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## INTERNATIONAL ELECTION OBSERVATION MISSION Republic of Turkey – Presidential Election, 10 August 2014

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### STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

**Ankara, 11 August 2014** – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE).

Vilija Aleknaitė-Abramikienė (Lithuania) was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observer mission. Åsa Lindestam (Sweden) headed the OSCE PA delegation. Meritxell Mateu Pi (Andorra) headed the PACE delegation. Ambassador Geert-Hinrich Ahrens is the Head of the OSCE/ODIHR Limited Election Observation Mission (LEOM), deployed from 9 July 2014.

The assessment was made to determine whether the election complied with OSCE commitments and Council of Europe standards, as well as international obligations and domestic legislation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the election process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process, including the tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The OSCE PA will present its report at its Standing Committee meeting in Geneva on 4 October 2014. The PACE delegation will present its report at its September/October 2014 session in Strasbourg.

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### PRELIMINARY CONCLUSIONS

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The 10 August presidential election presented Turkish voters with an important opportunity to directly choose their president for the first time. Three candidates, representing different political positions, were generally able to campaign freely. Freedoms of assembly and association were respected. However, the use of official position by the Prime Minister as well as biased media coverage gave him a distinct advantage over the other candidates. Direct debates among candidates would have brought more balance and been an opportunity to further engage in a dialogue on key issues facing Turkey.

The legal framework is generally conducive to the conduct of democratic elections, although key areas are in need of improvement. The 2012 Law on Presidential Elections (LPE) was adopted without support of opposition parties; other relevant laws were not harmonized with it, resulting in a lack of clarity in the legal framework and its inconsistent implementation.

In a positive step, recent amendments addressed a number of previous OSCE/ODIHR and PACE recommendations such as permitting campaigning in languages other than Turkish and regulating out-of-country voting. At the same time, a number of recommendations remain unaddressed.

Three party-nominated candidates, including the Prime Minister, contested the election. The possibility for independent candidacy is limited by the requirement for nominees to have the support of at least 20 members of parliament who can only support one candidate. All thirteen individuals who applied as independent candidates lacked the necessary parliamentary support to register.

The campaign was characterized by a general respect for fundamental freedoms and contestants were generally able to campaign without hindrance. A decision by the Supreme Board of Elections (SBE) regarding the official start of the campaign deferred the application by nearly three weeks of key campaign prohibitions and guarantees stipulated in the legislation, including on the use of state administrative resources and official positions for campaign purposes, benefitting the Prime Minister.

While all three candidates actively campaigned, the campaign of the Prime Minister was the most visible. The misuse of state administrative resources and lack of clear distinction of key institutional events with campaign activities granted him an undue advantage, contrary to national legislation and at odds with paragraph 5.4 of the 1990 OSCE Copenhagen Document and the Report on the Misuse of Administrative Resources during Electoral Processes by the Council of Europe's Commission for Democracy through Law (Venice Commission). The Kurdish language was used during rallies, and campaign material was available in Kurdish. The campaign of Mr. Demirtaş was disrupted on several occasions and some instances of violence occurred.

The election administration, headed by the SBE and composed of judges, generally administered the election in a professional manner. Eligible political parties were entitled to nominate non-voting representatives or members at all levels of electoral boards. Despite a previous OSCE/ODIHR recommendation and the Code of Good Practice in Electoral Matters of the Venice Commission, the law does not provide for meetings of the SBE and lower electoral boards to be open to observers and the media, and some regulations and many decisions were not publicly available, thereby reducing the transparency of the work of the election administration. Some regulations adopted by the SBE exceeded its jurisdiction and at times conflicted with the legislation.

Under the Constitution, SBE decisions are not subject to judicial review, leaving the election process under the final authority of an administrative body, challenging the separation of powers guaranteed by the Constitution, and denying the opportunity for effective judicial remedy in election disputes. A 2010 constitutional amendment allows individual petitions to the Constitutional Court on breaches of fundamental rights; however, on 23 July, the Court refused jurisdiction in the first-ever election case. There are no legal deadlines for the Court's adjudication of electoral cases.

Overall, there was confidence in the quality of the voter register. In a positive step, the SBE adopted a decision allowing all convicts outside of prison the right to vote. However, the deprivation of voting rights of active conscripts, cadets and prisoners who have committed intentional crimes, regardless of the severity of the crime committed, is at odds with the principle of universal suffrage and a recent ruling of the European Court of Human Rights.

For the first time, nearly three millions overseas voters were given the opportunity to vote abroad. According to the SBE, the procedure to assign these voters to polling stations was at times problematic.

The introduction of campaign finance regulations is a positive development, yet key areas require improvement. The LPE permits candidates to receive limited donations from Turkish citizens while candidates' personal funds and party funding are not addressed. An SBE regulation went beyond the scope of the LPE by allowing nominating parties to support their candidates by paying for political advertising. The existing framework lacks provisions for full disclosure, comprehensive reporting, and sanctions, which limit the transparency and accountability of the process.

OSCE/ODIHR media monitoring results showed that three out of five monitored TV stations, including the public broadcaster, TRT1, displayed a significant bias towards the Prime Minister. In particular, live broadcasting of his events and speeches gave him a distinctive advantage. This disproportionate coverage was coupled with limited coverage of other contestants, thereby limiting pluralistic

information on political alternatives for voters. In addition, Mr. Erdoğan dominated in paid political advertising. The framework does not provide for a clear definition of the impartiality requirement for broadcasters, and state institutions failed to redress, in a timely manner, unbalanced media coverage.

There were no women among the candidates for president, but one woman attempted to register as an independent candidate. All three candidates addressed issues related to women in their programmes, with Mr. Demirtaş particularly vocal on gender-equality. One of the 11 SBE members is a woman.

International observers were accredited for this election. The law, however, does not create the legal basis for the effective implementation of citizen and international observation as per paragraph 8 of the 1990 OSCE Copenhagen Document, previous PACE recommendations, and the Code of Good Practice in Electoral Matters of the Venice Commission. At a national level, citizen observers were not accredited, however, ballot box committees allowed observation on an ad hoc basis. Legal provisions regulating the accreditation and activity of party observers remain insufficient.

In the limited number of polling stations visited by international observers, election day was generally organized in a professional and efficient manner, and election procedures were followed overall. In a few documented cases, international and citizen observers were not allowed to observe the voting process. Where observed, counting and tabulation processes were transparent and well organized. While the SBE did not post preliminary results on its website, this information, along with polling station results protocols, was accessible to eligible political parties.

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## PRELIMINARY FINDINGS

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### Background

The 10 August first direct presidential election was set by the Supreme Board of Elections (SBE) on 7 March. The election took place in an environment dominated by the Justice and Development Party (AKP)<sup>1</sup> headed by its party leader and Prime Minister, Recep Tayyip Erdoğan. The AKP has held a majority in the parliament since the 2002 parliamentary elections.

The 550-member parliament is currently composed of the AKP with 313 seats, the Republican People's Party (CHP) with 130 seats, the Nationalist Movement Party (MHP) with 52 seats, the Peoples' Democratic Party (HDP) with 27 seats, the Democratic Regions Party with 1 seat, and 14 independent candidates.

A two-year process to draft a new civil constitution that would broadly guarantee fundamental rights and freedoms stalled in October 2013. The current Constitution dates from 1982 and was adopted under military rule.

### Legal Framework and Electoral System

The legal framework for presidential elections is generally conducive to the conduct of democratic elections, although key areas are in need of improvement. The 1982 Constitution concentrates on bans and prohibitions rather than broad guarantees of fundamental rights and freedoms. While it establishes the supremacy of applicable international law over national law, it entrenches undue limitations on the freedoms of association, assembly, and expression, and on electoral rights. The Constitution guarantees gender equality, but not the rights of ethnic groups.

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<sup>1</sup> The abbreviations used for political parties are based on their names in Turkish.

A constitutional referendum in 2007 changed the indirect presidential election system to a direct election of the president by popular vote with an absolute majority of valid votes. If no candidate wins the required majority in the first round, a second round between the top two candidates will be held two weeks later. Constitutional amendments also reduced the term of the president from seven to five years and increased the limit from one to two terms. Under the Constitution, the president cannot be a member of a political party.

The Law on Presidential Elections (LPE), adopted in January 2012, regulates aspects of the new presidential election system. It was adopted in an expedited manner with limited debate and no public consultation nor support of opposition parties.<sup>2</sup> The LPE lacks sufficient clarity, including on the role of political parties in the electoral and campaign process.

The 1961 Law on Basic Provisions on Elections and Voter Registers (Law on Basic Provisions) regulates all elections. However, it was not harmonized with the LPE and the new presidential election system, leaving inconsistencies and ambiguities relating to the implementation of presidential elections. In addition to the applicability of the Law on Basic Provisions, the LPE provides for the general application of all laws regulating other types of elections, thus reducing the clarity, transparency, and consistent implementation of the legal framework for presidential elections.<sup>3</sup>

SBE regulations and decisions supplement the legal framework. A number of regulations were adopted on various matters, including on campaigning, campaign finance and media coverage. In some instances, SBE regulations including on the campaign period and campaign financing did not effectively elaborate on the legislation, exceeded the SBE's regulation-making authority, or conflicted with the law. Some decisions lacked a clear legal basis (see below).

In a positive step, recent amendments to the legal framework addressed some previous OSCE/ODIHR and PACE recommendations, while a number of recommendations remain unaddressed.<sup>4</sup> The LPE regulates to some extent campaign finance for the first time. The Law on Basic Provisions was amended in May 2012 to incorporate regulations for out-of-country voting. Restrictions on using unofficial languages in the public sphere were recently loosened, including amending the Law on Basic Provisions in March 2014 to permit campaigning in languages other than Turkish.<sup>5</sup> However, recent SBE regulations require Turkish as the main language in campaign coverage and advertising.

## **Election Administration**

The election was administered by a four-tier election administration: the SBE, 81 Provincial Electoral Boards (PEBs), 1,067 District Electoral Boards (DEBs) and 165,574 Ballot Box Committees (BBCs).<sup>6</sup> In addition, one DEB was established in Ankara to co-ordinate the activities of 1,186 out-of-country BBCs.

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<sup>2</sup> In March 2012, several members of parliament from the CHP challenged certain provisions in the LPE, which led to the Constitutional Court annulling a provision prohibiting current and past presidents from running for a second term.  
<sup>3</sup> The LPE refers to the application of the Law on Parliamentary Elections, the Law on Local Government Elections, the Law on Referenda on Constitutional Amendments, and the Law on Political Parties.

<sup>4</sup> Previous OSCE/ODIHR reports on Turkey are available at: <http://www.osce.org/odihr/elections/turkey>. See the PACE report: Observation of the Parliamentary Elections in Turkey (12 June 2011): <http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileId=12999&Language=en>.

<sup>5</sup> Some ambiguity exists as the Law on Political Parties still includes a provision prohibiting unofficial languages in campaigning. Furthermore, Article 67 of the Constitution provides that amendments to election laws are not to be applied within one year of their adoption.

<sup>6</sup> Generally, each district has one DEB, though additional DEBs were established in areas with higher populations.

The SBE is a permanent, 11-member body tasked with overall authority and responsibility for the conduct of the election. SBE members are judges elected by the courts for a six-year term.<sup>7</sup> Several OSCE/ODIHR interlocutors expressed distrust in the election administration as the broader legal framework brings the courts under control of the Ministry of Justice, thereby undermining the independence of judges and, in effect, the SBE members.

The law does not require meetings of electoral boards to be open to observers and the media, despite a previous OSCE/ODIHR recommendation and the Code of Good Practice in Electoral Matters of the Council of Europe's Commission for Democracy through Law (Venice Commission).<sup>8</sup> The OSCE/ODIHR LEOM was not allowed to attend SBE sessions, while access to DEB meetings varied throughout the country. Some regulations and many decisions were not posted on the SBE website or otherwise made publicly available, undermining the transparency of the administration's decision-making process.

Eligible political parties were entitled to nominate non-voting representatives or members at all levels of electoral boards. Although the HDP nominated a presidential candidate, it was not an eligible political party. Nevertheless, the HDP was permitted to nominate its non-voting representative to the SBE, but not to lower boards or as BBC members.<sup>9</sup>

The technical preparations for the election were adequate, despite some shortcomings, in particular in not meeting certain legal deadlines.<sup>10</sup> Widespread confusion among the authorities and the election administration on their campaign-related responsibilities led to an inconsistent application and enforcement of the campaign framework.

The SBE, through DEBs, provided trainings for BBC members, although only the BBC chairperson and one member of each BBC were selected by the SBE to participate. Political parties provided separate trainings to their BBC members. The SBE prepared televised spots on voter information for in-country and out-of-country voters. The SBE introduced special arrangements for voters with disabilities and those over 75 years of age; these voters were included in voter lists of polling stations designed to be fully accessible.

The SBE printed and distributed 75,708,180 ballots, which included a surplus of some 30 per cent (see section below).<sup>11</sup> As referred to by the SBE, the Law on Local Government Elections stipulates that the quantity of printed ballots should amount to no more than 15 per cent of the number of registered voters, and the Law on Basic Provisions stipulates that each polling station should be provided with a package of 400 ballots. However, the SBE distributed packages of 420 ballots (plus two per cent reserve) to each polling station in-country, explaining that the additional ballots were for contingency purposes.<sup>12</sup>

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<sup>7</sup> Six members are elected by the Supreme Court and five by the Council of State. Of the 11 members, 10 are male and 1 female. PEBs and DEBs are headed by judges. Article 79 of the Constitution provides that elections are held under the general administration and supervision of the judicial organs.

<sup>8</sup> Section II.3.1(68) of the 2002 Code of Good Practice in Electoral Matters of the Venice Commission states that "only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results." See: <http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282002%29023-e>

<sup>9</sup> On 22 July, the HDP informed the OSCE/ODIHR LEOM that the SBE, based on legal criteria, denied its application to appoint a representative to the SBE; on 4 August, the SBE informed the OSCE/ODIHR LEOM that the HDP had a representative to the SBE; and on 5 August, the HDP retracted its initial statement and confirmed its representative.

<sup>10</sup> In particular, DEBs generally missed the legal deadline, set by the legislation, for designating and allocating locations to hold rallies and post campaign material on an equal basis.

<sup>11</sup> Number of ballots in-country: 71,025,780; out-of-country: 3,182,400; border crossings: 1,500,000.

<sup>12</sup> No legal provisions exist for the number of printed ballots for out-of-country and border crossing polling stations.

For the first time, overseas voters were given the opportunity to vote abroad. Out-of-country voting was established from 31 July to 3 August in 54 countries for voters residing abroad and additionally established from 26 July to 10 August at 42 border crossings. According to the SBE, the procedure to assign voters abroad to polling stations was at times problematic. Out-of-country ballots were returned and counted in Ankara and ballots cast at border crossings were counted by their assigned DEBs. A number of interlocutors expressed concerns regarding the integrity of the transportation and counting process for out-of-country ballots.

## Voter Registration

Voter registration is passive. The permanent central voter register is maintained by the SBE and linked to a civil and address registry, operated by the Ministry of Interior. Voter lists were compiled for in-country and out-of-country voters. The total number of eligible voters was 52,894,120 in-country, and 2,798,670 out-of-country.

Citizens over 18 years of age are included in the voter register. Active conscripts, cadets, and prisoners who have committed intentional crimes, regardless of the severity of the crime, are not eligible to vote. This is not in line with paragraph 7.3 of the 1990 OSCE Copenhagen Document.<sup>13</sup> On 20 June, the SBE issued a decision that all convicts outside of prison are entitled to vote. This decision partially implemented a September 2013 ruling of the European Court of Human Rights that Turkey's ban on convicted prisoners' voting rights is too broad and is in breach of the right to free elections.<sup>14</sup>

Following a public update period, the SBE finalised voter lists on 20 July. No changes to the voter lists were possible after this date and voters were required to vote at their place of registration. A lack of provisions for citizens in hospitals and sanatoriums, and seasonal workers to cast their vote in their place of temporary stay reduced their possibility to exercise their right to vote. Political parties were entitled to receive copies of voter lists. Not all parties applied to the SBE for a copy and none lodged complaints on the accuracy of the voter register. Overall, stakeholders expressed confidence in its quality.

## Candidate Registration

Presidential candidates must be at least 40 years of age, have a higher education, and be eligible to be a member of parliament (MP), which includes a ban on all persons convicted of a non-exhaustive list of a broad range of crimes or who have not completed their military service.<sup>15</sup> These restrictions (other than age requirement) are incompatible with the fundamental right to stand for election and with paragraph 7.5 of the 1990 OSCE Copenhagen Document.<sup>16</sup>

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<sup>13</sup> Paragraph 7.3 states that the participating States will “guarantee universal and equal suffrage to adult citizens”, while paragraph 24 provides that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law”. See also paragraph 14 of the 1996 UN Human Rights Committee General Comment No 25 to Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which states: “If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence of the sentence.”

<sup>14</sup> Judgment by the European Court of Human Rights: *Söyler v. Turkey*, application no.29411/07, 20 January 2014.

<sup>15</sup> In 2012, the Judicial Records Law was amended to provide for the restoration of convicts' candidacy rights after a minimum 15-year waiting period following full execution of the sentence; a 2011 Constitutional Court decision annulled the former provision that established a lifetime ban. To reclaim their rights, convicts must also prove they lived “a good life” for at least the first three years after full execution of their sentence.

<sup>16</sup> Paragraph 15 of General Comment No 25 to Article 25 states that “...Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” Paragraph 24 of the 1990 OSCE Copenhagen Document provides that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law”.

Presidential candidates require the support of at least 20 MPs, with each MP only permitted to support one nominee. This requirement limited the possibilities for independent candidacy. Parliamentary parties and parties that jointly received at least 10 per cent of the votes in the last general election may each nominate one presidential candidate. Article 11 of the LPE requires the resignation of presidential candidates from certain public positions, but does not specifically include the posts of prime minister, ministers, and MPs.

Three candidates were nominated by parties: Mr. Recep Tayyip Erdoğan, nominated by the AKP, Mr. Ekmeleddin İhsanoğlu, jointly nominated by the CHP and MHP, and Mr. Selahattin Demirtaş, nominated by the HDP. Thirteen individuals, including one woman, applied as independent candidates, but were not registered by the SBE due to the lack of support from the required 20 MPs. The final candidate list was published on 11 July.

### **Campaign Environment**

According to Article 13 of the LPE, the official campaign period began on 11 July, and the Law on Basic Provisions defines the end of the campaign at 18:00 on 9 August. The Law on Basic Provisions establishes a clear and strict regulatory framework for campaign conduct aimed at ensuring a level playing field, including detailed prohibitions on the use of state administrative resources and official positions for campaign purposes. However, an SBE decision regarding the official start of the campaign deviated from the LPE and deferred the application by nearly three weeks of key campaign prohibitions and guarantees stipulated in the legislation, including on the use of state administrative resources and official positions for campaign purposes, benefitting the Prime Minister. The date of 31 July was based on Article 49 of the Law on Basic Provisions, which provides that the official campaign period starts 10 days prior to election day; this period has applied to all elections up until the adoption of the LPE, which specifically regulates presidential elections.

The political environment was characterized by a confrontation between the current government and a movement purportedly challenging state structures. This was exemplified by investigations of corruption involving state officials and more recently arrests and detentions of law enforcement personnel during the campaign. Throughout his campaign, Mr. Erdoğan frequently referred to the importance of dismantling any existing alternative state structures that challenge state institutions.

The campaign was characterized by general respect for fundamental freedoms and contestants were generally able to campaign without hindrance. However, the use of state events for campaigning granted the Prime Minister an undue advantage over the other electoral contestants.

A key issue in the campaign was the debate on the future of Turkey's system of government; Mr. Erdoğan called for a strong presidential system while Mr. İhsanoğlu promised to preserve the current parliamentary system. Additionally, the ongoing situations in the Gaza Strip, Syria and Iraq, the issue of corruption of state officials, and the continuation of the Kurdish-Turkish peace process all featured prominently in the campaign. Mr. Demirtaş underlined the need to stand with people who face discrimination due to ethnic, religious, gender, or class-based identity. While all three candidates addressed issues related to women, Mr. Demirtaş was particularly vocal on gender-equality.

While all three candidates actively campaigned, the campaign was characterized by the high visibility of Mr. Erdoğan who travelled extensively throughout the country in his official role as Prime Minister, combining this activity with campaign events organized by the AKP and at times by the local

administration.<sup>17</sup> In addition, campaigning took place during the inauguration of key state infrastructure projects.<sup>18</sup> The misuse of state administrative resources and lack of clear distinction of state and party activities contravenes national legislation and is at odds with paragraph 5.4 of the 1990 OSCE Copenhagen Document and the Report on the Misuse of Administrative Resources during Electoral Processes by the Venice Commission.<sup>19</sup> Furthermore, instances of distributing food parcels and vouchers by Mr. Erdoğan's campaign were noted by the OSCE/ODIHR LEOM and confirmed by AKP representatives.

Campaigning by all three candidates included rallies, door-to-door campaigning, distribution of brochures, and the use of billboards and loudspeakers. Candidates used social media, in particular Mr. Demirtaş due to his campaign's limited financial resources and in order to address young voters. Representatives of Mr. İhsanoğlu and Mr. Demirtaş informed the OSCE/ODIHR LEOM that their capacity to purchase advertising space outdoors and in the media was limited due to financial constraints. In total, the OSCE/ODIHR LEOM observed 32 rallies by the three candidates. The use of the Kurdish language featured in most of the observed events held by Mr. Demirtaş and campaign material was also available in Kurdish.<sup>20</sup>

Several incidents of physical attacks on the campaign activists of Mr. Demirtaş and some instances of violence occurred during the campaign.<sup>21</sup> In the last days of the campaign, Mr. Erdoğan was criticized by some opposition parties and members of civil society for using inflammatory rhetoric against a number of ethnic and religious groups.<sup>22</sup> One CHP MP and the HDP lodged separate complaints with public prosecutors, on 6 and 7 August, respectively, regarding offensive comments made by Mr. Erdoğan against a religious group, referring to Article 216 of the Criminal Code on hate crimes.

## Campaign Finance

In a positive development and in line with previous OSCE/ODIHR recommendations, this election is the first with some degree of campaign finance regulation. The LPE permits candidates to only receive limited donations from Turkish citizens.<sup>23</sup> Other than individual donations, the law does not provide for other sources of funding, although it was reported by OSCE/ODIHR LEOM interlocutors that candidates' personal funds were allowed without limit and that political parties could fund campaign events. The SBE did not properly supplement the legal framework on campaign finance; an SBE

<sup>17</sup> The OSCE/ODIHR LEOM is aware of 15 events where official visits to governors were combined with campaign activities. Both the Prime Minister's official website and that of his campaign provided a schedule of his daily campaign events and upcoming inaugurations.

<sup>18</sup> On 25 July, Mr. Erdoğan campaigned during the inauguration of the high-speed train between Istanbul and Ankara. On 26 July, he participated in the opening ceremony of the Başakşehir football stadium in Istanbul.

<sup>19</sup> Articles 63 to 66 of the Law on Basic Provisions. Paragraph 5.4 of the 1990 OSCE Copenhagen Document provides for "a clear separation between the State and political parties; in particular, political parties will not be merged with the State." See the Venice Commission 2013 report at: <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282013%29033-e>

<sup>20</sup> Of note, based on the nationwide media monitored by the OSCE/ODIHR LEOM, there was some broadcasting of campaign events in the Kurdish language.

<sup>21</sup> Attacks on Mr. Demirtaş's campaign activists, campaign stands and materials were reported to the OSCE/ODIHR LEOM as follows: Samsun (26 July), Rize (26 July), İzmir (26 July), İstanbul (21, 28, 29, and 31 July), Gaziantep (1 August), Hasanbeyli (6 August), Alsancak (7 August), and Kadirli (8 August). On 28 July, in İstanbul (district of Küçükçekmece) there were verbal assaults and a shot fired at supporters of Demirtaş in front of his campaign office. On 31 July, in İstanbul (district of Sultangazi), a 16-year old boy was killed during a clash between the HDP and an extreme left organization. On 8 August, the OSCE/ODIHR LEOM was informed that in several villages in Kars Province, a number of BBC members nominated by the AKP resigned from their positions following threats.

<sup>22</sup> This included reference to Alevi, Zaza and Armenians.

<sup>23</sup> The law limits the amount an individual can donate for each round, which cannot exceed one month's salary of the highest-ranking civil servant. The SBE defines this amount at 9,082.51 Turkish Lira (TL) (approx. EUR 3,150). Candidates are not entitled to receive public funding and loans are not permitted.



regulation of 2 July, went beyond the scope of the LPE by allowing nominating parties to provide support to their candidate by paying for political advertising without limit or a requirement to report. Another SBE regulation of 6 June prohibited in-kind donations.

The LPE requires candidates to open bank accounts dedicated to donations and to report on donated income and its expenditure within 10 days of the announcement of the final results. The lack of requirement for interim reporting limited the transparency of campaign finance. All three candidates opened dedicated bank accounts and voluntarily disclosed donations received during the campaign.<sup>24</sup> Furthermore, the law does not require reporting on any personal or party funds used for campaign purposes or include sanctions for breach of campaign finance provisions. The existing framework lacks provisions for full disclosure, comprehensive reporting, and sanctions, which limit the transparency and accountability of the process.<sup>25</sup>

## Media

The Constitution permits restrictions on freedom of expression; legislation and its implementation criminalize speech on certain matters of public importance. In particular, broad provisions on criminal defamation and on propaganda in favour of a terrorist organization in the Anti-Terrorism Act have been applied by the courts to convict and imprison journalists.<sup>26</sup>

Media experts have expressed concern to the OSCE/ODIHR LEOM that dependencies of media-owners on the state for obtaining lucrative industrial tenders causes direct interference into editorial freedom, which results in limited criticism of the ruling party and Prime Minister, particularly on television. In addition, journalists reported to the observers that the fear of withdrawal of advertising by state companies allocated to government-friendly media outlets leads to self-censorship. Furthermore, journalists working with outlets not affiliated with the government reported that their accreditation to cover official government events was at times denied. The Internet contributes to pluralism, particularly in the social media, despite undue blocking, including recent bans on YouTube and Twitter.<sup>27</sup>

The partisan appointment of the Radio and Television Supreme Council (RTSC), the supervisory body for broadcasters, including on campaign coverage, results in a lack of independence.<sup>28</sup> Moreover, the RTSC nominates the General Director and administrative board members of the public broadcaster, the Turkish Radio and Television Corporation (TRT).

The legal requirement for all broadcasters to ensure “impartiality, truthfulness and accuracy”, among others, in campaign coverage lacked precision and was not elaborated by SBE decisions. Stakeholders, including RTSC members, provided contradictory interpretations of the impartiality requirement. Moreover, the framework does not establish a transparent and effective monitoring and reporting procedure between the RTSC, as the monitoring body, and the SBE, the sanctioning body. OSCE/ODIHR LEOM interlocutors stated that the RTSC did not provide monitoring results, but only reported to the SBE on violations as identified by RTSC monitors.

<sup>24</sup> Mr. Demirtaş: 1,213,000 TL (approx. EUR 418,275) from 7,119 donors as of 9 August, as per his campaign’s website at: <http://en.selahattindemirtas.net>. Mr. İhsanoğlu: 8,500,000 TL (approx. EUR 2,931,034) from an unknown number of donors as of 9 August, as published by his press office. Mr. Erdoğan: 55,260,778 TL (approx. EUR 19,055,440) from 1,350,796 donors as noted on a TV programme on 8 August.

<sup>25</sup> See Group of States against Corruption (GRECO), Third Evaluation Round, Compliance Report, 23 March 2012, at: [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)4\\_Turkey\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)4_Turkey_EN.pdf).

<sup>26</sup> The OSCE Representative on Freedom of the Media currently lists, after recent releases, 21 imprisoned journalists: <http://www.osce.org/fom/119921>.

<sup>27</sup> The recent blocking of Twitter and YouTube was lifted by the Constitutional Court on 2 April and 29 May, respectively, and were unblocked by authorities on 3 April and 3 June, respectively.

<sup>28</sup> The RTSC consists of nine members elected by parliament: five nominated by the AKP, two by the CHP and one member each by the MHP and Peace and Democracy Party (BDP).

On 4 August, the SBE informed the OSCE/ODIHR LEOM that thus far 17 warnings were issued to 17 TV stations. In addition, following prior RTSC warnings, 12 decisions against 9 TV stations ordered the suspension of the concerned TV programmes. However, in the absence of legal deadlines, the warnings issued were too late to provide for effective remedy during the campaign and did not include the necessary measures to be taken by the broadcaster in order to provide for a level playing field. Two SBE decisions against TRT were based on a complaint filed by the CHP on TRT's partial coverage in favour of Mr. Erdoğan. In addition, two complaints filed with the Prosecutor's office on the same issue are pending.<sup>29</sup> None of the complaints or the SBE media-related decisions were made public.<sup>30</sup> In addition, no RTSC monitoring results have been published.

The OSCE/ODIHR LEOM media monitoring showed that three of the five monitored TV stations, including the public broadcaster, TRT1, displayed explicit bias in campaign coverage in favour of the Prime Minister in news, current events, and discussion programmes.<sup>31</sup> TRT1 devoted 51 per cent of coverage to Mr. Erdoğan, while covering Mr. İhsanoğlu and Mr. Demirtaş with 32 per cent and 18 per cent, respectively. In addition, 25 per cent of Mr. İhsanoğlu's coverage was negative in tone, while Mr. Erdoğan's coverage was almost all positive. TRT adhered to its legal obligation to broadcast a total of 30 minutes of free airtime for each candidate.

ATV devoted 70 per cent to the Mr. Erdoğan, while Mr. İhsanoğlu and Mr. Demirtaş received 18 and 11 per cent, respectively. Forty-nine per cent of Mr. İhsanoğlu's coverage was negative in tone. NTV gave 70 per cent of its coverage to Mr. Erdoğan, and only devoted 18 and 11 per cent to Mr. İhsanoğlu and Mr. Demirtaş, respectively; it covered all candidates in a positive/neutral tone. CNN TÜRK devoted 54 per cent of its coverage to Mr. Erdoğan; however, it displayed a critical approach by devoting 28 per cent of this coverage in a negative tone. Mr. İhsanoğlu and Mr. Demirtaş got 27 and 20 per cent coverage, respectively. *Samanyolu TV* displayed a bias against Mr. Erdoğan and in favour of Mr. İhsanoğlu, with the Prime Minister receiving 62 per cent coverage, of which 92 per cent was negative. Mr. İhsanoğlu and Mr. Demirtaş got 28 and 11 per cent coverage, respectively. This disproportionate coverage limited pluralistic information on political alternatives for voters.

In addition, on monitored TV stations, Mr. Erdoğan was featured in almost seven hours of purchased political advertising, while Mr. İhsanoğlu purchased 36 minutes and Mr. Demirtaş 19 minutes. No presidential candidate debates were broadcast during the monitored period.

## Complaints and Appeals

The electoral complaints and appeals process is primarily regulated by the Law on Basic Provisions. Non-final decisions of lower level electoral boards can be appealed to higher level boards by political parties, voters, party observers, and candidates; granting the same right to civil society organizations would increase confidence and trust in the electoral process. The law does not establish a process for filing campaign-related complaints, although in practice such complaints are lodged with relevant DEBs during the official campaign period. Clear deadlines for submission and adjudication of complaints and appeals are not provided in the law.

<sup>29</sup> The alleged explicit partial coverage on TRT in favour of Mr. Erdoğan became a campaign issue and featured prominently in the media. On 27 July, the General Director of TRT publicly stated that if Mr. Demirtaş continued to accuse TRT of biased coverage in favour of Mr. Erdoğan, then TRT would stop providing live coverage of Mr. Demirtaş's campaign activities.

<sup>30</sup> The SBE informed the OSCE/ODIHR LEOM that its decisions are forwarded to the governor who informs the respective broadcaster. In addition, the RTSC is required by law to implement SBE decisions. One TV station concerned informed the OSCE/ODIHR LEOM that it received an SBE warning dated 19 July only on 7 August.

<sup>31</sup> Monitored media comprised five TV stations: ATV, CNN TÜRK, NTV, TRT1 and *Samanyolu TV*; and four newspapers: *Hürriyet*, *Zaman*, *Sözcü* and *Sabah*.

Prior to election day, the SBE received some 35 complaints. Most regarded the Prime Minister's eligibility as a candidate, resignation from his public post, and the misuse of state administrative resources; all of which were dismissed. Few complaints were lodged with lower level electoral boards prior to election day mostly regarding posting of campaign material. The adjudication of complaints and appeals by election bodies was not open to observers or the media, and complaints and decisions were generally not posted on the SBE's website or otherwise publicly available, undermining the transparency of the election dispute resolution process. Decisions were not issued to affected stakeholders on a timely basis. The SBE provided the OSCE/ODIHR LEOM with most of its decisions on complaints; in general, the reasons for decisions were insufficiently elaborated.

Under Article 79 of the Constitution, SBE decisions are not subject to judicial review, which leaves the electoral process under the final authority of an administrative body, challenging the separation of powers guaranteed by the Constitution, and denies the opportunity for effective judicial remedy in electoral disputes.<sup>32</sup>

A 2010 constitutional amendment established the right to file individual petitions to the Constitutional Court for violations of fundamental rights and freedoms within the scope of the European Convention on Human Rights (ECHR) and guaranteed by the Constitution. However, on 23 July, the Constitutional Court refused jurisdiction in the first ever election-related petition on grounds that the right to free elections under the ECHR applies only to parliamentary elections.<sup>33</sup>

Three cases challenging the candidacy of the Prime Minister and/or his refusal to resign while running for president and three petitions requesting out-of-country ballots be counted in the countries they are cast were also rejected by the Constitutional Court.<sup>34</sup> There are no legal deadlines for the court's adjudication of electoral cases.

### **Citizen and International Observers**

International observers from four international organisations were accredited by the SBE for this election. The law, however, does not create the legal basis for the effective implementation of citizen and international observation as per paragraph 8 of the 1990 OSCE Copenhagen Document, as previously recommended by PACE recommendations, and as per Section II.3.2 of the Code of Good Practice in Electoral Matters of the Venice Commission.<sup>35</sup> At a national level, citizen observers were not accredited,<sup>36</sup> however, they were able to deploy observers on election day due to collaboration with political parties or through the goodwill of BBCs on an ad hoc basis.

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<sup>32</sup> This is contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document, which states: "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity"; and Section II.3.3 of the Code of Good Practice in Electoral Matters of the Venice Commission.

<sup>33</sup> The case challenged election results for the Mayor of Ankara in March 2014. The court stated it would remain silent on the applicability of Article 79 of the Constitution to the review of individual petitions related to elections.

<sup>34</sup> Decisions in the latter three cases were not publicly announced prior to election day; the legal reasoning for all six decisions was not published as of the date of the release of this statement.

<sup>35</sup> Paragraph 8 of the 1990 Copenhagen Document reads: "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. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so to observe the course of their national election proceedings, to the extent permitted by law." See the PACE report: Observation of the Parliamentary Elections in Turkey (12 June 2011).

<sup>36</sup> The SBE denied two formal requests by non-governmental organizations to observe election day proceedings.

Political parties have the right to nominate observers, although there are no provisions for accreditation of such observers. They also have the right to receive upon request copies of the results protocols at polling stations.

## **Election Day**

In the limited number of polling stations visited by international observers, election day was generally organized in a professional and efficient manner, and BBC members were well prepared and followed voting procedures overall. However, in many polling stations observed, the number of BBC members was less than seven, which meant that not all entitled political parties were present as members.<sup>37</sup> Party and citizen observers were noted as being present in less than half of the polling stations. In a few documented cases, international and citizen observers were not allowed to observe the voting process. A few isolated instances of violence were reported throughout the day.

In the limited number of polling stations where international observers were present, the counting and tabulation processes were noted as transparent and well organized. However, with counting, there were some instances where procedures were not followed, including pre-signed results protocols. The tabulation process was observed as being conducted in an orderly and efficient manner.

While the SBE did not post preliminary results on its website, this information, along with polling station results protocols, was accessible to political parties. Although twenty-six parties were eligible to access these results, only six applied to the SBE prior to election day, as required.

*The English version of this report is the only official document.  
An unofficial translation is available in Turkish.*

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## **MISSION INFORMATION & ACKNOWLEDGEMENTS**

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Ankara, 11 August 2014 – The OSCE/ODIHR LEOM opened in Ankara on 9 July. It includes 13 experts in the capital and 16 long-term observers deployed throughout Turkey.

In line with OSCE/ODIHR's standard methodology for Limited Election Observation Missions (LEOMs), the LEOM focused on the longer-term electoral process without the additional deployment of short-term observers that would have provided the basis for a quantitative assessment of election day.

The observers visited a limited number of polling stations around the country on election day, although observation was not conducted in comprehensive fashion. On election day, 96 observers were deployed, including 29 parliamentary observers from the OSCE PA, 30 from the PACE, and 37 long-term observers and experts from the OSCE/ODIHR. In total, there were observers from 32 OSCE participating States.

The observers wish to thank the authorities for their invitation to observe the election and the SBE and the Ministry of Foreign Affairs for their assistance. They also express their appreciation to other state institutions, political parties and civil society organizations and the international community representatives for their co-operation.

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The Law on Basic Provisions stipulates that each BBC should be composed of seven members.

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