



Office for Democratic Institutions and Human Rights

# REPUBLIC OF POLAND

## PARLIAMENTARY ELECTIONS

9 October 2011

OSCE/ODIHR Election Assessment Mission Report



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**I. EXECUTIVE SUMMARY**

In line with OSCE commitments, the Permanent Mission of Poland to the OSCE invited the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to observe the 9 October parliamentary elections. Based on the recommendation of a Needs Assessment Mission, the OSCE/ODIHR deployed an Election Assessment Mission (EAM) for these elections.

The 9 October 2011 elections 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.

Poland's comprehensive legal framework generally provides a good basis for democratic elections and has been strengthened with the adoption of a unified Election Code, which introduced mechanisms to facilitate participation by disabled voters. However, multiple late changes, including amendments and a ruling of the Constitutional Court, did not enhance stability of the legal framework. Legislation provides for a possibility to cast a vote via proxy, which, while aiming at enfranchisement, contradicts the OSCE commitments related to the secrecy and equality of the vote and respect for voters' choices.

The election administration at all levels performed in an impartial and professional manner and enjoys a high degree of respect and public trust. The representation of electoral contestants at polling station level promotes transparency and enhances the impartiality of election administration.

A broad range of political parties registered candidate lists and candidates for the elections. The failure of the election administration to grant registration to the New Right Party nationwide candidate list, however, highlighted a lack of clear deadlines for signature verification.

The campaign was active, especially outside Warsaw, with political parties and candidates travelling extensively to engage with voters. Fundamental freedoms were respected at all times.

The regulation of campaign and political party finance is comprehensive, enjoys the overall trust of electoral stakeholders and provides for transparency, although this could be further enhanced in several areas, such as disclosure of private donations to political parties and all of their expenses.

The Polish media environment is diverse, and coverage of the election campaign provided voters with a range of viewpoints. However, a review of the structure and composition of the National Broadcasting Council could help avoid the public perception that public broadcasting is under government influence. Criminal liability for defamation and public insult remains in place, potentially affecting freedom of speech, especially during election periods.

The legislation establishes a single hierarchical structure of responsibility in the complaints and appeals process. Decisions of election commissions may be appealed to the higher-level commission up to the level of the National Election Commission (NEC). However, while certain

decisions of the NEC are subject to appeal to the Supreme Court, judicial remedy is lacking in other cases – notably those related to candidate registration and the results of the *Senat* elections – which are not subject to judicial appeal. The election appeals system should be reviewed to guarantee an effective and timely remedy to all complaints, with the possibility for courts to review certain cases prior to election day.

In accordance with standard practice for EAMs, the OSCE/ODIHR mission did not observe election day proceedings in a systematic or comprehensive manner. However, members of the OSCE/ODIHR EAM visited a limited number of polling stations on election day. Voting and counting appeared to be generally conducted in a calm and orderly manner in the polling stations visited. 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. Guidelines for determining validity of the vote were quite strict and invalid votes amounted to 4.5 per cent of the total votes cast.

In a welcome development, the newly adopted Election Code provided for international observers. The OSCE/ODIHR EAM was granted full access to all stages of the electoral process. The legislation, however, still does not permit domestic non-partisan observers, as called for by the 1990 Copenhagen Document.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

On 5 August 2011 the Permanent Mission of Poland to the OSCE invited the OSCE/ODIHR to observe the 9 October parliamentary elections. The OSCE/ODIHR sent a Needs Assessment Mission (NAM) to Warsaw from 9 to 11 August, which recommended an Election Assessment Mission (EAM) be deployed to follow the elections.

The EAM was deployed from 26 September to 13 October 2011. It was led by Julian Peel Yates and consisted of six election experts from six OSCE participating States. OSCE/ODIHR EAM experts were based in Warsaw but also visited Gdańsk, Katowice, Wrocław, Lublin, Toruń and Łódź during the course of the mission. In accordance with standard practice for EAMs, the deployment of the OSCE/ODIHR EAM did not envisage any systematic or comprehensive observation of voting and counting procedures, although the EAM visited a limited number of polling stations on election day.

The elections were assessed for their compliance with OSCE commitments and other international standards for democratic elections, as well as with Polish legislation. This report should be read in conjunction with past OSCE/ODIHR reports, which provide additional details on Polish elections and whose recommendations remain applicable.<sup>1</sup> Following the 2007 elections, the OSCE/ODIHR concluded that they “demonstrated a democratic and pluralistic electoral process, founded on a high level of public confidence in the integrity and impartiality of the electoral administration.”

The OSCE/ODIHR wishes to thank the Ministry of Foreign Affairs and the National Election Commission (NEC) for the co-operation and assistance extended to the OSCE/ODIHR EAM during the course of the mission.

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<sup>1</sup> OSCE/ODIHR reports on previous elections in Poland are available at: <http://www.osce.org/odihr/elections/Poland>.

### III. BACKGROUND

The previous parliamentary elections were held on 21 October 2007, following the dissolution of a governing coalition led by the Law and Justice Party (PiS). Civic Platform (PO) emerged as the victor, winning 209 seats in the *Sejm*, and formed a majority government with the Polish People's Party (PSL) which won 31 seats. The PiS won 166 seats, but during the parliamentary term several PiS deputies broke away and formed a separate party, Poland Comes First (PjN). The Left and Democrats Coalition (LiD), which won 53 seats, dissolved in April 2008 into its constituent parties, including the Democratic Left Alliance (SLD) and Social Democracy of Poland (SDPL). The German Minority remained with 1 seat. In the *Senat*, PO held 60 seats, PiS 39 seats and an independent, former Prime Minister Włodzimierz Cimoszewicz, won 1 seat.

Following the tragic death of President Lech Kaczyński in April 2010, Poland held an early presidential election on 20 June, followed by a second round on 4 July. Mr. Bronisław Komorowski of PO won the election with 53 per cent of the vote, defeating the brother of the deceased president and PiS leader Mr. Jarosław Kaczyński who polled 47 per cent.

Poland has been a party to the International Covenant on Civil and Political Rights (ICCPR) since 1977. It has also ratified the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and has signed the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2007 but has not yet ratified it. Conclusions of the working group on Universal Periodic Review (UPR) of Poland by the UN Human Rights Council in 2008 contain 29 recommendations.<sup>2</sup>

### IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

The Republic of Poland has a bicameral Parliament consisting of the 460-member *Sejm* (lower house) and the 100-member *Senat* (upper house). Deputies to the *Sejm* and Senators are elected for a four-year term by secret ballot in universal, equal and direct elections. Parliamentary elections are announced by the President to be held on a non-working day, which shall be within the 30-day period before the expiry of the term of office of the *Sejm* and *Senat*. For these elections the President chose the earliest possible date.

Deputies to the *Sejm* are elected by proportional representation from 41 multi-member constituencies in an open list system. The size of constituencies varies between 7 and 20 elected deputies. Independent candidates cannot stand alone in the *Sejm* elections but only in list-sharing with other candidates in a multi-member constituency. This practice is contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document.<sup>3</sup>

*Senat* deputies are elected through a first-past-the-post system and, for the first time, were elected in 100 single mandate constituencies, rather than in multi-mandate constituencies as in past elections.

Political parties, coalitions and groups of voters who wish to compete in elections must form electoral committees following the announcement of elections. Electoral committees are the legal entities entitled to register candidates. Electoral committees whose candidate lists

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<sup>2</sup> See full text of the Report of the Working Group on the UPR of Poland at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/136/89/PDF/G0813689.pdf?OpenElement>.

<sup>3</sup> Paragraph 7.5 states that the participating States will respect "the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination."

collectively receive at least five per cent of the total number of valid votes cast nationwide (eight per cent for coalitions) participate in the distribution of mandates to the *Sejm* in relevant constituencies, according to the D'Hondt method. Electoral committees registered by the national minorities are exempted from these threshold requirements. For the *Senat*, the candidate who receives the most valid votes in a given constituency is elected.

*Changes to the electoral framework should be considered to enable independent candidates to stand in the Sejm elections. Further, provisions guiding the distribution of mandates could be re-considered to provide candidate lists which are running in only one multi-member constituency with an equitable chance to gain seats in the Sejm.*

Poland's comprehensive legal framework generally provides a good basis for democratic elections in line with the OSCE commitments and other international standards. The Constitution of the Republic of Poland, the Election Code, the Political Parties Act, the Press Law and the Broadcasting Law compose the primary legal framework for parliamentary elections in Poland. Relevant provisions of the Code on Civil Procedure and criminal legislation are applicable to election dispute resolution. The NEC issues binding guidelines for election commissioners and lower-level election commissions, as well as explanations for state and municipal bodies, electoral committees and broadcasters.<sup>4</sup>

The Election Code was adopted as a consolidated electoral legislative act on 5 January 2011 in line with previous OSCE/ODIHR EAM recommendations. Since then it was amended six times.<sup>5</sup> The late introduction of amendments to the electoral legislation is not in line with the principle of stability of electoral law which provides that electoral legislation should not be fundamentally changed within the last year before an election.<sup>6</sup> Furthermore, on 20 July 2011 the Constitutional Court ruled the following provisions of the Election Code to be inconsistent with the Constitution: for parliamentary and presidential elections to be held over two days, and provisions which banned the use of large-format election posters and paid election radio and TV advertising.<sup>7</sup> The Court also ruled that provisions of the Election Code that allow the casting of a ballot via proxy are consistent with the Constitution, which guarantees universal, equal, direct and secret elections.<sup>8</sup> This decision was announced less than three months before election day.

The NEC issued a number of regulations and decisions in order to provide a framework for issues that were not fully clarified by law. Of particular importance were the regulation of 17 August, concerning the tasks of the Precinct Election Commissions (PECs) for the preparation and conduct of polling, and the regulation of 22 August, amending some provisions of the previous regulation on arrangements for blind voters.

## A. VOTING AND CANDIDACY RIGHTS

The Constitution and the Election Code grant active suffrage to Polish citizens who are at least 18 years of age on election day, but withhold the right to vote from people who, by a final

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<sup>4</sup> Article 161 paragraph 1 of the Election Code.

<sup>5</sup> Laws of 3 February, 1 April, 15 April, 26 May, 27 May, and 29 July 2011.

<sup>6</sup> See Paragraphs 63 – 65 of the Venice Commission's Code of Good Practice in Electoral Matters, p. 26, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

<sup>7</sup> See Case K 9/11 concerning the Electoral Code in Poland, [http://www.trybunal.gov.pl/OTK/teksty/otk/2011/K\\_09\\_11.doc](http://www.trybunal.gov.pl/OTK/teksty/otk/2011/K_09_11.doc).

<sup>8</sup> See Article 97 Paragraph 2 of the Constitution of Poland.

judgment of a court, have been declared as legally incapacitated or deprived of public or electoral rights.<sup>9</sup>

Under the current legal framework, both partially and totally incapacitated persons are disenfranchised, which is contrary to the ruling of the European Court of Human Rights (ECtHR), as well as international good practice.<sup>10</sup> The OSCE/ODIHR EAM noted the recent effort by the Human Rights Defender's Office in presenting the problem of incapacitated persons' suffrage to the Minister of Justice.<sup>11</sup>

*Consideration could be given to altering the curtailment of the right to vote of persons with mental disabilities and the deprivation of suffrage rights for partially incapacitated persons in line with the UNCRPD and international good practice.*

The Criminal Code envisages deprivation of public rights and, as a part of it, deprivation of the rights to vote and to be elected, as a penalty in addition to at least three years imprisonment for "an offence committed with motives deserving particular reprobation."<sup>12</sup> However, contrary to ECtHR ruling, the Criminal Code does not require "a link between the offence committed and issues relating to elections and democratic institutions."<sup>13</sup>

*Consideration should be given to establishing a link between the offence committed and issues relating to elections and democratic institutions as a necessary ground for disenfranchisement within the procedure of deprivation of public rights.*

The State Tribunal, a body appointed by the *Sejm*, may also impose deprivation of electoral rights as an autonomous sanction for violation of the Constitution or of a law by high-level state officials or deputies of the *Sejm* and the *Senat* within their office or within its scope.<sup>14</sup>

Polish citizens with active suffrage rights who have reached 21 years of age by election day are eligible to be elected to the *Sejm*. Those who have reached 30 years of age are eligible for the election to the *Senat*. The Constitution was amended in 2009 to introduce a restriction on being elected to the *Sejm* and the *Senat* for those who are sentenced to imprisonment by a final judgment for an intentional indictable offence.<sup>15</sup> In addition, the Election Code removes the right to be elected in parliamentary elections from those who were sentenced for intentional tax crime and who are deprived of the right to be elected by the Lustration Act. According to the Lustration Act, candidates born before 1 August 1972 must submit a statement disclosing information on past collaboration with the secret services of the former communist government. A person loses his or her passive electoral right if there is a valid court finding that the statement

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<sup>9</sup> Article 62 of the Constitution and Article 10 of the Election Code.

<sup>10</sup> ECtHR ruled that "an indiscriminate removal of voting rights, without an individualized judicial evaluation and solely based on a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote", case of Alajos Kiss v. Hungary, No. 38832/06, 20 May 2010. See also Paragraph 1.1.d.v of Opinion no. 190/2002 of the European Commission for Democracy through Law (Venice Commission) on the Code of Good Practice in Electoral Matters, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf), p.6. See also Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections, CDL-AD(2011)045, [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)045-e.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)045-e.pdf).

<sup>11</sup> Human Rights Defender Bulletin, 2010, No 2, pages 21 – 22.

<sup>12</sup> Article 40 of the Criminal Code.

<sup>13</sup> ECtHR, Case of Greens and M.T. v. The United Kingdom, Nos. 60041/08 and 60054/08, 23 November 2011.

<sup>14</sup> Art. 198 of the Constitution and the Law on State Tribunal of 26/03/1982.

<sup>15</sup> Article 11 paragraph 2 of the Election Code.

was false. In response to the Constitutional Court decision and in line with the 2007 OSCE/ODIHR EAM recommendation, the 2007 amendments to the Lustration Act changed the deprivation period from 10 years to a variable period between 3 and 10 years.

## **B. OBSERVATION OF ELECTIONS**

Provisions allowing for international observers were introduced in the Election Code and partially implemented a previous OSCE/ODIHR recommendation. The OSCE/ODIHR EAM enjoyed full access to and good co-operation with all the electoral bodies they addressed, including the NEC, constituency and precinct commissions. However, contrary to Paragraph 8 of the 1990 OSCE Copenhagen Document, there is no provision for domestic non-partisan organizations to observe elections.

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

## **V. ELECTION ADMINISTRATION**

### **A. OVERVIEW**

Parliamentary elections are administered by a three-tiered election administration, composed of the NEC, 41 Constituency Election Commissions (CECs) and some 25,993 PECs.

The NEC is a permanent body tasked with the overall responsibility for administering the elections. It consists of nine active or retired judges appointed by the President: three each from the Constitutional Court, the Supreme Court and the Supreme Administrative Court. Members of the NEC select a chairperson and two deputy chairpersons from among themselves. Duties of the NEC include ensuring compliance with the election legislation, maintenance and update of the voter register, consideration of complaints about the operation of the CECs, development of voter education activities and establishment and announcement of the election results.

The National Election Office (NEO) is the executive body of the NEC, responsible for the organizational, administrative, financial and technical arrangements for the preparation and conduct of elections. There are 49 local units of the NEO, at least one in each constituency and each led by an election commissioner. The NEO offices provide the logistical support for the work of the PECs in close co-operation with the local administration.

Unlike the NEC, lower level election administration bodies are not permanent. The CECs are comprised of 5 to 11 judges – the number is first agreed with the NEC – proposed by the Minister of Justice. According to the law, CECs should be set up by the NEC no later than 48 days before election day and each of them is chaired by one of 51 election commissioners.<sup>16</sup> The CECs are responsible, *inter alia*, for supervising compliance with the election legislation by the lower level election commissions, registration of candidate lists for elections to the *Sejm* and the *Senat*, organization of a ballot lottery, printing of ballot papers and the adjudication of complaints about operation of PECs. The CECs also tabulate the results from the PECs of their constituency and submit them to the NEC.

The PECs are set up no later than 21 days before the day of voting and are composed of 6 to 8

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<sup>16</sup> In some constituencies more than one election commissioner is appointed.

people nominated by electoral committees, while one member is nominated by the head of the local administration. The structure of the PECs, with representatives of electoral committees working in conjunction with the local administration, promotes transparency and public confidence in the process. However, the process of forming PECs was, to some extent, impeded by the failure of some electoral committees in major cities to exercise their right to nominate members, as was reported by some OSCE/ODIHR EAM interlocutors.

The municipalities play an important role in the administration of polling and are responsible for the delineation of precincts, maintenance and update of voter lists, support for PEC training and distribution and retrieval of all election materials, including the voter lists. The mayor appoints a plenipotentiary and staff during the electoral period to provide technical support for the elections.

Overall, the 2011 parliamentary elections were administered in a professional, collegial and transparent manner. There is a high degree of respect and public confidence in the various bodies responsible for the administration of elections, as testified by OSCE/ODIHR EAM interlocutors.

*To ensure that public confidence is not only maintained but strengthened, the NEC could consider organizing periodic post-election review meetings of electoral officials from all levels of the administration to discuss best practice, training and potential improvements to the electoral process.*

## **B. VOTER REGISTRATION**

A national population register is maintained by the Ministry of Internal Affairs and Administration (MSWiA). For each election, the local government authorities are responsible for the compilation of voter registers in co-operation with the NEC. The registers are drawn from the Universal Electronic System for Registration of the Population (PESEL). Voters may obtain information on their inclusion in the voter register upon submitting a request to the municipality of their residence. For these elections the nationwide total number of registered voters was 30,512,850.

As a rule, citizens are included in the voter register of their permanent place of residence. However, it is possible for voters to 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. Absentee voting certificates (AVCs) can be issued to any voters who will not be able to vote at the polling station assigned by the municipality of their permanent residence. Voters with an AVC are able to cast their ballot in any polling station within the country and are added to the voter list by the PEC on election day.<sup>17</sup>

Despite the fact that AVCs are issued by the municipalities according to a sample provided by the NEC, they have different formats. This may lead to confusion as the PECs receive AVCs on election day.

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<sup>17</sup> A total of 114,214 requests were made by voters to be added to the voter registers of their temporary residence and a total of 188,549 AVCs were issued. The deadline to apply for inclusion in the voter register of temporary residence was 4 October 2011, while the deadline to apply for AVCs was 7 October 2011.

*In order to ensure uniformity and increase the security of the electoral process, the NEC could consider introducing a standardized format for the absentee voter certificates issued by municipalities.*

No interlocutors raised any concerns about the accuracy of voter registers. The OSCE/ODIHR EAM noted the conscientious effort made by municipalities to ensure the timely update of the voter registers prior to election day. This inclusive approach appeared to maximize the franchise.

### C. METHODS OF VOTING

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 for the disabled and elderly (over 75 years old) was first introduced for the presidential and municipal elections in 2010. For these elections, postal voting for the disabled and voters abroad was introduced, together with the ability for blind voters to use Braille templates.

The Election Code provides for voting by proxy by people with significant or moderate degrees of disability,<sup>18</sup> and elderly voters over 75 years of age. In order to vote by proxy, voters have to submit an application to the municipality 10 days prior to election day. According to the law, a power of attorney is issued at the domicile of the voter to another voter registered in the same municipality. In principle, one person can act as proxy for only one person; exceptionally, a person can act as proxy for two voters if at least one of them is a family member. The Election Code prohibits charging fees for acting as a proxy or “to issue a power of attorney to vote for any financial or personal benefit.”<sup>19</sup> A total of 12,427 voters nationwide cast their ballot by proxy in these elections. No allegations of abuse of proxy voting were brought to the attention of the OSCE/ODIHR EAM in the 9 October parliamentary elections. However, the OSCE commitments and other international standards for democratic elections require ensuring the secrecy and equality of the vote and respect for voters’ choices.<sup>20</sup>

*Consideration should be given to exploring alternative voting methods for the disabled and elderly voters or to further regulating voting by proxy so as to bring legislation more fully in line with OSCE commitments and other international standards for democratic elections.*

A new method of voting introduced by the recent electoral amendments is postal voting. Voters with significant or moderate degrees of disability and voters residing abroad are eligible to cast their ballots by post. To obtain a postal ballot, a voter has to submit a notification to the municipality at least 15 days before election day.<sup>21</sup> On the basis of the notification, the municipality or the consulate sends a “voting package” to these voters, no later than 10 days before election day.<sup>22</sup>

For the first time in Polish elections, visually impaired voters had the option either to vote by post or cast a ballot in person at a polling station through the use of Braille templates, a welcome

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<sup>18</sup> See Article 4 of the Act on Occupational and Social Rehabilitation and Employment of Disabled People for definitions and descriptions of the degrees of disabilities, <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20102141407>.

<sup>19</sup> Article 60 of the Election Code.

<sup>20</sup> See paragraphs 5.1, 7.3 and 7.4 of the 1990 OSCE Copenhagen Document; Article 25 of the ICCPR; General Comment to Article 25, paragraphs 20-22; the 1950 Convention for Protection of Human Rights and Fundamental Freedoms, Protocol 1 of 1952, Article 3.

<sup>21</sup> The notification could be made orally, in writing, by telegraph, fax or electronically.

<sup>22</sup> For these elections 22,951 registered voters received the voting package, of whom 17,161 actually cast their ballot by post (817 were voters with disabilities and 16,344 were out-of-country voters).

innovation introduced with the new Election Code.<sup>23</sup> Visually impaired voters had to notify the municipality at least 14 days before election day to apply to use a Braille template. The number of Braille templates provided was based on the number of requests from voters to use the Braille template.<sup>24</sup> Forty-three voters nationwide requested to vote by post with Braille templates, while 214 requested to vote with Braille templates at polling stations. Visually impaired voters could also vote with the assistance of a person of their choice, excluding PEC members.

All OSCE/ODIHR EAM interlocutors, including disability organizations, welcomed these new methods of voting which helped to enfranchise vulnerable groups. Although concerns were expressed that very few voters used the new mechanisms, many believed the numbers would increase in future elections as voters become more familiar with the options. It was also noted that some of the new methods were adopted shortly before the announcement of the elections, which did not allow sufficient time to inform voters of the procedures and deadlines. While disability organizations ran extensive voter information campaigns, voter education efforts by the NEC were limited.

*Prior to elections the NEC could consider conducting an extensive voter education campaign to target voters with disabilities and explain how to access the new voting methods available to them.*

#### **D. OUT-OF-COUNTRY VOTING**

Polish citizens residing abroad, regardless of whether on a permanent or temporary basis, have the right to cast their ballot at Polish embassies or consulates in the country of their residence either in person or by post. Voters have to declare their intention to vote at the consulate at least 3 days before election day, or submit a notification to the consulate to use the postal voting system at least 15 days before election day. Voters abroad are included in Warsaw I constituency and vote for the candidate lists of that constituency.<sup>25</sup> The Ministry of Foreign Affairs is responsible for the organization and conduct of out-of-country voting (OCV) and the transfer of results to the CEC of Warsaw I.

#### **VI. CANDIDATE REGISTRATION**

Electoral committees formed by political parties, coalitions and groups of voters have the right to nominate candidates for elections to the *Sejm*. According to the law, the number of candidates on the list may not be less than the number of deputies to be elected in the constituency and not more than twice that number.

The new Election Code introduced a quota of at least 35 percent of either gender in candidate lists for the *Sejm*, although the quota did not affect the placement of the candidates through a specific mechanism, such as a zippered list. The provision was welcomed by women's

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<sup>23</sup> See the 27 May 2011 Act (Section 7a) amending the Election Code to this effect at <http://isap.sejm.gov.pl/Download?id=WDU20111470881&type=1>. These introductions are in line with of Article 29 of the UN Convention on the Rights of Persons with Disabilities (CRPD) that Poland has signed but not yet ratified. See <http://www.un.org/disabilities/convention/conventionfull.shtml>.

<sup>24</sup> NEC Regulation of 22 August 2011, amending the Regulation of 17 August.

<sup>25</sup> During these elections a total of 139,415 voters registered for OCV and 119,678 voters actually cast their ballots, of which 117,467 were valid (98.15 per cent). OCV represented 12.07 per cent of the total votes cast in Warsaw I constituency.

organizations, which had campaigned for a gender quota, and is in line with a previous recommendation of the OSCE/ODIHR. However, the elected Parliament showed only a modest increase in representation of women over 2007,<sup>26</sup> calling into question the current mode of implementing the quota in promoting women's participation.

According to the law, a list of candidates for elections to the *Sejm* should be supported by signatures of at least 5,000 voters permanently residing in the given constituency, while for elections to the *Senat* the required number of signatures is 2,000. The CECs are responsible for the verification of supporting signatures and register the lists after verifying that all data submitted by each voter (name, address and Social Security Identification Number) are accurate. The law provides that a CEC can request an electoral committee to remove any mistakes on its list within three days. However, the law does not contain any standards or procedures for verification of the supporting signatures.

Several interlocutors complained to the OSCE/ODIHR EAM that signatures, or entire signature lists, were frequently invalidated for minor issues, such as orthographical or spelling errors. Indeed, the Supreme Court found the election commissions' method to assess voters' personal data during the signatures verification procedure to be excessively rigorous.<sup>27</sup> In this regard, the previous OSCE/ODHIR recommendation on "*standardizing the practice of verification of supporting signatures nationwide*" remains to be addressed.

The Election Code stipulates that electoral committees which have their lists of candidates registered in more than half of the constituencies (i.e. in at least 21 out of 41 constituencies) should submit an application to the NEC no later than 40 days prior to election day to obtain a certificate required to register their lists without supporting signatures in the rest of the constituencies.<sup>28</sup> The law also provides that an electoral committee should submit its list of candidates for registration to a CEC no later than 24:00 on the 40<sup>th</sup> day prior to election day.<sup>29</sup>

This coincidence of deadlines, together with the absence of a specific legal deadline for the verification of the signatures to be completed, effectively meant that the electoral committees intending to apply for nationwide registration had to submit their candidate lists to the CECs sufficiently far in advance for the signatures to be verified. Some CECs informed the OSCE/ODIHR EAM that they understood the 40-day deadline to be a time limit within which they should complete the verification of signatures, while other CECs reasoned that in absence of such deadline a CEC should complete the signature verification process in the shortest period possible.

The ambiguity of deadlines resulted in a much-publicized case, when Mr. Korwin-Mikke's New Right Party (NP) was refused nationwide registration, although it eventually registered candidate lists in 21 constituencies. The NP maintained that although it submitted its candidate lists and applied to the NEC for the certificate for nationwide registration by 30 August, two CECs (Rybnik and Warsaw II) did not issue their decisions to register their candidate lists until after 30 August (1 September and 5 September, respectively). The authorities maintained, however, that on the deadline for obtaining a certificate for the nationwide registration the party only had 19

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<sup>26</sup> In 2011, 112 women were elected to the *Sejm*, increased from 92 elected in 2007.

<sup>27</sup> Supreme Court decision of 31 August 2011 No III SW 10/11 with reference to its Case Law (as of 9 August 2004 No III SW 42/02).

<sup>28</sup> See Article 210 paragraph 3 of the Election Code.

<sup>29</sup> On 10 August 2011 the NEC issued Information ZPOW-503-56/11 specifying that the 40-day deadline fell on 30 August 2011.

candidate lists registered, and the NEC therefore had no choice but to refuse nationwide registration.

The electoral committee of NP contested the refusal of the NEC in an appeal submitted on 14 September to the Supreme Court,<sup>30</sup> which did not consider the case as it was filed prematurely.<sup>31</sup> The electoral committee then filed a similar appeal to the Regional Administrative Court in Warsaw on 15 September, which was rejected, as it fell out of the court's jurisdiction.<sup>32</sup> The NP announced its intention to file an appeal to the Supreme Court once the election results were officially published.

*To safeguard the principle of equal treatment, the legislation should be amended to include clear guidance and procedures for signature verification. Furthermore, the deadlines for submission of candidate lists, verification of signatures by CECs and application to the NEC for a certificate for nationwide registration should be clarified and separated, allowing sufficient time for these sequential steps to be completed.*

## VII. CAMPAIGN

Seven electoral committees registered nationwide candidate lists for the *Sejm*: PO, PiS, PSL, SLD, the Palikot Movement (RP), PJN and the Polish Labour Party (PPP). No coalitions were registered for these elections.

Four other electoral committees registered candidate lists in a number of constituencies. The NP registered candidate lists in 21 constituencies, the Right (*Prawica*) in 20 constituencies, Our House Poland Self-Defense of Andrzej Lepper registered lists in 9 constituencies, and an electoral committee representing the German minority registered a list in 1 constituency.

PO, PiS, SLD and PSL registered candidates in a majority of the 100 *Senat* constituencies (PO and PiS – 93 candidates each; SLD and PSL – 68 candidates each). The “Union of Presidents – Citizens for Senate”, a new civic movement of independent candidates registered candidates for the *Senat* in 30 constituencies. An additional 83 electoral committees registered lists for the *Senat*, supporting individual candidates.

The campaign was calm, with most interlocutors contrasting the tone with a much more antagonistic 2007 parliamentary election campaign. The campaign was polarized between the two leading parties, the ruling PO and the opposition PiS, with both parties running campaigns focused on their leaders, Mr. Donald Tusk and Mr. Kaczyński respectively, rather than on policy issues. Both parties appeared to run their campaigns in parallel, with little interaction, as exemplified by the lack of public debates between their leaders.

The entry of two newcomer parties, RP and PJN, added to the diversity of choice. PJN, a PiS splinter party, promoted itself as a party outside the political establishment. Meanwhile, the new approach promoted by the RP appeared to target young people. Notably, the RP candidate list in Gdańsk was headed by an openly gay candidate and in Kraków was headed by a transgender candidate, both of whom were elected to the *Sejm*.

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<sup>30</sup> Supreme Court File number III SW 12/11.

<sup>31</sup> According to Article 241 paragraph 1 of the Election Code, the time limit for the submission of complaints to the Supreme Court is seven days from the announcement of results by the NEC in the Official Gazette.

<sup>32</sup> Articles 384 and 493 of the Election Code stipulate that this court can adjudicate electoral disputes originating from local elections.

The campaign, particularly outside of Warsaw, was active, and all parties used a variety of methods to promote their candidates. Both Mr. Kaczyński and Mr. Janusz Palikot released books during the campaign period, raising the issue of whether the costs should be included in the parties' campaign expenses. The launch of Mr. Kaczyński's book was accompanied by billboards showing the candidate, which could have been considered part of the election campaign.

Political party interlocutors informed the EAM that the late July ruling of the Constitutional Court reversing the ban on paid political advertising and billboards over two square meters in size negatively affected their ability to plan their party strategies and resulted in fewer paid political advertisements and a greater use of the internet. Smaller and newer political parties that do not receive annual state subsidies, such as RP, PJN and NP, were especially active on the internet, using blogs, YouTube and Facebook to promote their campaigns.

There were no reports of any obstacles to campaigning or any reported violations of the fundamental freedoms of speech, movement and association. However, there was some discussion immediately after the elections of the enforcement of the campaign silence period.<sup>33</sup> Following the close of polls, the NEO informed the media that there had been 79 cases of breaking the electoral silence, and that 24 people had been arrested. The most frequent cases included disseminating leaflets and posters or destroying posters. A number of internet portals warned users that any posts that were deemed to break the silence would be deleted. However, bloggers and social media users did not necessarily follow the ban. In a widely publicized case, a Facebook user who posted "I am voting for PiS" was questioned by police. Such cases led to a post-election public discussion in the media that campaign silence provisions should either be revised to take into account the internet or removed.

## VIII. CAMPAIGN FINANCE

The regulation of campaign and political party finance is comprehensive, enjoys the overall trust of electoral stakeholders and provides for a high degree of transparency. Campaign financing is entirely regulated by the newly adopted Election Code, while the Political Parties Act governs political party financing. The current system of political party financing was established in December 2001 with amendments to the Political Parties Act. Recent changes, made in December 2010 at the initiative of the governing coalition, decreased state subventions to eligible political parties by approximately 43 per cent.

### A. POLITICAL PARTY FINANCING

According to the Political Parties Act, political party finances can be derived from membership fees, donations, legacies, bequests, revenues from assets and allocations from the State budget (subsidies and subventions). In practice, the biggest share of party finances comes from public funds. According to NEC data, state funding comprises approximately 80 per cent of the total party income of the two largest political parties (PO and PiS).

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<sup>33</sup> Article 107 of the Electoral Code stipulates that "electoral campaigning, *inter alia* organizing gatherings, marches and manifestations, making speeches and dissemination of electoral materials, is forbidden on election day and 24 hours before the election day."

Political parties receive two types of public funding – subsidies and subventions. Each political party, coalition or committee of voters and organization, which gains at least one seat in the *Sejm* or the *Senat*, is eligible to receive a subsidy from the state. The amount is calculated on the basis of the total expenditures declared in the financial reports and is proportionate to the number of the *Sejm* and *Senat* mandates obtained. Moreover, each political party that receives more than three per cent of the total number of votes cast or is part of a coalition which receives more than six per cent of the votes cast for the *Sejm* can obtain annual state subventions during the term of the *Sejm*.

OSCE/ODIHR EAM interlocutors generally expressed confidence in the political party financing system. According to them, the political party financing is transparent and the provisions of the Political Parties Act provide explicit mechanisms for effective control. Emphasizing the importance of transparency of political party funding, the Constitution stipulates that “the financing of political parties shall be open to public inspection.”

The Unit for Controlling the Financing of Political Parties and Election Campaigns within the NEO is the body responsible for monitoring and supervision of political party finance. Many OSCE/ODIHR EAM interlocutors noted the significant competence and capability of this Unit to deal with party and campaign finance issues.

Political parties which receive annual state subventions are obliged to submit finance reports to the NEC by 31 March each year in which they report on all party income, expenses from the election fund and expenditures financed from the state subvention. However, the financial reports do not contain information about the expenses of the party for statutory activities that are not funded by state subventions.<sup>34</sup>

*In order to increase the level of transparency of political party financing, it is recommended that financial reports of political parties cover all expenses of the political parties, including the expenditures for statutory activities funded through private donations.*

## **B. CAMPAIGN FINANCING**

According to the Election Code, the election campaign is conducted exclusively by the electoral committees and can be carried out from the date of their registration by the competent authority.

However, a number of the OSCE/ODIHR EAM interlocutors noted that several political parties started campaign activities before the announcement of the elections and the registration of the electoral committees. As a reaction to this, the NEC issued three opinions aiming to distinguish between campaign activities during the campaign and activities of the political parties in the period before the elections. Also, the NEC indicated the sources of funding that could be used for these campaign activities.

In the first opinion,<sup>35</sup> issued in reaction to early campaign activities by political parties, the NEC stipulated that actions in the pre-election period, bearing the features of the election campaign, violate the provisions of the Election Code. In the second opinion,<sup>36</sup> given as a reply to a PO

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<sup>34</sup> GRECO Third Evaluation Round Compliance Report on Poland noted that a recommendation that financial reports of the political parties “also cover those expenses for statutory activities which are not charged to subventions received from the State budget” has not been implemented, see [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)7\\_Poland\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)7_Poland_EN.pdf).

<sup>35</sup> NEC opinion ZPOW-557-1/11, see <http://pkw.gov.pl/gallery/23/54/13/235413/ZPOW-557-1-11.pdf>.

<sup>36</sup> NEC opinion ZPOW-503-33/11.

request for clarification regarding campaign activities in the pre-election period, the NEC reaffirmed its first opinion and pointed out that any material “bearing the features of the electoral campaign” can only be financed by the sources of electoral committees. However, in the third opinion,<sup>37</sup> the NEC pointed out that campaign activities of political parties between the announcement of elections and registration of an electoral committee should be financed “from the current financial means of the party.”

Some OSCE/ODIHR EAM interlocutors noted inconsistencies in the opinions, in particular regarding whether the electoral committees are the only responsible entities for conducting campaign activities and the sources of funding which may be used for campaign purposes. This lack of clarity caused confusion among political parties during the pre-election period.

Political parties that register candidates for the *Sejm* and the *Senat* in all constituencies have a maximum spending limit for campaign purposes of approximately seven million Euro. According to the law, up to 80 per cent of this amount can be spent for advertising.<sup>38</sup> Individuals can make contributions of up to 15 times the minimum monthly wage (approximately EUR 4,600 in total) to an electoral committee of voters or to the election fund of a party. The law stipulates that details of all contributions made to electoral committees have to be published on their websites.<sup>39</sup> However, given that the resources of a party electoral committee can only come from the election fund of the party, only the donations to electoral committees formed by voters are published during the election campaign. The register of private donations to a political party is annexed to its financial report but is not published.

*It is recommended that all contestants be required to publicly disclose all donations for the election campaign, including the register of private donations to political parties. It is also recommended that all election contestants publish financial reports containing detailed information about funding and expenditures on their websites.*

Most political party interlocutors of the OSCE/ODIHR EAM found reporting requirements for the electoral committees to be clear and precise. The period for submission of the financial reports is within three months of election day. Within 30 days of submission of the financial report, the NEC publishes it in its original version in the Public Information Bulletin. Within six months of submission of the report, the NEC can clarify with the relevant electoral committee any inadequacies in it and adopt or reject it on the grounds detailed in the Election Code. The timeframe for submission and evaluation of the campaign finance reports appear to be excessive in light of international good practice.<sup>40</sup> Moreover, prior to the submission of the financial report the NEC does not have legal authority to supervise or monitor campaign spending.

*Consideration could be given to shortening the deadlines for submission of financial reports and their publication. Also, consideration could be given to introducing mechanisms for supervision of the accounts of electoral committees during the election period and shortly after election day.*

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<sup>37</sup> NEC opinion ZPOW-503-44/11, see <http://pkw.gov.pl/wydruk/type,artykul,id,47326.html?pdf>.

<sup>38</sup> Article 136 of the Election Code.

<sup>39</sup> Article 140 paragraphs 1 and 2 of the Election Code.

<sup>40</sup> According to Paragraph 200 of the OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation, “Reports on campaign financing should be turned into the proper authorities within a period of no more than 30 days after the elections”, see <http://www.osce.org/odihr/77812?download=true>.

## IX. MEDIA

The media environment in Poland is diverse, with more than 90 private television channels, over 290 private radio stations and about 5,000 printed publications, including national and regional dailies, weeklies, monthly magazines and thematic editions.<sup>41</sup>

The Polish television market is one of the largest in Europe, with public television playing a dominant role. *Telewizja Polska (TVP)* broadcasts on 9 general and thematic channels and 16 regional ones (the *TVP Info* network), with nationwide *TVP1* and *TVP2* enjoying the highest viewership. The nationwide *TVN* and *Polsat* dominate the private sector.<sup>42</sup> *TVN* combines entertainment with public affairs and political programs, while *Polsat* is more oriented towards entertainment. Public radio (*Polskie Radio*) airs on 5 nationwide and 16 regional channels. Private *Radio RMF FM* and *Radio ZET* are market leaders. Tabloid *Fakt* dominates the print market with around 500,000 copies per day, along with *Gazeta Wyborcza*, the leading quality daily, with some 400,000 copies per day, more than double the circulation of its main competitor, *Rzeczpospolita*.

### A. LEGAL AND REGULATORY FRAMEWORK

The legal framework for the media includes the Constitution, the 1992 Broadcasting Act and the 1984 Press Law. The Constitution guarantees freedom of the press and prohibits any censorship of the means of social communication or licensing of the press. It also establishes the mandate and prerogatives of the National Broadcasting Council (NBC) to safeguard freedom of speech and public interest, further regulated by the Broadcasting Act.

The NBC oversees public and private broadcasters, including their election-related activities, and is composed of five members, with two appointed by the President, two by the *Sejm* and one by the *Senat*. Several OSCE/ODIHR EAM interlocutors positively evaluated the activity of the newly appointed Council<sup>43</sup> in their handling of complaints. However, a majority of interlocutors consider the NBC and the public television and radio broadcasters, to be subject to government influence. The NBC appointment procedures, the limited number of its members and the absence of a member rotation system impede pluralistic representation in the decision-making and activity of the Council.<sup>44</sup> Its institutional independence is also affected by the legal ability of the Parliament, together with the President, to dissolve the entire Council through rejection of its annual report.

*In order to ensure greater institutional credibility and effective independence of public broadcasters, consideration could be given to reforming the NBC structure and composition. Consideration could also be given to amending Article 12 of the Broadcasting Act that allows dismissal of the NBC following the rejection of its annual activity report.*

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<sup>41</sup> European Journalism Centre at [www.ejc.net/media\\_landscape/article/poland](http://www.ejc.net/media_landscape/article/poland).

<sup>42</sup> Average market share of main TV channels 12-18 September 2011, Nielsen Audience Measurement at [www.agbnielsen.pl](http://www.agbnielsen.pl).

<sup>43</sup> In June 2010, the NBC was dissolved, in accordance with Article 12 paragraph 4 of the Broadcasting Act, after Bronislaw Komorowski, temporarily discharging the duties of the President, approved the rejection of the NBC annual report by both the *Sejm* and the *Senat*.

<sup>44</sup> The 1994 Prague Resolution on the Future of Public Service Broadcasting specifies that “the independence of public service broadcasters must be guaranteed by appropriate structures such as pluralistic internal boards or other independent bodies”, 4th European Ministerial Conference on Mass Media Policy, Prague, December 1994. See [www.coe.int/t/dghl/standardsetting/media/doc/DH-MM\(2006\)004\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/media/doc/DH-MM(2006)004_en.pdf).

The 1992 Broadcasting Act<sup>45</sup> regulates both public and private broadcasters and provides broadly for political balance in public radio and television programs.<sup>46</sup> In line with a previous OSCE/ODIHR recommendation, the NBC took steps in setting up in-house media monitoring of the political balance outside and during the campaign period. However, it is unclear how NBC defines and oversees political balance, as no specific regulation is available. The Broadcasting Act prohibits any sponsorship of “electoral programs or programs directly related to electoral campaigns” or sponsorship of programs or other broadcasts by political parties.<sup>47</sup>

Although the 1984 Press Law, which provides for journalists’ rights, duties and activity, has been amended many times, several OSCE/ODIHR EAM interlocutors described it as outdated. One of its provisions establishes fines or criminal sanctions for those journalists that fail to publish statements *verbatim* and to have them authorized by those quoted prior to publication.<sup>48</sup>

A number of OSCE/ODIHR EAM interlocutors expressed concern with regard to several legal provisions that limit media freedom. Criminal liability for defamation and public insult remains in place.<sup>49</sup> The number of criminal cases for defamation has increased substantially in the last ten years, inhibiting journalists’ work.<sup>50</sup> Recently the Constitutional Court confirmed that Article 135(2) of the Criminal Code, which states that “public insult of the President of the Republic of Poland is punishable by imprisonment up to 3 years,” was in accordance with the Constitution.<sup>51</sup> The OSCE Representative on Freedom of the Media has noted on several occasions that the continuing prosecution of journalists for defamation violates international standards and has asked the Polish Government “to consider decriminalizing defamation and to use the opportunity to liberate the media from fear of imprisonment (...) by letting defamation cases be solved in civil courts.”<sup>52</sup>

*In order to ensure media freedom and protect freedom of speech, especially during election times, consideration could be given to removing the Criminal Code provisions that foresee criminal liability for defamation and public insult.*

Article 18 of the Broadcasting Act, which provides for broadcasters’ duties and obligations to follow in their programming, contains abstract notions that, in practice, allow the NBC wide discretion in interpreting the law. Paragraph 2 of the same article refers to broadcasters’ obligation to respect the public’s religious beliefs and the Christian system of values. In this regard, the 2008 report of the OSCE Representative on Freedom of Media makes reference to the fact that “restrictions on freedom of expression (...) should never be used to protect particular

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<sup>45</sup> Last amended in 2011.

<sup>46</sup> See Article 21 of the Broadcasting Act.

<sup>47</sup> See Article 17 of the Broadcasting Act.

<sup>48</sup> See Article 14 of the Press Law. In July 2011, the ECtHR refuted a 2008 ruling of the Polish Constitutional Court, which found a criminal fine on the basis of Press Law Article 14 to be in compliance with the Constitution, see Case of *Wizerkaniuk v. Poland*, No. 18990/05, 5 July 2011.

<sup>49</sup> Articles 133, 135, 212, 226 of the Criminal Code punish defamation and public insult of the President and various other state entities by up to three years imprisonment.

<sup>50</sup> According to the Helsinki Foundation of Human Rights in Warsaw, in 2010, 51 out of a total of 195 defamation cases were opened in court against people who made defamatory remarks by use of media, the majority of them journalists.

<sup>51</sup> Case P12/09, 6 June 2011, [http://www.trybunal.gov.pl/Rozprawy/2011/Dz\\_Ustaw/p\\_12s09.htm](http://www.trybunal.gov.pl/Rozprawy/2011/Dz_Ustaw/p_12s09.htm).

<sup>52</sup> See OSCE Representative on Freedom of the Media press release of 6 August 2007, <http://www.osce.org/fom/48844> and 2008 Report, <http://www.osce.org/fom/38076>, pp. 69 and 330. See also recommendation No. 15 of the Working Group on the UPR of Poland, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/136/89/PDF/G0813689.pdf?OpenElement>.

institutions, or abstract notions, concepts or beliefs, including religious ones.”<sup>53</sup> Such provisions can have an inhibiting effect on journalists’ ability to cover potentially controversial issues, including during the election campaign.

The Election Code provides clearly for equal treatment of electoral committees with regard to paid political advertising.<sup>54</sup> During the election campaign, electoral committees placed political advertising in both public and private media. The NEC received no major complaints related to unfair treatment. However, smaller political parties in particular complained to the OSCE/ODIHR EAM that the rates for paid political advertising in the broadcast media were prohibitively high.

## B. MEDIA COVERAGE OF THE CAMPAIGN

Media coverage of the election campaign provided voters with a wide range of viewpoints. The online coverage of the news portals and digital editions of print media constituted an additional source of information. However, according to OSCE/ODIHR EAM interlocutors, major policy topics were rarely covered or discussed during the campaign.

The Election Code provides for free broadcasting of campaign materials prepared by electoral committees on public television and radio. Only those electoral committees that registered lists of candidates in at least half of the constituencies were entitled to free broadcasts nationwide.<sup>55</sup> Their daily distribution was divided equally and broadcast using a random selection during the 15 days before the silence period. Neither the NEC nor public radio and television received any complaints regarding free airtime. *TVP* could refuse to broadcast (in agreement with the NEC) any campaign material promoting offensive content whilst informing the Prosecutor the same day; in these elections, it did not exercise this right.

In line with its legal obligations, *TVPI* organized a series of five weekly debates between electoral committees that registered *Sejm* candidate lists in all constituencies. According to several OSCE/ODIHR EAM interlocutors, the participating candidates were often not well known to the public. The private channel *TVN24* held six debates but with much less viewership. More popular candidates only from the political parties already represented in the Parliament were invited. Mr. Tusk and Mr. Kaczyński refused to participate in the final leaders’ debate of both TV channels but appeared individually in the *TVP2* interview program.<sup>56</sup>

Though *Polskie Radio* had no legal obligation to hold debates, its first and third nationwide channels organized debates with representatives of the first eight electoral committees that had registered candidates for the *Sejm*, including the NP.

The NBC received eight complaints related to election campaign coverage. The majority concerned *TVP*, but none alleged any major imbalance in the coverage of the campaign or in

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<sup>53</sup> Joint Declaration by the four Global Rapporteurs on Freedom of Expression on Defamation of Religions, Anti-Terrorism and Anti-Extremism Legislation, <http://www.osce.org/fom/38076>, p. 49.

<sup>54</sup> Article 119 paragraph 4 of the Election Code rules that political advertising fees for the entire campaign period cannot exceed the rates charged for commercial advertising and must be determined according to the rates in force on the day of the act ordering the election.

<sup>55</sup> In the case of the *Sejm* candidates, 15 to 30 hours of national coverage and 10 to 15 hours of regional coverage on *TVP* and *Polskie Radio*, respectively. For the candidates to the *Senat*, 5 to 10 hours of national coverage and 3 to 6 hours of regional coverage on *TVP* and *Polskie Radio*, respectively.

<sup>56</sup> ‘Tomasz Lis na żywo’, *TVP2*. Starting in the first week of September 2011, leaders or top politicians of the seven major contestant parties were interviewed individually or took part in debates.

candidate access. No interlocutors of the OSCE/ODIHR EAM raised any concerns with regard to the adjudication of complaints by the NBC.

## X. ELECTION DAY

### A. VOTING

In accordance with standard practice for EAMs, the OSCE/ODIHR EAM did not observe election day proceedings in a systematic or comprehensive manner. However, members of the OSCE/ODIHR EAM visited a limited number of polling stations on election day in the greater Warsaw area and in Łódź.

In the polling stations visited by the OSCE/ODIHR EAM the voting process was organized and directed by the PECs, who appeared to be well-trained, experienced and familiar with the voting procedures. The OSCE/ODIHR EAM noted that women were well represented in the lower-level election commissions visited.

Polling stations are set up for a minimum number of 500 registered voters and a maximum of 3,000. For these elections, a total of 25,993 PECs were established nationwide, with 7,245 of them accessible for voters with disabilities. Special PECs could be established in health care institutions, social assistance houses, penitentiary institutions, detention centers, student dormitories and on vessels.<sup>57</sup>

Polling stations were predominantly located in schools and other public buildings. Some of the polling stations visited by the OSCE/ODIHR EAM were set up in entryways or narrow corridors, which did not facilitate the flow of voters or allow sufficient space for the PECs to supervise the proceedings, particularly given the large number of voters assigned to each polling station.

*Consideration could be given to reducing the maximum number of registered persons per PEC, in order to ensure that the PECs are able to exercise control over the process, particularly in case of a high turnout.*

As voters entered a polling station, their identification was checked and voters without an identity card or another document with a photo were not allowed to vote. The eligibility of voters to cast a ballot in the particular PEC was determined through checking whether their names were included in the voter list. Before the ballots for the elections to the *Sejm* and the *Senat* were issued to voters, they were asked to sign the box next to their name on the voter list. The voters were to mark their ballots by putting a cross next to a candidate's name on only one list. The NEC maintained that any other way to mark the ballot (even if the intent of the voter is unambiguous) would result in the invalidation of the vote. Ballots with more than one cross for the same list were considered valid, but the vote was counted for the candidate whose name was higher on the list. However, if voters made a mistake when marking the ballot, they were not permitted to request a new ballot.

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<sup>57</sup> A total of 773 PECs were established in health care institutions (with 259 of them accessible also for voters with disabilities); 522 PECs were established in social assistance houses (with 209 of them accessible for voters with disabilities), 19 in student dormitories, 191 in detention centers and 3 on vessels.

*Consideration could be given to including in the Election Code a provision for re-issuing a ballot paper to voters who accidentally spoil their ballot.*

The registered electoral committees have the right to deploy one party agent per polling station. Because of the multi-partisan composition of the PECs, electoral committees in the past have not tended to use the opportunity to deploy party agents. However, in the days leading up to election day, PiS publicly raised concerns about the integrity of the election day process and announced its intention to send party agents to every polling station.

The turnout was relatively low, amounting to 48.92 percent of the registered voters. It was highest in Warsaw I constituency, to which the results of the OCV are added. The CECs had arranged for the printing of ballot papers amounting on average to some 85 per cent of the number of eligible voters in their constituency. CECs generally kept a certain quantity of ballot papers in reserve, issuing some 80 per cent to the PECs. In contrast with the previous parliamentary elections, no particular problems of shortages of ballot papers across the country were reported.

The voting process was conducted in an orderly and peaceful manner in the polling stations visited by the OSCE/ODIHR EAM. Nevertheless, in all visited polling stations, most voters marked their ballots outside the voting booths in full view of others, while the PEC members did not take any corrective action, despite provision in the law that the Chairperson of the PEC should ensure the secrecy of voting.<sup>58</sup> Polling stations frequently had tables with pens set up outside the booths, which appeared to encourage open voting. The OSCE/ODIHR EAM also noticed on a few occasions that voters were not forbidden from entering the polling booth with another person of their family. The organization and set-up of polling stations in many cases did not facilitate the secrecy of the vote, in violation of the commitments contained in the OSCE 1990 Copenhagen Document and other international standards.

*It would be timely to undertake a comprehensive review of the practice and relevant legal provisions in relation to the secrecy of the ballot. The authorities should also consider further measures to enhance the secrecy of the ballot, such as voter education activities and training of election authorities, to fully implement all procedures designed to ensure the secrecy of the vote.*

## **B. COUNTING AND TABULATION**

In the few polling stations where the OSCE/ODIHR EAM was present, counting started immediately after the closing of the polls at 21:00. During the counting and tabulation, proper procedures were followed; overall, the process was conducted transparently and efficiently. However, the booklet format for the *Sejm* ballots rendered the counting process lengthy and cumbersome, as also anticipated by many OSCE/ODIHR EAM interlocutors.

*The booklet format of ballots might merit a review, as it causes serious delays to the counting process.*

In determining the results, the PECs calculate the number of eligible voters, the number of voters issued ballots, the number of proxy votes, the number of invalid and valid ballots, the invalid votes cast, the valid votes cast for all the lists of candidates, the valid votes cast for each list of candidates and the valid votes cast for individual candidates from those lists.<sup>59</sup>

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<sup>58</sup> Article 42 paragraph 1, Article 49 paragraph 1 of the Election Code.

<sup>59</sup> Article 228 paragraph 1 of the Election Code.

The guidelines for determining validity of the vote are quite strict, particularly given the fact that a voter is unable to request a new ballot. During the counting, the OSCE/ODIHR EAM noticed some cases where the vote was considered invalid, despite the clear intent of the voter, because the two lines were not crossing each other in the required way or the voters had used another symbol to show their preference. For these elections, the invalid votes amounted to 4.52 per cent of the total votes cast (680,524 invalid votes).

*The narrow wording of the law and its interpretation should be reviewed in order to provide for the validity of the vote in all cases where the intention of the voter is clear and unambiguous, and not only in the cases where the ballot is marked with a cross.*

Official results are tabulated according to the original PEC protocols. A copy of the results protocol is posted at the polling station, while the results protocol is electronically and manually transmitted by the PEC to the corresponding CEC, which, upon aggregation of the results of the whole constituency, transmits the data to the NEC. The aggregation of the results was conducted through a software program, with various accuracy checks and automatic triggers in place to detect aggregation/tabulation errors. The NEC published the results in the Official Gazette on 12 October 2011.

## **XI. COMPLAINTS AND APPEALS**

The legislation establishes a clearly defined complaints and appeals process with a single hierarchical structure of responsibility. The Election Code envisages that the decisions of election commissions may be appealed to the higher-level commission up to the level of the NEC.<sup>60</sup> In addition, the election commissioner who is usually a head of a CEC can annul decisions of a PEC adopted in breach of the law or not compatible with guidelines of the NEC and refer the case to the CEC for a review or ruling on the case individually.<sup>61</sup>

Voters have the right to appeal the decision to refuse to enter them on the voter register within three days to the local regional court via the mayor of the municipality responsible for maintaining the voter register. Along with the transmission of the appeal to the court, the mayor may also consider the appeal justified and change or revoke the appealed decision.<sup>62</sup> The EAM neither noted nor was made aware of a significant number of such appeals.

The Election Code envisages that only limited decisions of the NEC are subject to appeal to the Supreme Court. These are the refusal to accept a notice of establishment of the electoral committee and the validity of the elections to the *Sejm*. This goes against the direct provision of the Constitution protecting the right to seek judicial remedy for infringement of freedoms or rights<sup>63</sup> as well as OSCE commitments.<sup>64</sup> The most evident gaps include the lack of judicial remedy in case of the NEC rejection of an appeal against a refusal by a CEC to register a candidates' list to the *Sejm* or a candidate to the *Senat*. The Election Code also does not provide for a possibility to appeal the validity of the *Senat* elections. The courts adjudicate electoral disputes, within the scope of their authority, in non-litigious shortened proceedings.<sup>65</sup>

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<sup>60</sup> Article 160 paragraph 1 point 5, Article 172 paragraph 1 point 5 of the Election Code.

<sup>61</sup> Article 167 paragraph 2 of the Election Code.

<sup>62</sup> Article 20 paragraph 4 of the Election Code.

<sup>63</sup> Article 77 paragraph 2 of the Constitution.

<sup>64</sup> Paragraph 5.10 of the OSCE Copenhagen Document 1990.

<sup>65</sup> Articles 20, 111, 145, 149, 205, 242, 250 of the Election Code.

*The Election Code should provide for judicial remedy against any NEC decision, and in particular in cases concerning candidate or candidate list registration, of refusal to issue the certificate for nationwide registration to an election committee and appeals on the validity of elections to the Senat.*

An appeal against the validity of elections to the *Sejm* can be lodged in writing with the Supreme Court within seven days from the announcement of election results by the NEC in the Law Journal of the Republic of Poland.<sup>66</sup> Several interlocutors of the OSCE/ODIHR EAM pointed out that complaints submitted during the campaign period, as well as in-between election day and the official announcement of results, are not considered. This limits the effectiveness of redress against infringements of fundamental rights, which is provided for by Paragraph 5.10 of the 1990 OSCE Copenhagen Document and Paragraph 18 of the 1991 OSCE Moscow Document.

*Consideration should be given to amending the legislation to provide the possibility for courts to review certain cases prior to election day.*

The validity of the elections to the *Sejm* is adjudicated in a two stage procedure.<sup>67</sup> In the first stage, a decision is taken by three judges of the Supreme Court whether an appeal or a protest is grounded and whether the infringement of the Election Code influenced the election results. In the second stage, the Supreme Court in the composition of the entire Chamber of Labour, Social Security and Public Affairs, on the basis of the NEC report and the aforementioned decisions, rules on the validity of the elections to the *Sejm* and on the validity of the election of a deputy against whom the protest was filed.

The NEC informed the OSCE/ODIHR EAM about 15 complaints submitted to and considered by the NEC. Two out of nine complaints related to the *Sejm* elections and two out of six complaints related to the *Senat* elections were considered as grounded.

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<sup>66</sup> Article 241 paragraph 1 of the Election Code.

<sup>67</sup> Articles 242, 244 of the Election Code.

## ANNEX: RESULTS

Final results were announced by the NEC:<sup>68</sup>

Total number of registered voters	30,512,850
Total number of valid ballots cast	15,050,027
Turnout (percentage)	48.92%
Valid votes (percentage)	95.48%

### Sejm

	<b>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)	4,295,016	29.89%	157
2.	Poland Comes First (PJN)	315,393	2.19%	
3.	Democratic Left Alliance (SLD)	1,184,303	8.24%	27
4.	Palikot's Movement (RP)	1,439,490	10.02%	40
5.	Polish People's Party (PSL)	1,201,628	8.36%	28
6.	Polish Labor Party – August '80	79,147	0.55%	
7.	Civic Platform (PO)	5,629,773	39.18%	207
8.	Andrzej Lepper Self-defense	9,733	0.07%	
9.	New Right (NP)	151,837	1.06%	
10.	Right	35,169	0.24%	
11.	German Minority	28,014	0.19%	1

### Senate

<b>Electoral committees</b>	<b>Seats Won</b>
Civic Platform (PO)	63
Law and Justice (PiS)	31
Polish People's Party (PSL)	2
Cimoszewicz for the <i>Senat</i>	1
Committee of Voters for Kazimierz Kutz	1
Committee of Voters for Marek Borowski	1
Committee of Voters for Rafał Dutkiewicz	1

<sup>68</sup> See the website of the National Election Commission, <http://wybory2011.pkw.gov.pl>.

## ABOUT THE OSCE/ODIHR

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

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

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

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

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

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

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

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

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