



Office for Democratic Institutions and Human Rights

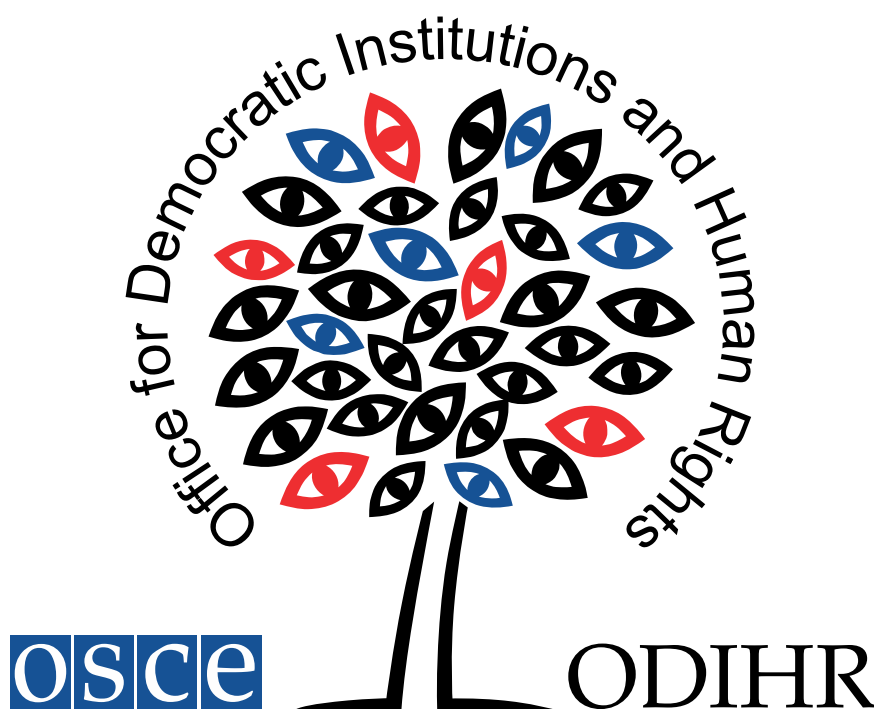
REPUBLIC OF POLAND

PRESIDENTIAL ELECTION

28 June and 12 July 2020

ODIHR Special Election Assessment Mission

Final Report



Warsaw
23 September 2020

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ODIHR Special Election Assessment Mission Final Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the authorities of Poland, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Special Election Assessment Mission (SEAM) on 15 June. The ODIHR SEAM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic elections as well as national legislation.

The Statement of Preliminary Findings and Conclusions issued on 29 June concluded that the election “was administered professionally despite the legal uncertainty during the electoral process. The constitutionally mandated election coincided with the outbreak of the COVID-19 pandemic, and the decision to continue with the holding of the election necessitated legal and practical adjustments. The changes jeopardized the stability and clarity of the otherwise suitable election legislation and had practical implications for candidate registration, campaigning and campaign finance, voting methods, and resolution of election disputes. The campaign was characterized by negative and intolerant rhetoric further polarizing an already adversarial political environment. In an evidently polarized and biased media landscape, the public broadcaster failed to ensure balanced and impartial coverage, and rather served as campaign tool for the incumbent.”

As none of the candidates achieved the required number of votes to be elected in the first round, a second round was held on 12 July. The Statement of Preliminary Findings and Conclusions issued on 13 July concluded that “the second round of the Polish presidential election was well managed despite gaps in regulation of important aspects. Candidates were able to campaign freely in a competitive run-off, but hostility, threats against the media, intolerant rhetoric and cases of misuse of state resources detracted from the process. The polarized media environment, and particularly the biased coverage by the public broadcaster, remained a serious concern. The refusal by both candidates to meet in a joint debate deprived voters of the opportunity to compare their policies. Inexpedient timeframes for processing complaints and appeals inhibited the means of legal redress between the two rounds.”

The presidential election was originally scheduled for 10 May. Due to outbreak of the COVID-19 pandemic, no election was held on 10 May. A new election date was scheduled for 3 June following the adoption of a new temporary law on 2 June on “Special regulations for general elections of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting” governing the presidential election (2 June Act). Ultimately, the election was called for 28 June with a second round on 12 July.

The legal framework is generally suitable for the holding of democratic elections. Amendments adopted in response to the COVID-19 pandemic significantly altered key aspects of the electoral legal framework. The changes were adopted in an expedited manner without meaningful consultation, which is at odds with OSCE commitments. Notwithstanding the changes enacted to hold the elections during the COVID-19 pandemic, the Election Code does not adequately regulate important elements of the second round including campaign, campaign finance and complaints and appeals, thus undermining the clarity of important elements of the legal framework for the second round. Many prior ODIHR recommendations remain unaddressed, including with regard to criminal

¹ The English version of this report is the only official document. An unofficial translation is available in Polish.

liability for defamation, voting rights of persons with intellectual and psychosocial disabilities, and scrutiny of interim campaign finance reports.

Measures to prevent and contain the spread of COVID-19 and the 2 June Act impacted the operations of NEC and introduced the option of postal voting in addition to in-person voting. Despite shortened timeframes, the election administration fulfilled its mandate in a professional manner and met all legal deadlines related to technical preparation of the election. Notwithstanding the changes to the composition of the NEC, which took effect following last year's parliamentary elections, the election administration at all levels enjoyed overall confidence among stakeholders. Short deadlines for delivery and retrieval of postal ballots, especially with respect to the second round, were a logistical challenge, in particular regarding out-of-country voting. Persons with disabilities could vote in person, via mail or by proxy.

Voter registration is passive and lists are extracted from a permanent voter register. Stakeholders expressed overall trust in the accuracy and maintenance of voter lists. Citizens could only review their inclusion in the lists in person. Temporary inclusion in the voter list caused confusion among some voters before the second round as all changes made to the voter list prior to the first round automatically applied for both rounds. While a record high number of voters registered abroad and in-country to cast their ballots by post, their overall number remained relatively low. Persons deprived of legal capacity remain disenfranchised, despite international standards and prior ODIHR recommendations.

The candidate registration process was inclusive. The NEC ultimately approved 11 candidates for the 28 June election. The registration of candidates initially registered for the 10 May election was effectively extended upon fulfilling a simple administrative procedure while new candidates were also able to register after the passing of the 2 June Act.

Women comprised only 26 per cent of members of the parliament at the time of the election and their numbers in high executive positions, including among ministers, remain low. There are no legal provisions promoting representation of each gender at all levels of the election administration; all nine NEC members are men. While one woman candidate had initially registered for the 10 May election, there were no women candidates when the election was held on 28 June and none of the male contestants explicitly tackled gender equality socio-economic policies in their campaigns.

As the COVID-19 restrictions on public assemblies initially introduced in March were eased on 29 May, the candidates embarked on a campaign which proved to be generally unencumbered, while intense and competitive. As the campaign intensified for the second round, counterdemonstrations to candidate's rallies occasionally resulted in clashes between supporters. The campaign environment reflected a high degree of political polarization and, in certain instances, campaign messages included intolerant rhetoric of a homophobic, xenophobic, and anti-Semitic nature. Vilification of opponents and negative campaigning, including on social networks, was frequent. Several high-ranking public officials conducted campaign activities, blurring the distinction between state and party and creating an undue advantage for the incumbent.

The legal framework for campaign finance has numerous gaps and does not provide for effective oversight during the campaign. The 2 June Act substantially amended the campaign finance legal framework, envisaging, among other things, lower campaign expenditure limits for electoral committees created for 28 June election. There is no requirement for interim reporting and transfers from parties' electoral funds to electoral committees are not disclosed before the election; the NEC conducts only *ex post* control, meaning any campaign finance infractions can only become known

months after the election. Transparency is further undermined by active third party campaigning, which remains unregulated as sanctions were repealed in 2018.

The constitutionally enshrined freedom of expression is undermined by the existence of criminal penalties for defamation and insult laws as well as by limited access to public information. The media landscape is sharply polarized with distinct editorial bias. The refusal of the candidates to engage with media they consider hostile led to lack of genuine debate, limiting the opportunity for voters to contrast the candidates' policies through a public debate. The public broadcaster (TVP) failed in its legal duty to provide impartial coverage, which could offset the editorial bias of the private media. Instead, TVP acted as a campaign vehicle for the incumbent. The National Broadcasting Council does not monitor campaign coverage despite having the legal mandate to do so. Additionally there are no legal mechanisms for determining and sanctioning imbalanced campaign coverage as it is taking place. Instances of intolerant rhetoric, often by the public broadcaster itself, and increased threats against journalists were reported.

The law affords the opportunity to seek legal redress against most decisions of the election administration. There is, however, a lack of clearly defined procedures for complaints relating to the campaign, campaign finance and election-day. There are also gaps in the law as it relates to complaints and appeals deadlines following the announcement of results of the first round. These gaps undermine the possibility for timely and effective legal redress between the rounds. Such complaints filed after the first round to the Supreme Court were treated as inadmissible. Deadlines in election dispute resolution were significantly shortened by the 2 June Act. After the second round, the Supreme Court rejected the vast majority of close to 6,000 complaints on formal grounds and declared the election valid within the legal deadline.

The ODIHR SEAM did not undertake systematic or comprehensive observation of election-day proceedings. In the limited number of polling stations visited, the voting and counting process was smooth and well organized. Sanitary measures necessitated by the pandemic were strictly enforced.

This report offers a number of recommendations to support efforts to bring elections in the Republic of Poland closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations focus on the need to ensure the independence of the institutions responsible for safeguarding the integrity of the electoral process, clearly defining campaign activities of public officials and the use of administrative resources in a campaign, introducing and enforcing mechanisms to counter hate speech, instituting safeguards to guarantee the independence of public media, and revising the legal framework to require sufficient impartiality in the campaign coverage in the public media. ODIHR stands ready to assist the authorities in improving the electoral process and addressing the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Permanent Mission of the Republic of Poland to the United Nations Office and International Organizations in Vienna, and based on the recommendation of a Needs Assessment Mission (NAM) conducted from 17 to 20 June 2019, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Special Election Assessment

Mission (SEAM) on 15 June.² The ODIHR SEAM, headed by Thomas Boserup, consisted of eight experts drawn from eight OSCE participating States. The SEAM was based in Warsaw and visited Gdańsk, Łódź, Radom, Lublin, Płock, Skierniewice, Ciechanów, Dęblin, Sopot and Żyrardów.

The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections as well as with national legislation. In line with ODIHR's methodology, while the SEAM visited a limited number of polling stations on election day, it did not carry out a comprehensive or systematic observation of election day proceedings. This final report follows two statements of preliminary findings and conclusions, which were released at press conferences in Warsaw on 29 June and 13 July.³

ODIHR SEAM wishes to thank the Ministry of Foreign Affairs, the National Election Commission (NEC) and the National Election Office (NEO) for their co-operation and assistance as well as to express its appreciation to other state institutions, judiciary, political parties, candidates, media, civil society organizations and international community representatives for sharing their views.

III. POLITICAL BACKGROUND

Poland is a semi-presidential republic with a government led by the prime minister and a directly elected president serving as a head of state. The president has the right to introduce legislation to the parliament and the power to veto and refer the bills to the lower house of parliament (*Sejm*).

The last parliamentary elections were held in October 2019. The ruling coalition led by the Law and Justice party (*Prawo i Sprawiedliwość*, PiS) secured majority of seats in the *Sejm* forming a government. Opposition parties, led by the Civic Coalition (*Platforma Obywatelska*, PO) along with independent candidates managed to secure majority in the *Senat* (upper house of the parliament).⁴

The presidential election was initially scheduled to take place on 10 May following the announcement by the *Marshal* (Speaker) of the *Sejm* on 5 February 2020. After the outbreak of the COVID-19 pandemic, the government decided to declare "state of epidemic" and proposed measures to continue with the election on the scheduled date.⁵ On 27 March, the *Sejm* voted in an expedited manner, a package of bills intended to protect the economy from the fallout of the COVID-19 pandemic and introducing amendments to the Election Code. The changes extended postal voting rights to citizens over the age of 60 as well as those under quarantine. Another draft Act was introduced in the *Sejm* on 6 April 2020 providing for holding the 10 May elections solely

² Due to travel and other restrictions in response to the health emergency caused by the COVID-19 pandemic, ODIHR deployed a Special Election Assessment Mission (SEAM) to Poland instead of a Limited Election Observation Mission recommended by the ODIHR NAM. The SEAM focused on issues identified by ODIHR NAM in order to assess the extent to which the elections were held in line with OSCE commitments and other international standards for democratic elections, as well as with national legislation.

³ See all previous [ODIHR election reports on Poland](#).

⁴ As a result of the 2019 elections, the *Sejm* is comprised of deputies from PiS (235 seats), PO (134), Democratic Left Alliance (*Lewica*, 49), the Polish People's Party (PSL, 16), Confederation (11) and the German Minority (1). The *Senat* is comprised of 48 senators from PiS, 43 from PO, 3 from PSL, 2 from *Lewica* and 1 senator each elected from 4 electoral committees.

⁵ The date for the conduct of presidential election is set by Constitution and the only way to postpone it would have been by declaring one of the forms of a State of Emergency. Constitution provides for the opportunity of declaring a State of Natural Disaster and introduction of extraordinary measures during which period and 90 days following its termination no election can be held. According to the Constitution and the Election Code, the presidential election must be held no earlier than 100 days and no later than 75 days before the expiration of the term of the serving president. The last mandate expired on 6 August and thus the last possible date to hold the election was 17 May.

by means of postal voting.⁶ It also accorded the Speaker of the *Sejm* the power to change the date of election under the “state of epidemic” and partially reassigned important functions related to elections from the NEC to the Ministry of State Assets. The decision to proceed with the election and the proposed draft Act to hold the election exclusively via postal vote was strongly criticised by the opposition. The draft Act entered into force on 9 May; however, two days before, on 6 May, the leaders of two coalition partners PiS and Agreement Party (*Porozumienie Jarosława Gowina*), issued a joint statement in favour of re-scheduling the election date.

On 10 May, the planned election day, the NEC issued a resolution that it had not been possible for voters to cast ballots for candidates and therefore the election had not taken place.⁷ A new law governing the presidential election was adopted on 2 June followed, on 3 June, by Speaker of the *Sejm* announcement of the new election date set for 28 June with a potential second round on 12 July. The foregoing meant that between 10 May and announcement of the new election date the election had been in legal limbo with implications on the principle of legal certainty. Setting a new election date outside the constitutionally defined timeframe is at odds with paragraph 5.3 of the 1990 OSCE Copenhagen Document.⁸ Despite stark opposition to the measures initially proposed to hold this election, key political actors did not ultimately indicate concerns with the holding of the 28 June election.

Women remain underrepresented in public life. Prior to the election, women held 4 out of 24 ministerial portfolios in the government, and only 2 of the 16 *voivodship* (region) governors are women. Women’s representation in the *Sejm* stood at 28 per cent (131 out of 460 members) and in the Senate at 24 per cent (24 out of 100 members) at the time of the election. Positively, women hold some prominent positions such as the Speaker of the *Sejm*, First President of the Supreme Court, and President of the Constitutional Tribunal.

IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

The president is directly elected in a single, country-wide constituency by majority of the valid votes. If no candidate receives the majority in the first round, a second round between the two leading candidates is organized two weeks later. The winner of the second round is determined by simple majority of the valid votes cast.

Poland is party to major international and regional instruments related to the holding of democratic elections.⁹ Presidential election is primarily regulated by the Constitution, Election Code and other legislation.¹⁰ In addition, the Act on “special regulations for general elections of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting” (hereinafter the 2 June Act) was applicable exclusively to the 2020 presidential election. The NEC has the authority to issue binding guidelines for lower level election commissions and officials, as well as explanations

⁶ See also ODIHR [legal opinion](#) on the draft Act on special rules for conducting the general election of the president of the Republic of Poland ordered in 2020 (Senate paper No. 99).

⁷ See NECs [10 May resolution](#) available in Polish. On 11 May, the Supreme Court declared that it was not in a position to decide on the election validity as no final results were presented to the court by the NEC.

⁸ Paragraph 5.3 of the 1990 OSCE Copenhagen Document highlights “the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law.”

⁹ These include the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 2003 Convention Against Corruption, and 2006 Convention on the Rights of Persons with Disabilities (CRPD). Poland is also a member of the Council of Europe’s Venice Commission and Group of States against Corruption and is a party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

¹⁰ Other relevant legislation includes the Act on Political Parties, Broadcasting Act and Assemblies Act.

(pertaining to election regulations) for broadcasters, government administration authorities, and electoral committees. For this election, the NEC supplemented the regulatory framework with guidelines and explanations on some aspects of the process.¹¹

In general, the electoral legal framework is comprehensive and provides detailed regulation of key components of the electoral process. While most provisions are generally applicable to both rounds, the Election Code lacks clarity on certain aspects pertaining to holding a second round. Among these are the lack of timeframes for the official second-round campaign period, unclear campaign finance expenditure limits and the inability to challenge the results of the first round between rounds in case of irregularities or offences affecting the outcome. These shortcomings detract from the overall legal certainty.

The legal framework should provide clarity on conducting the second round, such as the applicable campaign period and campaign expenditure limitations, as well as on the possibility of challenging the results of the first round.

A number of previous ODIHR recommendations on improvements to legal framework remain unaddressed, including those related to the abolition of criminal liability for defamation (see *Media*) and suffrage rights for persons who have had their legal capacity revoked. Some aspects would benefit from further elaboration, including the rules with respect to campaigning by public officials and use of public resources, provisions on campaigning by third parties, and oversight of campaign financing (see *Campaign Finance*). In addition, the lack of clearly defined procedures for campaign-related complaints undermine the effectiveness of legal redress (see *Complaints and Appeals*).

The 2 June Act, designed in response to the COVID-19 pandemic, was adopted under an expedited procedure, less than a month prior to the election day and without sufficient public discussion, thereby undermining the stability and clarity of the electoral law.¹² It introduced significant changes to key aspects of the electoral legal framework and process including, among others, the provision of optional postal voting for all, changes to the composition of lower level election administration bodies, involvement of the Ministry of Health on decisions related to deadlines for electoral activities and shorter deadlines for contesting election results.

Any changes to the electoral legislation, including under emergencies, should be formulated and adopted as much in advance of the elections as possible, as a result of an open process allowing sufficient time for a meaningful public debate and ensuring the principle of stability of law.

¹¹ NEC resolutions included guidelines for District Election Commissions (DECs) and Precinct Election Commissions (PECs) concerning the use of IT, resolutions on the layout of the ballots, envelopes, protocols, instructions on the transfer of protocols, procedure of dealing with voting packages, resolution on list of the candidates, list of people appointed to PECs and on compulsory postal voting in two municipalities.

¹² The 2 June Act was introduced on 12 May to the *Sejm*, went through three readings and was adopted on the same day. The Senate discussed it between 13 May and 1 June and introduced some amendments, some of which were accepted by the *Sejm* on 2 June. According to the Venice Commission Code of Good Practice in Electoral Matters, the principle of electoral law stability is considered “crucial for credibility of the electoral process, which is itself vital to consolidating democracy.” See also paragraph 18.1 of the 1991 OSCE Moscow Document, which states that legislation will be formulated and adopted as the result of an open process. See also [ODIHR opinion](#) on the draft act on special rules for the organization of the general election of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting (Senate paper No. 118).

V. ELECTION ADMINISTRATION

The presidential election was managed by a three-tier administration: the NEC and its executive body, the NEO, who lead the process, 49 District Election Commissions (DECs), and 27,230 Precinct Election Commissions (PECs). The NEC is permanent, and the DECs and the PECs are temporary bodies.¹³ For this election, the Ministry of Foreign Affairs established 169 PECs for the first round and 171 PECs for the second round abroad in diplomatic representations and other designated locations. In both rounds, eight PECs were established on vessels and platforms.

Measures to prevent and contain the spread of COVID-19 and the 2 June Act impacted the operations of NEC, the formation, recruitment and training of lower commissions and introduced the option of postal voting in addition to in-person voting.

The composition of the NEC changed following the 2019 parliamentary elections; it is now comprised of two judges (from the Constitutional Tribunal and the Supreme Administrative Court) and seven members appointed by political parties in proportion to their representation in the *Sejm*.¹⁴ Although some ODIHR SEAM interlocutors expressed concerns about the new method of political appointment that could compromise the independence of the election administration, overall the election bodies at all levels enjoyed confidence among stakeholders.

The NEC is responsible for overseeing the implementation of the electoral legislation, supervision over the maintenance and update of the voter lists, registration of electoral committees, oversight of campaign and party finance and the announcement of final election results. From the announcement of election day on 3 June, the NEC held 11 sessions in which it adopted numerous resolutions, decisions and regulations related to the organization of the election. All resolutions were published on the NEC website in a timely manner. Despite the radically shortened timeframe, the election administration met all legal deadlines and conducted its activities in a professional manner.¹⁵

The NEO is a permanent executive body responsible to the NEC for the administrative, financial and logistical organization of the election. The NEO has 49 delegate offices around the country, supporting the respective 49 DECs. In total, the NEO employs 539 election officers, of whom 65 per cent are women; NEO delegate offices are led by 22 women and 27 men respectively. For the election period, approximately 1,000 additional staff were temporarily hired. There are no provisions for representation of each gender at any level of election commissions, and no such data is aggregated by the NEC/NEO.¹⁶ All NEC members are men; the head of the NEO is a woman. Women chaired 9 out of the 49 DECs; and 35 per cent of all 293 DEC members were women.

Legal and administrative measures could be taken to promote women's membership in particular at the NEC level. Disaggregated data on gender representation in the election administration should be collected and published in a comprehensive manner.

Duties of the NEO election officers include but are not limited to the training of PEC members, co-ordination of postal voting and distribution of electoral materials. NEO delegate offices work in

¹³ The number of PECs for the first round was 27,230 and for the second round 27,231. DEC - *Okręgowa Komisja Wyborcza*, PEC - *Obwodowa Komisja Wyborcza*.

¹⁴ Previously, the NEC was comprised of nine active or retired judges appointed by the president, with three members nominated from each of the Constitutional Tribunal, Supreme Court and Supreme Administrative Court.

¹⁵ Due to the shortened timeframe, the NEC had 25 days, instead of the usual period of some 2 months to organize the election.

¹⁶ Paragraph 40.13 of the 1991 OSCE Moscow Document commits participating States to “ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women”.

close co-operation with municipalities in their respective areas regarding voter registration, postal voting, and the delivery of materials and results protocols. Each municipality has a designated person responsible for the electoral issues working alongside the delegate office of the NEO and the respective DEC.

The DECs were established by the NEC on 15 June. The DECs are generally chaired by election commissioners appointed by the NEC upon nomination of the Minister of Interior and Administration in early 2018 for a five-year term. Of the 100 commissioners, 31 are women. An election commissioner acts as the plenipotentiary of the NEC assigned to the area constituting a *voivodship* or part of one *voivodship*. Among other duties, a commissioner is liable for appointment of PECs and, where necessary, the drawing of precincts. DECs are responsible for supervising the work of PECs and establishing results within their respective districts. The 2 June Act amended the Election Code by stipulating that DECs shall be composed of 4 to 10 members, not including the president, appointed from among persons who have a degree in law but are not necessarily judges.¹⁷

The PECs were appointed by election commissioners by the 15 June deadline based on nominations from electoral committees whose candidates were contesting the election and consisted of up to 13 members, depending on the number of voters assigned to the precinct.¹⁸ In case of insufficient nominations from electoral committees, an election commissioner could select PEC members from citizen applicants. In case of a resignation, a PEC member was replaced from the reserve. Between the two rounds, the NEC informed about 5,709 resignations.¹⁹ These changes had no significant impact on the performance of PECs. The 2 June Act reduces the minimum number of PEC members from 5 to 3. The NEO developed a standardized training curriculum and reference guide for PEC members, who were trained by a combination of election officers and other representatives of the NEO and local administration. The form of the training for PEC members varied throughout the country and was either online or in person.

The NEC and NEO published voter education information related to the election day and voting, as well as general information on the electoral process, including videos on their website as well as in traditional and social media. Municipalities also published important details regarding voter registration and operational aspects of the election process. Voter education videos were aired on public television featuring sign language interpretation, and electoral information was published online in multiple formats.

Persons with disabilities could vote in person, via postal voting or by proxy. NEC regulations, the Election Code, and the 2 June Act require Braille sleeve to be available at polling stations as well as to be included in the postal voting package upon request. NEC identified more than half of polling stations as independently accessible for persons with physical disabilities, thus fulfilling the statutory requirements.

Delivery and retrieval of postal ballots was a logistical and operational challenge for all levels of election administration, municipalities as well as other participating state institutions, in particular for out-of-country voting. Less than 1 per cent of voters (193,580 and 223,849 for the first and second round respectively) registered in-country requested to vote by mail. The voters could return postal ballots by post, deliver it to their respective municipality two days before the election or directly to the respective polling station until the end of the voting on election day itself.

¹⁷ Notwithstanding the amendment, judges accounted for 83 per cent of DEC members.

¹⁸ Electoral committees are self-created legal entities with the right to nominate candidates for elections. They can also perform other election activities, in particular they have the exclusive right to conduct campaigns for candidates.

¹⁹ The number of PEC members in the first round was 209,084; in the second 210,098.

The casting of ballots abroad differed from country to country and included possibilities to vote exclusively in person, exclusively by postal vote or combining both means.²⁰ As a consequence of the 2 June Act, the timeframes for requesting postal voting for the second round were very short. For voters abroad, the deadline expired on 29 June, one day before the official announcement of results of the first round; for in-country voters on 30 June. Notwithstanding the short window for requests, the number of postal vote requests abroad rose from 343,241 in the first round to 480,262 in the second round. Several cases of problems with the delivery and returns of postal ballots abroad were reported during both rounds. Results data show that the return rate of the postal vote during the first round was 96 per cent inland and 87 per cent abroad and 96 per cent inland and 83 per cent abroad in the second round.

VI. VOTER REGISTRATION

Citizens at least 18 years of age on election day have the right to vote. Under the Constitution, persons deprived of legal capacity, including on the basis of intellectual or psychosocial disability, automatically lose the right to vote and, consequently, the right to be elected, despite international obligations and a previous ODIHR recommendation.²¹ In addition, the Act on Associations prohibits legally incapacitated persons from forming public associations or initiating public assemblies. The disenfranchisement and other restrictions on freedoms of assembly and association stand contrary to international standards.²² In 2018, the UN Committee on the Rights of Persons with Disabilities called for the repeal of these restrictions.²³

All restrictions on the electoral rights of persons with intellectual or psychosocial disabilities should be removed.

Voter registration is passive. A permanent register of voters is based on data derived from the Universal Electronic System for Registration of the Population and is collectively maintained by municipalities under the supervision of the NEO and the NEC. Voters with permanent residence are automatically included in the voter register. Voters having their permanent domicile in a particular municipality without permanent residence can be entered in the voter register, based on a written

²⁰ This was conditional upon the decision of the host country with respect to, among others, the spread of the COVID-19 pandemic. For instance, in UK, USA, or Germany voters could deliver their postal vote only via postal or other delivery providers, not in person.

²¹ Under the provisions of the Constitution and the Election Code citizens who are incapacitated are deprived of the right to vote. The type of the incapacitation is irrelevant; this rule is applicable to partial and full incapacitation. The Civil Code provides for full or partial legal incapacitation by a court decision, including on the basis of intellectual or psychosocial disability.

²² Article 29 of the Convention for the Rights of Persons with Disabilities (CRPD) requires States to “promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including... [p]articipation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties”. See also Articles 1 and 12 of the CRPD. Paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011 provides that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability”. See also Paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

²³ In paragraph 52 of its 2018 Concluding Observations on the initial report of Poland (CRPD/C/POL/CO/1), the Committee recommended “that the State party ... [r]epeal all provisions that deny persons with psychosocial or intellectual disabilities and persons deprived of legal capacity their right to vote and all other political rights.” See also the decision of the European Court of Human Rights (ECtHR) in Horváth and Kiss v. Hungary (application no. 11146/11, 29 April 2013).

request submitted to the office of the municipality. ODIHR SEAM interlocutors expressed overall trust in the accuracy and maintenance of the voter lists.

A voter list, derived from the permanent voter register in the respective municipality, is prepared 21 days before the election day. Each voter can be included in only one voter list. Voters could only verify their inclusion in the voter list at their respective municipality in person.²⁴ No other means of verification, for instance on the Internet, is provided for. Final voter lists contained a total of 30,204,684 voters in the first round, including 373,918 voters registered abroad in 86 countries and 379 voters on ships and platforms. For the second round, voter lists were updated to reflect changes in the national population register, including with regard to recently deceased voters, those who turned 18 years of age, and citizens who changed residence between rounds. For the second round, the total number of voters was 30,268,460, including 519,431 voters abroad in 87 countries and 323 voters on ships and platforms.

The Election Code could be amended to increase the means by which citizens can review and confirm their inclusion in the voter list.

Voters who wished to cast a postal vote were required to make a request at least 12 days before election day if they were in Poland and at least 15 days before the election day if they were abroad.²⁵ Voters with disabilities and those older than 60 years could request to vote by proxy 9 days before the election.²⁶ Proxy voting was criticized by previous ODIHR reports as it is in violation of international standards and OSCE commitments related to the secrecy of the vote.

The authorities should continue efforts to facilitate the direct participation of all citizens in the electoral process, including persons with disabilities, thereby eliminating a need for proxy voting.

Up until the finalization of voter lists, voters could apply to obtain an Absentee Voting Certificate (AVC), enabling them to vote at any polling station in country or abroad.²⁷ These voters were removed from the voter list at their original location of registrations and added to the supplementary voter list of the precinct where they cast their vote.²⁸

Voters temporarily staying in any municipality could also be included in the voter list of this municipality provided they made the request five days before the election. All changes made to the voter list prior to the first round, including requests for postal voting, were automatically and necessarily applicable for the second round. This caused confusion for some voters before the second round. Voters, who requested to be temporarily included to the voter list outside their permanent residence before the first round, were obliged to vote at the same polling station during

²⁴ Voters can verify inclusion to the respective voter list from 21 till 8 days prior to the election.

²⁵ Deadline for the request for postal vote abroad was 15 June and 29 June; for in-country requests 16 June and 30 June for the first and second round respectively. Voters in quarantine and isolation could request postal vote up to five days prior to the election. In case a voter was compulsory quarantined less than five days prior to the election, the request was admissible up to two days before the election.

²⁶ Deadline for the requests for proxy voting certificate was 19 June and 3 July for the first and second round respectively. A total of 16,854 and 21,210 voters used proxy certificates in first and second round respectively.

²⁷ Municipalities issued Absentee Voting Certificates using a standardized format established by the Ministry of Interior and Administration. The certificates also contained a hologram as an additional security measure.

²⁸ A total of 216,557 voters used AVCs in the first round and 584,751 in the second round.

the run-off.²⁹ Voters unable or unwilling to do so, could also obtain an AVC for the second round from the municipality where they temporarily included themselves prior to the first round.³⁰

Clarification of the law concerning temporary inclusion in the voter list for both rounds and adequate voter information on an individual basis at the time of the request could be considered.

Creation of a central voter registry maintained by the NEC could be considered to facilitate changes in and compilation of the voter list; this would centralize the changes of permanent residence, temporary inclusions in the voter list inland and abroad and other related issues.

VII. CANDIDATE REGISTRATION

Citizens of at least 35 years of age by election day, with active suffrage rights, can be elected president. Those imprisoned for an intentional offence or fiscal crimes are deprived of this right, as are persons whose legal capacity has been revoked by a court decision, including on the basis of intellectual and psychosocial disability, at odds with international obligations.³¹ In addition, persons subject to lustration provisions may also be prohibited to stand as candidates.³²

Electoral committees representing groups of voters had the exclusive right to nominate candidates upon having collected at least 100,000 signatures. Candidate registration both for the 10 May election and the extended registration for the 28 June election were inclusive. For the 10 May election, 35 electoral committees were registered by the NEC.³³ The registration was effectively extended by the passing of the 2 June Act, which allowed electoral committees to be re-registered by a simple procedure. The 2 June Act also permitted the registration of new electoral committees. As a result, 23 electoral committees were registered with the NEC and were eligible to apply to register their candidates for the 28 June election.³⁴

Fourteen electoral committees nominated their candidate.³⁵ The NEC ultimately approved candidatures of 11 candidates, 9 of whom were registered for the originally scheduled 10 May election.³⁶ One new candidate, Rafał Trzaskowski, was registered upon collection of the required number of signatures and one, Waldemar Witkowski, following a decision of the Supreme Court on 12 June (see *Complaints and Appeals* section).³⁷ All 11 candidates were men.

²⁹ The same procedures were applicable during the 2015 presidential election. The NEC informed ODIHR SEAM that some 260,000 voters requested to be included temporarily to voter lists outside their permanent residence prior to the first round. The NEC received a number of complaints regarding the issue. According to NEC information prior to both election days, some 450,000 such voters were added to voter lists before the first round and some 650,000 such voters before the second round.

³⁰ Information was posted on NEC website prior to both rounds of the election.

³¹ See Articles 3, 12 and 29 of the CRPD.

³² Article 11.2 of the Election Code provides that a court may revoke the right to be elected of persons who took part in the activities of security services between 1944 and 1990. The case law of the ECtHR provides that lustration provisions should be constantly reviewed.

³³ 40 electoral committees requested registration; 5 of them were rejected. Ten candidates were registered.

³⁴ In total, 24 electoral committees applied to be re-registered; 2 of them were denied re-registration because of administrative shortcomings, one new committee of Rafał Trzaskowski was established and registered.

³⁵ Electoral committees are not obliged to nominate any candidate; registered committees may nominate PEC members.

³⁶ All candidates for the 10 May election, but one were re-registered for the 28 June election. The 11 candidates were Robert Biedroń, Krzysztof Bosak, Andrzej Duda, Szymon Hołownia, Marek Jakubiak, Władysław Kosiniak-Kamysz, Mirosław Piotrowski, Paweł Tanajno, Rafał Trzaskowski, Waldemar Witkowski and Stanisław Żółtek.

³⁷ Four rejected candidates who collected less than the required number of 100,000 signatures appealed to the Supreme Court; one appeal was upheld.

From early on the opinion polls favored two candidates: the incumbent President, Andrzej Duda, supported by the conservative ruling PiS, who was standing for re-election and Rafał Trzaskowski, the mayor of Warsaw, backed by the liberal opposition PO and its coalition partners.³⁸ Other candidates who received prominent visibility and media coverage were the independent Szymon Hołownia, Krzysztof Bosak backed by the far-right Confederation *Konfederacja Wolność i Niepodległość* and *Polskie Stronnictwo Ludowe*), Władysław Kosiniak-Kamysz supported by the Polish People's Party and Robert Biedroń, with the support of *Lewica*. As none of the 11 candidates achieved the required majority of registered voters to be elected in the first round, the two candidates who received the highest number of votes in the first round, Mr Duda (43.5 per cent) and Mr Trzaskowski (30.4 per cent) proceeded into a second round. The third-placed candidate, the independent Szymon Hołownia, with 13.8 per cent of the vote, endorsed Mr Trzaskowski for the run-off.

VIII. CAMPAIGN ENVIRONMENT

The presidential election campaign starts from the date of announcement of the election by the Speaker of the *Sejm* and ends 24 hours before voting day, when the campaign silence period begins. Campaigning is prohibited in public offices and schools. Campaign materials may be mounted only with the consent of the owner; municipalities allocate designated locations for free. The legal framework does not regulate timeframes for the official second-round campaign period. In the absence of explicit legal campaign periods, both candidates restarted their campaign on 28 June, immediately after the announcement of exit polls while the campaign silence period of the first round was still ongoing.

The initial official campaign period began on 5 February. Due to measures to prevent the COVID-19 pandemic, in-person campaign activities were limited to a maximum of 50 participants. From 31 March, public gatherings were officially prohibited which inhibited the capacity for in-person campaigning. The candidates continued communicating with the voters using online tools. The uncertain legal basis of not holding an election on 10 May meant that campaigning and campaign finance were in a legal limbo between 10 May and the passing of the 2 June Act. Campaigning after the passing of the 2 June Act was able to take place generally uncurtailed as restrictions of public gatherings were eased on 29 May allowing for up to 150 participants.

The environment in the run up to the election was marked by entrenched political polarization with frequent instances of intolerant rhetoric in public discourse and allegations of corruption against prominent government officials. The election was seen as an important crossroads in determining Poland's future trajectory, in particular regarding respect for the rule of law and maintaining independence of state institutions. Some ODIHR SEAM interlocutors voiced their concerns that the ruling PiS party has since coming to power in 2015 introduced substantive changes to laws regulating the judiciary and the public media, which, in their opinion, undermined their independence. Despite the challenges arising from the pandemic, candidates and authorities encouraged voters to turn out in high numbers to cast their ballots, particularly ahead of the second round.

Following the 2 June Act, and prior to the first round, the contestants mostly campaigned through the broadcast and online media, and social networks as means of traditional outdoor canvassing

³⁸ The PO candidate for the originally scheduled 10 May election was Małgorzata Kidawa-Błońska who withdrew from the race. The opinion polls showed little support for Ms Kidawa-Błońska; however, support for the PO candidate rose precipitately once Mr Trzaskowski replaced her.

including display and distribution of paraphernalia were less prominent. Negative campaign tactics primarily by the two contenders leading in the opinion polls contributed to further polarizing an already confrontational environment. The COVID-19 pandemic was a central campaign issue, with both ruling and opposition parties accusing each other of exploiting the crisis for electoral gain. The prevalent themes were domestic economic issues in the aftermath of the COVID-19 measures, such as unemployment, taxation, retirement and social benefits.

Prior to the second round, the campaign intensified with the two candidates touring the country and holding a large number of direct meetings with voters, placing particular focus on mid-sized cities. The rallies attracted large crowds and COVID-19 restrictions were generally not respected; the police and the Sanitary and Epidemiological Inspectorate (SANEPID), the leading authority on COVID-19 issues, did not appear to enforce the measures regularly.³⁹

Once COVID-19 restrictions were eased, the candidates were able to campaign freely. However, the run-off campaign was even more acrimonious than before the first round. The incumbent's representation of his achievements stood in stark contrast to Mr Trzaskowski's depiction of the incumbent's record as a failure to deliver on promises made.

Several counterdemonstrations resulted in the disruption of official campaign rallies with instances of verbal (and at times physical) clashes between supporters of both candidates. Some elected representatives at local and national levels representing both political camps, informed the ODIHR SEAM that they had received death threats. There were also reports to law enforcement of destruction of campaign material and damage of private property of supporters of both parties.⁴⁰ The campaign was marked by negative campaigning, harsh mutual accusations, and vilification of the opponents, all contributing to the perception of the election in zero-sum terms. During both rounds, the ODIHR SEAM noted instances of intolerant rhetoric, particularly by the incumbent's campaign and the public broadcaster, that was xenophobic, homophobic and anti-Semitic in nature.⁴¹ Such messages provoked a sense of threat and elicited negative emotions towards the LGBTI community, and other minorities.⁴²

Relevant legislation, in particular the criminal code, should be revised to ensure compliance with international human rights standards pertaining to 'hate speech'.

³⁹ In Wrocław, following a campaign rally by President Duda and a counterdemonstration on 4 July, police initiated an investigation into violations of sanitary rules by both sides.

⁴⁰ ODIHR SEAM was informed about cases of graffiti sprayed on private houses displaying banners of one of the candidates and slashed tires on private vehicles.

⁴¹ See paragraph 22 of the Final Document of the 2002 OSCE Porto Ministerial Council, which calls the participating States to "[c]ommit themselves to combat hate speech ..., ensuring that such measures are consistent with domestic and international law and OSCE commitments".

⁴² Criminal code provisions related to "hate speech" exclude sexual orientation, gender identity, age, and disability status as protected categories. Paragraph I.B.6. of the 2010 Council of Europe's Committee of Ministers' Recommendation CM/Rec(2010)5 provides that "[m]ember states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such 'hate speech' should be prohibited and publicly disavowed whenever it occurs". Paragraph 15 of the 2016 CCPR Concluding Observations on the seventh periodic report of Poland (CCPR/C/POL/CO/7) noted a "reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the authorities to such incidents". Paragraph 7.7 of the 1990 OSCE Copenhagen Document commits participating States to ensure that "political campaigning [is] conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution".

Electoral contestants should refrain from using intolerant rhetoric and authorities and contestants should promptly condemn any such cases.

The incumbent and his campaign made some oblique though often explicit negative references to the LGBTI community, implying an ideology which they juxtaposed to what they perceive as traditional Polish values. These included the incumbent's proposal during his campaign of a constitutional amendment banning adoptions by people in same-sex relationships. Environmental issues gained increased prominence during the second round. Issues related to gender equality and women's rights remained marginal. Following the election, the ruling party announced that Poland is to withdraw from the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention).

Instances of campaigning, including the display of banners for the incumbent, on church premises were noticed. In his campaign rhetoric, the incumbent was repeatedly referring to traditional values and family structure and to the role the Catholic Church plays in building the identity of the nation. Several ODIHR SEAM interlocutors noted instances of involvement of Church officials in the campaign with public statements echoing at times the political messages of PiS.

As previously noted by ODIHR, the legal framework does not adequately address campaign activities conducted by public officials. Prime Minister Morawiecki toured the country visiting more than 80 cities in his official capacity, making campaign promises to distribute public funds while publicly handing out ceremonial cardboard checks.⁴³ All events were featured on the official Facebook account of the Office of the Prime Minister.⁴⁴ This blurred the distinction between state and party and created an undue advantage for the incumbent, which is at odds with Paragraph 5.4 of the 1990 OSCE Copenhagen Document.⁴⁵ Given the limited field presence of the ODIHR SEAM, the mission could not verify whether similar cases occurred at the lower levels of public administration.

Measures should be taken to ensure a clear separation between state and party, including by amending legislation to adequately define and regulate campaigning by public officials, and to explicitly prohibit the abuse of state resources.

⁴³ The Governmental Local Investment Fund has a total value of PLN 6 billion (some EUR 1.34bn, 1 EUR is approximately PLN 4.47) and is intended for subsidies to municipalities and cities (PLN 5 billion) and *powiats* (PLN 1 billion). Though an inherent part of the governmental COVID-19 prevention 'shield' fund, according to [official](#) government information, the funds can be used as well for the renovation of schools and kindergartens, investments in water supply, sewage systems and roads. It is not made explicit how these investments are directly linked to consequences of the pandemic. The fund has not yet been approved by the *Sejm*. For example, on 30 June, the Prime Minister, following a meeting with local government representatives in Łęczna (Lubelskie Voivodeship), encouraged the audience to vote for President Duda as only his victory guarantees "normal development."

⁴⁴ Sections B.1.1. and B.1.3. of the 2016 ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources in Electoral Processes states that "[t]he legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. [...] In order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns." Paragraph 207 of the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation states that "incumbent candidates and parties must not use state funds or resources (i.e. materials, work contracts, transportation, employees) to their own advantage."

⁴⁵ Paragraph 5.4 of the 1990 OSCE Copenhagen Document prescribes "a clear separation between the State and political parties; in particular, political parties will not be merged with the State."

A high number of public officials at both local and national levels, including mayors, and both the speakers of the *Sejm* and Senate, actively promoted their respective candidates either by attending their rallies or online on Facebook accounts. The ruling PiS party filed an official complaint with the NEC and the prosecutor regarding alleged campaigning for Mr Trzaskowski on the official website and social profiles of the City Hall of Łódź using a banner informing readers of an upcoming campaign event.

In comparison to public gatherings, the tone of campaign on official Facebook accounts of both candidates was more moderate. Candidates used official Facebook accounts mainly to mobilize voters, including by announcing rallies, as well as posting references, video material and links to their speeches. Nevertheless, negative campaigning on social networks, primarily against Mr Trzaskowski, intensified prior to the second round. Disinformation also circulated on different social media platforms.⁴⁶

IX. CAMPAIGN FINANCE

For this presidential election the legislation on political and campaign finance was complemented by the 2 June Act. The 2 June Act substantially amended the campaign finance legal framework less than one month prior to the election by allowing electoral committees to use funds accumulated during the first part of the campaign, duplicating the limits on donations by natural persons and by candidates as well as on guarantees on loans by guarantors and extending expenditure limits.⁴⁷ The changes brought by the 2 June Act compounded the effects of a campaign finance regulatory framework which is lacking transparency as previous ODIHR assessments have indicated. A number of previous ODIHR recommendations, including those related to interim reporting, regulation of third-party campaigning or effectiveness of oversight, remain unaddressed.

The legislation provides for private sources of campaign funding. There is no public funding for the presidential election, but political parties are entitled to receive an annual subvention from the state budget based on the results of the elections to the *Sejm*.⁴⁸ Political parties, coalitions of parties and voters' electoral committees may also receive one-time state subsidy as a form of compensation of expenditures on a campaign proportional to the number of mandates received in the *Sejm* or Senate elections. Political parties may finance electoral committees only through a specifically designated election fund made of the party's own contributions and donations, inheritance and bequests.

The electoral committees of voters are the only entities with the right to finance presidential campaigns. They can do this through receiving private donations, loans and transfers from the designated electoral funds of political parties. The law permits candidates' contributions and private donations from Polish citizens having domicile in the country.⁴⁹ Anonymous donations, contributions from foreign interests and legal persons are prohibited. In-kind contributions are only

⁴⁶ One such post claimed that voters who have cast their vote for President Duda in the first round do not have to vote again in the second round. The NEC issued a clarification statement on 3 July on its website condemning such "harmful" spread of misinformation and stressing that such behaviour is particularly reprehensible when conducted by public officials.

⁴⁷ A Polish citizen could donate up to 39,000 PLN (15 times the minimum wage) to one electoral committee until 10 May and 39,000 PLN after 10 May, in total 78,000 PLN. A candidate could donate up to 117,000 PLN (45 times the minimum wage) to his/her electoral committee until 10 May and 117,000 PLN after the 10 May, in total 234,000 PLN. A guarantor could guarantee a loan up to 39,000 PLN (15 times the minimum wage) until 10 May and up to 39,000 PLN after 10 May, in total 78,000 PLN. EUR 1 is some PLN (Polish *Złoty*) 4.39.

⁴⁸ Entitled are political parties that received at least 3 per cent of valid votes cast (6 percent for coalitions). Following the 2019 parliamentary elections, 7 political parties were entitled to receive an annual state subvention totaling PLN 70.4 million (some EUR 16 million) until 2023.

⁴⁹ Donations from the same person to several electoral committees are allowed.

allowed by individuals insofar as they consist of distributing election materials, assisting in office work, providing vehicles free of charge and giving free access to private places for the exhibition of campaign materials. The Election Code does not provide for contribution limits for permissible in-kind donations and these donations are not included into overall expenditure limit contrary to international standards.⁵⁰

The legal framework should be amended to provide contribution and expenditure limits on permissible in-kind donations.

The absence of interim reporting requirement to any institution undermines the transparency of campaign finance.⁵¹ While committees must declare private donations and loans exceeding one legal minimum monthly salary on their websites within seven days of receipt, they are not obliged to declare transactions received from parties' electoral funds during the campaign period. For this election, only 7 out of 11 committees published their registers of donations and loans on their websites. The remaining 4 committees, including that of the incumbent, indicated that they had no entries on the registers of donations and loans on their websites or that these registers were empty, implying that they were financed by parties' election funds or had not received any incomes. Positively, and although not required by law, both leading candidates published their income and asset declarations prior to the first round.

To enhance transparency, the law should provide for interim campaign finance report and for disclosing details of all income and expenditures on the websites of electoral committees during the campaign.

While the Election Code establishes a campaign expenditure limit it does not specify whether this applies to one or both rounds. The expenditure limit is calculated by multiplying the number of eligible voters by PLN 0.64. An electoral committee's spending on campaign advertising may not exceed 80 percent of the expenditure limit. The 2 June Act increased the expenditure limit for electoral committees registered for the 10 May election by 50 per cent, thus allowing for a limit of 150 per cent. For electoral committees created newly for the 28 June election, the campaign spending limit was capped at 50 per cent of the spending limit envisaged by the Election Code. According to NEC's interpretation of the law, the expenditure limit of PLN 0,64 per registered voter applied to both rounds cumulatively amounting to PLN 28.6 million for President Duda and some PLN 9.6 million for Mr Trzaskowski. Mr Trzaskowski's electoral committee raised repeated objections in the media that such a provision was to its disadvantage and did not provide for an equal level playing field.

Although the right to run a campaign is reserved exclusively for committees, the Election Code also permits campaigning by voters. However, campaigning by third parties remains unregulated and the

⁵⁰ Paragraph 175 of the [2010 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that 'reasonable limitations on private contributions may include the determination of a maximum level that may be contributed by a single donor. Such limitations have been shown to be effective in minimizing the possibility of corruption or the purchasing of political influence [...]'. Article 9 of the [2003 Council of Europe Recommendation Rec\(2003\)4 of the Committee of Ministers on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns](#) provides that 'states should consider adopting measures to prevent excessive funding needs of political parties, such as, establishing limits on expenditure on electoral campaigns'.

⁵¹ See the Article 7.3 of the [2003 UN Convention Against Corruption](#) provides that 'each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties'. Paragraph 201 of the [2010 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that '[...]effective disclosure is required for other regulations to be implemented effectively'.

provision on sanctions for campaigning by anybody without written consent of the committee was repealed, which is positive in itself but leaves legal uncertainty about third party campaigning.⁵² During this election, a number of third parties engaged in campaign activities for or against a contestant.⁵³ The fact that third parties are not obliged to file financial reports or disclose sources of funding and expenditures, undermines the transparency of campaign finance and the effectiveness of ceilings.⁵⁴ The NEC previously attempted to address this gap by communicating its position that, in the absence of regulation, campaigning on the Internet by third parties should be considered as an election offence.⁵⁵ However, the NEC also admitted its limited capacity to monitor campaign finance on the Internet.

Consideration should be given to regulation of campaigning by third parties including setting requirements for registration, financing and disclosure of third party campaigners.

The lack of clearly defined procedures for campaign-related complaints undermines the effectiveness of legal redress. The NEC received over 20 campaign-finance related complaints, most of which pertained to campaigning by third parties, before and after the first round and forwarded them to the police or prosecutor as it lacks authority to examine such complaints prior to the election day. The NEC informed the ODIHR SEAM that the complaints will be examined only once the final financial reports by committees are submitted three months after the election.

The oversight of campaign finance by the NEC is focused on *ex post* control, meaning that inspection and decisions on campaign finance related offences, however grievous, can only be made after the results of the election. According to the 2 June Act, electoral committees are obliged to submit one consolidated financial report covering the duration of the campaign, together with an external audit of the financial report, for both campaign periods three months after the election. Importantly, the NEC's requirement that the 9 committees that were unsuccessful in the first round submit their final campaign finance reports by 28 September compared to the 12 October deadline for the 2 second round contestants appears inconsistent with the interpretation that the law regulates both rounds as a single election. Political parties will only be required to submit an annual financial report, detailing sources of funding of political parties' electoral funds, to the NEC by 31 March 2021.

Rejection of the report by the NEC for campaign finance violations may lead to forfeiture of illegally obtained benefits and other sanctions ranging from a fine to imprisonment. These sanctions are applied by the courts based on applications from public prosecutor, police or tax office. The NEC may inform these institutions about alleged violations but lacks legal powers and tools to conduct an investigation. Other official bodies, such as the Central Anti-Corruption Bureau and the

⁵² See paragraph 8.f of the [2001 Council of Europe Parliamentary Assembly Recommendation 1516 of the on Financing of Political Parties](#). Nevertheless, the NEC in the Explanations of 3 June 2020 No. No ZKF-811-16/20, concluded that all reporting or information meetings of party members, social organizations, associations, persons performing public functions or representatives of committees proposing candidates in elections, organized during the election campaign, may take place only if they do not contain any signs of electoral agitation. Otherwise, they are treated as part of the election campaign and are subject to the regulations applicable to that campaign.

⁵³ For instance, in the last week before the election, *Gazeta Wyborcza* prepared an edition with a circulation of one million copies negatively portraying President Duda and 'volunteers' distributed it free of charge. A group of citizens, *Spontaniczny Sztab Obywatelski*, mounted up to 353 negative campaign billboards against President Duda and PiS throughout the country financed from fundraising activities. The group collected over PLN 400,000 from 5,000 different donors.

⁵⁴ Article 7.3 of the 2003 UNCAC provides that States should "consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties".

⁵⁵ See [position](#) of the NEC.

Supreme Audit Office have only a very limited authority to control political party, but not campaign, finance.⁵⁶ The oversight mandate of the NEC is as such limited and the NEC is therefore not able to obtain a full picture of electoral committee's finances, resulting in an ineffective control mechanism, which is at odds with international standards and good practice.⁵⁷

To ensure effective oversight during the campaign, the legal and institutional framework should clearly stipulate an oversight body provided with adequate powers to expeditiously redress campaign finance-related complaints and enforce sanctions.

X. MEDIA

A. MEDIA LANDSCAPE

Poland has a vibrant media sector, but the political coverage is sharply divided along the distinct political lines. The stark polarisation affects multiple facets of the media's work, including ability to access information and the awarding of state-related advertising to the friendly media companies and the exclusion of more critical platforms without evident economic logic.⁵⁸

Online media and television are the most important sources of news. Internet penetration is 78 per cent and 66 per cent of people use social media for news.⁵⁹ The television sector is dominated by three broadcasters – the public *Telewizja Polska (TVP)*, and the private *TVN* and *Polsat*, which together attract a little over 75 per cent of all TV audience. All three broadcasters also have a round-the-clock news channel, *TVP Info*, *TVN24* and *Polsat News* respectively.

Public TV and radio are funded by broadcasting tax and commercial advertising, but a large part of their budget derives from state subsidies.⁶⁰ The volatility of the public broadcaster's funding, and lack of transparency and procedures of appointing and dismissing its senior management, question editorial independence and could make *TVP* content more susceptible to government pressure.⁶¹

⁵⁶ The Supreme Audit Office is mandated to crosscheck how parties fulfil their financial obligations to the state, i.e. how they manage budgetary resources received in the form of state subventions and subsidies. The Central Anti-Corruption Bureau investigates offenses against the financing of political parties.

⁵⁷ Article 14 (b) of the 2003 Council of Europe's Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns stipulates that "The independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication". Paragraphs 189 and 214 of the 2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation state that "Public funding of political parties must be accompanied by supervision of the parties' accounts" and that "the regulatory authority should be given the power to monitor accounts and conduct audits of financial reports submitted by parties".

⁵⁸ [Research](#) on state related advertising spending 2015 - 2019 by Professor Tadeusz Kowalski, University of Warsaw, March 2020.

⁵⁹ [Reuters Institute Digital News Report, 2020](#).

⁶⁰ *TVP* operates 16 nationwide and 16 regional TV centres. The public radio, *Polskie Radio*, operates 6 nationwide and 17 local radio stations. In February 2020, the president signed the law awarding *TVP* and *Polskie Radio* PLN 2 billion compensation, the highest amount ever. In 2019, the compensation amounted to PLN 1.2 billion.

⁶¹ During the election campaign on 6 March, the head of *TVP*, Mr Jacek Kurski, was dismissed by the National Media Council; other council members learnt about the dismissal the same day, with no reasoning given. On 22 May, Mr Kurski was reappointed as a member of *TVP* board in the same procedure. On 7 August, the majority of the National Media Council rejected a motion of one of its members to select the head of *TVP* in an open competition and instead appointed Mr Kurski in this position. Paragraph 8.20 of [2008 Parliamentary Assembly of the Council of Europe \(PACE\) Resolution 1636](#) states that "public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations".

To ensure the public broadcaster's editorial independence, the management should be selected through a transparent, competitive process and legal safeguards for its financial sustainability and autonomy should be enacted.

B. LEGAL FRAMEWORK

While freedom of expression is enshrined in the Constitution, primary legislation unduly restricts it and gives grounds for concern about infringement of free speech. Contrary to previous recommendations by ODIHR and the OSCE Representative on Freedom of the Media (RFoM), defamation remains a criminal offence with which journalists are often charged.⁶² Public insult of the president is also a criminal offence, and the latter was actively used during the campaign.⁶³ Civil litigation is widely employed both against and by the media themselves.⁶⁴

All provisions that envisage criminal prosecution for defamation, libel, insult and slander should be repealed in favour of civil sanctions.

Restricted access for some private media companies to information of public interest held by the state institutions undermines the right to access to information.⁶⁵ Several ODIHR SEAM interlocutors also see the use of pre-publication injunctions as an increased threat to free expression and criticised as outdated the provision in the Press Act which requires journalists and media houses to obtain the consent of the interviewee before publication.⁶⁶

Coverage of the presidential election campaign is regulated mainly by the Broadcasting Act and the Election Code. The former outlines the basic principles for public broadcasting as “pluralistic, impartial, well-balanced, independent.” The Election Code details the allocation of free airtime to contestants but does not deal with the fairness or equitability of the coverage. Before the presidential election, candidates shared 25 hours of free airtime in public television and 35 hours in public radio before the first round and 6 and 8 hours before the second round, respectively. Both *TVP* and *Radio Polskie* fulfilled this obligation.

⁶² See, for example, section 4.3.2 of the [2015 ODIHR Opinion on the Draft Amendments to Certain Provisions of the Criminal Code of Poland](#), as well as statements by the OSCE RFoM from [3 August 2017](#) and [6 June 2019](#). The data from the Ministry of Justice and Helsinki Foundation for Human Rights show a steep increase in application of the Article 212 §2 of Criminal Code (defamation via media) since 2016. Between 2016 and 2018, 356 people (not exclusively journalists) have been convicted. Although a one-year long prison sentence is possible, in the vast majority of cases the fine is financial. Nevertheless, according to ODIHR SEAM interlocutors there is a strong chilling effect, in particular when it comes to regional journalists.

⁶³ Thirteen cases related to destruction of President Duda's campaign posters and two were against protesters in the incumbent's rallies; both pleaded guilty. One more case, concerning slogans insulting the president posted on a car, was dropped by prosecution already during the campaign.

⁶⁴ The leading daily newspaper, *Gazeta Wyborcza*, has 7 outstanding criminal defamation and 43 civil cases, brought against it by politicians, persons with close ties to the ruling party or state-owned companies. The estimated legal costs run into PLN 1.3 million.

⁶⁵ Supreme Administrative Court informed the ODIHR SEAM that a total of 1,148 cases were initiated related to access to public information in 2019. Paragraph 26.2 of the 1991 OSCE Moscow Document provides that “participating States will not discriminate against independent media with respect to affording access to information, material and facilities.” 2011 UN General Assembly resolution 66/163, in particular, reiterates that “transparency is a fundamental basis for free and fair elections, which contribute to the accountability of Governments to their citizens, which, in turn, is an underpinning of democratic societies.” In addition, according to the Article 13.1(b) of the UNCAC, State parties ensure “that the public has effective access to information.” See also articles 7.3 and 10 of the UNCAC.

⁶⁶ Provisions of the Press Act, adopted in 1984, require to obtain publication consent for daily newspapers in no more than 6 hours, for magazines no more than 24 hours. In practice, consent often means request to change content.

The Constitution envisages the National Broadcasting Council (NBC) as the safeguard of free speech and public interest, and the Broadcasting Act adds the duty to ensure pluralism and protect independence of the media sector. Although the NBC is vested with a mandate to monitor campaign coverage, it chose not to use it. In this election, the NBC only reacted to complaints brought to its attention. Moreover, the review process does not have a legal timeframe or sanctions. While the contestants can also apply to regional courts to have an expedited redress procedure, this applies only to retraction of false information.

The independence of the National Broadcasting Council should be legally guaranteed and the authority should be legally required to actively monitor the broadcast media in order to fulfill its mandate to ensure impartial coverage. An effective legal mechanism to deal with complaints of distorted coverage should be provided for in a timely manner.

C. CAMPAIGN COVERAGE

Throughout the campaign, the *TVP* failed in its legal duty to provide balanced and impartial coverage. Instead, it acted as a campaign vehicle for the incumbent and frequently portrayed his main challenger as a threat to Polish values and national interests. Some of the reporting was charged with xenophobic and anti-Semitic undertones.

Owing to starkly polarised media landscape, debate on key issues was limited to contestants simply restating their positions. Throughout the campaign, both main contenders chose not to engage with those media which they considered hostile. Several media outlets, seen as pro-opposition or more critical of the incumbent and the ruling party, informed the ODIHR SEAM of challenges obtaining interviews with the president or to receive information about his campaign diary in advance. Editorial bias across the media landscape, combined with the lack of an effective oversight by the NBC, reduced voters' ability to access comprehensive information that would help to inform their choices.

As mandated by law, the *TVP* organized a joint debate of all 11 contestants prior to the first round of the election. The format in which one-minute-long statements were made in response to identical questions did not allow for meaningful engagement which would enable voters to judge policy proposals on a competitive basis. After the debate, the incumbent was afforded the opportunity to respond in a lengthy live interview, while only short pre-recorded soundbites by other candidates were aired.

Favourable treatment of any contestant by public media should be treated as misuse of public funds and should be properly addressed.

For the second round the candidates eschewed a joint debate, choosing to appear separately in almost simultaneously transmitted broadcasts on two different channels. The president appeared on *TVP*, while Mr Trzaskowski's broadcast was on the private *TVN24* with coverage also on *Polsat*. *TVP* offered the candidates a town-hall style televised discussion which Mr Trzaskowski refused to attend, claiming bias on the part of the public broadcaster. He also repeated his intention to dismantle the news channel *TVP Info* once elected. The incumbent turned down the invitation to join the debate organised by *TVN* and the news site *onet.pl*, linking his refusal to their foreign ownership. He also accused several foreign-owned media of interference in the campaign and promoting "German interests" after they published articles critical of him. The tabloid *Fakt*, which was specifically named by the incumbent, reported a subsequent increase of hate mail and threats to its journalists on social networks to the police. Several other ODIHR SEAM interlocutors reported

that journalists covering the campaign felt they had to take measures to protect themselves due to the increased hostility from the incumbent's campaign rhetoric.⁶⁷

Authorities should swiftly investigate threats, online and offline, against journalists, and politicians should refrain from the use of inflammatory language that may incite such actions.

NBC received 100 complaints about the election coverage, out of which 92 directly concerned TVP's coverage of the election.⁶⁸ Only four grievances were addressed during the campaign, others were still pending on the date of publication of this report.

XI. COMPLAINTS AND APPEALS

The legal framework affords opportunities for legal redress against decisions related to the registration of voters, rejection of the registration of candidates' committees and of candidates by the NEC as well as against the rejection of campaign finance reports by the NEC. In addition, the Election Code provides for the possibility of contesting election results. Decisions on the matter of voters' register can be challenged with the municipality by a voter applying for inclusion. Rejection of the registration of a candidate's committee or the candidate can be appealed to the Supreme Court. At the same time, the registration of a candidate's committee or the candidate cannot be appealed, leaving no means of legal redress. Rejection of a committee's financial report can be appealed by the candidate's financial proxy to the Supreme Court.

In addition to the NEC decisions mentioned above, the Election Code provides for appeals against NEC resolutions containing binding guidelines for election commissions and officials concerning performing tasks connected with carrying out the elections. No appeals against NEC resolutions regulating the conduct of this election were filed with the Supreme Court. However not all resolutions and decisions are subject to judicial review, which leaves other NEC decisions or actions without a legal remedy.⁶⁹

The Election Code should be reviewed to provide for judicial review of all administrative decisions and resolutions issued by the NEC.

Election-day offences can be addressed to the police by any voter. There is a lack of clarity in the law regarding complaints and appeals procedures concerning the conduct of the election administration bodies and access to a judicial review concerning operations of NEC, DEC and

⁶⁷ *Fakt* is published by German-Swiss conglomerate *Ringier Axel Springer Polska (RASP)*, which owns some 20 media brands in Poland, including *Newsweek Polska* and *onet.pl*. *Fakt* reported to police over 200 hate emails and messages received via social networks. Another RASP outlet, *onet.pl*, reported having received a credible threat on 9 July and thus decided not to broadcast its morning program "Onet Rano" from a regular or mobile studio. On 14 July, 30 foreign correspondents and editors in Poland in an open letter condemned the incumbent's and TVP's personal targeting of a correspondent of the German newspaper *Die Welt* who subsequently received "thousands of threatening messages."

⁶⁸ Thirty-four complaints relate to TVP news program *Wiadomości* from 24 June, which aired a 4 minutes 23 seconds long story about President Duda's campaign. The format and content did not correspond to journalistic standards and rather resembled a campaign spot for the incumbent.

⁶⁹ Paragraph 5.10 of the 1990 OSCE Copenhagen Document commits participating States to ensure that "everyone have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Principle 1A of Recommendation Rec(2004)20 of the Council of Europe's Committee of Ministers advises that "all administrative acts should be subject of judicial review". See also Venice Commission Code of Good Practice in Electoral Matters, paragraph II.3.3.c, Explanatory Report paragraph 97.

PECs is not guaranteed in the Election Code. The NEC did not receive any official complaints regarding the operations of DEC and PEC during the first and the second round.

The NEC informed the ODIHR SEAM about a high number of informal inquiries received from voters pertaining to issues over which the NEC does not have official competence, such as alleged breaches of campaign regulations.⁷⁰ Complaints alleging unlawful use of administrative resources and other campaign and election-day related irregularities were thus made to different institutions including the police, public prosecutors, and the Office of the Human Rights Commissioner. ODIHR SEAM interlocutors noted the absence of clearly defined responsibilities and procedures, including legal deadlines for campaign and campaign-finance related complaints. This undermines the effectiveness of legal redress. The Office of the Human Rights Commissioner received a number of complaints relating to postal voting abroad, in particular with respect to short timeframes, a lack of adequate information and the late arrival of voting packages.

The legal framework should be reviewed to provide clear procedures and guarantees concerning complaints about the conduct of the election administration bodies. The revisions should also effectively address campaign and election-day related violations and irregularities and ensure an effective judicial review.

The Supreme Court informed the ODIHR SEAM that it received 36 complaints concerning the NEC resolution from 10 May, in which it declared that it had not been possible to conduct voting. All were rejected as inadmissible on formal grounds, as only final election results can be challenged in the Supreme Court. In the event of an appeal, the Supreme Court reviews the legality of the NEC's resolutions concerning registration of the electoral committees and candidates. In total, the Supreme Court received 8 appeals on registration of electoral committees, and 13 regarding registration of candidates of which only one was upheld.⁷¹ On 6 May, the Speaker of the *Sejm* requested clarification from the Constitutional Tribunal regarding the authority of the Speaker to change an already set election date under extraordinary circumstances; the decision is still pending.

The Supreme Court is responsible for examining complaints against the validity of the election. Voters, chairpersons of relevant electoral commissions or electoral committees may file a complaint.⁷² The Court has received seven complaints concerning the results of the first round; decisions in all cases were left without further examination on formal grounds. The Supreme Court informed the ODIHR SEAM that complaints on election results may be filed only after the announcement of the final election results. Complaints against results of the first round are thus considered "premature" and declared inadmissible on formal grounds. Although complaints concerning offences and irregularities concerning the first round could be raised to the Supreme Court after the second round, this does not provide a prompt judicial oversight. As such, there is no effective means of legal redress for election-related offences and violations that may have had an

⁷⁰ The NEC keeps an informal database of these inquiries for archiving purposes.

⁷¹ The registration of candidate Waldemar Witkowski for the originally scheduled 10 May election was rejected by the NEC on 7 April as he failed to collect the required number of 100,000 valid signatures; NEC's decision was upheld by the Supreme Court on 15 April. On 10 June, NEC rejected the candidate's re-registration attempt for the 28 June election on the same grounds. On 12 June, the Supreme Court upheld the candidate's complaint. In its interpretation of the 2 June Act, the Court decided that the number of support signatures collected during the two registration periods prior to the 10 May and the 28 June election can be combined, thus totalling over 100,000 signatures. The Court argued that any restrictive interpretation would violate the active right to vote of the candidate's supporters.

⁷² Complaints can be filed on the basis of either alleged offense against elections, as specified in chapter 31 of the Criminal Code, which is impacting the course of voting, determination of voting results or election results; or violation of the provisions of the Election Code regarding process of voting, determination of election results, affecting the outcome of the election.

impact on the course of voting and the determination of voting results in the first round of the presidential election, contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document.

The Election Code should be reviewed to provide for an effective remedy regarding complaints challenging the election results after the first round.

Deadlines in election dispute resolution were significantly shortened by the 2 June Act. Complaints challenging election results had to be filed with the Supreme Court within 3 days and the Court had to rule on the validity of election results within 21 days rather than the respective deadlines of 14 and 30 days as stipulated in the Election Code, reflecting how threats to the stability of election law may have an effect on the means of redress.

The Supreme Court informed ODIHR SEAM that it introduced additional measures to meet the established deadlines, such as delegation of additional administrative staff from other chambers of the Supreme Court, prolonged working hours including weekends, prior digitalization of files, improved circulation of court documentation, and close cooperation with the NEC and Public Prosecutor's Office enabling submission of required documents on the same day. Regarding complaints filed abroad, an arrangement with the Ministry of Foreign Affairs was reached requiring respective consuls to forward complaints submitted to them within 24 hours of receipt to the Supreme Court to enable speedy processing.

Deadlines for electoral dispute resolution should allow complainants adequate time to prepare submissions that meet legal requirements and also allow the Supreme Court sufficient time to review each complaint, deliberate and issue a fully reasoned decision.

XII. ELECTION OBSERVATION

The Election Code provides for citizen observation of the electoral process. Associations which are, per their founding documents, active in democracy, civil rights and civil society development, may appoint observers to election commissions, and enjoy rights similar to those enjoyed by party and candidate proxies; however, they may not enter comments on PEC protocols or follow the transport of protocols to higher commissions. Similar to party and candidate proxies, citizen observers do not require accreditation from the NEC.⁷³ The Election Code provides international observers the right to observe the work of election commissions at all levels. In addition to the ODIHR SEAM, four observers from the Parliamentary Assembly of the Council of Europe (PACE) observed both rounds of the election.⁷⁴

At least five citizen observer groups observed the election in both rounds. The largest group was Civic Election Control, backed by the Democracy Defence Committee (*Komitet Obrony Demokracji*, KOD) with close to 1,000 observers in the first round and some 4,000 in the second round. The citizen observation efforts focused predominantly on election day. A number of ODIHR SEAM interlocutors associated some citizen observation activities with specific candidates, political parties or PEC members. Such practices, while not prohibited by legal provisions on observation, blurred the line between citizen and party observation activities.⁷⁵

⁷³ Citizen observers had to present a certificate from their nominating organizations to the PEC on election day.

⁷⁴ See PACE statements after the [first round](#) and the [second round](#).

⁷⁵ See articles 4 and 5 of the section "Non-partisan, Independent Scrutiny of Electoral Processes" of the 2012 [Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations](#).

XIII. ELECTION DAY

On 15 June, the Ministry of Health issued a regulation on sanitary and protective measures to be taken in polling stations on election day. It was supplemented by regulation from 6 July which allowed preferential treatment for elderly, pregnant women, disabled and parents accompanied by small children during the second round. The pandemic and the measures enacted to prevent spread of the virus had no significant impact on voting during both election days. On 19 June, within its legal mandate and upon request of the Ministry of Health, the NEC decided to conduct voting exclusively by post in two municipalities, in which the number of positive COVID-19 cases was higher than 100 per 10,000 inhabitants.⁷⁶

The ODIHR SEAM did not undertake systematic or comprehensive observation of election-day proceedings. In the limited number of polling stations visited, the voting and counting process was smooth and well organized and COVID-19 sanitary and protective measures were strictly enforced. On occasions, voters chose not to use the available voting screens and marked their ballot in the open. Cast ballots were often not folded. Voting screens were sometimes placed in a way that could compromise the secrecy of the vote. The NEC reported a number of minor incidents on both election days, most of them related to destruction of campaign material and breach of the campaign silence period.⁷⁷ The high turnout (64.5 per cent in the first round and 68.2 per cent in the second round) combined with distancing measures resulted in long queues; voters queuing at the time of closing were allowed to vote. While the reconciliation of votes was a lengthy process in some visited polling stations, this had no impact on the accuracy of the results; however, some additional training could speed up the process.

The Election Code provides for overly strict ballot validity criteria even when the intention of the voter is clear. Ballots with any sign other than ‘minimum two crossing lines’ or when the sign is placed outside of the provided box are invalidated. Nevertheless, the number of invalid votes was very low; 0.3 per cent in the first round and 0.86 per cent in the second round.

Ballot validity provisions in the Election Code should be reviewed and relaxed with a view to providing for the validity of the vote where the intention of the voter is clear and unambiguous.

On the day of the announcement of the results, for both first and second rounds, a comprehensive breakdown of results, including polling station data was published in a user-friendly database on the NEC’s website. This was later followed by the publication of scanned results protocols from all polling stations and DECs, thus contributing to overall transparency of the NEC.

XIV. POST-ELECTION DAY DEVELOPMENTS

The final result was announced by the NEC on 13 July. The incumbent Andrzej Duda was re-elected for a second term with 51.03 per cent of the vote; Rafał Trzaskowski received 48.97 per cent. Following the announcement, President Duda pleaded to continue his policies and apologized to those who felt offended by his campaign statements. Mr Trzaskowski publicly accepted the results and pronounced his intention to create a broad civic movement to build upon his electoral

⁷⁶ Municipalities Marklowice and Baranów, with 4,275 and 6,018 registered voters respectively.

⁷⁷ The Police reported a total of 530 misdemeanor and election offences cases during both rounds.

result.⁷⁸ His party, the PO, launched a website to facilitate information gathering from all citizens concerning alleged irregularities and lodged a complaint with the Supreme Court on, among others, misuse of administrative resources, biased coverage by the *TVP* and irregularities with postal voting abroad.

The NEC has not published any information regarding the relevant procedures applicable to contest the election result. The Supreme Court provided detailed information on the electoral complaints; however, it was published on the Court's website only on 14 July 2020, two days prior to the submission deadline. To fill in the void, several civil society organizations published relevant guidance on their websites.⁷⁹

The Supreme Court received 5,847 challenges to the election result from electoral committees and voters. Many of these complaints sought the annulment of results based on a variety of alleged irregularities in the electoral process, including holding of the election day outside the constitutionally mandated period, the role of the public media and government officials in the campaign which skewed the level playing field, and irregularities with respect to out-of-country voting. Some 88 per cent of the complaints were rejected as inadmissible on formal grounds mainly due to failure to meet the legal deadlines for lodging the complaint and lack of evidence to substantiate the allegations.⁸⁰ Other reasons for dismissal included complaints lodged by persons with no legal standing or concerning matters for which the Election Code afforded the opportunity to lodge a complaint with the court or the NEC prior to voting day, and complaints that fell outside the scope of competence of the Supreme Court, such as campaign finance related issues or the coverage of candidates in public media. In its final resolution, the Supreme Court opined that the unequal access to mass media by candidates did not affect the validity of the elections as unrestricted media pluralism was ensured.⁸¹ Some 600 complaints were found admissible but rejected by the Court as unfounded. The Supreme Court found 93 complaints valid but determined that these had not influenced the election result. These complaints referred mainly to late or incomplete delivery of election packages, irregularities in the voter list and work of the PECs on election day. The Supreme Court confirmed the validity of the election result within the legal deadline on 3 August 2020.

Complaints were reviewed by Supreme Court panels of three judges in non-public sessions in which representatives of the NEC and the Prosecutor General's Office participated. Complaints may be referred to a public hearing only for important cases.⁸² This contravenes major international standards guaranteeing access to a public hearing.⁸³ The resultant Court opinions were reasoned and consistent and were published on the Court's website. In cases generating media interest, the Court

⁷⁸ The official inauguration of the movement took place on 5 September; its focus shall be “defending democratic principles, free media, and local governments.” It also alleges to pay special attention to education, women rights, climate change and the youth. The independent Szymon Holownia also announced intention to contest next parliamentary elections with a newly created party Poland 2050.

⁷⁹ These included Helsinki Foundation for Human Rights, Free Courts Association, Political Accountability Foundation and, Democracy Defence Committee (KOD).

⁸⁰ The Supreme Court informed ODIHR SEAM that due to the high number of complaints received, no statistical breakdown of cases was compiled. Also, the Supreme Court did not prepare separate statistics as to how many complaints related to the first round and how many to the second round.

⁸¹ See here the [English version](#) of the resolution.

⁸² In this election, no cases were adjudicated publicly.

⁸³ The UDHR, Article 10 sets the principle of non-discrimination and equality in the access to a fair and public hearing by an independent and impartial tribunal in the determination of everyone's rights and obligations. The ICCPR, Article 14 further provides and enforces the principle of equality before courts and the right of “every citizen to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of his rights and obligations in a suit at law”. See also OSCE Paragraph 13.9 of the 1989 Vienna Document, and Paragraph 5.16 of the 1990 Copenhagen Document.

also issued press-releases contributing to transparency. The session on declaring the election valid was open to the public and the media and was broadcast live by the leading TV stations.

The review of election related complaints by the Supreme Court should be conducted in sessions which are open to the public.

XV. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in the Republic of Poland and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations that remain to be addressed.⁸⁴ The legislative reforms should be undertaken well in advance of elections and through open and inclusive consultation, including with civil society. ODIHR stands ready to assist the authorities of the Republic of Poland to further improve the electoral process and to address recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. Any changes to the electoral legislation, including under emergencies, should ensure, that they are formulated and adopted well in advance, as a result of an open process allowing sufficient time for a meaningful public debate and ensuring the principle of stability of law.
2. Measures should be taken to ensure a clear separation between state and party, including by amending legislation to adequately define and regulate campaigning by public officials, and to explicitly prohibit the abuse of state resources. Favourable treatment of any contestant by public media should be treated as misuse of public funds and should be properly addressed.
3. To ensure the public broadcaster's editorial independence, the management should be selected through a transparent, competitive process and legal safeguards for its financial sustainability and autonomy should be enacted.
4. To ensure effective oversight during the campaign, the legal and institutional framework should clearly stipulate an oversight body provided with adequate powers to expeditiously redress campaign finance-related complaints and enforce sanctions.
5. The independence of the National Broadcasting Council should be legally guaranteed and the authority should be legally required to actively monitor the broadcast media in order to fulfill its mandate to ensure impartial coverage. An effective legal mechanism to deal with complaints of distorted coverage should be provided for in a timely manner.
6. The Election Code should be reviewed to provide for an effective remedy regarding complaints challenging the election results after the first round.

⁸⁴ In paragraph 25 of the [1999 OSCE Istanbul Document](#), all OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations". The follow-up of prior recommendations from the [Final Report on the 2015 parliamentary elections](#) is assessed by the ODIHR EAM as follows: recommendations 7, 12, 17 were fully implemented, recommendations 5, 11 were implemented partially.

B. OTHER RECOMMENDATIONS

Legal Framework

7. The legal framework should provide clarity on conducting the second round, such as the applicable campaign period and campaign expenditure limitations, as well as on the possibility of challenging the results of the first round.

Election Administration

8. Legal and administrative measures could be taken to promote women's membership in particular at the NEC level. Disaggregated data on gender representation in the election administration should be collected and published in a comprehensive manner.

Voter Registration

9. All restrictions on the electoral rights of persons with intellectual or psychosocial disabilities should be removed.
10. The authorities should continue efforts to facilitate the direct participation of all citizens in the electoral process, including persons with disabilities, thereby eliminating a need for proxy voting.
11. The Election Code could be amended to increase the means by which citizens can review and confirm their inclusion in the voter list.
12. Clarification of the law concerning temporary inclusion in the voter list for both rounds and adequate voter information on an individual basis at the time of the request could be considered.
13. Creation of a central voter registry maintained by the NEC could be considered to facilitate changes in and compilation of the voter list; this would centralize the changes of permanent residence, temporary inclusions in the voter list inland and abroad and other related issues.

Campaign Environment

14. Electoral contestants should refrain from using intolerant rhetoric and authorities and contestants should promptly condemn any such cases.
15. Relevant legislation, in particular the criminal code, should be revised to ensure compliance with international human rights standards pertaining to 'hate speech'.

Campaign Finance

16. The legal framework should be amended to provide contribution and expenditure limits on permissible in-kind donations.
17. To enhance transparency, interim campaign finance report should be provided for by law. Details of all income and expenditures should be disclosed on the websites of electoral committees during the campaign.

18. Consideration should be given to regulation of campaigning by third parties including setting requirements for registration, financing and disclosure of third party campaigners.

Media

19. All provisions that envisage criminal prosecution for defamation, libel, insult and slander should be repealed in favour of civil sanctions.
20. Favourable treatment of any contestant by public media should be treated as misuse of public funds and should be properly addressed.
21. Authorities should swiftly investigate threats, online and offline, against journalists, and refrain from the use of inflammatory language that may incite such actions.

Complaints and Appeals

22. The Election Code could be reviewed to provide judicial review of all administrative decisions and resolutions issued by the NEC.
23. The legal framework should be reviewed to provide clear procedures and guarantees concerning complaints about the conduct of the election administration bodies. The revisions should also effectively address campaign and election-day related violations and irregularities and ensure an effective judicial review.
24. The Election Code should be reviewed to provide for an effective remedy regarding complaints challenging the election results after the first round.
25. Deadlines for electoral dispute resolution should allow complainants adequate time to prepare submissions that meet legal requirements and also allow the Supreme Court sufficient time to review each complaint, deliberate and issue a fully reasoned decision.

Election Day

26. Ballot validity provisions in the Election Code should be reviewed and relaxed with a view to providing for the validity of the vote where the intention of the voter is clear and unambiguous.

Post-election day developments

27. The review of election related complaints by the Supreme Court should be conducted in sessions which are open to the public.

ANNEX I – FINAL RESULTS⁸⁵

Candidate	Percentage of valid votes cast	Valid votes cast
First Round, 28 June 2020		
Andrzej Sebastian Duda	43,50	8,450,513
Rafał Kazimierz Trzaskowski	30,46	5,917,340
Szymon Franciszek Hołownia	13,87	2,693,397
Krzysztof Bosak	6,78	1,317,380
Władysław Marcin Kosiniak-Kamysz	2,36	459,365
Robert Biedroń	2,22	432,129
Stanisław Józef Żółtek	0,23	45,419
Marek Jakubiak	0,17	33,652
Paweł Jan Tanajno	0,14	27,909
Waldemar Włodzimierz Witkowski	0,14	27,290
Mirosław Mariusz Piotrowski	0,11	21,065
Data regarding the voting process		
Number of registered voters	30,204,684	
Turnout/ percentage of voting participation	19,483,760 (64,51 %)	
Number of total valid votes	19,425,459 (99.70 %)	
Number of total invalid votes	58,301 (0.30 %)	
Second Round, 12 July 2020		
Andrzej Sebastian Duda	51,03	10,440,648
Rafał Kazimierz Trzaskowski	48,97	10,018,263
Data regarding the voting process		
Number of registered voters	30,268,460	
Turnout/ percentage of voting participation	20,636,635 (68,18 %)	
Number of total valid votes	20,458,911 (99,14 %)	
Number of total invalid votes	177,724 (0,86 %)	

⁸⁵ Source: [Final results](#) as published by the National Election Commission.

ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance and non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations. More information is available on the ODIHR website (www.osce.org/odihr).