



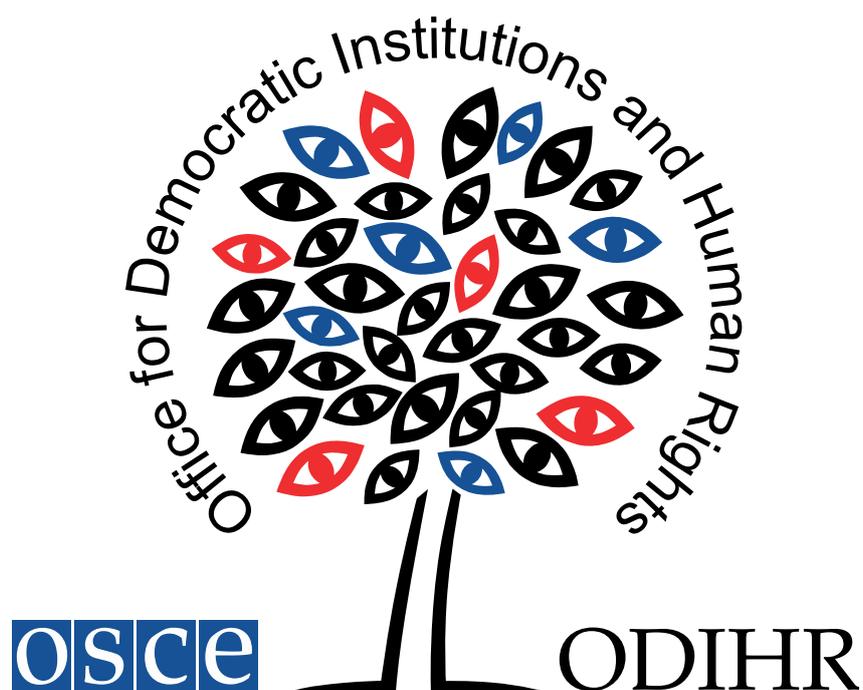
Office for Democratic Institutions and Human Rights

# REPUBLIC OF POLAND

## PARLIAMENTARY ELECTIONS

25 October 2015

OSCE/ODIHR Election Assessment Mission Report



Warsaw  
26 January 2016

## TABLE OF CONTENTS

<b>I. EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>II. INTRODUCTION AND ACKNOWLEDGEMENTS.....</b>	<b>3</b>
<b>III. BACKGROUND.....</b>	<b>4</b>
<b>IV. ELECTORAL SYSTEM.....</b>	<b>4</b>
<b>V. LEGAL FRAMEWORK .....</b>	<b>5</b>
<b>VI. ELECTION ADMINISTRATION.....</b>	<b>5</b>
<b>VII. VOTER RIGHTS AND REGISTRATION.....</b>	<b>6</b>
<b>VIII. CANDIDATE REGISTRATION.....</b>	<b>8</b>
<b>IX. CAMPAIGN.....</b>	<b>9</b>
<b>X. POLITICAL PARTY AND CAMPAIGN FINANCE.....</b>	<b>10</b>
A. FUNDING SOURCES .....	10
B. CAMPAIGN EXPENDITURE .....	11
C. DISCLOSURE AND REPORTING.....	11
D. OVERSIGHT .....	12
<b>XI. MEDIA .....</b>	<b>13</b>
A. LEGAL FRAMEWORK .....	13
B. MEDIA COVERAGE OF THE CAMPAIGN.....	14
C. OVERSIGHT .....	15
<b>XII. CITIZEN AND INTERNATIONAL OBSERVATION .....</b>	<b>16</b>
<b>XIII. ELECTION DAY .....</b>	<b>16</b>
<b>XIV. COMPLAINTS AND APPEALS .....</b>	<b>18</b>
<b>XV. RECOMMENDATIONS .....</b>	<b>19</b>
A. PRIORITY RECOMMENDATIONS .....	19
B. OTHER RECOMMENDATIONS .....	20
<b>XVI. ANNEX: FINAL RESULTS .....</b>	<b>21</b>
<b>ABOUT THE OSCE/ODIHR.....</b>	<b>22</b>

**REPUBLIC OF POLAND**  
**PARLIAMENTARY ELECTIONS**  
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**OSCE/ODIHR Election Assessment Mission Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Permanent Mission of the Republic of Poland to the OSCE and based on the recommendation of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Assessment Mission (EAM) for the 25 October 2015 parliamentary elections.

The 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.

Elections to the *Sejm* and *Senat* (lower and upper chambers of parliament) were administered by a three-tiered structure of election commissions in an impartial, professional and transparent manner. The election administration has regained the high degree of trust and respect among stakeholders, which was tarnished following the failure of the administration's electronic tabulation system during the 2014 local elections. A new system was introduced and functioned effectively to support the verification of results protocols and tabulation. The involvement of electoral contestants' representatives in the work of polling station commissions promotes transparency and enhances the impartiality of the election administration. The voter registration system is generally reliable, comprehensive and well maintained.

Electoral committees formed by political parties, coalitions and groups of voters have the right to nominate candidates. The candidate registration process was inclusive and transparent, providing voters with a wide selection of political alternatives. Electoral committees that registered candidate lists for the *Sejm* in at least half of the constituencies were automatically registered nationwide. Eight electoral committees registered candidate lists in all constituencies.

The campaign took place in an open and peaceful environment and fundamental freedoms were respected. The campaign environment remained free and pluralistic despite polarization between the two leading parties. The participation of new contestants added to the diversity of choice for the voters. Social media were extensively used by all contestants to reach out to the electorate, in particular to young and urban voters.

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

The political finance system provides a comprehensive regulatory framework. Campaign finance is regulated by the Election Code, while the Political Party Act governs political party financing. However, transparency concerns were raised by some OSCE/ODIHR EAM interlocutors in several areas, especially in regards to the disclosure of donations to parties and reporting on routine party activities.

The media environment provided a platform for broad political pluralism with a range of viewpoints. Electronic media complied with a legal obligation to broadcast voter education materials and aired free-of-charge contestants' campaign programmes. The public broadcaster organized a debate between candidates from the two leading parties, followed by an all-contestant debate, both widely viewed. Even though the number of criminal cases for defamation and public insult through mass media has decreased, the risk of prosecution under the criminal defamation law constrains public debate and the freedom of speech. Provisions allowing for the dissolution of the electronic media oversight body before the end of its tenure and the absence of a rotation system for its members are seen hampering its effective independence.

Complaints and appeals against the decisions of election commissions are adjudicated by higher-level commissions. Decisions of the National Election Commission (NEC) can be appealed to the Supreme Court in very limited cases. Although the lack of judicial review of candidate registration refusals was declared unconstitutional in 2012, the Election Code has not yet been amended.

The Election Code provides for at least 35 per cent of either gender in *Sejm* candidate lists, but the order in which candidates are to appear is not addressed. All electoral contestants met the stipulated quota requirement. Campaigns of three prominent contestants were run by their respective women leaders. Women were also well represented in the lower-level election commissions, although not at all at the NEC level.

In line with the OSCE/ODIHR methodology, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner. Voting and counting appeared to be generally conducted in an orderly manner in a limited number of polling stations visited by the OSCE/ODIHR EAM team members. The OSCE/ODIHR EAM noted, however, a consistent pattern of open and group voting, which is contrary to the fundamental principle of the secrecy of the vote. Despite previous OSCE/ODIHR recommendations, the criteria for determining the validity of the vote remain narrow and overly strict.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

On 11 February 2015, the Permanent Mission of the Republic of Poland to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 10 May presidential election. In view of parliamentary elections due to take place later in the year, and in accordance with its mandate, the OSCE/ODIHR undertook a Needs Assessment Mission (NAM) from 9 to 12 March for both the presidential and parliamentary elections. The OSCE/ODIHR NAM recommended the deployment of an Election Assessment Mission (EAM) specifically for the parliamentary elections. On 22 July, the OSCE/ODIHR received a separate invitation to observe the 25 October parliamentary elections.

The OSCE/ODIHR EAM was deployed from 12 to 29 October. It was headed by Ambassador Jan Petersen and consisted of six experts from six OSCE participating States. OSCE/ODIHR EAM experts were based in Warsaw and met with interlocutors from Katowice, Kraków, and Łódź. The electoral process was assessed for compliance with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. In line with the

OSCE/ODIHR methodology, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner. However, mission members visited a limited number of polling stations.

The OSCE/ODIHR EAM wishes to thank the Ministry of Foreign Affairs and the National Election Commission for their co-operation and assistance as well as to express gratitude to representatives of political parties, candidates, media, civil society and other interlocutors for sharing their views.

### III. BACKGROUND

Poland is a parliamentary republic with a president as a head of state and a prime minister heading the executive branch of government. The presidential election in May resulted in the Law and Justice (PiS) candidate, Andrzej Duda, defeating incumbent Bronisław Komorowski, backed by the Civic Platform (PO). Between the two rounds of the election, then-president promised to hold a three-part referendum, including a question on a change of the electoral system, which was subsequently held in September.<sup>2</sup>

Local elections, held in November 2014, were marred by the failure of the NEC's electronic tabulation system, which resulted in a considerable delay in the announcement of final results. According to OSCE/ODIHR NAM interlocutors, this incident diminished the level of confidence in the election administration.

The last parliamentary elections were held on 9 October 2011. Candidates from six lists were elected to the *Sejm* (lower chamber of parliament). The PO gained the largest number of seats (207), followed by the PiS (157), the Palikot's Movement (40), the Polish People's Party (PSL; 28), the Democratic Left Alliance (SLD; 27), and the German Minority (1). Women made up 23.9 per cent of the elected *Sejm*, having gained 110 seats. Following the elections, the PO formed a majority coalition government with the PSL. Subsequently, a number of members of parliament (MPs) left the PO to form the party Poland Together United Right and left the PiS to form a new party, United Poland, and together formed their own faction. A number of MPs shifted factions or became independent. In the *Senat* (upper chamber of parliament), the PO held 63 seats, PiS 31 seats, and PSL 2 seats, and 4 independent candidates were elected.<sup>3</sup>

The OSCE/ODIHR has previously assessed two parliamentary elections in Poland. The EAM deployed for the 2011 elections concluded that they "were pluralistic and democratic, with a broad choice available to the voters and a high degree of public confidence in all stages of the election process."<sup>4</sup>

### IV. ELECTORAL SYSTEM

The parliament comprises the *Sejm*, a 460-member lower chamber, and the *Senat*, a 100-member upper chamber. Deputies and senators are elected for a four-year term. Candidates for the *Senat* are elected through a first-past-the-post system in 100 single-mandate constituencies. Members of the *Sejm* are elected by proportional representation from 41 multi-member constituencies in an open list

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<sup>2</sup> The referendum was held on 6 September; however, the voter turnout of less than 8 per cent was well below the 50 per cent threshold required for the referendum results to be legally binding.

<sup>3</sup> Since 2011, one senator switched from the PO to the PiS faction and one quit the PO to represent the Poland Together United Right in the *Senat*. In 2011, women won 13 out of 100 seats in the *Senat*.

<sup>4</sup> [See previous OSCE/ODIHR reports on elections in Poland.](#)

system. The constituencies are created within the boundaries of administrative regions. A fair distribution of mandates among the constituencies is achieved by using a proportionality rule and a national quota of representation of the population.<sup>5</sup> In line with international good practice, the maximum deviation from the distribution criterion does not exceed 10 per cent.<sup>6</sup>

Electoral committees representing political parties, coalitions and groups of voters are the sole entities that can register candidates or lists of candidates. Electoral committees whose candidates receive collectively at least five per cent of valid votes cast nationwide (eight per cent for coalitions) participate in seat distribution to the *Sejm*. Electoral committees registered by national minorities are exempted from any threshold.<sup>7</sup> For the *Senat*, the candidate who receives the largest number of the valid votes is elected in the constituency.

## V. LEGAL FRAMEWORK

With a few exceptions, the comprehensive legal framework provides a good basis for conducting democratic elections in line with OSCE commitments and other international obligations and standards. The 1997 Constitution, the 2011 Election Code (last amended in August 2015), the 1997 Political Parties Act (last amended in 2015), the 1992 Broadcasting Act (last amended in 2015), and the 1984 Press Law (last amended in 2013) constitute the primary election legal framework. Relevant provisions of the Civil Procedure Code and the Penal and Criminal Codes are applicable to election dispute resolution. OSCE/ODIHR EAM interlocutors expressed general confidence in the legal framework for elections.

The Election Code was adopted as a consolidated electoral legislative act on 5 January 2011 and has since been amended 16 times. A number of amendments were made after the last parliamentary elections, introducing a number of positive changes and addressing some previous OSCE/ODIHR recommendations. The more notable changes included the introduction of voting instructions in the ballot booklet, adding fields for various types of invalidated ballots in results protocols, and granting the right to party agents to videotape the electoral process before the opening of polling stations, after the closing, and during counting and tabulation. Additional changes aimed at strengthening confidence in the integrity of the process following the challenges of the 2014 local elections include prohibiting candidates' relatives to be members of Precinct Election Commissions (PECs) and introducing a nine-year term for NEC members.<sup>8</sup>

## VI. ELECTION ADMINISTRATION

The elections were administered by a three-tiered election administration composed of the NEC, 41 Constituency Election Commissions (CECs), and 27,859 PECs in as many polling stations, of which 10,756 were made accessible for disabled voters. In addition, 250 PECs were established in diplomatic representations abroad.

The NEC is a permanent structure consisting of nine active or retired judges appointed by the president and three each nominated by the Constitutional Tribunal, the Supreme Court, and the

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<sup>5</sup> The number of mandates per constituency varies from 7 to 20.

<sup>6</sup> See paragraphs I.2.2.13-17 of the [2002 European Commission for Democracy through Law \(Venice Commission\) of the Council of Europe Code of Good Practice in Electoral Matters](#).

<sup>7</sup> This provision has allowed the German minority to be represented in the *Sejm* since 1991 in the constituency of Opole in southern Poland.

<sup>8</sup> This provision will enter into force in 2016.

Supreme Administrative Court.<sup>9</sup> The NEC selects a chairperson and two deputy chairpersons from among its members. The NEC is charged with the overall administration of elections and is responsible for overseeing the implementation of the election legislation, maintenance and update of the voter register, consideration of complaints about the operation of the CECs, voter education, and the establishment and announcement of election results. Currently, there is no female member of the NEC.

The National Election Office (NEO) is the executive body of the NEC responsible for the organizational, administrative, financial and technical arrangements for the conduct of the elections.<sup>10</sup> There are 49 local NEO units, at least one in each constituency for the *Sejm* elections.

Lower-level election commissions are not permanent and are established only in connection with the elections. CECs consist of 5 to 11 judges, are established by the NEC no later than 48 days before election day and each is chaired by one of the 51 election commissioners.<sup>11</sup> The CECs are tasked with supervising the implementation of election legislation by the lower-level election commissions, registration of candidate lists and candidates, ballot printing, and consideration of complaints about PEC activities. CECs also tabulate PEC results within their constituencies.

PECs are established no later than 21 days before election day. Membership consists of six to eight people nominated by the electoral committees, and one nominated by the head of the local administration. OSCE/ODIHR EAM interlocutors noted that the structure of PECs, enabling the joint work of representatives of electoral committees and local administration, continue to foster transparency and public confidence. A total of 1,634 polling stations were established for healthcare institutions, nursing homes, prison and police custody, and detention centers with at least 15 voters.

Following the challenges faced during the tabulation of the 2014 local election results in connection with an electronic system failure, the NEC introduced a new *Information System – Support for the Electoral Bodies*, which was successfully tested nationwide several times in October ahead of the elections. The system appears to have functioned effectively in supporting verification of results protocols and results tabulation. Overall, the elections were administered in a professional, collegial and transparent manner.

## VII. VOTER RIGHTS AND REGISTRATION

Citizens who attain 18 years of age by election day have the right to vote, unless they have been declared incapacitated or deprived of their public or voting rights by a final judgment of a court.<sup>12</sup>

Neither the Constitution nor the Election Code distinguishes between full and partial incapacitation as defined in the Civil Code for the purpose of determining voting rights.<sup>13</sup> In 2007, the Constitutional Tribunal stated that there was a need to introduce changes in the provisions related to incapacitation. In 2010, the European Court for Human Rights (ECHR) ruled that “an indiscriminate removal of voting rights, without individualized judicial evaluation and solely based

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<sup>9</sup> Following the 2014 local elections, seven members of the NEC were replaced. Another member was appointed in November 2014 to replace a member who reached the age limit of 70 years for NEC members. The ninth member retained his position.

<sup>10</sup> The NEO head was replaced following the 2014 local elections.

<sup>11</sup> According to the Election Code, the NEC appoints from 2 to 6 election commissioners to each of the 16 voivodships (provinces) from among judges for a period of 5 years at the request of the Ministry of Justice.

<sup>12</sup> See Article 62 of the Constitution and Article 10 of the Election Code.

<sup>13</sup> Civil Code, Articles 13 to 16.

on a mental disability necessitating guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote”.<sup>14</sup> The 2011 OSCE/ODIHR report recommended that the curtailment of the right to vote of persons with mental disabilities and the deprivation of suffrage rights for partially incapacitated persons be reviewed. In an open letter to the President of 7 October 2015, the Ombudsperson recalled earlier appeals to review the Constitution in line with the ECHR jurisprudence and reiterated the need to lift the limitations of the voting rights of incapacitated persons.<sup>15</sup>

On 10 March 2015, the government tasked the Minister of Justice to recommend adjustments to the legal framework with a view to replacing the concept of incapacitation with a case-by-case review by the court to determine the extent to which one’s rights should be limited or removed. A draft bill was expected by the end of 2015. The ongoing process to review the issue of incapacitation in line with international standards and following previous OSCE/ODIHR recommendation is welcome.

Local government authorities are responsible to compile voter registers in co-operation with the NEC for each election. These registers are extracted from the Universal Electronic System for Registration of the Population, maintained by the Ministry of Internal Affairs and Administration. Voters are entitled to receive information on their inclusion in the voter register by applying to the municipality of their residence. The total number of registered in-country voters was 30,629,150, as well as 199,451 registered to vote abroad of whom 35,754 registered to vote by post. There were 10,020 persons registered to vote by proxy and 9,927 persons registered to vote by post in-country.

Citizens are included in the voter register at their permanent place of residence. Voters may also apply to be included in the voter register of the municipality of their temporary residence; in such case, the municipality where the voter is permanently registered is notified of the voter’s request to be included in another register. Voters who were unable to vote at the polling station linked to their permanent residence were issued absentee voting certificates (AVCs). Voters with AVCs were able to cast their ballots in any polling station and were added to the voter register by the PEC on election day.<sup>16</sup> In line with the previous recommendation, the Election Code requires the municipalities to issue AVCs according to a sample provided by the NEC. AVCs were better protected against fraud through the inclusion of standard holograms used nationwide.

OSCE/ODIHR EAM interlocutors did not raise any major concerns about the quality of voter registers. The voter registration system is generally reliable, comprehensive, and well maintained.

The Election Code provides for a variety of ways to cast a ballot, facilitating the participation of voters, and disabled voters in particular. Proxy voting is available for disabled and elderly voters (those over 75 years of age). Postal voting was also recently extended to all voters, including those disabled and abroad, and voters with visual impairments are given the possibility to use Braille templates.<sup>17</sup> In a positive step, applications for proxy, postal and out-of-country voting could be made electronically, facilitating registration and participation. Given the extension of postal voting to all categories of voters, this voting method could help to reduce and eliminate the need for proxy voting, bearing in mind that OSCE commitments and other international standards for democratic

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<sup>14</sup> See [case of Alajos Kiss v. Hungary](#), No. 38832/06, 20 May 2010.

<sup>15</sup> According to the Ombudsperson, as of 31 December 2013, 77,739 citizens were declared incapacitated, of whom 85 per cent were declared partially incapacitated.

<sup>16</sup> For these elections, 154,060 AVCs were issued.

<sup>17</sup> Article 53a of the Election Code stipulates that postal voting option is not available to those who applied to vote by proxy. Article 53b requires in-country voters to apply to vote by post 15 days before election day and those living abroad – 18 days before election day.

elections require ensuring the secrecy and equality of the vote and respect for voters' choices.<sup>18</sup>

*Consideration should be given to reviewing the need to maintain proxy voting given the expansion of postal voting and with a view to bringing the legislation fully in line with OSCE commitments and other international standards for democratic elections.*

Previous OSCE/ODIHR reports have noted that greater voter education efforts should be made, particularly focusing on disabled voters and on the use of a postal ballot as an alternative to a proxy vote. Some OSCE/ODIHR EAM interlocutors stated that while some progress has been made in this area, additional efforts are needed and the recommendation remains valid.

Citizens residing abroad, regardless of whether on a permanent or temporary basis, have the right to cast their ballots at embassies or consulates in the country of their residence either in person or by post. Voters abroad are included in a constituency in Warsaw and vote for the candidate lists of that constituency. The Ministry of Foreign Affairs is responsible for the out-of-country voting and the transfer of results.

## VIII. CANDIDATE REGISTRATION

The right to stand in *Sejm* and *Senat* elections is granted to citizens with active voting rights who have reached 21 and 30 years of age by election day, respectively. Citizens sentenced to imprisonment for an intentional indictable offence or for an intentional tax crime are deprived of the right to be elected. The State Tribunal, a body appointed by the *Sejm*, may forfeit the mandate of a deputy or a senator conducting any business activity with the state.

Candidates cannot run independently in the *Sejm* elections but only in list-sharing with other candidates. The lack of provisions for independent candidacy is contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document and has previously been noted as problematic by the OSCE/ODIHR.<sup>19</sup>

Electoral committees are required to submit candidate lists to the respective CECs for registration not later than 40 days before election day. CECs register the constituency lists after verification of required documents and the supporting signatures. Each *Sejm* candidate constituency list has to be supported by signatures of at least 5,000 voters permanently residing in the given constituency, and 2,000 signatures are required for *Senat* candidates.

The law provides that a CEC can request an electoral committee to remove any mistakes on its list within three days. However, despite a 2011 OSCE/ODIHR recommendation, the law still does not contain specific standards or procedures for the verification of the supporting signatures.

*Consideration should be given to amending the legislation to include clear guidance and procedures for signature verification.*

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<sup>18</sup> See paragraphs 5.1, 7.3 and 7.4 of the 1990 OSCE Copenhagen Document; Article 25 of the International Covenant on Civil and Political Rights (ICCPR); United Nations Committee on Human Rights, General Comment 25 on "The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service," paragraphs 20-22; the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, Article 3.

<sup>19</sup> Paragraph 7.5 states that the OSCE participating States will respect "the right of citizens to seek political and public office, individually or as representatives of political parties or organizations, without discrimination."

The Election Code provides for at least 35 per cent of either gender in candidate lists for the *Sejm*, but does not address the order in which candidates of either gender are to appear. The total number of registered candidates for the *Sejm* was 7,858, including 3,328 women or 42.4 per cent, and of the 423 *Senat* candidates, 58 were women (13.7 per cent).<sup>20</sup> All electoral contestants met the stipulated quota requirement and the campaigns of three prominent contestants were run by their respective women leaders.

*Consideration could be given to supplementing the gender quota requirement with additional measures concerning the rank order, such as a requirement for alternating positions between genders on party lists, as well as effective legal sanctions.*

Following the 2014 amendments to the Election Code, and in line with an OSCE/ODIHR recommendation, electoral committees that have registered candidate lists for the *Sejm* in more than half of the constituencies (in at least 21 of 41) were automatically registered nationwide without requiring supporting signatures from the other constituencies.<sup>21</sup>

Seven electoral committees and one electoral committee of a coalition registered candidate lists in all *Sejm* constituencies (PiS, PO, PSL, Razem, KORWiN, Nowoczesna, and committee of voters Kukiz 2015 Movement). The election coalition United Left comprised five parties – the Democratic Left Alliance, Your Movement, Polish Socialist Party, Labor Union, and the Greens. Another seven electoral committees registered lists in a number of constituencies.<sup>22</sup>

The PO and PiS registered candidates in the majority of *Senat* constituencies, 83 and 98 respectively, while the PSL registered candidates in 58 constituencies, United Left in 31, KORWiN in 10, Nowoczesna in 16, and Kukiz 2015 Movement in 9. An additional 83 electoral committees registered candidates for the *Senat*, usually in 1 constituency, supporting individual candidates.

## IX. CAMPAIGN

The campaign took place in an open and peaceful environment, and fundamental freedoms were respected. Most OSCE/ODIHR EAM interlocutors stated that the general tone and climate of the campaign were calmer than in previous elections. The campaign environment was free and pluralistic, although the campaign was polarized between the two leading parties, the governing PO and the opposition PiS.

The defeat of then-President Komorowski, backed by the PO in the May presidential election, triggered a change in the PO's campaign strategy. Their party leader and then-Prime Minister was active during the campaign and organized government visits and cabinet meetings across the country.

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<sup>20</sup> For the *Sejm*, the PO included 393 female candidates, PiS 363, PSL 384, United Left 396, Kukiz 2015 334, Razem 282, KORWiN 354, Nowoczesna 373.

<sup>21</sup> Previously, electoral committees required a certificate from the NEC allowing nationwide registration. The deadlines to apply for this certificate and to be registered in the constituencies coincided, which caused a logistical issue and prevented one committee from receiving a nationwide registration in 2011.

<sup>22</sup> *Komitet Wyborczy Wyborców JOW Bezpartyjni* (Non Partisan Single Mandate Electoral Districts) registered candidate lists in 8 constituencies, the Zbigniew Stonoga's Committee of Voters in 19 constituencies, Social Movement of the RP in 3 constituencies, United for Silesia in 2 constituencies, Self-Defense registered lists in 7 constituencies, Grzegorz Braun's Committee of Voters "God Bless" in 12 constituencies, New Right Congress in 6 constituencies. The Citizens to Parliament and the electoral committee representing the German Minority each registered a list in one constituency.

The participation of new contestants, such as Kukiz 2015, Nowoczesna and Razem, added to the diversity of choice. However, their campaigns were at times overshadowed by the polarization of the campaign and the rhetoric used by the two leading parties, which alluded that a vote given to small electoral committees would be lost. Three of the most prominent contestants, the PO, PiS and United Left, had female leaders to run their campaigns.

The last two weeks of the campaign were dominated by the European migration crisis, which emerged as an important issue dividing the political parties. In addition, domestic and social issues, such as the retirement age, child benefits, education, healthcare, along with foreign policy topics, such as the country's place within the European Union, featured in some party programmes and were discussed in the two main televised debates.

The campaign was primarily conducted in the broadcast media via participation in debates and interview programmes. In addition, electoral committees relied heavily on social media to run their campaigns and reach out to voters. The PiS, more than its main political rival, relied heavily on Facebook, Twitter, Snapchat, Periscope and other social media, aiming to attract young and urban voters.<sup>23</sup> Campaign methods also included door-to-door canvassing, distribution of campaign materials and organization of local and national electoral rallies. Campaign silence was in force 24 hours before election day.

## **X. POLITICAL PARTY AND CAMPAIGN FINANCE**

The political finance system provides for a comprehensive regulatory framework. Campaign finance is regulated by the Election Code, while the Political Party Act governs political party financing. The Council of Europe's Group of States against Corruption (GRECO), in its third evaluation round in 2014, concluded that Poland had implemented satisfactorily a number of its previous recommendations, including the publication of more information regarding political funding on the Internet, more transparency as regards to the disclosure of donations received for electoral purposes, and more guidance provided by the oversight body.<sup>24</sup>

### **A. FUNDING SOURCES**

Political parties can be funded by membership fees, donations, legacies, bequests, revenues from assets, and allocations from the state budget. Anonymous donations, as well as contributions from foreign sources and legal entities are prohibited. Political parties that obtain at least three per cent of valid votes cast in elections to the *Sejm* or are a part of a coalition that receives at least six per cent of valid votes cast are eligible for annual public funding during the term of office of the *Sejm*. Public funding is proportional to the number of the votes obtained.

Political parties are heavily reliant on state financing. During the last parliamentary term, the total state financing to all parliamentary parties was approximately PLN 54 million per year.<sup>25</sup> The two largest parties in the outgoing parliament, the PO and PiS, received PLN 17.7 million and PLN 16.5

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<sup>23</sup> According to SentiOne, a tool for social media brand monitoring, the PiS acquired the most extensive online presence gaining about 38 per cent of social media voices, while the second placed PO, enjoyed only 23 per cent, and the next most present contestant Kukiz 2015 - almost 9 per cent.

<sup>24</sup> See [GRECO Addendum to the Second Compliance Report on Poland, Third Evaluation Round, 10 October 2014](#).

<sup>25</sup> Equal to some 13 million EUR (one Polish Zloty (PLN) is approximately 0.24 EUR).

million, respectively. According to parliamentary political parties' websites, the proportion of public funding to party budgets is around 80 per cent.<sup>26</sup>

Financing of election campaigns by committees of voters can come from private donations and loans, while for party and coalition committees they can only come from political parties' election funds. Individuals can donate up to 15 times the minimum salary (EUR 420) and guarantee a loan taken by a political party up to the same amount. Candidates can contribute to their electoral committee up to 45 times the minimum salary. Volunteers can provide in-kind support to electoral committees by engaging in leafleting, displaying posters, and assisting in office work. Donations to electoral committees must be made by bank transfer. Each committee can use only one bank account to collect funds.

Each political party, coalition or committee of voters gaining at least one seat in either chamber of parliament is entitled to receive a state subsidy to reimburse campaign expenses. This reimbursement, allotted after the elections, is proportional to the number of seats obtained, but cannot exceed the actual expenses incurred by the electoral committee or the spending limit.<sup>27</sup>

## **B. CAMPAIGN EXPENDITURE**

Campaign expenditure is limited to PLN 0.82 per voter for the *Sejm* elections and PLN 0.18 per voter for the *Senat* elections. The spending limit is electoral committee-specific and its calculation depends on the number of candidates the committee registers. Committees that register candidates for the *Sejm* and the *Senat* in all constituencies have a nationwide maximum spending limit of PLN 30,629,150.<sup>28</sup> According to the law, up to 80 per cent of this amount can be spent for advertising. During the campaign, each electoral committee must appoint a financial representative responsible for the committee's financial management.

In accordance with the law, all expenses incurred for electoral purposes from the date of the electoral committee's registration have to be accounted for in the financial report and count towards the spending limit. The OSCE/ODIHR has previously pointed out the need for clarification regarding campaign activities in the pre-election period (i.e. the period between the announcement of elections and registration of an electoral committee). This issue remained an area of concern for some OSCE/ODIHR EAM interlocutors despite that in 2011 the NEC issued three decisions pointing out that campaign activities should be covered from the funds of electoral committees and that activities carried out by political parties during the pre-election period should be financed "from the current financial means of the party". However, interlocutors stressed that especially in election years, such as in 2015, the proximity of the two elections may lead to political party activities being used as a way to campaign outside of legally prescribed timeframes.

## **C. DISCLOSURE AND REPORTING**

Political parties that receive annual state funding are obliged to submit two reports to the NEC by 31 March each year, which are pre-reviewed by an auditor: a financial report on state funding received and expenditures charged to state funding, and a report on sources of funds and expenses

<sup>26</sup> In 2013, for instance, public funding represented 86 per cent of the PiS's income, 80 per cent of the PO, and 75 per cent of the PSL.

<sup>27</sup> According to the NEC, following the 2011 elections, the average subsidy amounted to 71 per cent of the total amount of declared expenditures by electoral committees.

<sup>28</sup> According to the NEC the highest spending electoral committees were the PiS and PO, whose total campaign expenses were capped at PLN 30,376,941 and PLN 29,553,800, respectively. The expenses of Kukiz 2015 committee of voters were capped at PLN 25,492,973.

charged to the election fund. The NEC should publish party financial reports in the Official Journal of Poland (“*Monitor Polski*”) within 14 days of submission.

These financial reports do not, however, need to contain information about the expenditures of parties for statutory activities that are not covered from state funding. These reports also do not need to be accompanied by supporting documents, which are only viewed by the auditors in charge of checking the parties’ financial reports. In 2011, the OSCE/ODIHR EAM recommended that financial reports of parties be more comprehensive and “include expenditures funded through private donations.” This recommendation has not yet been addressed.

*To increase the transparency of political party financing, it is recommended that financial reports cover all expenditure of political parties, including statutory activities not covered from state funding, and be accompanied by supporting documents.*

All electoral committees are obliged to submit reports, checked by an auditor, to the NEC, within three months after election day. Electoral committees have to submit all information regarding a donation or a loan within seven days of receipt. However, this obligation only applies to committees of voters given that party and coalition committees’ resources can only come from the party’s election fund. Details regarding contributions made to a party or a coalition are not made public until the party submits its financial report to the NEC (at the latest, on 31 March of the following year). This is not in line with the intentions of Article 11.2 of the Constitution, which reads that “the financing of political parties shall be open to public inspection.” Most OSCE/ODIHR EAM interlocutors expressed concerns over the lack of transparency of political parties’ sources of financing.

*More frequent declarations on donations received by political parties for electoral purposes through their election funds and their publication in a timely manner could be considered.*

Several OSCE/ODIHR political party and campaign finance recommendations from the 2011 final report that remain relevant, have been supported by the NEC in its openly published response to the report in 2012 and could thus serve as the basis for further improving regulation.

#### **D. OVERSIGHT**

The NEC is the oversight body responsible for checking the reports submitted by political parties and electoral committees, including audit reports and opinions. The NEO’s unit for control of financing of political parties and election campaigns comprises seven employees and helps the NEC to perform its supervision tasks. There is no campaign finance supervision during the campaign or until the accounts are submitted. The NEC has to decide within six months following the submission of a report whether to accept it, with or without reservations, or to reject it. The NEC cannot go beyond the information and documentation submitted by electoral committees and political parties, but can turn to law enforcement agencies in case it suspects violations of political finance regulations. Thus, the lack of fully independent investigative power by the NEC and the shortage of human resources can potentially weaken the effectiveness of the regulatory regime.

*Consideration could be given to increasing the NEC’s financial and human resources dedicated to the oversight of political financing and to vesting it with the investigative power to undertake full audits of financial reports.*

According to the law, the NEC can reject a party’s annual report based on minor transgressions, which can lead to the withdrawal of state support for up to three years. In 2012, the Constitutional Tribunal considered the proportionality of relevant sanctions to possible violations and ruled that

applicable political and campaign finance rules were in conformity with the Constitution.<sup>29</sup> International standards require that sanctions be effective, bear a relationship to the type of violations, and respect the principle of proportionality.<sup>30</sup>

*The NEC could be granted a greater margin of appreciation on minor transgressions of political finance regulations by amending to the law to introduce a threshold below which an irregularity does not lead to the rejection of a financial report.*

## XI. MEDIA

The media market in Poland is the largest in Central and Eastern Europe and continued to provide a platform for broad political pluralism. *Gazeta Wyborcza* remains the largest quality newspaper, and its competitors are *Rzeczpospolita* and *Dziennik Gazeta Prawna*, as well as the tabloids *Fakt* and *Super Express*. The Catholic weekly *Gość Niedzielny* maintains its lead in weekly magazines followed by *Polityka* and *Newsweek Poland*. Two right-wing weeklies, *W Sieci* and *Do Rzeczy*, emerged in 2013 and gained fairly a strong readership, resisting the shrinking market for print periodicals. At the regional level, 19 dailies, published by the Polish affiliate of Verlagsgruppe Passau, dominate the market.

Television represents the most important news source and has the biggest share of advertising revenue. The public broadcaster, *TVP*, plays a dominant role together with private channels *Polsat* and *TVN*. All three broadcasters have delegated almost all news output to their digital news channels (*TVP Info*, *TVN24*, *Polsat News*), meanwhile terrestrial networks focus on entertainment, with only a small number of news programmes remaining. The public broadcaster is weakened by its inefficiency in licence fee collection leading to dependency on advertising, which constitutes more than two thirds of its revenues.<sup>31</sup> Privately owned radio stations *RMF FM* and *Radio Zet* dominate the market.

There is a shift among the younger generation towards accessing news through smartphones and computers. Major media outlets provide free online content, and web portals such as *Onet.pl*, *WP.pl* and *Gazeta.pl* are popular. Social networks are widely popular with Facebook, YouTube and Twitter serving as important sources of news. Overall, public trust in the media as well as the Internet is high.<sup>32</sup>

### A. LEGAL FRAMEWORK

Media conduct during election campaigns is primarily regulated by the Constitution, the Election Code, the Broadcasting Act, and the Press Law. Although the Constitution guarantees freedom of expression and prohibits censorship, the Criminal Code retains defamation and public insult provisions. The penalty is stricter for both if committed by means of mass media.

Even though the number of criminal cases for defamation and public insult through mass media has decreased substantially in the last two years, the possibility of imprisonment as well as the risk of prosecution under criminal defamation provisions have a chilling effect on the freedom of speech

<sup>29</sup> See judgment of the Constitutional Tribunal, 18 July 2012, K14/12.

<sup>30</sup> See Article 16 of Recommendation Rec(2003)4 of the Council of Europe's Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns.

<sup>31</sup> Since 2010, *TVP* has lost almost half of its audience and advertising revenue.

<sup>32</sup> Thirty one per cent of Poles have high trust in media, compared to 20 per cent on average in the European Union. See the [Eurobarometer survey](#) on Media Use in the European Union, November 2014.

and public debate, especially at the local level.<sup>33</sup> The repeal of these provisions has been requested by the Ombudsperson, and a number of media and civil society representatives. Criminal prosecution for defamation is contrary to OSCE commitments and violate the journalists' right to freedom of expression, guaranteed under Article 10 of the European Convention on Human Rights, which has been stressed by the OSCE Representative on Freedom of the Media (RFOM) and underscored in a recent ECHR judgement.<sup>34</sup>

*To effectively ensure media freedom and protect freedom of speech, especially during an election period, consideration should be given to removing provisions that foresee criminal liability for defamation and public insult.*

While a persistent issue has been the large amount of online hate speech, the legal framework does not contain regulations for the Internet. When adjudicating Internet-related cases (criminal or civil), courts tend to apply the Press Law, which has not been adapted to online content. There is legal uncertainty as to which websites should be considered press and which fall outside the scope of the Press Law. Several OSCE/ODIHR EAM interlocutors called to amend the Press Law to be applicable to online content to ensure online media freedom and to create a framework for combating hate speech online.

## **B. MEDIA COVERAGE OF THE CAMPAIGN**

According to the Election Code and the National Broadcasting Council (NBC) regulations, during the campaign, public television and radio broadcast free-of-charge voter education materials provided by the NEC and campaign programmes of electoral committees that registered candidate lists in at least half of the constituencies.<sup>35</sup> The broadcasting of campaign programmes started on 10 October on 4 nationwide and 16 local *TVP* channels, four nationwide public *Polish Radio* channels and also via *Polish Radio* broadcasting abroad. Neither the NEC nor the NBC received any complaints regarding the provided free airtime.

In line with its legal obligation, *TVP* organized one electoral debate with representatives of all eight electoral committees that registered candidate lists nationwide. Each contestant was given equal speaking time and the order was decided by drawing lots. The debate was also broadcast by *TVN* and *Polsat*, was widely viewed and considered to have impacted the subsequent opinion polls.

One day before this debate, a debate was held between the two leading candidates from the PO and PiS and screened on *TVP*, *Polsat* and *TVN*.<sup>36</sup> Opposition parties raised concerns that only the two leading parties, selected based on opinion polls, were invited. *TVP* as well as the NBC claimed that the debate did not require the strict regulation that was imposed arguing that it was not an electoral debate as defined by the Election Code, but a journalistic programme in the meaning of the Broadcasting Act, which protects the broadcasters' rights to determine content.<sup>37</sup>

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<sup>33</sup> According to the Ministry of Justice, there were three convictions for criminal defamation and three convictions for insult via mass media in 2014.

<sup>34</sup> See *Maciejewski v. Poland*, application no. 34447/05, January 13, 2015. See also the [OSCE RFOM's call for decriminalization of defamation in Poland](#), 17 September 2012

<sup>35</sup> NEC voter education materials were also broadcast on private channels and included an information campaign in the press.

<sup>36</sup> According to *TVP*, the Kopacz and Szydło debate was watched by 8,000,259 viewers, while the more inclusive debate was seen by 6,686,664 viewers.

<sup>37</sup> Article 120.1 of the Election Code and Article 13 of the Broadcasting Act.

Election campaign coverage in the press roughly followed ideological preferences of its readership. While *Rzeczpospolita* and *Wprost* remained generally impartial, *W Sieci* advised readers against the PO and *Gazeta Wyborcza* published a headline stating that “Democracy is at stake” the day before election day. The wide use of Internet challenged the meaning of electoral silence as journalists were tweeting with code names for electoral contestants before the announcement of first provisional results based on exit polls.

### C. OVERSIGHT

The Constitution establishes the mandate and prerogatives of the NBC to safeguard freedom of speech and public interest, further regulated by the Broadcasting Act. The NBC has broad powers to issue licenses and impose financial penalties on broadcasters.

Although NBC members are required to suspend their membership in political parties, the most recent appointments resulted in disputes and often criticism. Council members are chosen and nominated by the *Sejm* (2), the *Senat* (1), and the president (2). As *Sejm*, *Senat* and president are elected, the NBC nomination procedure was meant to create a balance of power. However, according to some interlocutors, changes to regulations on the NBC’s composition that followed shifts in power in previous years have been perceived as attempts of instituting greater control over this body. Moreover, the NBC can be dissolved before the end of its tenure through a rejection of its annual report that has to be submitted to the *Sejm*, *Senat* and the president by the end of March of each year.<sup>38</sup> Combined with an absence of a member rotation system, regulations on the NBC are seen as not facilitating its full independence.

*To ensure greater institutional credibility and effective independence of the NBC, consideration could be given to introducing a member rotation system and to amending provisions that allow the dissolution of the NBC before the end of tenure.*

The impartiality and independence of the NBC and of public media were widely discussed. The PiS called for the reform of public media, having announced immediately after election day its ongoing preparations of a new broadcasting act and the intended transformation of public media into national media. The tendency to review fundamental media-related provisions after changes in government and the attempts of greater control over media institutions demonstrate an inclination to see media regulation as an element of political strategy.

The NBC monitored election campaign coverage on major national public and private television and radio channels, analysing levels of pluralism, impartiality, balance and professional quality.<sup>39</sup> Parallel monitoring was conducted by *TVP*.

The NBC received eight complaints regarding the coverage of electoral campaign by public media. Two were lodged by electoral committees objecting to the exclusive Kopacz/Szydło debate. Four complaints were lodged by the United Left, Razem, KORWiN, and one *Senat* candidate regarding insufficient coverage of their electoral campaigns. One complaint was lodged by the PO electoral committee accusing the PiS of using in an electoral spot with subliminal messages, which are prohibited by law. One complaint addressed by the PiS electoral committee to the *TVP* president

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<sup>38</sup> In 2010, when the president represented the same political party as the majority in *Sejm* and *Senat*, the annual report was rejected and the entire regulatory body dismissed.

<sup>39</sup> See the [NBC report on monitoring election campaign coverage](#), released on 21 December.

and only brought to the attention of the NBC referred to an incident between the PiS representatives and TVP security personnel that took place before the inclusive television debate.<sup>40</sup>

## **XII. CITIZEN AND INTERNATIONAL OBSERVATION**

The Election Code includes provisions allowing international observation. The OSCE/ODIHR EAM enjoyed full access and good co-operation with all stakeholders, including election commissions at all levels. The Code also allows electoral committees to nominate agents (authorized persons) to each PEC to observe the electoral process and voting on election day, and to receive copies of PEC results protocols.<sup>41</sup>

However, contrary to paragraph 8 of the 1990 OSCE Copenhagen Document, there are no provisions for citizen non-partisan organizations to observe elections. The inability of civil society organizations to register as observers during these elections resulted in their representatives registering as party agents as a way of circumventing the existing restriction.<sup>42</sup> The inclusion of provisions enabling citizen observation could thus also guarantee the distinction between partisan and independent non-partisan citizen observation.

*The Election Code should provide for full access of citizen non-partisan observers to all stages of the electoral process in line with the OSCE commitments and other international obligations.*

## **XIII. ELECTION DAY**

In accordance with standard practice for EAMs, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner. In the limited number of polling stations visited, PECs appeared to be well trained, experienced and familiar with the voting procedures, and the voting process was organized in an orderly and competent manner. The turnout was reported at 50.92 per cent of registered voters.

The OSCE/ODIHR EAM noted that women were well represented in the lower-level commissions visited. Party agents were present in nearly all observed polling stations. Polling stations were set up for a minimum of 500 inhabitants up to a maximum of 3,000.

*The maximum number of voters per polling station, rather than inhabitants, could be used for planning purposes and could be reduced to avoid possible overcrowding.*

Voters had identification documents checked and those without an identity card or another document with a photo were not allowed to vote. Eligibility was checked against the voter register,

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<sup>40</sup> The four complaints connected to an imbalance in TVP programmes were accepted, but not decided upon by the time of writing of this report. The two complaints connected to Kopacz/Szydło debate were found unsubstantiated. The complaint on subliminal messages was rejected on the grounds that the NBC is not a competent body to investigate such issues. The complaint related to allegedly denied access of PiS representatives to TVP premises was only brought to the attention of the NBC (therefore not registered as a complaint), nevertheless the NBC addressed the TVP president for an explanation, which was received promptly.

<sup>41</sup> Article 103 of the Election Code and NEC decision of 25 September 2015.

<sup>42</sup> The Movement for Election Control informed the OSCE/ODIHR EAM that this would be the mechanism through which it would carry out observation.

which voters were requested to sign.<sup>43</sup> In case a voter spoils the ballot, the law does not allow for it to be replaced.

*Consideration could be given to permitting the re-issuance of a ballot paper to voters who spoil their ballots.*

In all visited polling stations, many voters marked their ballots outside of the voting screens in full view, and the PEC members did not take any corrective action, despite provision in the law and a related NEC decision that the PEC chairperson should ensure the secrecy of voting.<sup>44</sup> There were frequently tables with pens located just beside voting screens, which appeared to facilitate open voting. The OSCE/ODIHR EAM also noticed that multiple persons were not prevented from simultaneously going behind the voting screens. Failure to ensure the secrecy of the ballot contradicts OSCE commitments and other international obligations and standards.

*Efforts are required to ensure that the legal provisions for the secrecy of voting are implemented in practice and enforced by PECs. The significance of ballot secrecy should be emphasized during the training of election commissions and in voter education materials.*

During counting and tabulation, procedures were followed overall, and the process was conducted transparently and efficiently. However, the booklet format for the *Sejm* ballots resulted in a cumbersome and protracted counting process.

*The format of the ballot booklet could be reviewed with a view to facilitating and speeding up counting.*

To have a better understanding for the reasons of ballot invalidation, the percentage of which was considered rather high in previous elections, and to tighten control, the format of the election result protocols was changed. In a welcome step, among other information, election commissions were obliged to provide a breakdown of invalid ballots by reason. Nevertheless, ballot validity criteria remained strict, resulting in, among other reasons, invalidation of votes with any sign other than an “x” (two crossing lines) or when the “x” is placed outside of the provided box, even when voter intent is clear. The number of invalid votes amounted to 394,664 or 2.53 per cent of the total votes cast.

*Ballot validity provisions could be reviewed and liberalized with a view to providing for the validity of the vote where the intention of the voter is clear and unambiguous.*

A copy of the PEC protocol is publicly displayed at the polling station immediately after being signed by all PEC members. PEC protocols are then delivered to the CECs after their verification at designated municipality units where paper protocols are checked against protocols filled out by PECs using the electronic system. In case of mistakes or discrepancies, PECs would be asked to correct the protocols. Upon receipt of all PEC protocols, CECs verify them again and draw their own protocols for submission to the NEC.<sup>45</sup> The NEC published final election results on its website on 27 October.

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<sup>43</sup> If a voter refuses to sign the voter register, s/he is issued ballot(s) and a remark “refusal to sign” is entered into the signature section of the register, signed by the PEC chair or deputy chair.

<sup>44</sup> Article 52.2 of the Election Code and NEC decision dated 25 September 2015.

<sup>45</sup> Articles 76 and 173 of the Election Code and NEC decision dated 12 October 2015 (amended on 19 October 2015).

#### XIV. COMPLAINTS AND APPEALS

According to the Election Code, complaints and appeals related to the work and decisions of election commissions shall be processed by the higher-level commission up to the NEC. Complaints related to the refusal of entering a person in the voter register or those related to inaccuracies in the voter register are lodged to the Regional Court through the mayor who can decide to change or revoke the appealed decision instead of referring it to the court.

The NEC received a total of 21 appeals of CEC decisions, 16 related to the *Sejm* and 5 to the *Senat* elections. All the appeals were related to the rejections of candidate lists, questioning the process of verification of signatures and the requirements related to provision of readable data when submitting names of supporters, their addresses and identification document numbers. All appeals were rejected.

The Election Code envisages that only two categories of NEC decisions can be appealed to the Supreme Court. These are the decisions on the refusal to accept the financial report of an electoral committee and on the refusal to accept the notice of establishment of an electoral committee. In 2011, the OSCE/ODIHR noted that the absence of judicial review of NEC decisions was contrary to OSCE commitments.<sup>46</sup> In 2012, the Constitutional Tribunal declared that the lack of judicial review of NEC decisions rejecting an appeal against a refusal by a CEC to register a list of candidates to the *Sejm* or a candidate to the *Senat* contravenes Article 77 of the Constitution, which protects the right to appeal to a court in case of infringement of freedoms or rights.

On 19 April 2013, the *Senat* tabled a bill to introduce an appeal to the Supreme Court for refusal of a list, removal of one or more candidates on a list or invalidation of a list already registered. The Supreme Court supported the proposed bill, noting, however, that it would have an impact on the electoral calendar and may also require changes to the Constitution. The government considered that the *Senat's* proposal was too wide, extending beyond the Constitutional Tribunal's ruling, and the bill was not adopted before the dissolution of the outgoing *Sejm*.

During these elections, the Supreme Court received an appeal related to the refusal of a list of candidates by the CEC and the NEC. The refusal was based on the lack of sufficient valid signatures. The Supreme Court considered it was not competent to decide on the case since it was not within the scope of the 2012 decision of the Constitutional Tribunal.<sup>47</sup>

*The Election Code should provide for judicial review of NEC decisions, in particular in cases related to candidate or candidate list registration.*

The Election Code contains penal and criminal provisions mainly related to campaigning, election financing, and voting. 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. The General Prosecutor would inform the Supreme Court of these cases in the eventuality of a protest on the validity of the election.

A complaint regarding the validity of elections to the *Sejm* or to the *Senat* may be lodged with a Supreme Court by a voter entered into a voter register, a chairperson of an election commission or by a representative of an electoral committee within seven days from the announcement of the

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<sup>46</sup> See paragraph 18.4 of the OSCE 1991 Moscow Document, paragraph 5.10 of the 1990 OSCE Copenhagen Document and Section II.3.3 of the Code of Good Practice.

<sup>47</sup> The reason for rejecting the list was that one person on the list did not have the right to be a candidate.

results. The complaint shall be based either on the commission of a crime against elections or a breach of the provisions of the Code relating to voting or determination of the results, that could affect the outcome of the elections. The Supreme Court decides on the validity of the election no later than 90 days after the elections.

As of 10 November, the Supreme Court received 77 complaints related to the elections. The majority were lodged by a voter or a candidate, alleging that the votes for a candidate were not counted correctly.<sup>48</sup>

## **XV. RECOMMENDATIONS**

These recommendations, as contained throughout the text, are offered with a view to further enhance the conduct of elections in Poland and to support efforts to bring them fully in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities of Poland to further improve the electoral process and to address the recommendations contained in this and previous reports.<sup>49</sup>

### **A. PRIORITY RECOMMENDATIONS**

1. Efforts are required to ensure that the legal provisions for the secrecy of voting are implemented in practice and enforced by PECs. The significance of ballot secrecy should be emphasized during the training of election commissions and in voter education materials.
2. Consideration should be given to reviewing the need to maintain proxy voting given the expansion of postal voting and with a view to bringing the legislation fully in line with OSCE commitments and other international standards for democratic elections.
3. The Election Code should provide for judicial review of NEC decisions, in particular in cases related to candidate or candidate list registration.
4. To effectively ensure media freedom and protect freedom of speech, especially during an election period, consideration should be given to removing provisions that foresee criminal liability for defamation and public insult.
5. The Election Code should provide for full access of citizen non-partisan observers to all stages of the electoral process in line with the OSCE commitments and other international obligations.
6. Ballot validity provisions in the law could be reviewed and liberalized with a view to providing for the validity of the vote where the intention of the voter is clear and unambiguous.

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<sup>48</sup> Supreme Court decided on all complaints on 22 December. It dismissed 44 complaints on procedural grounds, 6 were declared unfounded. In 27 cases the SC ruled that the irregularities identified did not affect the outcome of the elections.

<sup>49</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations.”

## **B. OTHER RECOMMENDATIONS**

### **Candidate Registration**

7. Consideration should be given to amending the legislation to include clear guidance and procedures for signature verification.
8. Consideration could be given to supplementing the gender quota requirement with additional measures concerning the rank order, such as a requirement for alternating positions between genders on party lists, as well as effective legal sanctions.

### **Political Party and Campaign Finance**

9. To increase the transparency of political party financing, it is recommended that financial reports cover all expenditure of political parties and be accompanied by supporting documents.
10. More frequent declarations on donations received by political parties for electoral purposes through their election funds and their publication in a timely manner could be considered.
11. Consideration could be given to increasing the NEC's financial and human resources dedicated to the oversight of political financing and to vesting it with the investigative power to undertake full audits of financial reports.
12. The NEC could be granted some margin of appreciation on minor transgressions of political finance regulations by introducing a threshold below which an irregularity does not lead to the rejection of a financial report.

### **Media**

13. To ensure greater institutional credibility and effective independence of the NBC, consideration could be given to introducing a member rotation system and to amending provisions that allow the dissolution of the NBC before the end of tenure.

### **Election Day**

14. The maximum number of voters per polling station, rather than inhabitants, could be used for planning purposes and could be reduced to avoid possible overcrowding.
15. Consideration could be given to permitting the re-issuance of a ballot paper to voters who accidentally spoil their ballots.
16. The format of the ballot booklet could be reviewed with a view to facilitating and speeding up counting.

## XVI. ANNEX: FINAL RESULTS

The NEC announced the final election results on its website on 27 October 2015.<sup>50</sup>

<b>Total number of registered voters</b>	30,629,150
<b>Total number of valid ballots cast</b>	15,595,335
<b>Total number of valid votes</b>	15,200,671
<b>Total number of invalid ballots</b>	1,738
<b>Total number of invalid votes</b>	394, 664
<b>Turnout (percentage)</b>	50.92
<b>Valid votes (percentage)</b>	97.47

	<b>Sejm Electoral Committees (in order of candidate lists)</b>	<b>Number of votes received</b>	<b>Per cent of votes</b>	<b>Seats Won</b>
1.	Law and Justice (PiS)	5,711,687	37.58	235
2.	Civic Platform (PO)	3,661,474	24.09	138
3.	Razem	550,349	3.62	0
4.	KORWiN	722,999	4.76	0
5.	Polish People's Party (PSL)	779,875	5.13	16
6.	Coalition United Left	1,147,102	7.55	0
7.	Kukiz 2015	1,339,094	8.81	42
8.	Nowoczesna	1,155,370	7.60	28
9.	Non Partisan Single Mandate Electoral Districts Voters Committee	15,656	0.10	0
10.	Zbigniew Stonoga's Voters Committee	42,731	0.28	0
11.	Social Movement of the RP Voters Committee	3,941	0.03	0
12.	United for Silesia Voters Committee	18,668	0.12	0
13.	Self-Defense	4,266	0.03	0
14.	Grzegorz Braun's Committee of Voters "God Bless"	13,113	0.09	0
15.	New Right Congress	4,852	0.03	0
16.	German Minority Voters Committee	27,530	0.18	1
17.	Citizens to Parliament Voters Committee	1,964	0.01	0

<b>Senat Electoral Committees</b>	<b>Seats Won</b>
Law and Justice (PiS)	61
Civic Platform (PO)	34
Lidia Staroń - Always on the People's Side Voters Committee	1
Marek Borowski's Voters Committee	1
Grzegorz Bierecki's Voters Committee	1
Orembski - Independent Senator from Wrocław's Voters Committee	1
Polish People's Party (PSL)	1

<sup>50</sup> In 2015, 125 women were elected to the *Sejm*, increased from 112 elected in 2011.

## 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 coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the 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 OSCE/ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).