



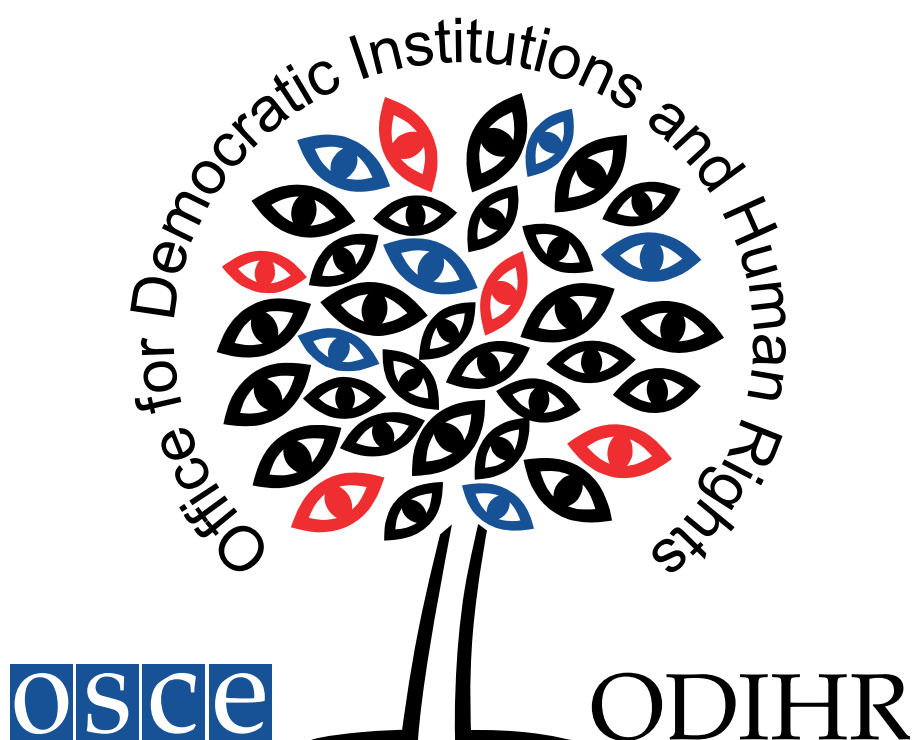
Office for Democratic Institutions and Human Rights

POLAND

PARLIAMENTARY ELECTIONS 2019

ODIHR NEEDS ASSESSMENT MISSION REPORT

17-20 June 2019



Warsaw
25 July 2019

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**REPUBLIC OF POLAND
PARLIAMENTARY ELECTIONS
2019**

ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the Ministry of Foreign Affairs of the Republic of Poland to observe the upcoming parliamentary elections, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 17 to 20 June. The NAM included Alexander Shlyk, Head of ODIHR Election Department, Lusine Badalyan, ODIHR Senior Election Adviser, and Keara Castaldo, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and preparations for the elections. Based on this assessment, the NAM should recommend whether to deploy an ODIHR observation activity for the forthcoming elections and, if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions as well as with representatives of political parties, media, and civil society. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and co-operation in organizing the NAM. ODIHR would also like to thank each of its interlocutors for taking the time to meet with the NAM and for sharing their views.

II. EXECUTIVE SUMMARY

Poland is a semi-presidential republic with a government led by the prime minister, who is confirmed by the bicameral parliament, and a directly-elected president serving as head of state. In the upcoming parliamentary elections, voters will elect 100 members to the upper chamber (*Senat*) and 460 members to the lower chamber (*Sejm*).

The electoral legal framework has been amended on multiple occasions since the last parliamentary elections, including significant changes adopted in early 2018 in an expedited manner. A few amendments were in line with prior ODIHR recommendations, such as introducing provisions for citizen observation and broadening rights to appeal decisions of the election administration; however, a number of prior ODIHR recommendations remain unaddressed. Several ODIHR NAM interlocutors expressed concerns over amendments which increased the role of the government in the management of the electoral process and a lack of meaningful public consultation prior to the adoption of these changes.

Elections are managed by the National Election Commission (NEC) together with a National Election Office, as well as constituency and precinct election commissions. The structure of the NEC remains unchanged in the upcoming elections, but will subsequently include more political appointments. A new category of election officers, appointed from among public employees, will oversee the work of polling station personnel. ODIHR NAM interlocutors

indicated trust in the overall professionalism of the election administration, including in the conduct of election day procedures, but noted that changes to its composition following these elections could undermine public confidence.

The election administration conducts voter education, including related to the rights and options of voters with disabilities, and produces some materials in accessible formats. However, some stakeholders reported concerns related to the inaccessibility of polling stations and lack of efforts by the political parties to make political rallies more inclusive for persons with disabilities. The parliament has adopted and proposed a series of legislative changes which, overall, reduce opportunities for alternative modes of voting, primarily impacting voters with disabilities. Contrary to international standards, national legislation prohibits persons revoked of legal capacity from forming or joining an association as well as from organizing public assemblies.

Citizens of at least 18 years of age have the right to vote, unless this right is revoked by a court decision, including on the basis of mental disability, which contravenes international standards. Voter registration is passive and the voter list is extracted from the national population register on the basis of data collected by local authorities. No ODIHR interlocutors raised concerns related to the maintenance and accuracy of the voter list.

Candidate lists are registered on the constituency level based on nominations by electoral committees representing political parties, coalitions and groups of voters. The law does not prescribe specific standards or procedures for signature verification, contrary to a prior ODIHR recommendation. Notwithstanding, ODIHR NAM interlocutors raised no concerns related to party or candidate registration processes.

Although women candidates are often highly visible in electoral campaigns and related media coverage, including as party leaders, women remain underrepresented in parliament and government and stakeholders reported a lack of strategy by political parties and authorities to further promote women in public life. The existing requirement for gender representation on candidate lists does not include guarantees that each gender is placed in winnable positions. No current members of the NEC are women and no requirements exist on the representation of each gender within the election administration.

The current political climate is highly polarized. The campaign is expected to be particularly competitive in certain closely contested districts. The legal framework does not strictly regulate the activities of public officials during the campaign period, and several stakeholders reported concerns related to the misuse of state resources at the national and local levels in campaigns. Several ODIHR NAM interlocutors expected that inflammatory rhetoric, including xenophobic and homophobic hate speech, will feature in the upcoming parliamentary campaign, and highlighted the need to observe the conduct of the campaign at the regional level.

Electoral committees must submit a financial report to the NEC within three months after election day; no detailed interim reporting is required, but voter election committees must disclose all donations within seven days of receipt. The law does not foresee gradual sanctions for violations. Recent amendments to the Election Code removed the possibility for sanctioning third-party campaigning or contributions, which raises concerns of potential abuse.

The media environment in Poland is pluralistic but polarized. Management of public broadcasting has undergone recent changes, and many stakeholders described systemic pro-

government bias in the public media, including in news programmes. Although mandated by law to monitor media, the National Broadcasting Council does not systematically monitor public or private media for compliance with electoral obligations. Defamation and public insult are criminal offenses subject to imprisonment, and these provisions have resulted in litigation against media outlets and activists.

In line with a prior ODIHR recommendation, amendments to the Election Code broadened appellate rights related to NEC decisions and instructions. A new chamber within the Supreme Court, now subject to a different appointment procedure, was vested with the authority to validate election results. Although stakeholders did not raise major concerns related to procedures for election dispute resolution, many described an overall lack of public confidence in the independence of key judicial bodies and the resultant efficacy of filing complaints.

In considering an observation activity, the ODIHR NAM has taken into account the various findings outlined in this report, including recent substantive changes to the electoral legal framework, and the views expressed by stakeholders. The ODIHR NAM noted overall confidence in the conduct of the election administration, including election day procedures, although interlocutors raised concerns related to forthcoming changes to the composition of election management bodies. Stakeholders also highlighted several aspects of the revised legal framework and the conduct of the election campaign that would merit particular attention, including the new role of constituency election officers, media coverage of the elections, effectiveness of campaign finance oversight, possible misuse of state resources including on the local level, and the role of the judiciary in the resolution of election-related disputes. Many interlocutors welcomed a long-term ODIHR activity to observe the pre-election campaign environment throughout the country and to systematically assess the public and private media coverage of the elections.

Based on the findings of this report, the ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM), subject to the availability of resources, to assess the forthcoming parliamentary elections. In addition to a core team of experts, the ODIHR NAM will request the secondment of 18 long-term observers from OSCE participating States to follow the electoral process countrywide. While the mission would visit a limited number of polling stations on election day, comprehensive and systematic observation of election day proceedings is not envisaged. In line with ODIHR's standard methodology, the LEOM would include a media monitoring element.

III. FINDINGS

A. BACKGROUND

Poland is a semi-presidential republic with a government led by the prime-minister, who is confirmed by the parliament, and a directly-elected president serving as head of state. The bicameral parliament comprises the upper chamber (*Senat*) with 100 seats and the lower chamber (*Sejm*) with 460 seats.

Following the last parliamentary elections in October 2015, candidates from six lists were elected to the *Sejm* and from seven lists to the *Senat*. The Law and Justice Party (PiS) gained the largest number of seats in both chambers, and formed a government, overtaking the then-

ruling Civic Platform (PO) party.¹ In the 2018 local elections, PiS won a majority of seats in 9 of 16 regional authorities, while PO maintained mayoral seats in many major cities, including Warsaw. In the 2019 European Parliament election, PiS won 27 seats, PO-led coalition 23, and Wiosna, a new party established in February 2019, won 3 seats.

Since coming to power in 2015, the PiS government has introduced a series of substantive changes to laws on the judiciary and public media, generally increasing the scope of political appointments.² In 2016, the European Commission launched an investigative inquiry into adherence to the principle of rule-of-law, following changes to the Constitutional Tribunal and the management structure of public broadcasters. In December 2017, the Commission initiated Article 7 proceedings in response to a bill which lowered the mandatory retirement age of Supreme Court judges and granted the president with discretionary power to prolong judicial terms.³ The government later suspended these latter provisions, which were then also found by the European Court of Justice to violate European law.⁴

ODIHR has previously observed three parliamentary elections in Poland.⁵ For the 2015 parliamentary elections, ODIHR deployed an Election Assessment Mission, which concluded that “[t]he elections were competitive and pluralistic, conducted with respect of fundamental principles for democratic elections in an atmosphere of freedom to campaign and on the basis of equal and fair treatment of contestants. With a few exceptions, the comprehensive legal framework generally provides a good basis for conducting democratic elections in line with OSCE commitments and other international obligations and standards. The Election Code has undergone revision since the last parliamentary elections, including a number of positive changes and addressing some previous OSCE/ODIHR recommendations, such as the review of incapacitation provisions in the context of voting rights in line with international standards. However, the absence of provisions for independent candidacy and citizen non-partisan election observation remain to be addressed”.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Parliamentary elections are primarily regulated by the Constitution and the 2011 Election Code (last amended in 2018).⁶ These rules are supplemented by non-binding guidance and

¹ The *Sejm* comprises seats held by PiS (235), the Civic Platform (PO, 138), the association Kukiz15 (42), Nowoczesna (28), the Polish People’s Party (PSL, 16), and the German Minority (1). The *Senat* comprises 71 seats held by the PiS, 34 seats held by the PO, and one member elected from each of the PSL and four voters’ committees. In 2015, 125 women were elected to the *Sejm* and 14 to the *Senat*.

² Changes included, but were not limited to, a new procedure for the election of the president of the Constitutional Tribunal, authorizing the president of the republic to appoint an “acting president”, a term not recognized by the Constitution. In 2017, the terms of members of the National Council of the Judiciary, responsible for judicial appointments, were prematurely terminated, and the structure amended so that 15 of 25 members are appointed by the Sejm rather than by judges. A new National Media Council (NMC) responsible for determining the leadership of national and regional public broadcasters comprises a majority of PiS appointees who are party members.

³ Article 7 of the Treaty of the European Union details a mechanism to suspend the rights of a member state, such as voting privileges in the European Council.

⁴ See judgment in [case C-619/18, *Commission v Poland*, 24 June 2019](#).

⁵ See all previous [ODIHR election-related reports on Poland](#).

⁶ Other relevant legislation includes the 1990 Law on Assemblies (amended in 2016), 1997 Political Parties Act (last amended in 2015), 1992 Broadcasting Act (last amended in 2015), 1984 Press Law (last amended in 2013), and the penal and criminal codes.

instructions of the National Election Commission (NEC). Poland is party to major international and regional instruments related to the holding of democratic elections.⁷

The electoral legal framework has been amended on multiple occasions since the last parliamentary elections, including significant changes adopted in early 2018 in an expedited manner. Some of these changes were in line with prior ODIHR recommendations and were welcomed by ODIHR NAM interlocutors, such as provisions for citizen observation, regulations on the publication of results protocols, and a broader possibility to appeal decisions of the election administration. Other amendments, some of which contradict prior ODIHR recommendations, introduced a new appointment procedure for the NEC and the head of the National Election Office (NEO), reduced the availability of postal voting, removed prohibitions on third party campaigning, expanded permissible types of in-kind contributions to campaigns, and allowed election officials to participate in campaigns.⁸ A number of ODIHR NAM interlocutors expressed a high level of concern regarding the lack of meaningful public consultation prior to the adoption of these changes.

Senators and deputies are elected for four-year terms. Candidates for the *Senat* are elected through a first-past-the-post system in 100 single-mandate constituencies. Members of the *Sejm* are elected through a proportional open list system from 41 multi-member constituencies. Following the 2018 amendments, election commissioners, rather than local authorities, are responsible for delineation of electoral constituencies and the maximum number of residents allocated to each polling station is now 4,000, an increase from 3,000.

Electoral committees representing political parties, coalitions and groups of voters can register candidates for the *Senat* and/or lists for the *Sejm*. Electoral committees whose lists receive at least five per cent of valid votes nationwide (eight per cent for coalitions) participate in seat distribution to the *Sejm*. Electoral committees registered by recognized national minorities are exempt from any threshold requirement. For the *Senat*, the candidate who receives the largest number of votes is elected in each constituency.

C. ELECTION ADMINISTRATION

Elections are administered by a three-tiered structure comprised of the NEC and NEO, 41 Constituency Election Commissions (CECs), and some 27,000 Precinct Election Commissions (PECs). Additional PECs are established in diplomatic representations abroad to implement out-of-country voting. Most ODIHR NAM interlocutors conveyed trust in the overall professionalism of the election administration, including in the conduct of election day procedures.

⁷ Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 2003 Convention Against Corruption (CAC), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD). Poland is also a member of the Council of Europe's European Commission for Democracy through Law (Venice Commission) and Group of States against Corruption (GRECO), and is a party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the 1995 Framework Convention for the Protection of National Minorities.

⁸ An additional amendment that provided for live-streaming from polling stations on election day was later reversed, with the NEC citing high costs and lack of administrative feasibility. Most amendments took effect prior to the 2018 local and 2019 European Parliament elections, while the new composition of the election administration will take effect after the 2019 parliamentary elections.

The NEC is a permanent structure responsible for overseeing the implementation of the election legislation, maintenance and update of the voter list, registration of electoral committees, oversight of campaign finance, and the announcement of final election results. Currently, the NEC comprises nine active or retired judges, three nominated by each of the Constitutional Tribunal, the Supreme Court, and the Supreme Administrative Court. The law foresees that the NEC selects a chairperson and two deputy chairpersons from among its members, but the post of chairperson has remained vacant since March 2019. No current members of the NEC are women and no requirements exist on the representation of each gender within the election administration.

Amendments to the Election Code in 2018 which will enter into force after the 2019 parliamentary elections, authorize political parties to appoint seven of the nine members of the NEC, proportional to their representation in the *Sejm*, with another two members appointed by the Constitutional Tribunal and the Supreme Administrative Court, respectively. The amendments also allow only the Minister of the Interior to nominate candidates for the head of the NEO, the executive body within the NEC which is responsible for the administrative, financial and logistical organization of the elections. Many ODIHR NAM interlocutors noted that these amendments could weaken the independence of the election administration and undermine public confidence in its impartiality.

CECs supervise the implementation of election legislation by lower-level commissions, register candidate lists, and handle complaints related to decisions of PECs, which oversee election day procedures. CECs are temporary and comprise nine members appointed by the NEC. PECs are established at least 21 days before election day, and comprise 9 members nominated by electoral committees, with a chairperson nominated by the local administration. Amendments in 2018 introduced a new category of election officers at the constituency level to be appointed by the head of the NEO from among public employees. These officers are responsible for ensuring the appropriate conduct of election day procedures by the PECs, and for overseeing general preparations such as PEC trainings and the delivery of ballots. Election officers may not be appointed in the municipality in which they are a registered voter. ODIHR NAM interlocutors did not raise concerns related to the introduction of election officers to oversee the PECs, but some noted difficulties in recruiting sufficient election personnel on the local level.

The parliament has adopted and proposed a series of legislative changes which, overall, reduce opportunities for alternative modes of voting, primarily impacting voters with disabilities. Since 2018, voters must provide a physical disability certificate in order to register for postal voting, removing the opportunity for the elderly and others with limited mobility, who are now limited to proxy voting, and voters residing abroad, who are now limited to in-person voting at designated consular offices.⁹ Proxy voting was previously criticized by ODIHR as contrary to OSCE commitments related to the secrecy and equality of the vote. Proposed legislation in 2017, which was not adopted, sought to prohibit Braille ballot templates in polling stations. Several ODIHR NAM interlocutors raised concern related to the accessibility of polling stations for persons with physical disabilities, and noted an already cumbersome administrative

⁹ See also paragraph 51 of the [2018 CRPD concluding observations](#), which raised concern about “[t]he amendment made to the electoral law in 2018, which limits voting procedures by correspondence, and therefore the accessibility of voting procedures for persons with disabilities”.

process of registration for postal voting.¹⁰ ODIHR had previously recommended that the authorities should better publicize the then-established option of postal voting as an alternative to proxy voting for voters with limited mobility.¹¹ Positively, the election administration conducts voter education, including related to the rights and options of voters with disabilities, and produces some materials in accessible formats.

D. VOTER REGISTRATION

Citizens of at least 18 years of age have the right to vote, unless this right is revoked by a court decision, including on the basis of mental disability, which contravenes international standards.¹² The Ombudsperson has previously called on the authorities to review the Constitution, the Civil Code and other acts related to the legal incapacitation of persons with disabilities in order to, among other things, lift the restriction on voting rights.¹³

Voter registration is passive. The voter lists are derived from the national electronic population register which is maintained by the Ministry of Internal Affairs and Administration. For each election, voter lists are drawn from this register by local government authorities in co-operation with the NEC. Voters may verify their inclusion in the voter list or obtain information on their voter record by submitting a request to the municipal authority. According to the NEC, there are currently some 30.1 million registered voters. No ODIHR NAM interlocutors raised concerns related to the maintenance or accuracy of the voter lists.

A voter may request to be included in a voter list at a place of temporary residence. These voters receive an absentee voter certificate (AVC) in order to cast a ballot at any polling station in the country, and are added to the respective voter list by the PEC on election day. To protect against fraud, the Election Code requires municipalities to uniformly issue AVCs according to a sample provided by the NEC.

Eligible voters residing abroad must actively register for each election with the diplomatic mission in their country of residence. Voters can apply in-person or by phone, mail, fax, or e-mail. The Ministry of Foreign Affairs estimates that some 3 million eligible voters reside outside of Poland. Votes cast abroad are allocated to the fourth constituency of the Warsaw municipality. Both the Ministry and the National Election Commission conduct information

¹⁰ A person must pre-register an electronic profile with the public administration, and the application for postal voting must be accompanied by confirmation from a physician of the extent of the voter's disability.

¹¹ See also paragraph 52 of [2018 CRPD concluding observations](#), which recommended that the State party "replace the amendment to the electoral law of 2018, and ensure the accessibility of voting procedures for all persons with disabilities".

¹² Articles 12 and 29 of the [2006 CRPD](#). See also paragraph 9.4 of the [2013 CRPD Committee's Communication No. 4/2011](#), which states that "Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of Article 2 of the Convention". Paragraph 41.1 of the [1991 OSCE Moscow Document](#) commits participating States "to ensure protection of the human rights of persons with disabilities".

¹³ See paragraph 51 of the [2018 CRPD concluding observations](#), which "recommends that the State party establish a procedure aimed at restoring the full legal capacity of all persons with disabilities, and develop supported decision-making mechanisms that respect their autonomy, will and preferences". See also paragraph 41 of the [2016 CCPR concluding observations](#).

campaigns related to the rights and requirements of eligible voters residing abroad, including notice of accessible premises for voters with physical disabilities.

E. CANDIDATE REGISTRATION

Citizens with the right to vote and at least 21 and 30 years of age, respectively, are eligible to stand as candidates for the *Sejm* and *Senat*, except those serving a prison sentence for certain intentional crimes.

Electoral committees formed by parties, coalitions of parties, and groups of voters can be registered with the respective election authority as of the announcement of the elections. They then may submit candidate lists to the respective CEC at least 40 days prior to election day, accompanied by 5,000 supporting signatures for candidate lists for the *Sejm* and 2,000 signatures for *Senat* candidates. Electoral committees that register candidate lists for the *Sejm* in more than half of constituencies are automatically registered nationwide, without requiring supporting signatures from the other constituencies. The CEC may request an electoral committee to correct mistakes in submissions within three days. The law does not prescribe specific standards or procedures for signature verification, contrary to a prior ODIHR recommendation. Notwithstanding, ODIHR NAM interlocutors raised no concerns related to party or candidate registration processes.

The Election Code requires that each gender be represented by at least 35 per cent of candidates on each list but has no requirements on the placement of each gender within the open but ranked lists. Although ODIHR NAM interlocutors reported that there is increased awareness of obstacles faced by women candidates, there is a lack of strategy by parties and authorities to promote women in public life, and in winnable electoral districts.

F. ELECTION CAMPAIGN

The current political climate is polarized. The campaign is expected to be particularly competitive in certain closely contested constituencies. Political parties met by the ODIHR NAM generally did not raise concerns with regard to the ability to campaign freely, but expressed concerns about biased media coverage and misuse of state resources.

By law, the official campaign period begins upon the announcement of elections, and contestants may campaign upon registration. A campaign silence period begins 24 hours before election day, which includes a prohibition on publishing opinion polls. Municipalities are responsible for regulating the free use of public space for contestants during the campaign. The Election Code restricts campaign activities in public institutions and schools, and identifies specific locations for posters and other electoral materials.

The legal framework does not strictly regulate the activities of public officials during the campaign period, but obliges leave from office when campaigning. Several ODIHR NAM interlocutors alleged instances of abuse of state resources in recent electoral campaigns, on the national and regional levels, including campaign materials placed on official vehicles and the use of such vehicles for campaign events.¹⁴

¹⁴ Additionally, in 2017, the government financed an information campaign related to legislative proposals to restructure the judiciary, including a billboard campaign, which opposition parties argued violated

Inflammatory rhetoric, including xenophobic and homophobic hate speech, featured in recent electoral contests and several ODIHR NAM interlocutors expected it to feature in the upcoming parliamentary campaign. Hate speech on the basis of sexual and gender identity or disability is not criminalized under national legislation.¹⁵

Positively, several ODIHR NAM interlocutors noted that women candidates are often highly visible in electoral campaigns and related media coverage, including as party leaders. However, some stakeholders noted instances of sexist rhetoric on social media, predominantly impacting women in public office.¹⁶ Overall, women remain underrepresented in public life.¹⁷

ODIHR NAM interlocutors noted an increase in political rhetoric related to the rights of persons with disabilities following major public demonstrations in 2014 and 2018. However, stakeholders reported that political parties rarely provide sign language interpretation or other modes of accessible information at rallies and in political advertisements. Contrary to international standards, national legislation prohibits persons revoked of legal capacity from forming or joining an association as well as from organizing public assemblies.¹⁸

G. CAMPAIGN FINANCE

Political parties rely heavily on public funding, in the forms of state subsidies and subvention. Each political party, coalition or election committee, which gains at least one seat in the *Sejm* or *Senat*, is eligible to receive a state subsidy. This amount is calculated on the basis of the total expenditures declared in the financial reports and is proportionate to the number of *Sejm* and *Senat* mandates obtained but cannot exceed the limit of the campaign expenditure or the actual expenses of the electoral committee. Moreover, each political party that receives more than three per cent of the total number of votes cast or is part of a coalition that receives more than six per cent of the votes cast for the *Sejm* can obtain annual state subventions during the term of the *Sejm*. Additional income is permitted from donations and membership fees.

Campaigns of electoral committees can be financed from private donations and loans. Party and coalition electoral committees can only be financed from designated election funds. Candidates can contribute to their electoral committee up to 45 times the minimum monthly income, equivalent to approximately EUR 23,445.¹⁹ Individuals can donate up to 15 times the minimum monthly income, or approximately EUR 7,815. Anonymous donations, as well as contributions from foreign sources and legal entities, are prohibited. Specific spending limits are determined for each election committee on the basis of the number of registered candidates

rules on party financing. The NEC declined to assess the matter, citing a lack of necessary resources to verify whether the billboard campaign violated the electoral legislation or the act on political parties.

¹⁵ For example, during the 2019 European Parliament elections, the PiS leader referred to the LGBTI community as a “national threat”. Paragraph 15 of the [2016 CCPR concluding observations](#) noted a “reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the authorities to such incidents”.

¹⁶ In 2017, sexist remarks by a Polish MEP in parliamentary session were widely circulated in the national and international media, including that women are “smaller, weaker, and less intelligent”.

¹⁷ Paragraph 21 of the [2014 CEDAW concluding observations](#) notes “the limited participation of women in public and political life ... and the prevalence of gender biases and stereotypes”.

¹⁸ Paragraph 51 of the [2018 CRPD concluding observations](#) raised concern with “the Law on Associations, which does not allow persons deprived of legal capacity to found an association, to be a member of one, or to organize public assemblies”.

¹⁹ 1 EUR is approximately 4.25 Polish Zloty (PLN).

(for the *Sejm*) or contested constituencies (for the *Senat*), calculated against maximum rates of PLN 0.82 and PLN 0.18 per registered voter, respectively.

Recent amendments to the Election Code removed sanctions on third-party campaigning or contributions, even as these activities still remain prohibited. No regulations were introduced to control or monitor potential campaign activities by third parties. Other amendments broadened the possibility for in-kind contributions to electoral committees, including the free use of venues and vehicles.²⁰ There is no requirement to report in-kind contributions. Several ODIHR NAM interlocutors, including the election administration, raised concerns about the lack of regulation of third-party campaigning and contributions and indicated that these loopholes could easily be abused.

The NEC is the primary oversight body for political and campaign finance. Political parties that receive annual state subventions are obliged to submit annual financial reports to the NEC, in which they report on all party income, expenses from the election fund and expenditures financed from state subvention. Voter election committees must report on any donations within seven days of receipt. All electoral committees must submit a financial report to the NEC within three months after election day. The law does not foresee graduated sanctions and incorrect bookkeeping can result in heavy penalties, including revocation of public funding.²¹

H. MEDIA

The media environment in Poland is pluralistic but highly polarized. Television remains the primary source of information, followed by radio and print and electronic media. The public television, *Telewizja Polska*, operates seven national channels (including *TVP1*, *TVP2*, and the news channel *TVP Info*), in addition to regional channels, while *Polskie Radio* comprises eight national stations and some 20 regional and local stations. The public broadcasters compete with more than 200 private television and some 200 private radio outlets. ODIHR NAM interlocutors remarked on the growing prominence of online news portals and social media in political communication.

The Constitution guarantees media freedom and prohibits censorship.²² Despite a prior ODIHR recommendation, under the criminal code, defamation and public insult carry penalties of up to one year of imprisonment, and up to three years for defaming or insulting the state or head of state or on the basis of religion.²³ The ODIHR NAM noted several recent cases of journalists charged with criminal defamation, often initiated by public officials.²⁴ Some ODIHR NAM interlocutors remarked that the costs of legal defence pose a financial burden on smaller media outlets, potentially resulting in self-censorship.

²⁰ Permissible in-kind contributions were previously limited to volunteer leafleting, as well as office space of a member of the election committee or the associated political party.

²¹ In 2016, the NEC sanctioned *Nowoczesna* by revoking 75 per cent of its public funding, because of transferring funds from its party account directly to the NEC, rather than through its respective election committee. The same sanction was imposed on the party *Razem* for inaccuracies in its financial report.

²² The legal framework for media includes the 1992 Broadcasting Act, and the 1984 Press Law.

²³ See also paragraph 37 of the [2016 CCPR concluding observations](#), in which “the Committee reiterates its concern that the offence of defamation is still penalized with deprivation of liberty for one year, as specified in article 212 (2) of the Penal Code. The Committee is also concerned about other laws imposing criminal responsibility for insulting State symbols, senior officials and religion”.

²⁴ In February 2019, the PiS leader referred the newspaper *Gazeta Wyborcza* to prosecutors on the basis of “criminal libel”. In June 2017, the then-defense minister pursued terrorism charges against an author who accused him of links to the Russian security service; the charges were later dropped by the Warsaw prosecutor’s office.

The Constitution also establishes the mandate of a National Broadcasting Council (NBC) to safeguard freedom of speech and public interest. A new law adopted in 2016 established a National Media Council (NMC) comprised of political appointees, mostly from the ruling party (two members are appointed by the president from nominees of opposition parties, and three by the *Sejm*). The NMC is authorized to appoint and replace the management of the public television and radio broadcasters on the national and local levels. According to ODIHR interlocutors, upon its formation the NMC replaced a significant number of managers of national and regional public media, accompanied by the attrition of hundreds of journalists.²⁵ Additional draft legislation introduced in April 2016, which was not adopted, would have obligated the public broadcasters to disseminate the views and positions of government leaders.²⁶

The legal framework contains requirements for impartiality and balanced coverage in the public media. Most ODIHR NAM interlocutors described systemic pro-government bias in the public broadcasters, including in news programmes. Representatives of public media informed the ODIHR NAM that their editorial policies provide equal opportunities for diverse political stakeholders to participate, and that public broadcasting aims to counter-balance anti-government coverage in private media. Although authorized by law to monitor media, the NBC does not systematically monitor public or private media for compliance with electoral obligations, despite prior requests from the NEC.

For elections to the *Sejm*, the Election Code provides for a total of 15 hours of free airtime on national public television and 30 hours on national public radio to electoral committees contesting at least half of constituencies. For elections to the *Senat*, the law provides for 5 free television hours and 10 free radio hours, respectively. Additionally, the law provides for free airtime of *Sejm* and *Senat* contestants on regional public media. Private media are obliged to provide the same conditions to all electoral contestants for purchasing airtime for paid political advertising. Broadcasters must report to the NBC on their apportionment of airtime to electoral contestants.

I. COMPLAINTS AND APPEALS

The Election Code envisages that decisions of election commissions may be appealed to higher-level commissions up to the level of the NEC. During previous parliamentary elections, only two categories of NEC decisions could be appealed to the Supreme Court: decisions on the refusal to accept the financial report of an electoral committee and on the refusal to register an electoral committee. A 2016 decision of the Constitutional Tribunal found this limitation in the Election Code to be unconstitutional, and, in line with a prior ODIHR recommendation, subsequent amendments broadened appellate rights to include appeals of NEC instructions and guidelines and of decisions related to constituency boundaries.

²⁵ See a [statement of the OSCE Representative on Freedom of the Media](#). Prior to establishing the NMC, the government initially authorized the treasury minister to appoint the management and supervisory boards of public broadcasters. In December 2016, the Constitutional Tribunal, in response to a complaint of the Ombudsperson, ruled that excluding the NBC from the appointment process was unconstitutional.

²⁶ See [2016 Council of Europe expert opinion](#). See also paragraph 37 of the 2016 CCPR concluding observations, which noted concern about “legislative changes regarding the State party’s public broadcasting services, which appear retrogressive in terms of the protection of the guarantees that ensure the independent broadcasting of the public television and radio services in the State party”.

The Election Code provides for legal recourse of voters and contestants throughout the electoral process. Voters have the right to appeal decisions related to their exclusion from the voter register within three days of the decision to the regional court, via the mayor of the municipality responsible for maintaining the voter register; the court's decision cannot be appealed. Decisions on rejected candidate lists may be appealed to the NEC and further to the Supreme Court. Complaints related to the distribution of free public airtime may be filed by the electoral committee to the NEC. Additionally, the criminal code refers to crimes against elections such as interference with the course of an election, violation of freedom of vote, and electoral bribery, all subject to imprisonment. Although stakeholders did not raise major concerns related to procedures for election dispute resolution, many described an overall lack of public confidence in the independence of key judicial bodies and the resultant efficacy of filing complaints.

A complaint regarding the validity of the elections may be lodged with the Supreme Court by a registered voter, a chairperson of an election commission, or by a representative of an electoral committee, within seven days from the announcement of the results. The Supreme Court must decide on the validity of results within 90 days of the election. A new chamber was introduced within the Supreme Court, the Chamber of Extraordinary Control and Public Affairs, with the authority to validate election results.²⁷

The prosecutor general can submit comments on individual cases brought before the Constitutional Tribunal and Supreme Court, including complaints related to the electoral process. Since 2017, the minister of justice also serves as the prosecutor general. Neither judicial body raised concern to the ODIHR NAM related to this function, although some ODIHR NAM interlocutors noted a perception of lack of impartiality of the public prosecutor.

J. CITIZEN AND INTERNATIONAL OBSERVERS

The Election Code provides for international observation of elections and permits electoral committees to nominate representatives at all election commissions, including polling stations on election day. Positively, in line with a prior ODIHR recommendation, recent amendments to the electoral law introduced provisions for citizen observation, and citizen groups observed the recent local and European Parliament elections.

IV. CONCLUSIONS AND RECOMMENDATIONS

In considering an observation activity, the ODIHR NAM has taken into account the various findings outlined in this report, including recent substantive changes to the electoral legal framework, and the views expressed by stakeholders. The ODIHR NAM noted overall confidence in the conduct of the election administration, including election day procedures, although interlocutors raised concerns related to forthcoming changes to the composition of election management bodies. Stakeholders also highlighted several aspects of the revised legal framework and the conduct of the election campaign that would merit particular attention, including the new role of constituency election officers, media coverage of the elections,

²⁷ See paragraph 43 of the [2017 Council of Europe's Venice Commission opinion on draft judicial legislation](#) (since implemented): "it is of particular concern ... that judges appointed by a [National Council on Judiciary] dominated by the current political majority would decide on issues of particular importance, including the regularity of elections, which is to be decided by the Extraordinary Chamber".

effectiveness of campaign finance oversight, possible misuse of state resources including on the local level, and the role of the judiciary in the resolution of election-related disputes. Many interlocutors welcomed a long-term ODIHR activity to observe the pre-election campaign environment throughout the country and to systematically assess the public and private media coverage of the elections.

Based on the findings of this report, the ODIHR NAM recommends the deployment of a Limited Election Observation Mission (LEOM), subject to the availability of resources, to assess the forthcoming parliamentary elections. In addition to a core team of experts, the ODIHR NAM will request the secondment of 18 long-term observers from OSCE participating States to follow the electoral process countrywide. While the mission would visit a limited number of polling stations on election day, comprehensive and systematic observation of election day proceedings is not envisaged. In line with ODIHR's standard methodology, the LEOM would include a media monitoring element.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Piotr Chmiel, First Secretary, Unit for Human Rights and Promotion of Democracy
Bartosz Grodecki, Director, Department of Consular Affairs
Beata Brzywczy, Deputy Director, Department of Consular Affairs
Ilona Kałdońska, Head of Legal Section, Department of Consular Affairs

National Election Commission

Wiesław Kozielowicz, Deputy Chairperson
Sylwester Marciniak, Deputy Chairperson

National Election Office

Krzysztof Lorentz, Head of Department for Control of Party and Campaign Finance

Supreme Court

Małgorzata Sekuła-Leleno, Legal Expert
Przemysław Szuty, Legal Expert
Valery Vachev, Legal Expert

Constitutional Tribunal

Marcin Koman, Head of the Office of the President of the Tribunal
Bartosz Skwara, Deputy Head of the Legal Service Office

Commissioner for Human Rights

Adam Bodnar, Commissioner for Human Rights
Mirosław Wróblewski, Director of Unit of Constitutional, International and European Law

Media Representatives

National Broadcasting Council (KRRiT)

Ms. Anna Szydłowska, Director of the Presidential Department
Ms. Agnieszka Wąsowska, Director of the Department of Monitoring
Ms. Grażyna Bączkowska, Deputy Director of the Department of Public Media
Ms. Małgorzata Rozenau, Head of Unit of Complaints and Requests, Presidential Department

Polish Television

Jarosław Olechowski, Director, *Television Information Agency*
Dawid Wildstein, Deputy Director, *TVPI*
Clayton Reklewski Louis-Jean, Deputy Director for International Relations, *TVP*

Polish Radio

Paweł Kwieciński, Head of the Programme Office
Adam Szczurzewski, Plenipotentiary for Electoral Campaigns
Agnieszka Kurec, Director of the Board's Office
Marek Solon-Lipiński, Director of the Office of International Relations

Gazeta Wyborcza

Roman Imielski, National Editor

Rzeczpospolita

Jedrzej Bielecki, Deputy Editor-in-Chief

National Journalists Association (SDP)

Dorota Zielińska, Co-ordinator of International Cooperation

Society of Journalists

Krzysztof Bobiński, Member of Board

Andrzej Krajewski, Head of Monitoring Team

Political Parties²⁸

Sławomir Nitras, MP, Civic Platform

Dariusz Standerski, Program Director, Wiosna

Civil Society

Batory Foundation

Ewa Kulik-Bielińska, Director

Zofia Lutkiewicz, Programme and Grants Officer

Helsinki Foundation for Human Rights

Maciej Nowicki, Vice President of Board

Konrad Siemaszko, Lawyer, Legal Intervention Programme

Institute of Public Affairs

Jacek Kucharczyk, President

Małgorzata Druciarek, Head of the Gender Equality Observatory

Filip Pazderski, Senior Policy Analyst, Democracy and Civil Society Programme

Integracja

Tomasz Przybyszewski, Editorial Team

Mateusz Różański, Journalist

Political Accountability Foundation

Karol Bijoś, President

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The ODIHR NAM offered meetings to all parliamentary political parties, among others.