapter on Austria.

²⁸ While Article 20.4 of the Constitution guarantees the right to information, Article 20.3 states that the obligation to maintain secrecy prevails over the obligation to disclose information.

²⁹ Article 8.10 of the [PACE Resolution 1636 \(2008\)](#) "Indicators for media in a democracy" highlight, that "privacy and state secrecy laws must not unduly restrict information".

Information, which among others aims to enhance access to information, had been under review for over a year and was yet to be adopted.

The independent Austrian Communications Authority, *KommAustria*, oversees the compliance of electronic media with legislation. The supervision during the campaign is complaint-based and no media monitoring is conducted. The self-regulatory body for the print media, the *Presserat*, reviews complaints against print outlets, but has no sanctioning power.

I. COMPLAINTS AND APPEALS

The complaints and appeals process is regulated by electoral laws, the Constitutional Court Act, and the Administrative Court Proceedings Act. All ODIHR NAM interlocutors expressed an overall confidence in the election dispute resolution mechanism and the impartiality of the election authorities and judiciary, positively noting the effectiveness of existing checks and balances.

Complaints about the election process are generally only considered as part of challenges to the election results that are reviewed by the Constitutional Court after the announcement of results. These challenges may be submitted within one week after announcement of the results, and the Constitutional Court has to make a final decision on a complaint within four weeks. Such complaints can only be filed by candidate representatives.³⁰ A challenge of election results will only be granted if the violation could affect the outcome of the election; in such case, the only available remedy is to annul election results partially or fully.

Voter registration is the only area where election-related complaints are resolved prior to election day. Municipal decisions on voter lists can be appealed to the administrative courts within two days, with a final court decision made within four days.³¹ Appeals on decisions of *KommAustria* and the IPPTP are also subject to adjudication by administrative courts within a six month deadline. ODIHR has previously recommended election-related complaints, including those pertaining to candidate registration, be open to judicial review prior to the announcement of the final election results.³²

IV. CONCLUSIONS AND RECOMMENDATION

All ODIHR NAM interlocutors expressed full confidence in the electoral process and the ability of the election administration to professionally and transparently administer the election. While most ODIHR NAM interlocutors welcomed a potential election observation activity, no new issues were identified since the last elections that would benefit from further assessment by ODIHR. Based on this, the ODIHR NAM does not recommend deploying an election-related activity for the upcoming 2022 presidential election. ODIHR, however, reiterates that many of its previous recommendations remain valid and stands ready to offer its assistance in a post-electoral follow-up process.

³⁰ Section 3.3.f of the Venice Commission 2002 Code of Good Practice in Electoral Matters recommends that “all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections”.

³¹ A complaint on voter registration issues can be additionally filed to the Constitutional Court if it is framed as a violation of a fundamental right, but this can only be done after the election.

³² Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”.

ANNEX: LIST OF MEETINGS

Federal Ministry of European and International Affairs

Raphael Lassmann, Deputy Head, Permanent Mission of Austria to the OSCE
Werner Senfter, Deputy Head, Department of Expatriates Abroad
Marie Bruckmayer, Attaché

Federal Ministry of the Interior

Gregor Wenda, Deputy Head, Department of Electoral Affairs
Bernhard Uhlir, Legal Expert, Department of Electoral Affairs

Constitutional Court

Stefan Frank, Secretary General

Supreme Administrative Court

Meinrad Handstanger, Judge, Member of Federal Election Board
Robert Schick, Judge, Member of Federal Election Board

City Council of Vienna

Christine Bachofner, Head, Election Department MA-62
Christian Ruzicka, Deputy Head, Election Department MA-62
Otto Gmoser, Head of Unit, Vienna Election Registry

Independent Political Parties Transparency Panel

Michael Kogler, Legal Service

Political Parties

Robert Luschnik, New Austria and Liberal Forum (NEOS)
Alina Blafard, Member, Social Democratic Party
Raphael Sternfeld, Head of Communication, Social Democratic Party
Erich Enengl, Member, Social Democratic Party
Martin Graf, MP, Freedom Party of Austria
Hubert Erhardt, Press officer, Freedom Party of Austria
Fabian Stütz, Head of Policy and Strategy, Austrian People's Party
Julia Pühringer, Officer for international affairs, Austrian People's Party
Michel Reimon, MP, the Greens

Civil Society

Bettina Knoetzl, President, Transparency International – Austrian Chapter
Hubert Sickinger, Political party finance expert, Lecturer, Vienna University
Christina Wurzinger, Head of European and International Affairs, Austrian Disability Council
Paul Grohma, Michael Lidauer, Armin Rabitsch, Members, *Wahlbeobachtung.org*

Diplomatic Missions Resident in Austria

Representatives of diplomatic missions of Andorra, Greece, Montenegro, the Russian Federation, San Marino, Slovakia, Slovenia, Switzerland