



VALG



REPORT TO
OSCE/ODIHR

RESPONSE TO OSCE's EAM REPORT OF
27 NOVEMBER 2009
NORWAY

31 MAY 2010



STORTINGSVALG 2009

INTRODUCTION

At the invitation of the Norwegian Government, OSCE/ODIHR carried out an Election Assessment Mission in Norway during the General Election of September 2009. OSCE's report from the visit was presented on 27 November 2009. This report gives an overview of the requests contained in the OSCE report and the planned follow up to them.

The Ministry of Local Government and Regional Development is very pleased that OSCE wished to carry out observations in Norway. Norway is a living democracy and our electoral system enjoys great confidence. Even so, we believe it has been very useful to allow OSCE's election observers to review and check various aspects of the Norwegian electoral system and electoral legislation. The Ministry would also like to express its gratitude for all the help and useful input from OSCE's representatives in consultation meetings in connection with the follow up of the EAM report.

On 31 May the Ministry put forward a consultation paper to be the subject of public enquiry. This proposes certain amendments to the Election Act and the Election Regulations. Most of the proposed amendments are in line with the requests of OSCE. After a three month public enquiry, the Ministry plans to put proposed amendments to the act before the Storting in late autumn 2010.

REQUESTS AND FOLLOW UP

Below is a review of OSCE's requests in the EAM report and how the Ministry is planning to follow up.

- 1. Consideration might be given to allowing officials employed in government ministries the right to be elected to office.*

The rules regarding eligibility for election to the Storting is regulated by section 62 of the Constitution and section 3-1 of the Election Act. No employee in the ministries is eligible for election to the Storting, with the exception of ministers, state secretaries and political advisers. The background to this rule is the desire to make a distinction between the executive and the legislative powers. There is no contravention of the rules if an employee in the Ministry is nominated on an electoral list and thereby stands for election, but in order to be elected to the Storting the person must resign from his or her position in the Ministry by Election Day.

The Ministry believes there may be good grounds for considering amendments to the rules regarding the eligibility of ministry employees for election to the Storting. Consideration should be given to differentiating between employees in the Ministry based on position or duties, so that not all ministry employees are automatically covered

by the rules. Another and equally important aspect of the present rules is the requirement that ministry employees who stand for election must resign from their positions *by* Election Day. This rule means that the candidate must resign before it is clear whether he or she will be elected. There may be grounds here for using the same rule as for local elections, where resignation must occur before the elected body *comes into office*.

Changes to the eligibility rules would require an amendment to the Constitution and are regulated by clear procedural rules. Proposals for amendments to the Constitution are put forward by members of the Storting (members of parliament), not by the government. Since proposed amendments must formally be put forward by members of the Storting, the ministry does not propose any specific legislative amendments on this point. Any proposals for constitutional amendments that are put forward during the current period of the Storting would take effect from the general election of 2017 at the earliest.

2. *Consideration might be given to reviewing the duty to be elected, ensuring it is fully consistent with the International Covenant on Civil and Political Rights which states that no one should be forced to associate with a political party or group not of his/her choosing.*

The electoral system in Norway is based on a principle of obligation to represent. According to this principle, there is an obligation to stand for election and to accept election, provided one is not excluded or has not been exempted. The obligation to represent applies to both general and local elections. The obligation to represent has a long tradition in Norway and is an expression of civic obligation and social responsibility.

The rules for exemption are strict. An exemption can be made if a candidate appears on a proposed electoral list in an electoral district other than the one where the person in question is entitled to vote or if the person has sat as a representative in the national assembly in the preceding electoral period.

An important rule in practice is that a candidate may demand exemption from appearing on a list if he or she is a member of a political party from another electoral list. In reality this means that a candidate who has been nominated against his or her will must join a political party in order to be exempted. The Ministry agrees that questions might be raised whether this is consistent with the principle of organisational liberty and the right to not be a member of a political party that stems from the UN Covenant on Civil and Political Rights and the European Convention on Human Rights.

The Ministry will therefore propose a new ground for exemption that allows a demand to be removed from an electoral list that one cannot support, by which one presents a declaration to the electoral authorities that one cannot stand as a candidate because

one's political views or convictions are contrary to those represented by the electoral list.

It is proposed that this rule is only introduced for local elections. In the case of a general election, the obligation to represent is laid down in the Constitution. Since proposed amendments to the Constitution must formally be put forward by members of the Storting, the Ministry does not propose any specific legislative amendments in respect of general elections. In the Ministry's assessment, such an amendment to the Constitution should be considered. Any proposals for constitutional amendments that are put forward during the current period of the Storting would take effect from the general election of 2017 at the earliest.

- 3. Consideration could be given to a review of the constitutional provision for the distribution of parliamentary seats among constituencies, in order to ensure a better compliance with the principle of equal suffrage.*

In connection with the new Election Act, which came into force with effect from the General Election of 2005, a thorough and fundamental review was made of the principles that should form the basis of the distribution of seats between the different counties in general elections. There was a desire to safeguard representation in terms of both a political dimension and a geographical dimension. The method that forms the basis for the distribution of seats is laid down in section 57 of the Constitution and gives 1 point per inhabitant and 1.8 points per square kilometre. A new calculation is made for each constituency every eight years, so as to take significant changes in settlement patterns into account in the geographical distribution of seats.

The number of equalising mandates was increased from 8 to 19. The purpose of the equalising mandates is to ensure a better proportional distribution of seats among the political parties. Each county shall have one equalising mandate to ensure greater geographical equalisation.

International principles of equal suffrage mean that basically each vote should have the same value. Exceptions can however be made in certain cases according to international standards. It is laid down that the maximum deviation from prevailing distribution criteria should not exceed 10 per cent, and never 15 per cent apart from in exceptional cases, such as in thinly populated administrative areas.

In the Ministry's assessment, the present distribution of seats is consistent with international standards. There is a dynamic in the present calculation scheme in that new calculations shall be made every eight years and that new population figures shall be taken into account. The next calculation of mandates between the counties will occur in early spring 2012 based on population figures on 01.01.2012 and will apply to the general election of 2013.

Since the distribution method is laid down in the Constitution, any changes to the present system would require a constitutional amendment. Only members of the Storting may put forward proposals for constitutional amendments. The Ministry proposes that the current system is continued.

- 4. It is recommended that consideration be given to amend the Election Act to either provide voters with a genuine opportunity to affect the election of a particular candidate by lowering the threshold or to move to a closed list system.*

According to section 7-2 of the Election Act, voters in general elections may change the order of candidates on the ballot paper and may cross out candidates. The threshold for a change to have effect is high. Changes to ballot papers only have an effect if more than 50 per cent of those who have voted for the same list/party have made changes to the same candidate. This has never happened in practice.

The Ministry will consider whether changes should be made to the present system.

- 5. Consideration should be given to restricting candidates from serving as members of Polling Committees and Electoral Committees, in order to prevent any real or perceived conflict of interest.*

Every municipality shall have an electoral committee and in municipalities with several polling stations, polling committees shall also be elected. There is currently no restriction on choosing candidates who are standing for election or other active politicians for electoral committees or polling committees. The background to this is the principle that as few as possible shall be excluded from serving on publicly elected bodies.

The Ministry agrees with OSCE that confidence in the performance of elections indicates a new evaluation of the present rules for restricting candidates from serving as members of electoral committees and polling committees.

The Ministry believes that there are grounds for making a distinction between electoral committees and polling committees when it comes to eligibility. The electoral committee has no direct contact with the voters. Candidates serving as polling staff will have a different degree of personal interest in the outcome of the election.

List candidates or other politicians serving as members of polling committees has a long tradition in Norway. If they should be excluded or not be able to act as vote receivers or staff at polling stations, it is a question whether and eventually how this will affect the conduct of the election practically. Some municipalities have previously indicated that it is difficult to recruit people to these positions. At the same time, the principal obligations must be taken into consideration. It is important to consider revising our current practice, for example by inviting people in general to participate and serve at polling

stations. Such participation can contribute to increased involvement and interest in the election.

Before proposing any possible amendments, the Ministry wishes to discuss this question more thorough with the local election authorities. After the consultation a proposal will be put forward to the Storting.

6. *It is recommended that a review of the Political Parties Act be carried out to consider increasing transparency of campaign income and expenditures through regular and independently audited reports.*

The Council of Europe's Group of States against Corruption (GRECO), as part of its evaluation of the financing of political parties and candidates in member countries, has given six recommendations for increased inspection and control of party financing. In this connection, Norway has been asked to consider greater openness in respect of the financing of election campaigns. The Ministry of Government Administration, Reform and Church Affairs, in consultation with professional circles involved, will put forward a proposal for how all GRECO's recommendations can be followed up in the Political Parties Act. The aim is to present an amendment to the act that can be sent for public enquiry during the course of spring 2010.

7. *Consideration could be given to specifying dates for the period during which the NRK must ensure broad and balanced coverage.*

The Ministry of Cultural Affairs points out that the requirement for broad and balanced coverage is not essentially limited to any time periods. Since the view of what constitutes the election campaign period may change over time, it is probably not appropriate to specify this any further.

8. *Consideration could be given to developing a mechanism for complaints against NRK that includes more timely procedures for resolution of election-related matters, in order to ensure the possibility for prompt remedies that could have a meaningful impact on the campaign.*

The Ministry of Cultural Affairs points out that the present system is based on the Norwegian Media Authority carrying out a subsequent evaluation of NRK's election campaign coverage. Out of consideration for the NRK Director General's editorial freedom as guaranteed by section 6-4 of the Broadcasting Act, introducing a system by which the authorities can intervene in the ongoing election campaign coverage is not an option.

In general, and in accordance with section 7-1 of the Broadcasting Act, the duties of the Broadcasting Council include discussing and commenting on programme issues presented to them by the NRK's Director General or that the Broadcasting Council find grounds for taking up, including after approaches from the public. The media have also developed a self-judgement system that sets a standard for activities. The press's own

ethical guidelines (including the “Be Careful” poster) include rules for journalistic behaviour, relationships with sources and principles for publication. Among other things, the rules are intended to ensure open debate, the free dissemination of information and that different viewpoints can be expressed. Complaints about breaches of the ethical guidelines may be made to the Press Complaints Commission, a complaints body appointed by the Norwegian Press Association. The commission is made up of members from the press organisations and the public.

9. Considering that the public service broadcaster has a responsibility to ensure broad and balanced coverage of elections in its programs, consideration could be given to reviewing the approach to the right of access for parties in an election campaign.

In Report no 18 (2008-2009) to the Storting section 7, the Ministry of Cultural Affairs discussed other alternatives to facilitate small parties and lists gaining access to the broadcast media. In the report, the ministry noted that it could be relevant to introduce a system with a right to free transmission time, such as exists in the United Kingdom for example. According to the report, such a system should also include the Norwegian commercial broadcasters. The Ministry of Cultural Affairs will therefore consider the need for further measures in the light of the EMD’s follow up of the judgement against Norway.

10. The authorities should continue efforts to ensure secrecy of the vote, including broadening the use of the coloured pilot ballot if it is found to be more effective.

There is no requirement for ballot papers to be placed in envelopes on Election Day. Instead the voter should fold the ballot paper so that it is not possible to see how the person has voted. It has been a problem in the past that some voters do not fold the ballot paper correctly, so that it is possible to see how they have voted. This problem has been reduced as people have become more familiar with the new system and through information about how the paper should be folded.

In the election in 2009 the Ministry carried out pilots on a new paper ballot design. The evaluation results were very positive. The new ballot papers had no central fold and also had a different colour on the back. The pilots showed that these ballot papers were considered to be easier to fold correctly and fewer people folded them incorrectly.

Based on this experience, the Ministry will carry out further work to find the best possible design for the ballot papers. We believe that the ballot papers that were tried out in 2009 should be used by all municipalities. We therefore propose amendments to the provision on the design of the ballot paper.

11. The authorities should consider adopting consistent procedures on election day safeguards, including sealing of the ballot boxes on election day.

In Norway there is no requirement for ballot boxes to be sealed during voting on Election Day, only during transport and storage and voting in advance. There is a long tradition for this and it is based on the electoral system being largely based on a fundamental public trust that the electoral administration is impartial and that the elections are performed with integrity.

We agree with OSCE that this might raise questions as to whether this practice is consistent with international standards. The Ministry will therefore propose amendments to the Election Act so that ballot boxes shall be sealed both during advance voting and on the Election Day itself.

Most municipalities will depend on being able to empty the ballot boxes during the course of Election Day. To ensure that this is done in a proper manner, the Ministry will propose that routines are devised for this through the regulations.

12. The election authorities should adopt a consistent approach for identifying voters, while minimizing the possibility for disenfranchisement.

All voters who are not known to the staff at the polling station shall provide identification before they can vote at elections. The requirement for identification is not absolute. If the official at the polling station knows the voter, the voter does not need to show identification. The official at the polling station must in each case assess the identification that the voter provides. The law does not include any requirement regarding the type of identification that is acceptable.

In the Ministry's assessment, both OSCE's observations and its own assessment show that voters not having been able to vote because of lack of identification is not a widespread problem. Even so, the Ministry will specify routines in the electoral manual further, to minimize the probability for any breach of the rules. The Ministry will also focus strongly in future on informing voters about the requirement for identification.

The Ministry finds no grounds for making any specific amendments to the present law or regulations in respect of requirements for the identification of voters.

13. Election authorities should continue their efforts to facilitate voting for the disabled, and all municipal authorities should implement the existing criteria for making polling stations accessible.

According to the Election Act, voting shall take place at polling stations that allow easy access for the disabled. Other premises shall only be used if there are "specific grounds". The interior of the polling station shall facilitate voting for all voters.

There is also other legislation that regulates this area and recent amendments have been made to other legislation that will improve accessibility over time. The Ministry has

developed a completely new design solution for voting booths, ballot boxes and graphic profiling of the election. These have been tried out with very positive results. The entire solution has been developed in accordance with the requirements for universal design and will therefore help to improve accessibility.

Besides further work on introducing the design solution, the Ministry will emphasise to the municipalities the importance of facilitation so that all voters can exercise their right to vote without having to ask for help.

The Ministry does not believe there is any need for specific amendments to legislation or regulations.

14. It is recommended that consideration be given to providing the legal right to appeal all election-related matters and election results to a competent court as the final authority on all election matters, in line with OSCE commitments and international good practice.

15. Consideration could be given to setting specific expedited time limits for the adjudication of election-related complaints and appeals by all relevant authorities including courts, the NEC and Parliament, in order to be fully consistent with paragraph 5.10 of the Copenhagen Document.

Prior to the EAM report the Ministry has initiated a comprehensive review of the present system for election-related complaints. These issues are included in a larger problem complex around complaints and the approval of elections. The Ministry has asked the Venice Commission (the law interpretation body for the Council of Europe) to investigate the regulations for complaints and approval of elections and the situation regarding international obligations. A statement from the Commission is expected in late 2010 or early 2011. Based on the commission's recommendations, the Ministry will undertake a thorough assessment of whether there is any need for changes to the complaints system and/or the system for approving elections.

APPENDIX

THE MINISTRY'S PROCEDURES FOR HOW NORWAY FOLLOWS UP ON ELECTIONS

Elections are held every four years, alternating every two years: municipal and county elections are followed two years later by a General Election. The last local election was held in 2007, the next is in 2011. The last general election was in 2009, the next is in 2013. Elections are always held in September.

PLANS (UPDATED REGULARLY)

- The Ministry's overall plan for possible issues for assessment (4-year period). Revised every year.
- Working plan of specific tasks (2-year period) Revised every year.

LEGISLATION PROCESS

1. EVALUATION

Starts after the election. (2009 General Election – from December 2009)

After each election an evaluation of the conduct of the election in each municipality and county is conducted. This is based on an extensive survey sent to all counties and municipalities.

2. CONSULTATION PAPER

The consultation paper is prepared and sent out in spring the year after the election. (2009 General Election – Consultation Paper 31 May 2010. Hearing: June, July, August 2010)

The ministry issues a consultation paper with reviews of the evaluation. The ministry assesses the conduct of the election and makes proposals for any revisions and/or amendments to the Election Act. The consultation paper is sent out for public consultation to all municipalities, counties, other public bodies, NGOs and other private organisations and companies affected by elections. The number of instances totals approximately 600. Anyone else who wishes may also submit a statement.

3. PUBLIC HEARING

Everyone is given a deadline of 3 months to make a statement. All statements are public and posted on the ministry's website.

(2009 General Election – June, July, August 2010)

4. PROPOSAL FOR AMENDMENTS

The proposal is prepared in the autumn of the year after the election. (2009 General Election – December 2010)

On the basis of the consultation paper and consultation statements, the ministry prepares a proposal for the Storting on amendments to the Election Act.

The bill is then debated in the Storting. (2009 General Election – spring 2011)