



ODIHR SPECIAL ELECTION ASSESSMENT MISSION Republic of Poland – Presidential Election, Second Round, 12 July 2020

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

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.

On 30 June, the National Election Commission (NEC) announced the results of the first round of Poland's presidential election held on 28 June. The turnout for the first round was 64.5 per cent. The incumbent president, Andrzej Duda (backed by Law and Justice party, *Prawo i Sprawiedliwość*, PiS) received 43.5 per cent of the vote, while Rafal Trzaskowski, the mayor of Warsaw (backed by Civic Platform, *Platforma Obywatelska*, PO), received 30.4 per cent, and thus both qualified for the 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. All candidates expressed overall confidence in the election management of the first round. In spite of the challenges arising from the COVID-19 pandemic, candidates and authorities encouraged voters to turn out in high numbers to cast their ballots in the second round.

The clarity of the otherwise suitable election legislation was compromised by the 2 June Act on Special Regulations for General Elections of the President of the Republic of Poland, ordered in 2020 with the Possibility of Postal Voting. Furthermore, the Election Code does not address some aspects of holding a second round. While most provisions are generally applicable to both rounds, there are insufficient explicit run-off regulations such as the timeframes for the official second-round campaign period and campaign expenditure limits. The legislation also lacks clarity on complaints and appeals following the announcement of results of the first round, thus undermining the means of an effective legal redress. The NEC did not issue any specific regulations for the second round, as, in spite of the deficiencies identified above, the commission views the regulatory framework as sufficient and interprets the law as regulating both rounds as one election.

After the first round, all levels of the election administration continued to conduct their work in a professional manner enjoying confidence among stakeholders. Comprehensive results of the first round disaggregated down to the polling station level were published on NEC's website on 30 June. The user-friendly database was supplemented by the publication of scanned results protocols from all polling stations, which contributed to overall transparency.

The election administration met all legal deadlines related to the preparation of the run-off. There were no significant changes to the polling station list and composition of the Precinct Election Commissions (PECs) between the rounds; minor changes corresponded to the operational needs. The composition of District Election Commissions (DECs) remained virtually unaltered. Additional training was organized mostly for the new PEC members. All organizational and logistical tasks, including PEC formation and training were conducted in a decentralized manner by the 49 DECs in

close cooperation with the 49 delegate offices of the National Election Office (NEO). Sanitary and protective measures similar to the first round were applied.

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. Voters temporarily staying away from their permanent residence could also be included in the voter list elsewhere upon their request. All changes made to the voter list prior to the first round, including requests for postal voting, applied automatically to the second round. This caused confusion among some voters who requested to be temporarily included in the voter list outside their permanent residence before the first round and were obliged to vote at the same place in the run-off.¹

As a consequence of the 2 June Act, the timeframes for requesting postal votes for the second round were very short. For voters abroad, the deadline expired on 29 June, one day after the first round. The deadline for in-country voters expired on 30 June. Notwithstanding the short timeframe, some 140,000 additional voters abroad registered between the rounds, bringing the total number of out-of-country voters to a record high of 519,431, out of whom 479,584 requested postal votes. The final voter register contained a total of 30,309,485 voters, of whom 223,010 registered in-country requested to vote by mail. Several cases of problems with delivery and consequent return of postal vote abroad during the first round were reported. Results of the first round show that the return rate of the postal vote was 96 per cent inland and 87 per cent abroad. In line with the decision taken by the NEC before the first round, two municipalities (Baranow and Marklowice) conducted the vote exclusively by mail due to the spread of the pandemic.

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 campaign intensified with both candidates touring the country and holding a high number of direct meetings with voters, with particular focus placed 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.²

The candidates were able to campaign freely. However, the run-off campaign was even more confrontational than before the first round. 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 of destruction of campaign material. Campaigning, including the display of banners for the incumbent, on church property was also common. The campaign was marked by negative rhetoric, harsh mutual accusations, and vilification of the opponents, all contributing to the perception of the election in zero-sum terms. ODIHR SEAM noted instances of intolerant rhetoric of xenophobic, homophobic and anti-Semitic nature, particularly by the incumbent's campaign and the public broadcaster. The incumbent's representation of his achievements stood in stark contrast to Mr Trzaskowski's depiction of the

¹ The same procedures applied for the 2015 presidential election. The NEC informed ODIHR SEAM that some 250,000 voters requested to be included temporarily in voter lists outside their permanent residence prior to the first round. The NEC received a number of inquiries regarding the issue and made efforts to inform voters about the possibility to vote by Absentee Voter Certificate in other polling stations instead.

² In Wroclaw, 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.

incumbent's record as a failure to deliver on promises made. Environmental issues gained increased prominence during the second round in addition to taxation, social benefits, and retirement, which had been important in the previous round. LGBT issues continued to be a prominent campaign issue for the incumbent who proposed a constitutional amendment banning adoptions by same-sex couples.

As previously noted by ODIHR, the legal framework remains silent on 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.³ All events were featured on the official Facebook account of the Office of the Prime Minister. This blurred the line 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. 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.

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 candidate 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.⁴

The campaign finance framework has numerous legal and institutional shortcomings. Despite a previous ODIHR recommendation, campaigning by third parties remains unregulated. The provision on sanctions for campaigning by anybody without a written consent of the committee was repealed in 2018, which is positive in itself but leaves legal uncertainty about third party campaigning.⁵ 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. The NEC informed

³ 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 *poviats* (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."

⁴ 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.

⁵ 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 civic organization, *Spontaniczny Sztab Obywatelski*, mounted 353 negative campaign billboards against President Duda and PiS throughout the country financed from fundraising activities. The organization collected over PLN 400,000 from 5,000 different donors.

the ODIHR SEAM that the complaints will be examined only once the final financial reports by committees are submitted three months after the election. No institution is legally mandated to conduct effective oversight of campaign finance during the campaign.

The Election Code establishes a campaign expenditure limit but does not specify whether it applies to one or both rounds. 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 million for President Duda and some PLN 9.5 million for Mr Trzaskowski.⁶ 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. The active participation of third parties in campaigns, combined with the absence of explicit provisions for interim reporting, insufficient information published by contestants, lack of oversight and the absence of a means for legal redress for complaints regarding the misuse of state resources until after the election, undermine the transparency of campaign finance. Positively, and although not required by law, both leading candidates published their income and asset declarations prior to the first round.

Reflecting the starkly polarised media landscape, the candidates eschewed a joint debate choosing to appear separately in almost simultaneously transmitted broadcasts on two different channels; the president appearing on the public broadcaster *Telewizja Polska (TVP)*, while Mr Trzaskowski was on the private *TVN24* with coverage on *Polsat*. The absence of a real debate deprived voters of the possibility of evaluating the candidates on a competitive basis as they avoided the media they perceived as hostile to them. *TVP*, which is required by law to arrange the debate, 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 organized by *TVN* and the news site *onet.pl*, linking this to their foreign ownership. The incumbent also accused several foreign-owned media of interference in the campaign and of 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.⁷

TVP and the public radio *Polskie Radio* fulfilled their legal obligations to offer free airtime to both candidates on an equal basis. Despite having the legal mandate to ensure an open and pluralistic radio and television, the National Broadcasting Council (NBC), did not monitor coverage of the campaign prior to the second round. The findings of several civil society groups, which monitored the media during the campaign, are in line with the ODIHR SEAM's assessment of the first round that public television failed in its legal duty to be impartial and the *TVP* coverage strongly favoured the incumbent. According to data provided to the ODIHR SEAM by the NBC, public TV and radio devoted significantly more airtime to the ruling party already prior to the start of the presidential campaign.⁸ Since the beginning of the campaign, the NBC has received 94 complaints, out of which

⁶ For electoral committees registered for the 10 May election that resumed the campaign after the 3 June, the expenditure limit was extended by 50 per cent, totalling up to 150 per cent; for electoral committees created newly for the 28 June election, the spending limit was capped at 50 per cent of that envisaged by the Election Code.

⁷ *Fakt* is published by German-Swiss conglomerate *Ringier Axel Springer Media AG*, which owns some 20 media brands in Poland, including *Newsweek Polska* and *onet.pl*.

⁸ According to NBC data, from January to April 2020, *TVP* devoted to the political positions of PiS 2 hours and 1 minute, and to PO 23 minutes. In *Polskie Radio*, PiS views were broadcast for 1 hour and 8 minutes, PO for almost 23 minutes. More recent data from *Polskie Radio* showed balanced coverage during the campaign.

90 are still pending.⁹ Between the two rounds, police filed three cases for the criminal insult of the president; two with respect to destruction of the incumbent's campaign posters and one concerning a verbal insult by a protester in his campaign rally. This reaffirmed the concern about infringement of freedom of expression.

The Supreme Court is responsible for examining complaints against the validity of the election. The Court has received six complaints concerning the results of the first round; decisions in all cases are pending. The Supreme Court informed the ODIHR SEAM that complaints 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. As such, there is no effective means of legal redress for election-related offences that may have had an 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.

As yet, no appeals against NEC resolutions regulating the conduct of this election have been filed with the Supreme Court. The NEC has not received any official complaints regarding the operations of DEC and PEC during the first 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 to address, such as alleged breaches of campaign regulations. 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. Some ODIHR SEAM interlocutors noted that the run-off results might be challenged in courts, additionally voicing their concerns that the ruling PiS party has since coming to power in 2015 introduced substantive changes to laws regulating the judiciary, which, in their opinion, undermined their independence. Complaints challenging election results have to be filed with the Supreme Court within 3 days and, based on the 2 June Act, the Court has 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.

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; ballots were often not folded. The NEC reported a number of minor incidents, most of them related to destruction of campaign material and breach of the campaign silence period. The high turnout (estimated at 67.7 per cent) resulted in long queues; voters queuing at the time of closing were allowed to vote.

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

⁹ Thirty-four complaints relate to the TVP news program "Wiadomości" from 24 June, which aired a 4 minutes 23 seconds long story about the incumbent's campaign. The format and content did not correspond to journalistic standards and resembled rather a campaign spot for the incumbent.

MISSION INFORMATION & ACKNOWLEDGEMENTS

Warsaw, 13 July 2020 – This Statement of Preliminary Findings and Conclusions is an assessment made to determine whether the election complied with OSCE commitments, international obligations and standards for democratic elections, and with national legislation.

ODIHR has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process.

The ODIHR SEAM, headed by Thomas Boserup, was deployed from 15 June and consists of a core team of eight international experts based in Warsaw. The ODIHR SEAM did not carry out systematic or comprehensive observation of the voting, counting and tabulation proceedings on election day, in line with ODIHR's methodology for election assessment missions. Mission members did, however, visit a limited number of polling stations on election day.

The ODIHR SEAM wishes to thank the authorities of the Republic of Poland for their invitation to observe the election, and the National Election Commission and the Ministry of Foreign Affairs for the assistance. They also express their appreciation to other state institutions, political parties, media and civil society organizations, and international community representatives for their co-operation.

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