

REPORT TO
OSCE/ODIHR

RESPONSE TO OSCE'S ELECTION EXPERT
TEAM REPORT FROM
THE 2017 PARLIAMENTARY ELECTIONS

Introduction

Following an invitation from the Norwegian government, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) sent an Election Expert Team (EET) to Norway to the parliamentary elections in September 2017. The team carried out an Election Expert Mission, focusing on election administration, the electronic election administration system and party and campaign finance.

The OSCE has previously carried out three missions in Norway: two Election Assessment Missions (EAM) in 2009 and 2013, and an EET mission to observe the internet voting pilot during the local government elections in 2011.

The Ministry is grateful that the OSCE/ODIHR prioritised to carry out another mission in Norway in 2017. The question of public confidence in electoral systems and electoral management continues to be of high importance for both voters and electoral bodies on all levels. The Ministry highly appreciates feedback from international election observers, and believes this is necessary to maintain a critical view on the existing practice.

Recommendations

Below is a review of the OSCE's recommendations in the EET report and a description of how the Ministry plans to follow up the respective recommendations.

1. *The Directorate and municipalities could consider introducing measures to better facilitate party and preferential choices in advance voting.*

For municipal council elections, the municipal electoral committee prints ballot papers with the names of all the local candidates, which are distributed to the polling stations in the municipality.

For county council elections and parliamentary elections, the county electoral committee prints ballot papers with the names of all the local candidates, which are distributed to the polling stations in the county.

Voters who vote outside their municipality in municipal elections, and outside their county in county council elections and parliamentary elections, are provided with a ballot paper with all the registered political parties printed on. Voters who want to cast their vote for a local list that is not a registered party, can manually write this on the universal ballot, meaning that any voter can vote for any party or list, no matter where they cast their vote. However, as there are no room for all local candidates from all constituencies on one universal ballot paper, these voters will not be able to change candidate rankings or cast personal votes, unless they bring along a ballot paper from their own constituency.

The Ministry considers it inexpedient to provide every voter with their local ballot paper in any polling station during the advance voting station. The Ministry emphasises the long period of advanced voting and the possibility to vote in any municipality in Norway. The Ministry will not follow up this recommendation.

2. *Additional measures should be undertaken to allow visually impaired voters to independently select candidates.*

Visually impaired voters are entitled to assistance by a returning officer when they vote. They may additionally be assisted by a person of their own choosing. For visually impaired voters who read braille, another opportunity is to use the universal ballot paper, on which all the registered political parties are printed in braille. There are not any measures enabling visually impaired voters to independently select candidates without assistance.

As part of the evaluation of the 2017 election, the Ministry and the Directorate will invite representatives from relevant interest groups and organisations to evaluate and discuss the conditions for voters with disabilities and voters that need assistant voting.

The Ministry will work towards finding the best solutions for voters needing assistance within the current legal framework, and will discuss the possibility of following up this recommendation in this process.

3. *Advance voting procedures could be adjusted to allow all valid ballot cast to be counted.*

A large amount of Norwegian voters cast their ballot in a municipality where they are not registered. These ballots are sent by mail to their municipality for verification and approval, and they are counted in that municipality.

The postal sector in Norway is changing quite rapidly, and this development has consequences for the shipment of ballots cast in advance. Before the election in 2017, the Ministry changed the deadline for when the votes have to be received by the Electoral Committee to be approved. This solution was a response to the elimination of Saturday mail service in Norway from 2017. This led to a decrease in the percentage of rejected votes based on delays during the 2017 election.

The Ministry is in close contact with the Ministry of Transport and Communication, which are responsible for the Norwegian postal service Posten Norge. The Election Act commission's mandate includes the assessment of future methods for shipment of ballots cast in advance with a view to ensure that no votes have to be rejected because of a delay. The Ministry will follow up the recommendation as earlier planned, but does not seek to adjust the voting procedures itself at the moment.

4. *List of acceptable forms of ID could be expanded or clarified to accommodate voters without a passport or driver's license.*

The Representation of the People Act regulates the obligation to provide proof of identity during advance voting and voting on Election Day. Pursuant to Section 8-4 (6) and 9-5 (2) of the Act, a voter who is unknown to the returning officer must provide proof of identity while casting their vote.

Neither the Act nor the Regulations define what form of identification shall be accepted. The returning officer is obliged to show good judgement in deciding whether or not the presented identification is sufficient proof of identity. Although the typical identification would be a bank card with photo, a passport or a driver's license, the Ministry notes that other forms of photo IDs may be acceptable. The minimum requirement is that the identification is of a certain official character and shows the voter's name, date of birth and picture. A voter who presents identification which is out of date, but meets the minimum requirements, should be allowed to cast their vote. The main objective is that the returning officer shall be convinced that the correct person is present.

The Ministry does not find it necessary to publish a complete list of acceptable forms of identification. The Ministry finds that the returning officer's possibility to show sound judgement and approve several forms of photo ID, to be sufficient guidance. The interpretation of the legal requirement is described in the election handbook, and also presented on the national training conferences held by the Election Directorate. The Ministry believes that the municipalities are adequately informed on their possibility to approve several

forms of identification. Voters who are unknown to the returning officer must be responsible for in one way or another prove their identity, so that the returning officer can be sure that the correct person is casting the vote.

5. *Except where vote secrecy is challenged, results should be published by polling station to enhance transparency and allow for greater scrutiny of results.*

The Election Directorate is responsible for reporting election results. The results are published on the website www.valgresultat.no.

Pursuant to the Act § 10-4, the municipal electoral committee decides in which manner the count is performed. The directorate publishes results according to the chosen counting method. Thus, the results are published by polling station for those municipalities that count the votes by polling station.

As OSCE notes, around half of the municipal electoral committees in 2017 chose to count their votes together, meaning that the results could only be published on a municipal level. Some group their polling stations for counting to protect voting secrecy, which is regulated in the Act § 10-4 (2). Others choose this because of operational convenience.

The OSCE recommendation is followed up for the municipalities that count their votes by polling station. The Ministry will not change the Act to further regulate how the municipal electoral committee count their votes.

6. *In case modifications are introduced to electoral operations, including to electronic systems, full compliance should be ensured for all levels of the election administration.*

Aligned with the ongoing debate concerning security regarding use of ICT-tools in election implementation, two measures were introduced by central government. The Ministry issued a new regulation requiring all municipalities to perform the preliminary count of ballots manually. The Directorate, on its hand, issued a set of recommendations specifically targeting the control counts at county level, as noted by the OSCE. The recommendations resulted in discrete operationalisations at local level not primarily due to time constraints, but because they were perceived differently, were subject to local risk assessments and were adapted to local conditions and setups.

The Directorate was actively observing and guiding the counties on their implementations, through personal contact with election officials from all CoECs. However, the Directorate does not have a legal mandate to instruct the local authorities, and thereby verify full compliance to any given set of recommendations. Nevertheless, the Directorate recognises the potential in improving its guidance to the local level, particularly in terms of best-practice technical ICT-setup and assessments of security and risk.

7. *Source codes of software used to facilitate key voting procedures could be made available for external verification and reviews made public.*

The Directorate has an ongoing assessment with respect to this subject. The primary requirement is to have a very high degree of transparency in the election administration and implementation, in order to sustain the high level of trust currently enjoyed in the public. At the same time, election processes need to be secure. Currently, there have not been submitted any requests regarding the source code of the election systems.

8. *To enhance transparency of party income, further provisions on regulating and disclosure of monetary and in-kind contributions to party members and candidates could be considered.*

As stated in the Prop 140 L (2011-2012) Amendments to the Political Party Act (hereinafter the "Bill") section 6.2, the Norwegian political system is typically "party-centred". The registered political parties (by all means) dominate the election campaigns. Concerning the Parliamentary elections in particular, it is uncommon for candidates other than those nominated by a registered political party to win representation in the Norwegian Parliament (Stortinget) for the following reasons:

- Changes made to the list of candidates by the electorate rarely influence the choice of person significantly.
- The election campaigns are dominated by the parties – the listed candidates rarely conduct personal election campaigns.

Consequently, candidates' possibility for running their own personal campaigns, is in practice rather confined.

For all the above mentioned issues the situation can nonetheless be different at county council and municipal council levels where the Election Act gives the electorate a better opportunity to influence the choice of person.

During the law amending process in 2013, leading up to Norway's full compliance with all GRECOs recommendations, the legislator was aware of a possible change, e.g. that candidates may contribute more directly in election campaigns in the future, compared to the current situation. Therefore a provision in order to expand the reporting requirements comprising candidates as well, was introduced in the PPA.

In the consultation memorandum of November 2011 (see section 6.2.1 of the Bill), the Ministry takes into account the fact that a proposal for reporting by candidates could be resource-intensive for the public authorities even if the actual reporting procedure is simplified for the candidates. In the consultation memorandum, the Ministry therefore envisions that the proposal ought to be limited to candidates representing political parties, and that the reporting could possibly become part of the party's or the party unit's ordinary annual report. The legislator supported this view.

So far, the Ministry of Local Government and Modernisation has not issued regulations on this topic, because we think the time has not matured yet. Donations from the private sector

directly to party candidates seems not to be a widespread problem in the meaning of circumventing the openness of the system. It is the ministry's understanding of the PPA that monetary and non-monetary gifts to candidates will be embraced by the parties reporting obligations if such gifts are conveyed, transferred or in other ways being utilized by the party organisation.

However, in the position of being the superior authority for the administration of the PPA, the Ministry is always looking for ways to improve the system concerning the transparency of the financing of the democracy. In this process we cooperate closely with inter alia the Statistic Norway which is responsible for the reporting system in the PPA. As stated in the section above, we have payed and will still pay attention to this issue in the future.

The issues raised by the OSCH/ODHIR in this recommendation is thusly already considered by Norway.

Recommendations from 2013 and earlier reports

OSCE/ODIHR points out that some of the recommendations from the 2013 final report and earlier reports remain to be addressed. This includes recommendations to better guarantee the equality of the vote in the distribution of seats among constituencies, to reconsider the duty to accept candidacy, to remove the ban on the right of government ministry employees to be elected, to provide the right to appeal all election-related matters to a competent court, and to review the role of parliament in the certification of election results.

The Norwegian government appointed on 21 June 2017 a public legislative commission mandated to draft a new Election Act. The Election Act Commission shall investigate issues pertaining to the appeals system for matters relating to elections, following up one of the mentioned recommendations.

The commission will in its inquiry look at how the electoral system affects fundamental elements of democracy. The commission is free to look at all aspects of the Norwegian electoral system, and any proposed changes to the electoral system shall consider any consequences for geographical and political representation.

Considering the recommendation to reconsider the duty accept candidacy, five parliamentary representatives proposed in September 2016 a change in the Constitution to abolish the duty to accept candidacy in parliamentary elections. The proposition is that candidates can claim exemption by declaring in writing that he or she does not want to be candidate for election on the electoral list in question. The proposition will be considered by the Parliament.