



Office for Democratic Institutions and Human Rights

REPUBLIC OF POLAND

PRE-TERM PARLIAMENTARY ELECTIONS

21 October 2007

OSCE/ODIHR Election Assessment Mission Final Report



Warsaw
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I. EXECUTIVE SUMMARY

In response to an invitation from the Ministry of Foreign Affairs of the Republic of Poland, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 21 October 2007 pre-term elections to both houses of parliament, the *Sejm* (lower house of parliament) and *Senat* (upper house of parliament).

The 21 October elections were called as a consequence of the end of the governing coalition between Law and Justice (PiS), Self-Defence of the Republic of Poland (Samoobrona) and the League of Polish Families (LPR) and the self-dissolution of the *Sejm*. They demonstrated a democratic and pluralistic electoral process, founded on a high level of public confidence in the integrity and impartiality of the electoral administration. The registration of candidates and party lists was inclusive, offering voters a wide and genuine choice. Turnout was reported at 53.88 per cent.

The campaign was vigorously contested, and was considered one of the most heated and divisive in Polish elections since the democratic transition. It was marked by occasional partisan interventions by institutions of the State.

The diverse media landscape enabled voters to make informed choices. Media debates between the principal contenders for head of government played a significant role in informing voters. Public concern, however, was expressed throughout the campaign at the perceived disproportion in quantitative coverage by the public television broadcaster, exacerbated by the absence of effective mechanisms of oversight.

Media monitoring by the OSCE/ODIHR EAM for the last two weeks of the campaign showed a lack of qualitative balance by public television in the coverage of the three main contestants. The National Broadcasting Council was unable to properly discharge its constitutional responsibility due to deficiencies in its structure and disagreements flowing from its partisan composition, underlining the need for measures of reform to ensure appropriate independent oversight of the conduct of the public media.

Poland has a comprehensive legal framework for elections conducive to the democratic process. It could nonetheless benefit from review to ensure the fullest exercise of suffrage rights; a continuation of the codification process started in 2001 could enhance its practical application.

The overarching body administering the elections, the National Election Commission, composed of senior judges, commands widespread confidence and respect, underscored by the transparent performance of the subordinate election administration. Certain technical and administrative shortcomings, including insufficient numbers of ballots in some polling stations and the administration of out-of-country voting, should be addressed in order to maintain the high traditional level of public confidence in the delivery of the elections.

According to standard practice, an OSCE/ODIHR EAM does not envisage comprehensive and systematic observation of election day procedures, although members of the EAM did have the opportunity to visit polling stations around the country on election day. Voting and counting appeared to take place in a calm and orderly manner. However, in all polling stations visited, the OSCE/ODIHR EAM did note carelessness over the secrecy of the ballot, with widespread family and group voting, and open voting in public view.

The OSCE/ODIHR was invited to observe the pre-term parliamentary elections by the Minister of Foreign Affairs of the Republic of Poland on 2 October 2007. Despite the absence of specific legal provisions enabling election observation, the OSCE/ODIHR EAM was granted access to all levels of the election administration, including voting and counting.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of the Republic of Poland on 2 October and a Needs Assessment Mission¹ undertaken on 4 and 5 October 2007, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for the 21 October 2007 elections to both houses of parliament, the *Sejm* and *Senat*.

The OSCE/ODIHR EAM was deployed from 9 to 24 October 2007. It was led by Mr Julian Peel Yates and consisted of 12 election experts from 10 OSCE participating States. In addition to experts based in Warsaw, the OSCE/ODIHR EAM deployed to Lodz, Poznan, Wroclaw, Opole, Katowice, Krakow, Gdansk, Lublin, Torun and Bialystok. The OSCE/ODIHR EAM also contained a media monitoring component.

In line with standard OSCE/ODIHR practice, the OSCE/ODIHR EAM did not include systematic or comprehensive observation of voting and counting procedures, typical for full-scale election observation missions, although the OSCE/ODIHR EAM visited a limited number of polling stations on election day.

The OSCE/ODIHR wishes to thank the National Election Commission and other electoral authorities, the Ministry of Foreign Affairs and representatives of political parties, the media and civil society, for the co-operation and assistance extended to the OSCE/ODIHR EAM during the course of the mission.

III. BACKGROUND

The previous parliamentary elections of September 2005 were the fifth held after the democratic transition in Poland. Law and Justice (PiS) emerged as the largest party in the *Sejm* with 155 seats (27 per cent of the vote), followed by Civic Platform (PO) with 133 seats (24 per cent). Other parties to obtain seats in parliament were Self-Defence of the Republic of Poland (Samoobrona) with 56 seats (11.4 per cent), the Alliance of the Democratic Left (SLD) with 55 seats (11.3 per cent), League of Polish Families (LPR) with 34 seats (8 per cent) and Polish People's Party (PSL) with 25 seats (7 per cent). Two deputies representing the German minority were also elected.

¹ The OSCE/ODIHR NAM report is available at www.osce.org/documents/odihr/2007/10/27185_en.pdf

In the *Senat*, 49 seats were won by PiS, 34 by PO, followed by seven for LPR, three for Samoobrona and two for PSL. Five independents were also elected. The presidential election followed in October 2005 and was won by Mr Lech Kaczynski (PiS), who beat Mr Donald Tusk (PO) in a second round by 54 per cent to 46 per cent.

Following the election, a minority government led by PiS was formed under Prime Minister Kazimierz Marcinkiewicz with the tacit support of LPR and Samoobrona. In May 2006 these three parties created a formal coalition which saw the leaders of LPR and Samoobrona taking the posts of Deputy Prime Minister. In July 2006, Mr. Marcinkiewicz resigned and was replaced as Prime Minister by the leader of PiS, Mr. Jaroslaw Kaczynski.

On 9 July 2007, Deputy Prime Minister Lepper was dismissed by Prime Minister Kaczynski who linked him to an alleged corruption scandal. This led to the formal end of the coalition on 13 August when the ministers from LPR and Samoobrona were dismissed and replaced by ministers from PiS. At the same time the Prime Minister called for early elections. On 7 September, the *Sejm* voted to dissolve itself by 377 votes to 54, predominantly with the votes of deputies from PiS, PO, SLD and PSL. The majority of deputies from Samoobrona and LPR voted against the dissolution. On 8 September, President Lech Kaczynski announced pre-term parliamentary elections for 21 October.

IV. LEGAL FRAMEWORK

A. OVERVIEW

The Polish legislative framework is conducive to the conduct of democratic elections and enjoys broad public confidence. The primary legislation on parliamentary elections was codified in April 2001, with the adoption of a single Act on Elections to the *Sejm* of the Republic of Poland and to the *Senat* of the Republic of Poland, hereinafter referred to as the 'Parliamentary Elections' Act' (PEA).² It has since been amended on a number of occasions.³

Certain aspects of the electoral process lie beyond the purview of the PEA and are regulated by other laws. These include provisions of the Local Elections' Act of 1998 on establishing polling stations; the Political Parties' Act of 1997 containing requirements for parties' registration, funding and financial accountability; provisions of the Criminal Code on election-related offences; and the Civil Procedure Code in its part relating to non-litigious proceedings.

The Polish parliament might wish to consider further codification of the electoral legislation, which would further enhance its accessibility for voters, political parties, candidates and the general public and facilitate its practical application.

The electoral framework remains influenced by the lustration legislation, namely the Act on Disclosure of Information on Documents of the Organs of State Security for the Years of

² The PEA replaced the *Sejm* Elections' Act of 1993 and the Senate Elections' Act of 1991.

³ Inter alia, amendments relating to the boundaries of constituencies, compilation and verification of voter lists, and mechanisms for penalizing violations of the financial regulations.

1944 to 1990 and the Contents of Those Documents (often referred to as the Lustration Act).⁴ One of the purposes of the Lustration Act is to inform the electorate on past collaboration with the communist secret services of those seeking public office and to disbar them in cases of their false denial.

The legal basis for holding pre-term parliamentary elections derives from Article 98 of the Constitution,⁵ which provides for the possibility of shortening the term of office of the *Sejm* by two-thirds majority of its deputies and the subsequent calling of the elections by the President, to be held within 45 days. The dissolution of the *Sejm* leads to a simultaneous dissolution of the *Senat*. Pre-term elections are held under shortened time limits.

B. ELECTORAL SYSTEM

Parliament has two chambers, a 460-member lower chamber, the *Sejm*, and a 100-member upper chamber, the *Senat*. Members of both houses are elected for a four year term in direct elections, conducted on the same day.

Poland is divided administratively into 16 regions (*województwo*). For elections to the *Sejm*, 41 multi-mandate constituencies are created within the regions, where the deputies are elected by a proportional party-list system. The division of the regions into constituencies and a fair distribution of the mandates in constituencies⁶ are achieved by using a proportionality rule and national quota of representation of the population. Changes in the constituency boundaries are voted by the *Sejm* on the proposal of the National Election Commission (NEC) no later than 12 months before the expiry of the term of office of the *Sejm*. No changes are made before extraordinary elections.

Election committees⁷ representing political parties, coalitions or groups of voters register open constituency lists of candidates with the Constituency Election Commissions (CECs) where they want to run. Each constituency list contains a number of candidates which is not less than the number of seats to be allocated in the constituency, and does not exceed twice that number. Unique numbers are allocated by lot to all registered election committees,⁸ which determine the position of the constituency lists on the ballot paper. Voters vote by marking the box against the name of only one candidate, and it is only through the candidate of choice that a vote is attributed to the respective list.

Election committees whose candidates collectively receive at least 5 per cent of the total number of valid votes cast nationally (8 per cent for coalitions) participate in the distribution of seats at constituency level. Election committees registered by national minorities are exempted from these threshold requirements.

⁴ The Lustration Act was adopted on 18 October 2006 and enacted on 15 March 2007 (replacing the previous Act of 1997).

⁵ As well as PEA, Article 10.

⁶ By law not less than seven deputies are elected in each constituency. The largest number of mandates, 19, are distributed in the constituency #19 Warsaw I.

⁷ Election committees are defined by PEA, Article 95 as those entities that shall “in the name of political parties and voters, engage in electoral activities, in particular the nomination of candidates for deputies to the *Sejm* and candidates for senators, and shall exclusively conduct the election campaign on their behalf”.

⁸ For the pre-term elections on 21 October 2007 the election committees that had registered for the 2005 elections retained their unique numbers.

The seats in each constituency are distributed amongst the lists through the D'Hondt method, applied to the constituency totals of votes received by the respective election committees. Mandates gained by a list are attributed to the candidates with the most votes.

The election to the *Senat* is conducted in 40 multi-mandate constituencies,⁹ electing two to four senators each. The election law establishes the number of senators representing each region in the *Senat*.

Election committees of parties, coalitions and groups of voters may register with the CECs a number of candidates for the *Senat*, which does not exceed the number of senators elected in the respective constituency. The candidates are ordered alphabetically on the ballot paper and voters may vote for as many candidates as seats are distributed in the constituency. The members of the *Senat* from each multi-mandate constituency are elected by a first-past-the-post majority system. Candidates elected as senators in a constituency are those receiving the successive highest number of votes.

C. SUFFRAGE AND CANDIDACY ELIGIBILITY

Polish citizens enjoy the suffrage from 18 years of age, unless they are legally incapacitated or deprived of their public or electoral rights by a final court decision.¹⁰ The Criminal Code envisages deprivation of the right to vote and to be elected as a sanction collateral to imprisonment for 'an offence committed with motives deserving particular reprobation'.¹¹

Pursuant to the Constitution,¹² eligibility to stand for parliamentary elections is conditional only upon the suffrage and age of citizens. Thus, to be a candidate for the *Sejm* elections, a person should have the right to vote and have attained the age of 21, whilst for elections to the *Senat* a candidate must be at least 30 years of age.

The PEA and the Lustration Act, however, set a further specific criterion for candidacy eligibility. Each candidate born before 1 August 1972 is required to submit a statement disclosing information on his or her past collaboration with the communist secret services.¹³ Under the Lustration Act, a person loses his or her passive electoral right for ten years if there is a valid court ruling finding that the statement was false.¹⁴ The Constitutional Tribunal found this provision of the Lustration Act (along with a number of other provisions) unconstitutional by its ruling of 11 May 2007 and ordered its amendment with a view to setting a lower time-limit for the loss of the passive electoral right.

In light of the ruling of the Constitutional Tribunal and recent pertinent case law of the European Court of Human Rights,¹⁵ amendments to the lustration legislation should be considered to ensure due protection of citizens' electoral rights.

⁹ The constituencies for the *Senat* election coincide with those for the elections to the *Sejm* with a single exception – the *Sejm* constituency of Kraków and Chrzanów form a single constituency for the election to the Senate.

¹⁰ Article 62 of the Constitution and PEA, Article 7.

¹¹ Article 40 of the Criminal Code.

¹² Article 99 of the Constitution.

¹³ PEA, Article 144, para. 5.

¹⁴ Following PEA, Article 8, paragraph 1a, and Article 21, paragraph 2 of the Lustration Act.

¹⁵ E.g. *Bobek v. Poland*, Judgement of 17 July 2007, and *Matyjek v. Poland*, Judgement of 24 September 2007.

D. COMPLAINTS AND APPEALS

Generally, legal redress in electoral disputes may be sought from the courts. The only exception concerns claims against the election administration, when a higher-level election commission provides a mechanism for complaint.¹⁶

With respect to the pre-electoral period, the law envisages the possibility of addressing inaccuracies or omissions in the voter lists with the head of the relevant local authority, and of appealing an adverse decision to the regional court. Complaints of campaign violations, particularly allegations that an election committee has used false or misleading information in its campaign, are also heard in the regional court. The procedure for handling such complaints is expedited. The law allows only 24 hours for filing a complaint alleging defamation in the campaign, and 24 hours for its examination by the court. If a court finds in favour of the complainant, it may issue a ruling prohibiting the publication of the false information, ordering the confiscation of the materials, requiring a correction of the information, ordering the publication of a reply, or an apology. It was reported to the OSCE/ODIHR EAM that election committees filed frivolous complaints in abuse of this complaints' procedure to gain political advantage. However, the process seems to provide an efficient and trusted mechanism for resolving campaign disputes in a timely manner.

Courts can handle electoral disputes in 'non-litigious proceedings'. Those are not clearly defined in the Code of Civil Procedure, but are well understood by practitioners and electoral participants in Poland. Non-litigious does not always equate to non-adversarial, but more accurately describes an expedited procedure where the judge has more discretion to tailor the proceedings to the circumstances of the specific case.

The validity of the elections may be challenged in the Supreme Court within seven days of the announcement of the election results by the NEC. Challenges against the validity of the election of a deputy or a senator must be based on allegations of an 'offence against the election',¹⁷ or a violation of the election law relating to the conduct of the elections or the process of establishing results. These complaints are heard by a three-judge panel of the Supreme Court in a non-litigious procedure. The full panel of the Chamber of Labour, Social Insurance and Public Affairs of the Supreme Court decides, in the form of a resolution, on the validity of the elections within 90 days of election day.¹⁸ The resolution is based on a report from the NEC,¹⁹ and a consideration of the decisions taken by the three-judge panels in response to specific, written election complaints. The participants to the proceedings in the Supreme Court establishing the validity of an election following a complaint are the person lodging the complaint, the head of the appropriate election commission and the Prosecutor General.

The Minister of Justice in Poland also holds the position of Prosecutor General.²⁰ His role as a partisan member of government could lead to a conflict of interest with that assigned to him as a representative of the public interest in Supreme Court proceedings of election appeals'

¹⁶ It is noteworthy that the election commissions of the two higher levels, i.e. CECs and the NEC, consist of judges.

¹⁷ Offences against Elections and Referenda are defined in the Criminal Code, Chapter XXXI.

¹⁸ PEA, Article 82, para. 2.

¹⁹ PEA, Articles 176 and 212.

²⁰ Prosecutor Service Act of 1985, Section 1.

on the validity of the elections. This apparent conflict of interest could warrant further consideration by Parliament.

E. OBSERVERS

Under the current electoral legislation, observers appointed by the election committees, which have candidates running in the elections, may follow polling and counting. The law does not explicitly provide for domestic non-partisan or international observation of the elections. The NEC, however, made ad hoc arrangements to grant the OSCE/ODIHR EAM appropriate access to all levels of the election process.

Nonetheless, in order to remove any uncertainty and to comply fully with OSCE commitments, the law should specifically provide for access for international and domestic non-partisan observers to all stages of the election process.

V. ELECTION ADMINISTRATION

A. OVERVIEW

Elections to the *Sejm* and *Senat* are administered by a three-tiered election administration, headed by the NEC. The second level comprises the 41 CECs. Voting and counting on election day is conducted by 25,470 Precinct Election Commissions (PECs).

The NEC is a permanent body of nine members, composed of three judges each from the Constitutional Tribunal, the Supreme Court and the Supreme Administrative Court. CECs consist of 7 to 11 judges, who are nominated by the Minister of Justice and appointed by the NEC. PECs are composed of 6 to 10 persons from amongst those nominated by election committees, and one person nominated by the head of the relevant local authority. PEC members are appointed by the mayor (or city president). All PECs for these elections were appointed within the legal deadline. Most worked in the minimum composition, since not all election committees exercised their right to nominate members because of the shortened time limits for pre-term elections.

The NEC has overall responsibility for the conduct and organization of elections and the implementation of the PEA. It is vested with substantial competencies, including supervision of the maintenance of the voter registers, adjudication on complaints against decisions and actions of CECs, including the right to rescind unlawful CEC decisions, and determination and publication of election results. NEC instructions and guidelines are binding for lower level commissions.

The CECs have charge of the registration of the candidate lists of election committees for elections to both the *Sejm* and *Senat*, and of the tabulation and determination of the election results in the respective constituency. They take decisions on complaints against decisions and actions of the PECs in their constituency.

The National Election Office (NEO) is the executive body of the NEC, which ensures the organizational, financial and technical arrangements for the preparation and conduct of elections. The head of the NEO is appointed by the Marshal of the *Sejm* (Speaker) upon nomination by the NEC and serves at the same time as secretary of the NEC. There are 49

regional units (delegatura) of the NEO, at least one in each constituency, which in close co-operation with the local administration secure the logistic support needed for the work of the election commissions. The heads of the regional units of the NEO, or persons appointed by them, serve as secretaries of the DEC. OSCE/ODIHR EAM interlocutors confirmed that such arrangements have worked in a satisfactory manner in all elections in Poland. Overall, the election administration has been enjoying a high level of trust of both the public at large and participants in the election process.

Despite this broad confidence, organizational problems which were revealed on election day (see Section XI Voting) indicate that the system would benefit from general review and refinement of certain procedures.

The NEC issued a large number of instructions and guidelines for these elections, including an instruction for the work of CECs and their plenipotentiaries on the tabulation and determination of the election results, as well as an instruction for the use of the IT system for the transmission and processing of results. The ‘Guidelines on the tasks and agenda of the work of precinct electoral commissions, concerning preparation and conduct of voting in the election to the *Sejm* and the *Senat*, called for the day of 21 October 2007’ (hereinafter referred to as ‘NEC Guidelines’) formed a detailed and comprehensive manual for the PECs and were adopted by the NEC on 24 September.

The CECs prepared and posted within the required legal deadlines notifications informing voters of the addresses and boundaries of the polling stations in the constituency as well as the list of election committees and candidates on their constituency lists. No problems were reported concerning the printing of ballot papers. The number of ballot papers printed amounted in general to 80 per cent of the number of voters registered in the constituency; the determination of this figure was at the discretion of each CEC.

Several stages of training were arranged for CECs and PECs. For the training of PECs, members were provided with copies of the PEA, the NEC Guidelines and a short election day guide.

The local authorities have a significant role in the organization and conduct of the elections. The mayor (or city president) authorizes a plenipotentiary and staff during the election period to provide technical assistance for the elections. In practice, it is the local authorities who manage the election process at the level of polling stations. Primary tasks of the local administration include delineation of precincts, maintenance of the voter register and production of voter lists, preparation and distribution of election materials, and providing facilities for PEC training.

There is a clear distinction between the role of the election commissions and the supporting organizational and logistic activities of the local administration performed in co-operation with the NEO regional units. However, in the absence of a general instruction, it seems that each NEO regional unit, together with local authorities, decides on the manner of co-operation and the concrete role of the local administration in the organization of elections.

To provide uniformity in the role of local authorities in the organization of elections, the issuing of general instructions could be considered.

B. VOTER REGISTRATION

Permanent voter registers are maintained in Poland by specialized departments (Administrative and Civil Affairs) of municipalities dealing also with the registration of births, deaths, residence, and the issuance of IDs, which provides for continuous updating of the voter registers.

The municipal offices maintaining the voter registers printed two copies of the voter lists for each polling station in their municipality within the legal deadline of 7 October.²¹ One copy of the voter list is delivered to the relevant PEC on the day before election day, while the second copy remains with the municipality office. Off-the-register certificates (ORCs) are issued to voters who are not able to vote on election day in the polling station of their permanent residence. Voters possessing an ORC may vote on election day in any polling station where they will be added to the voter list and the ORC attached to it. The names of the persons issued with ORCs are crossed out in the voter lists of their polling station of residence. According to information provided by the NEO, the number of ORCs issued as of 20 October was 60,289.

Voters temporarily residing in a precinct who apply for inclusion in the voter list within two weeks before election day, are included in additional voter lists to be delivered to the PEC together with the main list printed two weeks before election day. In addition, it is possible to be added to the voter list on election day, based on residence. Such requests for inclusion in the voter list have to be approved by PECs after consulting with municipal registration offices on the eligibility of the voters requesting inclusion.

According to the NEC, the practice of previous elections shows that voter registration is generally accurate, with only a small number of omissions or mistakes. The number of registered voters nationwide as of 20 October was 30,507,996, plus 175,150 registered to vote abroad. The final number reported with the official results was 30,615,471.

C. REGISTRATION OF CANDIDATES

The process of registration of candidates appeared to be inclusive. There were only four rejections because of the insufficient number of supporting signatures submitted: 5,000 signatures required for each constituency list and 3,000 for each candidate to the *Senat*.²² None of the rejections was contested.

The PEA does not contain any standards or procedures for verification by CECs of the supporting signatures. This might potentially lead to non-uniform practices. Some OSCE/ODIHR EAM interlocutors from the election administration stated that the requirement for collection of supporting signatures is unnecessary, often misused for campaign purposes, and should be removed.

Consideration could be given to standardizing the practice of verification of supporting signatures nationwide.

²¹ PEA, Article 17.6.

²² PEA, Articles 142.1 and 196.1.

The total number of registered candidates for the *Sejm* was 6,188 (including 1,428 women) and for the *Senat* 385 (46 women).

D. OUT-OF-COUNTRY VOTING

Polish citizens residing permanently or temporarily abroad can apply (in person, orally, or in writing) for inclusion in the voter list maintained by the relevant Polish diplomatic mission, at the latest five days before election day.

By the registration deadline of 16 October, 175,550 Polish citizens were registered for voting abroad, compared with 49,840 in 2005. The final number reported with the official results was 190,698. For these elections, 205 polling stations were formed for out-of-country voting compared with 161 for the 2005 elections. The largest numbers of voters were registered in the United Kingdom to vote in 20 polling stations, and in the United States in 21 polling stations.

Though political parties can nominate candidates for membership in the PECs abroad, in practice such PECs are made up of embassy or consulate staff appointed by the consul. The consul in each diplomatic mission organizes the voting and hence receives, and is responsible for, all election materials. Due to the large number of voters abroad wishing to exercise their voting rights, the consuls in some countries met serious difficulties not only in appointing enough PEC members, but also in finding appropriate premises for voting. As a result polling stations in some places²³ had more than 4,000 registered voters.

Voters abroad vote for the Warsaw I Constituency. Though there is a remote potential for a distortion of the election results, this has never been an issue in practice, since the turnout in Warsaw I is traditionally high, while it tends to be low abroad. While the votes from abroad represented 14.75 per cent²⁴ of the total votes cast in Warsaw I constituency, they did not affect the result of the *Senat* election.

As the number of voters residing abroad has increased after Poland joined the European Union, consideration could be given to reform the current out-of-country voting system, including ways to achieve a more equitable distribution of the out-of-country votes.

The protocols with the voting results (or the information from them) from polling stations abroad are sent to the consul, who certifies and transfers them to the Ministry of Foreign Affairs (MFA) by diplomatic electronic channels, by telefax or telephone. The copy certified by the MFA should be sent by the MFA to the CEC Warsaw I within 24 hours after the end of voting local time. Only once the protocols (or the information from them) have been approved by the MFA, are the commission members abroad allowed to leave the polling station. The originals of the protocols and the other election material are sent by diplomatic mail to Warsaw and delivered to CEC Warsaw I.

The approval of the protocols should be conducted by a CEC plenipotentiary. The MFA should have only an intermediate role in transmitting protocols from abroad to the CEC.

²³ 3 in London, 2 in Dublin, 1 each in Brussels, Rome and Cologne.

²⁴ 4.78 per cent in the 2005 elections.

VI. CAMPAIGN

A. POLITICAL PARTIES AND THE CAMPAIGN

Six election committees and one election committee of a coalition registered candidate lists in all of the 41 constituencies for these elections. The six election committee lists included five parties who were represented in Parliament: PiS, PO, Samoobrona, LPR and PSL, and the Polish Labour Party (PPP). The election coalition Left and Democrats (LiD) was made up of four parties, SLD, the Social Democratic Party Poland (SDPL), Labour Union (Unia Pracy), and Democratic Party (PD).

In the run-up to the elections the League of Polish Families (LPR) announced a coalition with the group Prawica Rzeczpospolita (Right of the Republic) of former Speaker of Parliament Marek Jurek, and with Union of Real Politik (UPR) of Janusz Korwin-Mikke. This coalition was called League of the Right of the Republic (also LPR), but the list was registered under the party name of the League of Polish Families, thus avoiding the higher threshold for coalitions to be eligible to enter parliament.

Three other election committees registered candidate lists in some constituencies. The Women's Party (Partia Kobiet) registered candidates in seven constituencies, whilst the election committee representing the German Minority and the Patriotic Self-Defence (Samoobrona Patriotyczna) registered a list in one constituency each.

Twenty-nine election committees put forward candidates to run for the *Senat*. Only seven groupings nominated candidates in more than 10 of the 40 constituencies (PO, PiS, LiD, PSL, LPR, UPR and Samoobrona), while 15 of the election committees submitted only a single candidate in one constituency.

The campaign was vigorously contested and polarized, predominantly between the two leading political parties PiS and PO. Political commentators noted that it was one of the most heated and divisive campaigns in Poland since the democratic transition, partly as a result of the lessons drawn by opposition parties from the successful direct and confrontational approach adopted in the 2005 parliamentary and presidential elections by PiS and President Lech Kaczynski.

The campaign often lacked substantive discussion of policy differences, focusing instead on direct and negative attacks on rival parties. The PiS campaigned strongly on an anti-corruption platform and argued that only a vote for it would ensure cleanliness in public life, while stating that a vote for their opponents would mean a return to the alleged 'corrupt' previous period.

Means of campaigning were largely traditional – posters, leaflets, and meetings with voters. The internet was widely used, including TV clips posted on party websites, together with other sites such as You Tube. As a voter chooses only one candidate from the party list, many candidates engaged in active individual campaigning. Several candidates from the Warsaw constituency went to the United Kingdom and Ireland to court the émigré vote. A significant feature of the political contest was the large number of election-related libel cases, apparently used by parties as a form of free publicity as the press has been following up on many such cases and the issues thus get repeated exposure.

The last week of the campaign was dominated by the repercussions of a press conference on 16 October called by the Central Anti-Corruption Bureau (CBA) which provided information on an ongoing bribery investigation concerning a PO deputy from the outgoing *Sejm*. During the press conference, the Head of the CBA, Mariusz Kaminski, stated that voters should take into consideration the information he provided and draw their own conclusions when considering how to vote. The press conference was also re-transmitted on TVP1, the principal public television channel, with the broadcast schedule changed to accommodate it. Video footage from the investigation released during the press conference was subsequently used by PiS to claim that PO planned to privatize the health service, which PO strongly denied.

President Lech Kaczynski appeared to make partisan political interventions during the campaign. Most notably, in an interview aired by the First Station of public radio on 18 October, he stated there were reasons to remove the parliamentary immunity of some of the leaders of PO, but declined to reveal any names or further information.

These incidents at times blurred the distinction between government, state institutions and the ruling party, potentially infringing Article 5.4 of the OSCE Copenhagen Document of 1990, which commits participating States to ensuring a clear separation between the State and political parties.

B. CAMPAIGN FINANCE

The PEA provides for substantive regulation of campaign finance, with several significant attributes:²⁵

- a limit on individual donations (14,040 PLN or some 4,000 EUR per Election Fund),
- a ban on particular kinds of donations (corporate and foreign),
- disclosure of income and campaign expenditure (not later than three months after the election),
- a ceiling on total campaign expenditure (30,305,147 PLN or some 8.6 million EUR), per election committee,
- a regulation that only 8 per cent of total campaign expenditure should be spent on advertising in the media,
- public subsidy according to the seats gained in the *Sejm* and *Senat*.

Such legal provisions have the potential to deliver a rigorous system which enforces principles of equal access and financial moderation in the election campaign. The PEA grants oversight authority to the NEC. The NEC, however, is not entitled in its scrutiny of campaign finance reports to go beyond the information and documentation submitted by election committees. The NEC can request “the assistance given by State organs” for the examination of campaign finance reports submitted by election committees.²⁶ This makes the enforcement of the campaign financing restrictions dependent on the honesty and accuracy of the reports submitted by election committees, or alternatively on effective cooperation between the NEC and other State organs. While there is a high level of trust in the system regulating campaign finance and its functioning, the lack of fully independent investigative power by the NEC could potentially weaken the effectiveness of the regulatory regime.

²⁵ The PEA regulates campaign financing only during the campaign period. The Act on Political Parties regulates political party financing at all other times.

²⁶ PEA, Article 122, para 4.

VII. MEDIA

A. MEDIA LANDSCAPE

Poland has a diverse and vibrant media environment with more than 300 broadcast²⁷ media, including 51 television channels, 254 radio stations and three digital platforms as well as some 3,000 printed publications. The Polish television market is one of the largest in Europe, with public television the dominant component. Although radio and newspapers play a significant role, television is the prime source of political information.

Public media includes both television (Telewizja Polska - TVP) and radio broadcasters (Polskie Radio). TVP broadcasts on six channels; however, TVP1 and TVP2 with nationwide coverage enjoy the highest popularity and viewing. Another terrestrial channel, TVP Info,²⁸ airs through a network of regional branches. A dominant feature of the private sector is competition between the nationwide Polsat, the first established private television channel, and TVN covering around 80 per cent of the country. While Polsat targets its audience principally with entertainment programmes, TVN attempts to attract viewers by combining entertainment with more quality and politics oriented programmes, including through the all-news channel TVN24.

There is a broad range of print media. Although there is no official state newspaper, one of the three most influential dailies, *Rzeczpospolita*, is co-owned by the state. The main newspapers distributed nationwide, *Fakt* and *Gazeta Wyborcza*, declare a circulation of some 400-500,000, with the daily *Dziennik* established in 2006 strengthening competition in the sector.

The broadcast media, including their election-related performance, are overseen by the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji) (hereinafter 'NBC'), which is also in charge of granting licences. The body is composed of five members, with two appointed by the President, two elected by the *Sejm* and one by the *Senat*.²⁹ The current NBC composition is an outcome of amendments to the 1992 Broadcasting Act introduced by the coalition government formed after the 2005 parliamentary elections. The consequence of the changes was that all five members belonged to governing coalition parties. Deadlock ensued when the coalition dissolved and the NBC Chairwoman resigned to run as a candidate in the current elections (see section D below).

Many of the interlocutors of the OSCE/ODIHR EAM raised serious concerns regarding what they saw as a high level of politicisation in the media environment, including within the regulatory body and public television itself. Several international organizations dealing with freedom of expression have noted an uncomfortable atmosphere in the Polish media arena, which has developed especially since the 2005 elections.³⁰ While political influence in the media is longstanding, recent developments have highlighted the deficiency of the current model of oversight. The NBC has been unable properly to discharge its constitutional responsibility. The transformation from State broadcaster to public service broadcaster also

²⁷ Information provided by the National Broadcasting Council on 8 October 2007.

²⁸ From 6 October the channel TVP3 was renamed TVP Info reflecting its strengthened information format.

²⁹ Previously there were 9 members, 3 each chosen by the President, *Sejm* and *Senat*.

³⁰ Reporters Without Borders, Freedom House.

appears to remain unfinished, subordinating its governing structure, via the NBC, to political parties.³¹

Consideration should be given to minimizing governmental influence on the composition of the NBC, and to achieve greater balance, diversity and independence in managerial appointments in public media.

B. LEGAL FRAMEWORK FOR THE MEDIA

Article 54 of the Constitution guarantees freedom of expression and forbids censorship and licensing of the press. Defamation, however, remains a crime punishable by up to two years imprisonment. In addition, the Criminal Code³² provides special protection to public officials, the President and the Polish nation *per se*, offences against the latter two being punishable by up to three years imprisonment. Whilst defamation cases against media professionals ordinarily generate fines, the OSCE Representative on Freedom of the Media has, however, criticized the continuing prosecution of journalists, noting that the practice violates international standards, and calling for governmental action to change inadequate libel and insult provisions in Polish law.³³

Article 213 of the Constitution defines the overarching responsibility of the NBC of safeguarding the public interest regarding broadcasting. The Constitution, the Broadcasting Act and the PEA are relevant for media conduct during the electoral process. Provisions of the PEA³⁴ contain the main principles for the allocation of free and paid airtime for contestants, based on equal opportunity. No requirements are stipulated for election related coverage, such as news or current affairs programmes.

The NEC allocated by lot contestants' free airtime on public television channels (TVP1 and 2, and satellite TV Polonia) and on five stations of public radio. Public television and radio had to allocate in total 15 and 30 hours respectively amongst all contending parties and coalitions with lists registered in at least half of the constituencies for elections to the *Sejm*; and 5 and 10 hours respectively for parties and coalitions with candidates in at least half of the constituencies for the *Senat* elections.³⁵

C. MEDIA MONITORING

On 6 October, the OSCE/ODIHR EAM commenced the monitoring of six television channels, two radio stations and five daily newspapers.³⁶ The EAM monitored the television channels from 18.00 to 24.00 hours, focusing on the main news programmes, free and paid airtime for

³¹ OSI, EU Monitoring and Advocacy Programme - Television Across Europe: Regulation, Policy and Independence, Poland Country Report 2005:
http://www.eumap.org/topics/media/television_europe

³² Articles 133, 135, 212 and 226.

³³ See Press Release of the OSCE Representative on Freedom of the Media of 6 August 2007 at <http://www.osce.org/item/25867.html>

³⁴ Articles 85-94, 180-186 and 216-217.

³⁵ Parties and coalitions which registered a list or candidate in at least one constituency were entitled to a lesser amount of time on regional channels.

³⁶ From 6 to 19 October the OSCE/ODIHR EAM monitored the following media outlets with qualitative and quantitative analysis: *TVP 1, TVP 2, TVP Info, Polsat, TVN, TVN 24* (TV channels); *Public Radio – First Station, Radio Maryja* (radio stations); *Dziennik, Fakt, Gazeta Wyborcza, Nasz Dziennik, Rzeczpospolita* (newspapers).

election contestants and debates between contenders. Public Radio was monitored during its main morning programme, and *Radio Marija* during its evening news programme. The OSCE/ODIHR EAM assessed whether the media provided impartial and balanced coverage of the contestants and State authorities, and the degree of unimpeded access to the media, including allocation of free airtime.

1. Free airtime and debates

Both public television and radio adhered to the legal requirements for free airtime. Between 8 and 19 October free campaign spots were transmitted, prepared by the contestants and with no responsibility for content borne by the broadcaster. The NBC³⁷ defined two time blocs for free airtime during the morning and evening schedules, but specific times remained at the discretion of broadcasters. Public television decided to present its evening bloc before 18.00 hours, thus outside the period usually defined as prime time.

TVP also organized different forms of televised debates. From 1 October, TVP2 aired four live debates³⁸, including the three principal contenders for head of government. The format enabled participants to engage in mutual discussion, and played a significant and constructive role in enabling voters to make informed choices on the views of the main contestants.³⁹ While these three debates were broadcast at 20.00 hours attracting large audiences, the fourth debate between representatives of smaller parties was aired at 16.00 hours. According to the Director of TVP it was entirely up to the competing parties to agree on the participation, suitable model and time.

From 8 October TVP Info also broadcast eight televised debates with all parties and coalitions running nationwide represented.⁴⁰ The format of the debates required party representatives to focus on pre-determined topics and did not provide for a real interactive discussion, thus appearing less attractive for the viewers.

2. News programmes

During the timeframe monitored by the OSCE/ODIHR EAM, most of the monitored media gave broad coverage to the campaign, and provided voters with a diverse range of information, focussing mainly on the positions of the principal contenders on actual issues, rather than on their parties' political platforms. The monitored media devoted the overwhelming majority of their coverage to the three, and closer to election day, the two principal contenders, and only sporadically reported on smaller political parties.

The OSCE/ODIHR EAM received a considerable number of complaints from parties regarding their limited access to the public media, predominantly television, relating to the period before the deployment of the OSCE/ODIHR EAM. OSCE/ODIHR EAM media monitoring findings showed a lack of qualitative balance by the public television broadcaster during the broadcasts monitored. While all three TVP channels devoted the largest news

³⁷ Resolutions adopted on 18 and 25 September 2007.

³⁸ Debates, aired simultaneously on TVP Info and TVN 24, took place in the following order: on 1 October with J. Kaczynski and A. Kwasniewski, on 12 October with J. Kaczynski and D. Tusk and on 15 October with L. Miller and R. Giertych and on the same day with D. Tusk and A. Kwasniewski.

³⁹ *Gazeta Wyborcza* 17 October 2007, citing AGB Nielson Media Research, noted that 10.6 million viewers watched Tusk-Kwasniewski, 10.2m Kaczynski-Kwasniewski and 9.1m Kaczynski-Tusk.

⁴⁰ Some of these debates were also rebroadcast on TVP1.

coverage to PO of all political parties (some 30 per cent on TVP1 and TVP2; and some 32 per cent on TVP Info), the party's portrayal was characterized by mostly neutral and negative information, especially on TVP1 and the informative TVP Info. The PiS, by comparison, was presented on all public channels in a qualitatively balanced way (with some 24 per cent on TVP1 and TVP2; and some 19 per cent on TVP Info).

According to Article 21 of the Broadcasting Act, the role of the public broadcaster is governed by 'accountability for wording' and must be driven by principles of 'balance, impartiality and high quality'. The manner in which the public broadcaster (TVP1) covered the allegations made public against a PO deputy⁴¹ in the final week of the campaign, implicitly questioning the credibility of an entire contending party, was inconsistent with these principles and represented an inappropriate interpretation of its public service responsibilities.

Of the private broadcasters, Polsat, during the timeframe monitored by the OSCE/ODIHR EAM, overall showed a degree of lack of balance in coverage of the main parties, with some 35 per cent of balanced (generally equally positive, neutral and negative) political news coverage for PO, while it gave some 30 per cent to PiS, with a neutral and negative tone prevailing in party related information. TVN and TVN 24, in the timeframe monitored by the OSCE/ODIHR EAM, paid the highest attention to the two main parties, with slightly more news airtime for PO (some 33 per cent and 34 per cent respectively) than PiS (some 31 per cent and 32 per cent). In terms of tone, the two channels showed a broadly balanced approach towards all contestants.

In its main morning show, the First Station of public radio hosted guests from across the political spectrum. Together with its news bulletins it devoted the highest proportion of its time to PiS with some 36 per cent, followed by PO and LiD with some 25 per cent and 21 per cent respectively. Another radio broadcaster, *Radio Maryja*, in its evening news programme presented a clear bias against PO which accounted for 39 per cent of mostly critical information coverage.

The monitored print media expressed a diversity of view, with qualitatively a large proportion of criticism of almost all the contesting parties, and quantitatively dominant coverage of PO and PiS. At the same time, they often displayed an unbalanced approach, by presenting a more negative picture of certain parties. While *Gazeta Wyborcza* showed clear bias against PiS, *Rzeczpospolita* adopted a similar approach towards PO. More balanced portrayal of the two parties, both in quantity and quality, was observed in *Dziennik*.

Public media should ensure that all parties are presented in an impartial and objective manner and no party receives favourable treatment.

D. MEDIA COMPLAINTS AND APPEALS

The NBC received 33 complaints⁴² concerning election-related media coverage, including 18 filed by political parties and 15 by individuals. The majority challenged the conduct of public television, especially the lack of quantitative balance, asserting excessive coverage of the ruling PiS. Despite the fact that the NBC was regularly provided by TVP with monitoring

⁴¹ See Section VI Campaign above.

⁴² Information provided by the National Broadcasting Council on 6 November October 2007.

data of political party coverage on their public television channels, which clearly indicated unequal coverage, the regulator was unable properly to discharge its constitutional responsibility to 'safeguard the public interest regarding radio broadcasting and television'.⁴³

The NBC was unable to elect a new chairperson and function effectively according to law due to deficiencies in its structure⁴⁴ and disagreements flowing from its partisan membership. As a consequence, the NBC did not seek to apply Article 10 of the Broadcasting Law which allows a remedy by requiring problematic broadcasting to cease, with the possibility of financial sanction. Instead, the body adopted a passive and formalistic approach to its responsibilities, only forwarding complaints to the public broadcaster and asking for explanation.

In order to ensure effective independent oversight of the conduct of public media, measures should be considered to reforming the structure of the NBC and its composition.

The NBC should consider commissioning media monitoring based on both quantitative and qualitative criteria in order to identify inequitable and preferential coverage in the media, to allow an appropriate and timely regulatory response.

VIII. PARTICIPATION OF NATIONAL MINORITIES

Under the PEA, election committees from national minorities⁴⁵ are exempt from the 5 per cent national threshold for elections to the *Sejm*.⁴⁶ As a result they need only to receive sufficient votes in a given constituency to be able to take part in the distribution of seats.

Only the German minority in the Opole constituency took advantage of this preference by registering an election committee for these elections. Although their representation was reduced from two seats to one, they maintain their continuous representation in the *Sejm* since 1991.⁴⁷

A 'Belarusian Election Committee' had participated in recent local government elections, but their representatives did not submit an independent list for these elections, noting the obstacle of the short signature collection period for early elections as well as a lack of money and enthusiasm after the recent unsuccessful campaigns. Candidates identifying themselves with the Belarusian-Orthodox community did however run on the election lists of PO, LiD and PSL, with two candidates (both LiD) being elected.

⁴³ Under Article 213.1 of the Constitution.

⁴⁴ The Chairwoman E. Kruk resigned on 26 September 2007 in order to participate in the elections for PiS. Though a new member was appointed, the NBC was unable to elect a new chairperson until after the elections, on 23 October 2007. The current law requires a two-thirds majority, and the partisan split of 3 to 2 in its membership prevented agreement on a new chairperson, thereby frustrating its proper and effective functioning.

⁴⁵ Article 2.2, Law on National and Ethnic Minorities and Regional Languages, 8 January 2005, identifies nine national minorities in Poland: Armenian, Belarusian, Czech, German, Jewish, Lithuanian, Russian, Slovak and Ukrainian.

⁴⁶ PEA, Article 134.

⁴⁷ In 2005 the German minority received 34,469 votes (12.92 per cent of Opole district vote) and gained two seats. In 2007 they received 32,462 (8.8 per cent) with only once candidate elected. Due to the increase in turnout and the large vote for PO (which under the d'Hondt system gave them seven regional mandates), they would have needed around 49,000 votes to have maintained their second seat in the *Sejm*.

Other minorities are too small or dispersed to directly elect their own members. However, members of the Ukrainian minority also ran on the lists of national political groupings, and a prominent activist (candidate for PO) was elected in Elblag.

National minority issues did not appear to play a significant role in the elections. The German minority informed the OSCE/ODIHR EAM that they were satisfied with the local campaign in the Opole region. They expressed concern, however, that potential voters were lost as under the current regulations overseas votes are counted for the Warsaw I constituency, rather than for the constituency where the voters remain registered.

IX. WOMEN'S PARTICIPATION

While equal rights for men and women are guaranteed in the Constitution and 5 out of 21 ministries in the outgoing government were headed by women, government support for gender equality mechanisms appeared to be on the decline. The mandate of a Government Plenipotentiary for Equal Status of Women and Men, appointed in 2001 and responsible for policy formulation and initiation of legislation and including a regional structure, was not prolonged in 2005. Gender equality issues have subsequently been dealt with by a Department for Women, Family and Counteracting Discrimination in the Ministry of Labour and Social Policy, focussing on the lack of labour market access for women. A draft law on gender equality failed hitherto to be enacted.

Women participated actively in the current elections, and 22 per cent of candidates were women on the lists of the seven election committees running in all 41 constituencies.⁴⁸ In the absence of a legally prescribed ranking or quota requirement for the inclusion of women on candidate lists, PO was the only party declaring a specific policy for promoting women as candidates. At least one woman was to be included in the top three positions⁴⁹ in each of the party's candidate lists.⁵⁰ Ninety-four women were elected to the *Sejm*, leaving women's participation at 20 per cent in the lower house, the same as in 2005. In the *Senat* the representation of women has declined since 2001.⁵¹

The newly founded Women's Party⁵² participated in the elections and engaged in a successful media campaign. The party competed in seven out of 41 constituencies and results showed that it remained well below the required 5 per cent threshold to enter parliament. The requirement of collecting 5,000 signatures in each constituency in order to be able to field a candidate list in that constituency was reportedly difficult to meet for a newly established party.⁵³

⁴⁸ PPP 28.64 per cent, Samoobrona 23.98 per cent, LiD 22.16 per cent, PO 21.1 per cent, LPR 20.38 per cent, PiS 19.17 per cent, PSL 18.15 per cent.

⁴⁹ In Siedlce, Gdynia and Kalisz the first woman was placed lower than position 3.

⁵⁰ Women were placed first on the list in 11 constituencies for Samoobrona, 9 for PiS, 7 for PPP, 6 for PO, 5 for LiD and PSL respectively, and 1 for the LPR.

⁵¹ 2001: 23 women, 2005: 14 women, 2007: 8 women.

⁵² Registered in January 2007.

⁵³ When an election committee has collected 5,000 signatures in at least half of the electoral constituencies, it is automatically entitled to field candidate lists in all other constituencies without further supporting signatures (PEA Article 142.2).

The table below sets out the representation of women in the newly elected *Sejm*:

Parties entering parliament			
	Deputies	Women	% Women
PO	209	49	23
PiS	166	34	21
LiD	53	10	19
PSL	31	1	3
German Minority	1	0	0

Women were well represented in the lower levels of the election administration, although there was no female member of the NEC.

Ways to increase participation of women in both houses of parliament should be discussed by a broad spectrum of stakeholders, including civil society.

X. CIVIL SOCIETY AND YOUNG VOTERS

Non governmental organizations (NGOs) and the civil society sector were actively engaged in efforts to increase voter participation, especially amongst young voters, following concerns raised after turnout fell to 40.5 per cent in the 2005 parliamentary elections. A consortium of twelve NGOs combined their resources in one general project, “21pazdziernika.pl”, in order to promote participation in these elections. The project was addressed mainly to young voters in a campaign using e-mail, publicity handouts, posters and TV advertisements on public and private television. In addition, there were a number of other organizations and individuals engaged in get-out-the-vote campaigns. “Wybieram.pl”, an NGO focusing on participation of youth and students in public life, used multimedia platforms, social networks and discussion forums on the internet to attract the interest of young voters in the elections. The NGO also provided information mainly to students and voters abroad on how to vote.

Exit polls following these elections suggested that turnout was higher amongst young people than at the previous elections.

The Institute of Public Affairs (ISP) had also responded to the low turnout at the last parliamentary elections by proposing legislative changes to enable proxy or postal voting, or polling conducted over two days. Although the ISP lobbied in parliament and sought to encourage public debate, no changes were made, with politicians expressing concern about the potential for increasing voter fraud.

The electoral framework provides for election committees to nominate representatives as observers in polling stations. As noted above,⁵⁴ non-partisan domestic observers as well as international observers are not mentioned in the electoral framework and there is no procedure in place to allow their registration.⁵⁵ The traditionally high level of confidence of political parties and voters in the conduct of the elections appears to have affected the interest of even partisan stakeholders in closely scrutinizing election-day proceedings.

⁵⁴ See Legal Framework, Section IV E.

⁵⁵ The election committees are free to field any number of poll observers by providing them with an authorization letter.

The 1990 OSCE Copenhagen Document clearly acknowledges the benefits deriving from domestic observation, which can play a valuable role through objective scrutiny in ensuring that best practices are maintained. Poland is encouraged to consider introducing relevant provisions to this effect.

XI. VOTING

In line with standard OSCE/ODIHR practice, the OSCE/ODIHR EAM did not observe voting and counting in a systematic or comprehensive manner. However, the OSCE/ODIHR EAM visited a variety of polling stations in the areas of its deployment, in Warsaw, Krakow and Gdansk and their surroundings. Voting took place from 6.00 to 20.00 hours local time. In countries where the closing time would come after midnight on election day Warsaw time, polling was held on Saturday, 20 October.⁵⁶

Overall, voting appeared to be conducted in a calm and orderly manner, with at least three PEC members present as required by law. Voters' identification was properly checked, and voters' signatures on the list were requested for the receipt of ballots. Voters bearing ORCs were added to the voter list and allowed to vote. However, in widespread violation of OSCE commitments regarding the secrecy of the vote,⁵⁷ many voters marked their ballots outside the booths in full view of others, ignoring the essential requirements for secrecy. Family, group and open voting was witnessed by the OSCE/ODIHR EAM in every polling station visited. Whilst the NEC Guidelines⁵⁸ explicitly oblige the PECs to ensure ballots are marked behind screens, nowhere did the OSCE/ODIHR EAM see any corrective action by the PEC members. The integrity of the secrecy of the vote is fundamental. OSCE commitments require that it 'must be preserved in all aspects of operations at the polling place'.⁵⁹

In order to ensure respect for the integrity of the ballot and to overcome the apparent relaxed public attitude towards the secrecy of the ballot, nationwide voter education should be undertaken, and appropriate guidance and training provided for all PEC staff.

The PEA makes no provision for replacing a spoiled ballot paper. If a voter makes a mistake in marking a ballot in the voting booth and recognizes it at the time, he or she is not allowed to receive a replacement ballot. Indeed, the NEC Guidelines⁶⁰ categorically prohibit the issuance of a second ballot paper in these circumstances. The opportunity to cast a valid vote is thus lost.

Parliament should consider appropriate amendments to the PEA to prevent unnecessary disenfranchisement of voters who mistakenly marked their ballot.

Whilst voting was generally well organized, some of the polling stations which the OSCE/ODIHR EAM visited were not arranged in a way that allowed a continuous flow of voters from receipt of the ballot, to the voting booth and thence to unimpeded exit from the

⁵⁶ In the countries on the American continent.

⁵⁷ 1990 OSCE Copenhagen Document, paragraph 7.4.

⁵⁸ Article 21.

⁵⁹ Existing Commitments for Democratic Elections in OSCE participating States. A Progress Report, 2003, paragraph 8.9.

⁶⁰ Article 18.

premises. The OSCE/ODIHR EAM witnessed a number of voting surges, such as when polling stations filled with voters at the end of church services nearby, and due to the reduced number of PEC members and the insufficient number of polling booths⁶¹ the atmosphere verged on the chaotic. At these times PECs lost any visual control of the ballot box and booths.

Serious thought should be given to reducing the numbers of voters per polling station, requiring more PEC members to be present during voting, and providing more specific guidance on the setup of polling stations.

Expecting low turnout, and following previous practice, CECs arranged for the printing of ballot papers amounting to only 80 per cent on average of the number of eligible voters in their constituency. CECs kept a certain quantity of ballot papers in reserve, issuing less than 80 per cent to the PECs.⁶² Turnout in some constituencies, especially in big cities, surprised the election administration. In some instances, the PECs did not request additional ballots in sufficient time, and in others the logistic support staff from the municipalities and the NEO units failed to organize in time the delivery of the requested additional ballots. This led to interrupted voting in some 50 polling stations,⁶³ and subsequently to the prolongation of voting after 20.00. The majority of the affected PECs closed in the first half hour after 20.00 hours; in two polling stations in Warsaw the polls were closed considerably later.⁶⁴ The NEC reacted to the PEC decisions to prolong voting by correspondingly postponing several times the end of the election day silence, which unsettled both the media and the public. The delay of nearly three hours in the announcement of the results of the first exit polls had a damaging impact on hitherto unqualified public confidence in the organizational capacity of the election administration.

Appropriate arrangements should be made to ensure that PECs have sufficient ballots at all times of polling.

Television coverage from abroad showed long queues of voters for some polling stations for out-of-country voting. The high number of voters, more than 4,000, in some polling stations abroad could have placed potential difficulties on election administrators abroad.⁶⁵

Although all registered election committees were entitled to have observers with each commission, the OSCE/ODIHR EAM did not witness any domestic observation during the voting.

The reported turnout nationwide was 53.88 per cent, varying by constituency from 45.53 per cent in Opole to 74.03 per cent (73.44 per cent without the out-of-country votes) in Warsaw I.

⁶¹ The OSCE/ODIHR EAM visited at least two polling stations in Warsaw where there was only a single voting booth.

⁶² In some of the polling stations visited by the OSCE/ODIHR EAM the PECs received a number of ballots equal to 75 per cent of the voters on the voter list.

⁶³ Interruption of voting was reported in 14 polling stations in Krakow, 7 in Gdansk and 30 in Warsaw.

⁶⁴ The latest closing time was at 22:50 hours.

⁶⁵ London, Dublin, New York, Cologne.

XII. COUNTING AND TABULATION

Counting in the few polling stations visited by the OSCE/ODIHR EAM was conducted in the presence of all PEC members and in general consistently with legal provisions and the NEC Guidelines.

After the ballot box is opened the ballot papers for the elections to the *Sejm* and the *Senat* are separated and counted. The resulting numbers are compared against the numbers of voters who received ballot papers and any discrepancy found and not resolved by a recount has to be explained in the relevant results protocol. Ballot papers which are not of the prescribed form or are not stamped by the PEC are considered invalid and their number is entered in the respective draft protocol.

At the next stage, the valid ballots for the *Sejm* election are separated into piles of valid and invalid votes. The PECs appeared to have no difficulties or disputes over establishing the validity of votes. The PEA contains specific requirements for marking ballot papers by voters and evaluating their validity during counting.⁶⁶ Voters are allowed to express their choice only by putting an 'X' in the defined place next to a candidate on the ballot paper. The NEC has interpreted these provisions of the law literally so that no mark, other than an 'X', is counted as a valid vote, even when the intent of the voter is clear.

The narrow wording of the law and its strict interpretation by the election administration would benefit from review to reflect the general principle that any vote which clearly expresses the will of the voter should be respected.

Whilst the NEC Guidelines provide for starting the counting process for the *Senat* election after the count for the *Sejm* is completed, in most of the PECs visited by the OSCE/ODIHR EAM the separation of the valid and invalid votes for the *Senat* election was done at the same time as the separation of the votes for the *Sejm*. The count of the valid votes for the *Senat* appeared difficult and time consuming. In the absence of specific regulations, the practice adopted by the PECs observed was that one PEC member announced the names of the candidates marked on each ballot, while several or all the other PEC members would keep a record for one or more candidates as each name was called out. Such an organization of the count is obviously open to abuse because in practice all PEC members are working separately and the possibilities for mutual control are minimal. Nonetheless, the OSCE/ODIHR EAM saw nothing to suggest other than that the PEC members observed were determined to act fairly and impartially in their work, thus inspiring confidence in the reliability of the results produced.

Some years ago Poland introduced an IT system for the processing and transmission of data on voting and election results. Computers are currently available on election day in more than 95 per cent of polling stations, enabling PECs to check the correctness of the data from the count and to transmit it swiftly to CECs and the NEC. The data from the draft protocols is fed into a computer by an operator hired by the municipality and trained previously under the supervision of a CEC plenipotentiary responsible for the IT system. Login and password details are delivered to the Chair of the PEC together with the other election material. The PEC Chair also receives at the latest by noon on election day a licence for electronic signature

⁶⁶ Articles 160, 201 and 202 of the PEA.

to be used for certifying the electronic version of the protocols. The system provides information on the correctness and compatibility of the data input from the protocols by means of warning messages on the screen indicating mistakes. The PEC analyses the messages, checks the data on the draft protocols, recounts the votes if necessary and corrects mistakes. The system generates the respective protocol when it recognizes no errors. Explanations should be provided for persistent warnings (if any). The printed copy of the protocol is checked against the draft protocol by all PEC members present and if no differences are found the computer protocol is certified by the electronic signature of the PEC Chair and recorded on a disc.

Where possible the data from the electronic protocols is transmitted to the NEC IT server via the Internet. Two copies of the protocol are signed by all PEC members present and by party observers who submitted complaints or remarks. Where there was no computer available, or the equipment broke down, the copies are prepared manually. One copy of each protocol is posted in the PEC, while the second together with the disc with the electronic copy of the protocol is delivered to the CEC in a sealed envelope by the PEC Chair or by a plenipotentiary appointed by the CEC.

In the CECs, checks are made of the paper protocols for the requisite data, signatures and stamps. Data from the electronic protocol is checked against that in the paper protocol using a unique 32-digit number attributed to it by the software and only then is the protocol approved by CEC. The approval of the protocol is immediately transmitted to the NEC server and the data is included in the NEC database of confirmed results. The aggregation of the results from the confirmed PEC protocols is done automatically by the system. All stages of the process are well documented and the intermediate results based on confirmed protocols are posted on the NEC website. The data from the PEC protocols is made available only when all of the protocols in the constituencies are confirmed.

A delay in receipt of the results from the out-of-country voting in UK, Ireland and other European countries created some concern as to whether the results would arrive within the 24-hour legal deadline from close of the polls. No reasonable explanation for the delay was provided by the MFA, which was responsible for the organization of voting abroad and for the transmission of the results. In the event, however, the results were submitted to DEC Warsaw I shortly before the legal deadline and no votes from abroad were invalidated due to late delivery.

The official results of the elections were announced by the NEC at a press conference at 16.45 hours on 23 October.

ANNEX: ELECTION RESULTS

SEJM

Number of registered voters:	30,615,471
Number of voters issued with ballots:	16,495,045
Number of ballots found in the boxes:	16,486,116
Number of valid ballots:	16,477,734
Number of valid votes:	16,142,202
Number of invalid votes:	335,532 (2.04 per cent)

Nr.	Name of the Electoral Committee	Votes received	Percentage	Number of seats
2	Polish Labour Party (PPP)	160,476	0.99	
3	League of Polish Families (LPR)	209,171	1.30	
6	Law and Justice Party (PiS)	5,183,477	32.11	166
8	Civic Platform (PO)	6,701,010	41.51	209
10	Polish People's Party (PSL)	1,437,638	8.91	31
15	Self-Defence of the Republic of Poland (Samoobrona)	247,335	1.53	
19	German Minority	32,462	0.20	1
20	Left and Democrats Coalition (LiD) [SLD+SDPL+PD+UP]	2,122,981	13.15	53
21	Women's Party	45,121	0.28	
22	Patriotic Self-Defence	2,531	0.02	

SENAT

Number of registered voters:	30,615,471
Number of voters issued with ballots:	16,494,503
Number of ballots found in the boxes:	16,484,344
Number of valid ballots:	16,475,672
Number of valid votes:	16,190,804
Number of invalid votes:	284,868 (1.73 per cent)

Name of Electoral Committee	Number of seats
Law and Justice (PiS)	39
Civic Platform (PO)	60
Cimoszewicz for the <i>Senat</i>	1

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the 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.

The OSCE/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 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates 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 standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/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. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/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 persons, 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**, the OSCE/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. The OSCE/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.

The OSCE/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/odihhr).