



Office for Democratic Institutions and Human Rights

REPUBLIC OF POLAND

PARLIAMENTARY ELECTIONS
13 OCTOBER 2019

ODIHR Limited Election Observation Mission
Final Report



Warsaw
14 February 2020

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I. EXECUTIVE SUMMARY

Following an invitation from the authorities of Poland, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Limited Election Observation Mission (LEOM) on 10 September. The ODIHR LEOM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic elections as well as national legislation.

The Statement of Preliminary Findings and Conclusions issued on 14 October concluded that the parliamentary elections “were prepared well, but media bias and intolerant rhetoric in the campaign were of significant concern. While all candidates were able to campaign freely, senior state officials used publicly funded events for campaign messaging. The dominance of the ruling party in public media further amplified its advantage. Election day was orderly, although secrecy of the vote was not always enforced. Timely publication of preliminary results ensured transparency”.

The electoral legal framework is comprehensive and provides detailed regulation of key components of the electoral process. Amendments to the Election Code in 2018 addressed some prior ODIHR recommendations, but many remain unaddressed. In addition, the reform process was criticized by many ODIHR LEOM interlocutors for its rushed adoption without meaningful public debate and consultation. Some aspects of the legal framework would benefit from further elaboration, including rules on campaigning by public officials and the use of public resources, campaigning by third parties, oversight of campaign finance, and elements of election dispute resolution.

Citizens voted to elect 100 members of the upper chamber of the parliament (*Senat*) through a first-past-the-post system in single-mandate constituencies, and 460 members of the lower chamber (*Sejm*) through a proportional open list system from 41 multi-member constituencies. There were no changes to the boundaries of or the distribution of seats among constituencies for these elections, despite legal obligations to do so based on current population statistics.

The election administration fulfilled its mandate in a professional and transparent manner, met all legal deadlines related to technical preparation of the elections and enjoyed overall confidence among stakeholders. The National Election Commission (NEC) provided extensive information to voters in multiple accessible formats. However, the reduced availability of postal voting, in conjunction with increased rates of proxy voting, appeared to adversely affect the accessibility of the voting process for persons with disabilities. Changes to the composition of the NEC, which took effect after these elections, may impact the independence of the election administration and the oversight of campaign finance.

Voter registration is passive and lists are extracted from a permanent voter register. There is overall trust in the accuracy and maintenance of voter lists. Citizens could review their inclusion in the lists and could apply to vote in a place of temporary stay. Persons deprived of legal capacity remain disenfranchised, despite international standards, prior ODIHR recommendations, and repeated

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

criticism by international organizations. Furthermore, persons deprived of legal capacity are prohibited from forming or joining public associations or initiating public assemblies.

In an inclusive process, 5,111 candidates (on 234 candidate lists) for the *Sejm* and 278 candidates for the *Senat* were registered for the elections. Current procedures for verifying supporting signatures lack clear instructions, despite a previous ODIHR recommendation.

All contestants were able to campaign freely and fundamental freedoms were respected. The campaign environment reflected a high degree of political polarization and campaign messages included nationalist and homophobic rhetoric. Several high-ranking public officials who were also candidates made promises to locally distribute public funds, blurring the line between state and party. In addition, many stakeholders questioned the active role of the Catholic Church during the campaign.

Apart from a few prominent party members, women did not enjoy significant visibility in the campaign, including in media. With the exception of one contestant, no campaign platforms addressed issues related to women's rights and socioeconomic empowerment. The law requires that each gender must be represented by at least 35 per cent of candidates in each constituency list in *Sejm* elections. While this requirement was fulfilled, only some 28 per cent of newly elected parliamentarians are women. There are no requirements for the representation of each gender in election commissions and no member of the NEC was a woman.

Campaign finance rules permit public and private sources of funding and set limits on donations and spending. Oversight is carried out by the NEC based on post-election audits of contestants' financial reports. While campaign finance regulations are stringent, the current oversight system lacks mechanisms to monitor and investigate potential violations during the campaign. Sanctions for some campaign finance violations are disproportionate.

The pluralistic media landscape comprises a large number of outlets but is sharply divided along political ideologies. The distinct editorial bias of the media, especially the public broadcaster, and the absence of active oversight adversely impacted the opportunity of voters to make an informed choice. Furthermore, criminal penalties for defamation and limited access to public information undermine freedoms of expression and of the press.

The law affords legal redress against most decisions of the election administration. The NEC reviewed complaints and published relevant decisions in a timely manner, but some campaign violations lack clear procedures for seeking remedy. Most complaints filed to the Supreme Court were rejected as outside the scope of the law or unsubstantiated by evidence. Many stakeholders expressed doubts in the impartiality of prosecutors and courts in adjudicating election disputes, following the merger of the functions of the prosecutor general with the minister of justice and other judicial reforms.

Election day was calm and polling staff were generally knowledgeable about their responsibilities, although some procedures were not implemented consistently. Secrecy of the vote was not always enforced, instances of group voting were noted, and the layout of polling stations did not always provide for the autonomous participation of persons with limited mobility. The NEC promptly released preliminary and final results disaggregated by polling station, contributing to the overall transparency of the process.

This report offers a number of recommendations to support efforts to bring elections in the Republic of Poland further in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations focus on the need to ensure the independence of

the institutions responsible for safeguarding integrity of the electoral process, adequately defining campaign activities of public officials and the use of administrative resources in a campaign, introducing and enforcing mechanisms to counter hate speech, instituting safeguards to guarantee the independence of public media, and revising the legal framework to require sufficient impartiality in the campaign coverage in the public media. ODIHR stands ready to assist the authorities in improving the electoral process and addressing the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Permanent Mission of the Republic of Poland to the United Nations Office and International Organizations in Vienna, and based on the recommendation of a Needs Assessment Mission conducted from 17 to 20 June 2019, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established a Limited Election Observation Mission (LEOM) on 10 September. The ODIHR LEOM, headed by Ambassador Jan Petersen, consisted of 10 experts based in Warsaw and 10 long-term observers who were deployed across Poland on 17 September. Observers were drawn from 14 OSCE participating States. In line with ODIHR's methodology, the LEOM did not carry out a comprehensive or systematic observation of election day proceedings but visited a limited number of polling stations on election day.

The ODIHR LEOM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic elections as well as with national legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference in Warsaw on 14 October.² ODIHR wishes to thank the authorities of Poland for the invitation to observe the elections, as well as the Ministry of Foreign Affairs, the National Election Commission and the National Election Office for their assistance. It also expresses its appreciation to other state institutions, political parties, candidates, media, civil society organizations and international community representatives for sharing their views.

III. BACKGROUND AND POLITICAL CONTEXT

The 13 October parliamentary elections took place at a time of economic growth, as well as deep political polarization heightened by instances of intolerant rhetoric in public discourse, controversial legislative changes and corruption allegations against government officials. On 9 August 2019, following claims of abuse of state resources for private purposes, the speaker of the lower chamber of the parliament (*Sejm*) resigned and a new speaker was elected the same day.

The previous parliamentary elections in October 2015 resulted in the Law and Justice party (*Prawo i Sprawiedliwość*, PiS) securing a majority of seats in the *Sejm* and the *Senat* (upper house of the parliament) and forming a government.³ Among elected members to the *Sejm* and *Senat* in 2015, respectively 125 (27 per cent) and 13 (13 per cent) were women, including the speaker of the *Sejm*. In the 2018 local elections, PiS won the largest number of seats in most regional parliaments but lost to independent or Civic Platform (*Platforma Obywatelska*, PO) mayoral candidates in major cities

² See all previous [ODIHR election reports on Poland](#).

³ As a result of 2015 elections, the *Sejm* was comprised of deputies from PiS (235 seats), *Platforma Obywatelska* (PO, 138), the association Kukiz'15 (42), *Nowoczesna* (28), the Polish People's Party (PSL, 16), and the German Minority (1). The *Senat* comprised 61 senators from PiS, 34 from PO; 1 senator elected from each of the PSL and 4 electoral committees.

and towns. In the 2019 European Parliament elections, PiS won 27 seats, the PO-led coalition won 22, and *Wiosna*, a party registered in 2018, won 3.

Since coming to power in 2015, PiS has introduced a number of substantive changes to laws regulating the judiciary and public media which have increased the scope of political appointments and created a perception of government control over these institutions.⁴ While the principle of separation of executive, legislative and judicial powers is enshrined in the Constitution, many ODIHR LEOM interlocutors criticized the recent legislative measures as undermining the independence of the judiciary, echoing concerns expressed previously by ODIHR and other international organizations.⁵

In 2016, the European Commission launched an investigative inquiry into adherence to the principle of rule of law, and in December 2017 initiated a procedure to suspend certain rights of a member state.⁶ In June 2019, the European Court of Justice found that by lowering the retirement age of Supreme Court judges and granting the president the discretion to extend their term beyond the newly fixed retirement age, Poland acted in breach of European Union law.⁷ On 10 October, requesting an expedited procedure, the European Commission again referred Poland to the European Court of Justice, stating that the new disciplinary regime for judges does not safeguard against political control.⁸

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Poland is party to major international and regional instruments related to the holding of democratic elections.⁹ Parliamentary elections are regulated by the Constitution, Election Code and other legislation.¹⁰ The National Election Commission (NEC) has the authority to issue binding instructions for election commissions and officials, as well as clarifications pertaining to election regulations for broadcasters, governmental authorities, and electoral committees. For these elections, the NEC

⁴ Legal changes included the appointment of an “acting president” of the Constitutional Tribunal, a term not recognized by the Constitution; the terms of 15 judges of the National Council of the Judiciary, responsible for judicial appointments, were prematurely terminated, and the appointment modality was changed such that these 15 of 25 members are now elected by the *Sejm* rather than by judges; a new body of political appointees was established to appoint managers of public media (see also *Media*).

⁵ See the [2017 ODIHR Final Opinion on Draft Amendments to the Act on the National Council of the Judiciary and Certain Other Acts of Poland](#), the [2017 ODIHR Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland](#), the [2017 Opinion of the Council of Europe’s European Commission For Democracy Through Law \(Venice Commission\)](#), and the [2018 Report of the UN Special Rapporteur on the Independence of Lawyers and Judges in Poland](#).

⁶ The procedure was initiated in line with Article 7 of the Treaty on European Union (Lisbon Treaty) following passage of a law which lowered the mandatory retirement age of Supreme Court Judges and granted the president the power to prolong judicial terms beyond this limit; these provisions were suspended by the authorities].

⁷ See judgment in [Commission v Poland, 24 June 2019, case no. C-619/18](#).

⁸ See the [Press Release](#) of the European Commission. According to Article 258 of the Treaty on the Functioning of the European Union, the infringement procedure begins with a request for information to the Member State concerned, which must be answered within a specified period, usually two months.

⁹ These include the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 2003 Convention Against Corruption, and 2006 Convention on the Rights of Persons with Disabilities (CRPD). Poland is also a member of the Council of Europe’s Venice Commission and Group of States against Corruption, and is a party to the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

¹⁰ Other relevant legislation includes the Act on Political Parties, Broadcasting Act and Assemblies Act.

supplemented the regulatory framework with a number of regulations, guidance and clarifications on various aspects of the process.¹¹

The Constitution sets out political rights and freedoms and provides that ratified international treaties form part of the national legal framework. Under the Constitution, persons deprived of legal capacity, including on the basis of intellectual or psychosocial disability, automatically lose the right to vote and, consequently, the right to be elected (see *Voter Registration*).¹² Furthermore, the Act on Associations prohibits legally incapacitated persons from forming public associations or initiating public assemblies. The disenfranchisement and other restrictions on freedoms of assembly and association run contrary to international standards.¹³ In 2018, the UN Committee on the Rights of Persons with Disabilities called for the repeal of these restrictions.¹⁴ The Human Rights Commissioner has also previously called on the authorities to review the Constitution, the Civil Code and other acts related to the legal incapacitation of persons with disabilities in order to, among other things, lift the restriction on voting rights.¹⁵

All restrictions on the electoral rights of persons with intellectual or psychosocial disabilities should be removed.

The electoral legal framework is comprehensive and provides detailed regulation of key components of the electoral process. The Election Code underwent considerable revision in January 2018, which included changes in campaign and campaign financing rules, the composition and competencies of election management bodies, and election-day procedures.¹⁶ Some of these changes, such as the expansion of judicial remedies against decisions of the election administration and the introduction of provisions on citizen election observation, are in line with prior ODIHR recommendations.

A number of other recommendations remain unaddressed, including those related to the abolition of criminal liability for defamation, additional gender requirements for candidate lists, and suffrage rights for persons revoked of legal capacity. Some aspects would benefit from further elaboration, including the rules with respect to campaigning by public officials and use of public resources, provisions on campaigning by third parties, and oversight of campaign financing (see *Campaign Finance*). In addition, the lack of clearly defined procedures for campaign-related complaints undermine the effectiveness of legal redress (see *Complaints and Appeals*).

¹¹ Including clarifications pertaining to the registration of candidates, campaigning, voting procedures, campaign finance reporting, and provisions for facilitating the electoral participation of persons with disabilities.

¹² The Civil Code provides for full or partial legal incapacitation by a court decision, including on the basis of intellectual or psychosocial disability.

¹³ Article 29 of the CRPD requires States to “promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including... [p]articipation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties”. See also Articles 1 and 12 of the CRPD. Paragraph 9.4 of the 2013 CRPD Committee’s Communication No. 4/2011 provides that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability”. See also Paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document.

¹⁴ In paragraph 52 of its [2018 Concluding Observations on the initial report of Poland](#) (CRPD/C/POL/CO/1), the Committee recommended “that the State party ... [r]epeal all provisions that deny persons with psychosocial or intellectual disabilities and persons deprived of legal capacity their right to vote and all other political rights”. See also the decision of the European Court of Human Rights (ECtHR) in [Horváth and Kiss v. Hungary](#) (application no. 11146/11, 29 April 2013).

¹⁵ See for example letters (in Polish) to the president ([2015](#) and [2016](#)), the former prime minister ([2014](#)), and the former justice minister ([2014](#)).

¹⁶ Further amendments, mostly technical in nature, were made in June 2018 and January and July 2019.

According to several ODIHR LEOM interlocutors, the 2018 electoral reform process was rushed and did not provide an opportunity for meaningful public debate and consultations with the relevant institutions and other stakeholders.¹⁷ Changes to the composition of the NEC, which took effect after these elections, introduce additional political appointments which may compromise the independence of the election administration.¹⁸ These changes were characterized by many ODIHR LEOM interlocutors as indicative of the government's steps to erode the political independence of institutions that are essential for safeguarding the integrity of the electoral process.

The legal framework should be reviewed to address the shortcomings identified in this and prior ODIHR reports, following an inclusive and meaningful public debate. The legal framework should ensure the independence and impartiality of institutions which are responsible for safeguarding the integrity of the electoral process, including the National Election Commission.

One hundred members of the *Senat* are elected through a first-past-the-post system in 100 single-mandate constituencies, with seats awarded to the candidates who receive the largest number of votes in a given constituency. All 460 members of the *Sejm* are elected through a proportional open list system from 41 multi-member constituencies. Electoral committees whose candidate lists receive at least five per cent of valid votes nationwide (eight per cent for coalitions) participate in *Sejm* seats distribution. Electoral committees registered by recognized national minorities are exempt from any threshold requirement.¹⁹ Both the *Senat* and *Sejm* are elected for four-year terms.

Electoral constituencies are created within the boundaries of administrative regions. *Sejm* mandates are allocated proportionately to constituencies based on the population size. The NEC previously addressed the *Sejm* regarding a need to update this distribution based on current population statistics.²⁰ However, despite legal obligations amidst population shifts, the parliament has not adopted changes to the distribution of seats amongst constituencies for the *Sejm* since 2015, and boundaries of the *Senat* constituencies since 2011. In addition, several ODIHR LEOM interlocutors raised concerns that the current system of assigning all overseas voters to existing *Sejm* and *Senat* constituencies in Warsaw may have impacted the equality of the vote.

In order to ensure the equality of the vote, the authorities should periodically review and update the boundaries and the number of mandates per constituency.

¹⁷ In paragraph 18.1 of [1991 OSCE Moscow Document](#), the participating States have specifically committed to ensure that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.

¹⁸ The new NEC includes two judges (from the Constitutional Tribunal and the Supreme Administrative Court) and seven members appointed by political parties in proportion to their representation in the *Sejm*. In paragraph 20 of its [1996 General Comment No. 25 to the ICCPR](#), the UN Human Rights Committee advised that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant”.

¹⁹ The Act on National and Ethnic Minorities and Regional Languages recognizes the Armenian, Belarusian, Czech, German, Jewish, Lithuanian, Russian, Slovak and Ukrainian ethnic minorities.

²⁰ See a [January 2019 NEC report](#) concerning the implementation of provisions of the Election Code and proposed changes. The report references a 19 November 2018 letter to the *Sejm*, in which the NEC advised, *inter alia*, that in constituencies 9, 31, 32, 33 and 34 the number of elected members should decrease by one, and in constituencies 3, 20, 25, 26 and 39 should increase by one.

V. ELECTION ADMINISTRATION

Elections are administered by the NEC and National Election Office (NEO), 41 Constituency Election Commissions (CECs), and 27,415 Precinct Election Commissions (PECs).²¹ The Ministry of Foreign Affairs established an additional 320 PECs abroad in diplomatic representations and other designated locations. The election administration met all legal deadlines related to the technical preparation of the elections and most ODIHR LEOM interlocutors expressed confidence in the integrity of its work.

The NEC was a permanent body comprising nine active or retired judges appointed by the president, with three members nominated from each of the Constitutional Tribunal, Supreme Court and Supreme Administrative Court. All members of the NEC were men; there are no requirements for representation of each gender at any level of election commissions, and no such data is aggregated by the NEC. Six days prior to election day, the NEC elected a new chairperson from amongst its members via secret ballot; the position was previously vacant since March 2019.

Legal and administrative measures could be taken to promote women's membership in the election administration at all levels, including the National Election Commission.

The NEC is responsible for overseeing the implementation of the electoral legislation, maintenance and update of the voter lists, registration of electoral committees, oversight of campaign finance and the announcement of final election results. From the announcement of elections to the election day, the NEC held 18 sessions in which it adopted numerous decisions and regulations related to the organization of the elections. All decisions were published on the NEC website in a timely manner, contributing to transparency.

The NEO is a permanent executive body responsible to the NEC for the administrative, financial and logistical organization of the elections. The NEO has 49 delegate offices around the country. Following 2018 amendments to the Election Code, the current chairperson of the NEO was elected by the NEC based on nominations by the Minister of Interior and Administration. Additional legal changes included the appointment by the NEO of a new level of election administration comprising some 2,600 election officers to assist with PEC formation and training and other logistical tasks. In practice, the functions of election officers varied throughout the country, with many duties, including PEC training, co-ordination of postal voting and distribution of electoral materials, often being carried out by the local administration. Several municipalities reported too few or late appointments of election officers, which created difficulties in executing these tasks. These issues, however, did not appear to impact the overall quality of the administration of the elections.

The CECs were established by the NEC on 22 August and comprised 4 to 10 members nominated by the Minister of Justice. The CECs are chaired by election commissioners who were appointed by the NEC upon nomination of the Minister of Interior and Administration in early 2018 for a five-year term. CECs are responsible for registering candidates and candidate lists, supervising the work of PECs, and establishing results within their respective constituencies. Approximately 35 per cent of all CEC members were women; however, some 30 per cent of CECs were composed entirely of men or had only one woman member. Women chaired 15 of the 41 CECs.

The PECs were appointed by election commissioners on 23 September based on nominations from electoral committees and consisted of 5 to 13 members, depending on the number of voters assigned

²¹ Including 1,670 PECs formed in special precincts in hospitals, detention centres, prisons, social assistance places and student dormitories. A total of 320 precinct electoral commissions were established abroad and 5 on seagoing vessels. The CECs and PECs are temporary bodies established anew for each election.

to the precinct. The electoral committees of PiS and the Polish People's Party (PSL) were guaranteed the possibility to appoint a member to each PEC due to the fact that they hold seats in the *Sejm* or local *Sejmiks* (regional parliaments). Additional PEC members were determined by applications from other electoral committees, regardless of whether they had fielded candidates in the given constituency, using a lottery, if necessary.²² As a consequence, some electoral committees received seats in a PEC in a constituency where they did not field candidates, while other committees who had fielded candidates did not. Some interlocutors of the ODIHR LEOM indicated that this system could be subject to abuse.²³

The procedures for nominating and selecting Precinct Election Commission (PEC) members could be reviewed. If PECs are comprised of electoral committee representatives, priority could be given to electoral committees that are contesting seats in the constituency.

In case of insufficient nominations from electoral committees, an election commissioner could select PEC members from citizen applicants. Some CEC representatives described difficulties to the ODIHR LEOM in recruiting PEC members due to a lack of nominations and citizen interest, and noted a high number of resignations, often just prior to election day.²⁴ Many municipalities maintained a reserve of citizen PEC-member applicants to address potential staffing shortfalls or resignations.²⁵

The NEO developed a standardized training curriculum and reference guide for PEC members, who were trained by a combination of election officers and other representatives of the NEO and local administration. In training sessions observed by the ODIHR LEOM, no other training materials or manuals were issued. Training sessions observed by the ODIHR LEOM were comprehensive, though their formats varied and not all PEC members attended training.²⁶

The NEC and NEO published information related to the election day and voting, as well as general information on the electoral process, including 16 videos on their website as well as in traditional and social media. Municipalities also published important details about the election day procedures. Voter education videos were aired on public television featuring sign language interpretation, and electoral information was published online in multiple formats, including in high contrast and large print text, as well as audio content.²⁷

NEC regulations required Braille ballot guides to be available at polling stations, or alternatively, to be brought from the municipality upon request on election day, a policy which some ODIHR LEOM interlocutors criticized as an additional burden to the voter.²⁸ The NEC identified 14,498 polling stations as independently accessible for persons with physical disabilities, exceeding the statutory requirement of half of all polling stations; however, many ODIHR LEOM interlocutors noted

²² In total, 234,445 PEC members were appointed, including 36,618 nominated by PiS, 29,229 by Civic Coalition (KO), 28,332 by PSL and 24,659 by Democratic Left Alliance (*Sojusz Lewicy Demokratycznej, Lewica*).

²³ These interlocutors reported that in some cases PEC memberships were used as a "reward" for collecting supporting signatures, or that parties tried to obtain additional seats in PECs through other electoral committees.

²⁴ The NEC reported 6,547 resignations in total. To incentivize citizens to apply, the remuneration of PEC members was increased significantly prior to the European Parliament elections.

²⁵ Recent changes to the Election Code introduced the possibility of recruiting PEC members from anywhere in the respective province.

²⁶ Some election officials reported to the ODIHR LEOM that only the PEC Chair and Deputy received training. In other regions, the ODIHR LEOM was informed that all PEC members underwent training.

²⁷ The Election Code obliges municipalities to publish information on voting for persons with disabilities and to provide information directly to these voters on request.

²⁸ The authorities informed the ODIHR LEOM that the Braille guides were available at all polling stations.

continued challenges for accessibility posed by the current infrastructure (see also *Election Day*). Some municipalities provided transportation to polling stations for persons with limited mobility, upon request.²⁹ Additionally, recent legal amendments limited postal voting to those who can produce a disability certificate.³⁰ This change, together with a higher rate of proxy voting, raised concerns about the autonomous participation of persons with limited mobility or other physical impairments.³¹ Proxy voting was previously criticized by ODIHR as contrary to OSCE commitments related to the secrecy of the vote.

The authorities should continue efforts to facilitate the direct participation of all citizens in the electoral process, including persons with disabilities, thereby eliminating a need for proxy voting.

VI. VOTER REGISTRATION

Citizens at least 18 years of age have the right to vote, unless this right is revoked by decision of a court or state tribunal, including on the basis of intellectual or psychosocial disability, despite international obligations and a previous ODIHR recommendation.³²

Voter registration is passive. A permanent register of voters is based on data derived from the Universal Electronic System for Registration of the Population, and is collectively maintained by municipalities together with the respective NEO delegate offices, under the supervision of the NEC. Citizens are included in the voter list at their permanent place of residence.

Preliminary voter lists were extracted from this register on 23 September, and voters could verify their inclusion in the voter list in-person at their municipal administration.³³ In case of omission, eligible citizens could apply until 8 October to be included in the voter list, including at a place of temporary stay without justification, either in-person or through the Electronic Platform of Public Administration Services.³⁴ Some 181,706 voter records were added or updated prior to election day. While a voter could apply to be added to the list electronically, there was no possibility to verify their inclusion online.³⁵ Voter lists were finalized two days prior to election day and contained a total of 30,253,556 voters. In addition, 349,810 citizens registered to vote abroad at diplomatic representations in 92 countries.

²⁹ The ODIHR LEOM was informed that these arrangements were made in Białystok, Gdańsk, Łódź and Wrocław.
³⁰ ODIHR had previously recommended that the authorities should better publicize the then-established option of postal voting as an alternative to proxy voting for voters with limited mobility. See also paragraph 51 of the 2018 CRPD Concluding Observations, which raised concern about “[t]he amendment made to the electoral law in 2018, which limits voting procedures by correspondence, and therefore the accessibility of voting procedures for persons with disabilities”.

³¹ Only 2,104 persons in the country registered to vote by post for these elections, compared with 9,866 in 2015. The number of persons registered for proxy voting increased by 24 per cent to 21,666, up from 9,729 in 2015.

³² ODIHR LEOM interlocutors estimated that some 100,000 persons were disenfranchised on the basis of legal incapacity in these elections. Pursuant to the Article 16.1 of the Civil Code an adult may be incapacitated partially as a result of mental illness or other type of mental disorder, including alcohol or drug addiction.

³³ The authorities informed the ODIHR LEOM that voter lists are not published due to personal data protection rules.

³⁴ In such cases, the municipality where the voter is registered is notified of the voter’s request to be included in another voter list.

³⁵ Applicants, both in person and online, did not receive confirmation of their successful inclusion in the list. Some municipalities reported that they followed up with voters on the status of their request. Some voters reportedly were not added to the voter list because they had applied just prior to the deadline and errors or omissions in their applications could not be remedied in time.

Municipalities could consider expanding the means by which citizens can review and confirm their inclusion in the voter lists, including publication of the voter lists.

Until lists were finalized, voters could apply to obtain an Absentee Voting Certificate, enabling them to vote at any polling station in the country or abroad.³⁶ These voters were removed from the voter list at their place of residence and added to the supplementary voter list of the precinct where the vote was cast on election day. A total of 155,049 voters used these certificates to cast a ballot on election day. Most ODIHR LEOM interlocutors expressed overall confidence in the accuracy and maintenance of the voter lists, as well as in the use of absentee voting.

VII. CANDIDATE REGISTRATION

The right to stand in *Sejm* and *Senat* elections is granted to citizens with the right to vote and who have reached 21 and 30 years of age, respectively, by election day. Citizens sentenced to imprisonment for an intentional offence or fiscal crimes are deprived of this right, as are those revoked of legal capacity by a court decision, including on the basis of intellectual or psychosocial disability, which is contrary to international obligations.³⁷ Persons subject to lustration provisions may also be prohibited to stand as candidates.³⁸

Electoral committees representing parties, coalitions of parties and groups of voters can be registered with the respective election authority as of the announcement of the elections and have the exclusive right to nominate candidates.³⁹ Eighty-eight electoral committees that registered with the NEC were eligible to apply to CECs to register their candidates, accompanied by at least 5,000 supporting signatures per each candidate list for the *Sejm* and 2,000 signatures per each candidate to the *Senat*.⁴⁰ Five of these electoral committees registered candidate lists for the *Sejm* in more than half of the 41 constituencies and, as a result, their lists in all other constituencies were registered without requiring supporting signatures.⁴¹ These five electoral committees were also guaranteed the first five positions on the ballot, followed by four electoral committees which registered candidates in more than one constituency.⁴²

The Election Code regulates the verification of supporting signatures, which is further clarified by NEC regulations; however, CECs have discretion in how thoroughly they examine the data contained in a list of signatures, and CEC practices varied in these elections.⁴³ On 4 September, citing

³⁶ Municipalities issued Absentee Voting Certificates using a standardized format established by the Ministry of Interior and Administration. The certificates also contained a hologram as an additional security measure.

³⁷ See Articles 3, 12 and 29 of the CRPD.

³⁸ Article 11.2 of the Election Code provides that a court may revoke the right to be elected of persons who took part in the activities of security services between 1944 and 1990. The case law of the ECtHR provides that lustration provisions should be constantly reviewed.

³⁹ Candidates cannot run independently in *Sejm* elections but only in list-sharing with other candidates.

⁴⁰ Out of 94 electoral committees that applied 6 were not registered. By election day, three electoral committees withdrew.

⁴¹ These were KO, *Konfederacja*, *Lewica*, PiS and PSL, all of which included members of several parties within their respective lists.

⁴² These include (in the order on the ballot) The Right, Disappointed Pensioners Action, Coalition of Non-partisan Self-government Representatives and Effective Piotr Liroy-Marzec. The candidate list of the electoral committee of citizens representing the German minority was added to the ballot in Opole. On 13 September, the NEC televised its lottery which determined the order of the electoral committees on the ballot paper.

⁴³ Representatives of CECs informed the ODIHR LEOM of differing modes and extent of scrutiny in verifying the validity of support signatures. Section 1.3.iii of the [2002 Venice Commission Code of Good Practice in Electoral Matters](#) recommends that the “checking of signatures must be governed by clear rules”.

irregularities discovered in the information submitted by some electoral committees, the NEC instructed CECs to use a central database of personal identification numbers for verification of signatures. The NEC also specified that CECs that had registered a list or a candidate from the Coalition of Non-partisan Self-government Representatives should verify all of their support signatures in this database.⁴⁴ CECs rejected a total of 12 candidate lists for the *Sejm* and 19 candidates for the *Senat* after the verification process, typically for failing to provide the required number of valid signatures.⁴⁵

Clear instructions and procedures for the verification of support signatures should be elaborated, with the intent to ensure consistent application of legal provisions.

In an inclusive process, CECs ultimately registered 5,111 candidates (on 234 lists) for the *Sejm* and 278 candidates for the *Senat*.⁴⁶ Information on registered candidates was published on the NEC website and in the media, providing voters with an opportunity to familiarize themselves with the contestants.

While the Election Code requires that each gender be represented by at least 35 per cent of candidates on each constituency list, it has no requirements regarding the placement of candidates by gender within the lists, which are open and subject to preferential voting.⁴⁷ For these elections, 46 (16 per cent) *Senat* candidates and 2,163 (42 per cent) *Sejm* candidates were women.⁴⁸ Women headed only 46 of 237 *Sejm* candidate lists and no electoral committees informed the ODIHR LEOM of additional internal measures to support women candidates.⁴⁹ Ultimately, 132 women were elected to the *Sejm* (28.7 per cent) and 24 to the *Senat* (24 per cent).

In line with previous recommendations, the authorities and political parties could consider supplementing the gender requirement with affirmative measures to encourage the nomination of women candidates.

VIII. ELECTION CAMPAIGN

The official campaign period started from the announcement of the elections and lasted until 24 hours before election day. The ODIHR LEOM was informed that unofficial campaigning began much

⁴⁴ The NEC referred to instances of invalid support signatures submitted by this electoral committee in Piotrków Trybunalski and Tarnów. In Gdańsk, the additional verification of support signatures led to a reversal of an earlier decision to register the committee's list.

⁴⁵ Based on Article 265a of the Election Code, the CEC in Białystok accepted the replacement of a PiS candidate for *Senat* who passed away two weeks prior to election day. This decision was questioned by KO which claimed that the CEC had incorrectly calculated the legal deadline for replacing a candidate in such a case.

⁴⁶ Fifty-three electoral committees registered *Senat* candidates, while ten electoral committees registered candidate lists for the *Sejm*, including one candidate list from the German minority.

⁴⁷ However, the rules on counting votes give preference to the highest placed candidate in cases where the voter selects more than one candidate on the same list.

⁴⁸ For example, KO nominated 395 women (43 per cent of their candidates), *Konfederacja* - 349 (40 per cent), *Lewica* - 424 (46 per cent), PiS - 358 (39 per cent), PSL - 379 women (41 per cent).

⁴⁹ Paragraph 23 of the [1999 OSCE Istanbul Document](#) commits participating States to "making equality between men and women an integral part of [their] policies". Article 7 of the [CEDAW](#) provides that "States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right: (a) To ... be eligible for election to all publicly elected bodies". See also paragraph 3 of the OSCE Ministerial Council Decision 7/09, which calls on participating States to "encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balanced representation in elected public offices at all levels of decision-making".

earlier, building on the campaign for the 2019 European Parliament elections. Throughout the campaign, all contestants were able to campaign freely and fundamental freedoms were respected. However, the campaign environment was highly polarized and became increasingly negative. Some contestants' campaign messages were inflammatory, including instances of nationalist and homophobic rhetoric and hate speech.⁵⁰ Such messages provoked a sense of threat and elicited negative emotions towards the LGBTI community, non-Christians and other minorities.⁵¹

To prevent the dissemination of intolerant rhetoric, relevant legislation, in particular the criminal code, should be revised to ensure compliance with international human rights standards pertaining to 'hate speech'. Electoral contestants should refrain from using intolerant rhetoric and authorities and political parties should promptly condemn any such cases.

Campaign activities commenced with large-scale conventions organized in major cities. Campaigning was mostly done on the local level by organizing press conferences and meetings with voters, as well as by distributing leaflets.⁵² The majority of campaign events observed by the ODIHR LEOM were accessible for persons with limited mobility. No speeches at observed events were accompanied by display of text or sign language interpretation.

Contestants generally relied on social media to amplify their reach. ODIHR LEOM interlocutors noted that while Facebook was used extensively by contestants to cover or announce events, Twitter served as the primary online platform for promoting political views. The ODIHR LEOM observed cases of inflammatory political language against the LGBTI community, refugees, and women on social media platforms.

The campaign lacked broad public debate on important policy issues. Campaign events did not generally provide for substantive discussion or an opportunity for voters to challenge candidates on their electoral platforms. PiS' campaign was the most visible throughout the country. As campaigning progressed, the visibility of billboards and posters increased, especially those of Civic Coalition (*Koalicja Obywatelska*, KO), Democratic Left Alliance (*Sojusz Lewicy Demokratycznej* that

⁵⁰ For example, a KO candidate filed a complaint after receiving a message threatening to kill her unless she withdrew her candidacy, including a warning that the fate of the murdered mayor of Gdańsk awaits her. *Lewica* candidates informed the ODIHR LEOM of receiving death threats because of their stance in support of equal rights for LGBTI individuals or being members of the community. A PiS candidate mentioned in the media that he notified prosecutors about threats against his son. *Konfederacja* pledged to separate LGBTI individuals from the state and to remove them from public space. See paragraph 22 of the [Final Document of the 2002 OSCE Porto Ministerial Council](#), which calls the participating States to “[c]ommit themselves to combat hate speech ..., ensuring that such measures are consistent with domestic and international law and OSCE commitments”.

⁵¹ Criminal code provisions related to “hate speech” exclude sexual orientation, gender identity, age, and disability status as protected categories. Paragraph I.B.6. of the [2010 Council of Europe’s Committee of Minister’s Recommendation CM/Rec\(2010\)5](#) provides that “[m]ember states should take appropriate measures to combat all forms of expression, including in the media and on the Internet, which may be reasonably understood as likely to produce the effect of inciting, spreading or promoting hatred or other forms of discrimination against lesbian, gay, bisexual and transgender persons. Such ‘hate speech’ should be prohibited and publicly disavowed whenever it occurs”. Paragraph 15 of the [2016 CCPR Concluding Observations on the seventh periodic report of Poland](#) (CCPR/C/POL/CO/7) noted a “reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the authorities to such incidents”. Paragraph 7.7 of the 1990 OSCE Copenhagen Document commits participating States to ensure that “political campaigning [is] conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution”.

⁵² The ODIHR LEOM observed 16 campaign events of *Lewica*, KO, *Konfederacja* and PiS, in Elbląg, Gdańsk, Gdynia, Katowice, Konin, Kraków, Leszno, Lublin, Poznań, Sosnowiec, Szczecin, Wadowice and Warsaw.

campaigns under *Lewica*) and *Konfederacja*. Campaign materials of several candidates were defaced, suggesting politically motivated vandalism.⁵³

Most contestants focused their speeches on social protection, standards of living and healthcare, as well as cultural and other values. Campaign messages were frequently tailored to local issues. KO, in addition to general statements on the economy, environment and programmes to support youth and pensioners, emphasized its plans to reinstate the rule of law. The ruling party (PiS) stressed its achievements, making promises of higher wages and pensions as well as increased subsidies for farmers, and pledged to defend Polish identity and Christian culture against the imposition of “gender and LGBT ideologies”.⁵⁴ At campaign events, the PiS chairperson often deployed homophobic rhetoric, describing LGBTI individuals as a “threat to families and the Polish identity”, urging voters to defend traditional values over western influence.⁵⁵

The ruling party’s platform and campaign highlighted the importance of the Catholic faith in preserving Polish traditions, as well as the role the Catholic Church plays in building the identity of the nation. Several PiS campaign events observed by the ODIHR LEOM were organized inside religious institutions, and the party’s campaign materials were observed on walls and fences of places of worship. Public statements by Church officials at times echoed the political messages of PiS, in some cases specifically mentioning names of candidates for whom to vote. In other cases, voters were explicitly discouraged from voting for other parties. Many ODIHR LEOM interlocutors expressed concerns that the Church had an active role in the campaign, raising questions about the separation of church and state.

The legal framework does not regulate the campaign activities of public officials.⁵⁶ On 13 August, the NEC issued guidance that instructed candidates who perform public functions to maintain a distinction between their official and electoral activities. Several high-ranking public officials, including ministers and deputy ministers, were also candidates and were active in their respective constituencies at publicly funded events, including high-level forums and the inauguration of infrastructure projects and new police and fire stations. Some of these events were accompanied by

⁵³ For example, a full-size stand figure of a KO candidate with a partially cut-off head and legs tangled with a tape was hung on a tree in a park in Kielce. The candidate filed a complaint with the prosecutor’s office. In Bałuty, anti-Semitic language covered a KO candidate’s banner. Banners of some PiS candidates in Szczecin were painted with swastikas.

⁵⁴ Paragraph 47(b) of the [1997 CEDAW General Recommendation No. 23](#) recommends State parties to identify, implement and monitor measures to “encourage non-governmental organizations and public and political associations to adopt strategies that encourage women’s representation and participation in their work”.

⁵⁵ These remarks were made at campaign events on 18 September in Stalowa Wola, on 22 September in Tarnów and on 29 September in Szczecin. A complaint on the offensive content in the speech in Stalowa Wola was submitted by a civil society organization and rejected by the prosecutor’s office. The CERD Committee, in its [Concluding Observations on the combined twenty-second to twenty-fourth periodic reports of Poland](#) (24 September 2019, CERD/C/POL/CO/22-24) raised concern that “leading public figures, including politicians and media officials, are frequently the source of such offensive statements or fail in their responsibility to strongly denounce hate speech”.

⁵⁶ Sections B.1.1. and B.1.3. of the [2016 ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources in Electoral Processes](#) states that “[t]he legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaigning purposes, including charitable events, or events that favour or disfavour any political party or candidate. [...] In order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns”.

promises to locally distribute public funds.⁵⁷ The frequency and publicity of such activities, which at times included campaign messaging, created an undue advantage and blurred the line between state and party.⁵⁸

To ensure a clear separation between state and party, measures should be taken to separate government administration and party campaigning, including by amending legislation to adequately define and regulate campaigning by public officials, and to explicitly prohibit the abuse of state resources in election campaigns.

In a positive development, a recent amendment to the Election Code provided an opportunity for citizens to support electoral contestants of their choice by displaying their campaign materials free of charge on their property. However, many ODIHR LEOM interlocutors reported that campaign materials were at times placed on private property without soliciting prior permission from the owner.⁵⁹ Some alleged cases in which individuals were afraid to remove the campaign materials of the ruling party or to display campaign materials of opposition candidates for fear of losing their jobs or facing other consequences.⁶⁰

With the exception of *Lewica*, which made gender equality an integral component of its campaign, issues related to women's rights and gender equality did not feature regularly in the campaign and, when present, were limited to family issues and reproductive rights. Women candidates did not enjoy significant visibility apart from a few prominent party figures. At rallies observed by the ODIHR LEOM, some 35 per cent of participants and some 40 per cent of speakers were women. *Konfederacja* campaigned explicitly against gender equality and directed its outreach to men voters, including through video advertisements which objectified women and featured condescending language. Days before the election, KO released a video appealing to women voters to participate.

IX. CAMPAIGN FINANCE

Campaign financing is primarily regulated by the Election Code and the Act on Political Parties, which provide for both public and private sources of funding. Political parties that received more than three per cent of the votes cast (six per cent for coalitions) in the previous *Sejm* elections are entitled to annual public funding.⁶¹ Each political party, coalition or voters' electoral committee that obtains at least one seat in the *Sejm*, *Senat* or European Parliament is eligible for a subsequent one-time state subsidy.⁶²

The Election Code requires that all campaigns are financed through electoral committees. Voters' electoral committees may be financed from private donations or loans, while party and coalition electoral committees are financed only from the designated electoral funds of political parties. The

⁵⁷ For example, on 6 September, a Deputy Minister of Internal Affairs and Administration announced that the Lublin region would receive PLN 473 million for road construction and improvements; on 16 September, the Minister of Infrastructure announced the distribution of PLN 38 million for infrastructure projects in the Kraków district; on 20 September, in Warsaw, a Deputy Minister of Internal Affairs and Administration announced that PLN 72 million would be distributed to volunteer fire brigades. EUR 1 is some PLN (Polish *Złoty*) 4.38.

⁵⁸ Paragraph 5.4 of the 1990 OSCE Copenhagen Document prescribes "a clear separation between the State and political parties; in particular, political parties will not be merged with the State".

⁵⁹ For example, in Kraków, Lublin and Warsaw.

⁶⁰ For example, in Kielce, Kraków and Lublin. See Paragraph 7.7 of the OSCE Copenhagen Document.

⁶¹ After the 2015 *Sejm* elections, 10 political parties were entitled to receive annual public funding. In total, approximately PLN 58 million (some EUR 13.2 million) was allotted for such funding each year.

⁶² This subsidy is proportionate to the number of mandates obtained and is calculated on the basis of the electoral committee's campaign expenses, which are not to exceed the spending limit.

law permits candidates' contributions as well as private donations from citizens with permanent domicile in the country.⁶³ Anonymous donations, as well as contributions from foreign sources and legal entities are prohibited. In addition, electoral committees may accept in-kind contributions to their campaigns from individuals, who may volunteer to distribute election materials, assist in offices, supply vehicles free of charge and grant access to private spaces for displaying campaign materials.

There is no obligation for interim financial reporting to any institutions during elections, but all electoral committees are required to declare on their websites loans and private donations exceeding one minimum monthly salary within seven days of receipt. Despite this requirement, the law establishes that committees created by political parties obtain all their funding only from the respective political parties. As a consequence, sources of funding of political parties' electoral funds are reported only within the parties' annual reports. Out of 56 voters' electoral committees, only 25 published information on loans and private donations prior to election day. While the Election Code foresees a fine for non-compliance with this requirement, no remedial action was taken as of election day. The absence of consistent disclosure before election day detracted from the transparency of campaign financing.⁶⁴

To enhance the transparency of campaign financing, consideration should be given to requiring parties and coalitions to disclose private donations, and all electoral contestants to submit interim reports on income and expenditures, before election day.

A spending limit is calculated for each electoral committee based on the number of registered voters and the number of mandates contested by that committee.⁶⁵ An electoral committee's spending on campaign advertising may not exceed 80 per cent of the expenditure limit. The Election Code permits campaigning to be conducted by any electoral committee and any voter, and prohibits campaigning by other entities without the consent of the electoral committee.⁶⁶ However, a sanction for third party campaigning without the consent of the contestant was repealed in 2018, resulting in unclear regulation on the legality and consequences of such campaigning by legal entities and consequent reporting.⁶⁷

The legal framework should be reviewed to introduce clear rules regarding third party campaigning, including on the financing of such activities and subsequent reporting requirements. Proportionate sanctions should be in place to aid in the enforcement of these rules.

The NEC exercises oversight over party and campaign financing. Electoral committees must submit financial reports on campaign income and expenditures, together with an external audit of the financial report, to the NEC within three months of the elections. Rejection of the report by the NEC

⁶³ Candidates can contribute to their electoral committee up to 45 times the minimum monthly salary, equivalent in total to PLN 101,250. Individuals can donate to an electoral committee or the party's electoral fund up to 15 times the minimum monthly salary, or PLN 33,750.

⁶⁴ Article 7.3 of the [2003 UN Convention Against Corruption](#) provides that "[e]ach State Party shall also consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties". See also paragraphs 201 to 206 of the [2010 ODIHR and Venice Commission Guidelines on Political Party Regulation](#).

⁶⁵ An electoral committee that fields candidates in all constituencies is allowed to spend up to PLN 26.1 million in *Sejm* elections and PLN 5.7 million in *Senat* elections.

⁶⁶ Article 84.1 of the Election Code provides that only electoral committees conduct campaigning. In 2018, Article 106.1 was amended to permit voters to campaign independently of electoral committees.

⁶⁷ Paragraph 205 of the 2010 ODIHR and Venice Commission Guidelines on Political Party Regulation provides that "legislation should provide clear guidelines regarding which activities are not allowable during the pre-election campaign, and income and expenditures used for such activities during this time should be subject to proper review and sanction".

on the basis of detected violations of campaign finance regulations leads to a decrease in state subsidies, as well as other sanctions for specific irregularities.⁶⁸ In addition, parties whose annual financial reports are rejected are deprived of public funding for three years, regardless of the severity of the violation.⁶⁹ As these diverse sanctions may be imposed for the same offences, the issue of their constitutionality was referred by the Supreme Court to the Constitutional Tribunal in 2016, where it remains pending. Unlike the Election Code, the Act on Political Parties provides that even minor irregularities may lead to the rejection of the annual report.

Any sanctions for campaign financing infringements should be proportionate to the severity of the violation. Annual reports of political parties should not be rejected for minor violations.

While campaign finance regulations are stringent, the current oversight system lacks mechanisms to monitor and investigate potential violations during the campaign, such as undisclosed spending and misuse of public resources, which were alleged by some contestants.

Legal and administrative mechanisms could be introduced, and such monitoring sufficiently resourced, to enable comprehensive and proactive campaign finance oversight during the campaign period.

X. MEDIA

A. MEDIA ENVIRONMENT

The pluralistic media landscape comprises a large number of outlets but is sharply divided along different political ideologies. The majority of the media, most notably the public broadcaster, take distinct political sides in their coverage rather than providing objective and comprehensive information. The advertisement market provides a degree of economical sustainability for major media outlets; however, the selective allocation of paid advertisements by government institutions and government-affiliated companies was perceived by many ODIHR LEOM interlocutors as promoting editorial policies which favour the government.⁷⁰

Television (TV) is the primary source of information, with the public TV *Telewizja Polska (TVP)* together with private *TVN* and *Polsat* attracting some 75 per cent of all viewers combined.⁷¹ All three broadcasters have limited political programmes to their main newscasts, providing political coverage on their news channels – *TVP Info*, *TVN24* and *Polsat News*. The public TV and radio broadcasters are funded by the broadcasting tax and are regularly supported by state funding.⁷²

⁶⁸ The amount of subsidies for the eligible party is decreased by threefold the amount of incorrectly spent or received funding, up to 75 per cent of the total due amount of the subsidy.

⁶⁹ All registered political parties are obliged to submit annual financial reports to the NEC by 31 March each year or face sanctions such as deregistration. Article 16 of the [Council of Europe Committee of Ministers Recommendation Rec\(2003\)4](#) recommends that the infringement of political and campaign finance rules be subject to “effective, proportionate and dissuasive sanctions”.

⁷⁰ [Recent research by the University of Warsaw](#) on paid advertisement placed by the state-owned companies concluded that such advertisements were not placed based on their marketing effectiveness, and has increased in the media outlets, that support the government.

⁷¹ Information based on the [2018 report](#) of the National Broadcasting Council.

⁷² The *TVP* operates 7 national and 16 regional channels. The public radio (*Polskie Radio*) operates 8 national and some 20 regional and local radio stations. In 2019, the [public broadcasters were budgeted](#) to receive PLN 1.2 billion in state funding, in addition to PLN 650 million from the broadcast tax.

The National Broadcasting Council (NBC), the broadcast media regulator, is mandated by the Constitution to safeguard freedom of speech and public interest. The NBC was previously tasked to appoint and dismiss the senior management of the public broadcasters; however, a series of amendments to the Broadcasting Act in 2015 and 2016 transferred this duty first to the Treasury Minister and subsequently to a newly established National Media Council (NMC) comprised of political appointees.⁷³ The new appointment structure resulted in a nearly complete replacement of the management of the national and regional public broadcasters, including the appointment of a former PiS member of parliament as a general director of *TVP*.⁷⁴ The appointment of new management precipitated the departure of over 200 journalists from the public broadcasters. The Constitutional Tribunal concluded that the 2016 amendments, which exclude the NBC from appointing and dismissing the management of the public broadcasters, were unconstitutional.⁷⁵ However, the new management and oversight structure remain in place, raising concerns about the independence of the public media.

The legal framework should be amended to require the appointments of senior management positions in the public media and their supervisory body from professionals rather than those politically affiliated.

B. LEGAL FRAMEWORK

The Constitution guarantees the freedom of expression and prohibits censorship. Defamation and insult remain punishable by imprisonment under the Criminal Code, despite prior recommendations of ODIHR and the OSCE Representative on Freedom of the Media (RFoM).⁷⁶ In recent years, an increased number of criminal defamation cases were initiated against journalists, undermining the freedom of expression.⁷⁷ Furthermore, defamation of the head of state and other public officials, or based on religious affiliation, can incur a prison sentence of up to three years.⁷⁸ Offense of religious feelings and insults based on religious affiliation are also punishable with up to three years of imprisonment.⁷⁹

⁷³ The NMC is comprised of five members appointed for a six year term: three are appointed by the parliamentary majority of the *Sejm* and two by the president based on the nominations by the parliamentary opposition. Upon the establishment of the NMC, four *Sejm* MPs were appointed as members, including two who competed in these elections.

⁷⁴ Paragraph 8.20 of [2008 PACE Resolution 1636](#) states that “public service broadcasters must be protected against political interference in their daily management and their editorial work. Senior management positions should be refused to people with clear party political affiliations”.

⁷⁵ See the [13 December 2016 decision](#) of the Constitutional Tribunal (in Polish).

⁷⁶ See, for example, section 4.3.2 of the [2015 ODIHR Opinion on the Draft Amendments to Certain Provisions of the Criminal Code of Poland](#) as well as statements by the OSCE RFoM from [3 August 2017](#), [28 June 2018](#) and [6 June 2019](#).

⁷⁷ *Gazeta Wyborcza* informed the ODIHR LEOM of 12 criminal and over 35 civil cases of defamation ongoing against its journalists, initiated by public and ruling party officials and by state-affiliated companies. According to the Ministry of Justice, a total of 137 defamation cases resulted in criminal conviction in 2017 and 118 defamation cases in 2018. Paragraph 47 of the 2011 UN CCPR General Comment No. 34 on Article 19 of the ICCPR states that “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”. See also Paragraph 11 of the [2018 OSCE Ministerial Council Decision No. 3/18 on the Safety of Journalists](#).

⁷⁸ Paragraph 17.1 of the [2007 PACE Resolution 1577](#) calls for the immediate abolition of prison sentences for defamation. Paragraph 17.6 calls on member states to “remove from their defamation legislation any increased protection for public figures”.

⁷⁹ Paragraph 76 of the [2008 Venice Commission Report on the Relationship between Freedom of Expression and Freedom of Religion](#) notes that “it must be possible to criticize religious ideas, even if such criticism may be perceived by some as hurting their religious feelings”.

As previously recommended, all provisions that envisage criminal penalties for defamation, libel, insult, and slander should be repealed in favour of civil sanctions.

The Constitution also guarantees the right to obtain information on the activities of public institutions and public officials, and is supplemented by the Act on Access to Public Information. Many ODIHR LEOM interlocutors raised concerns on the implementation of this law, claiming that in practice information requests are often left without reply, forcing media to undergo lengthy court procedures, and undermining the accessibility of public information.⁸⁰

The Election Code requires the national public broadcaster to allocate free airtime to electoral committees that compete in at least half of constituencies. *Sejm* electoral committees were entitled to receive 15 hours on *TVP* and 30 hours on public radio combined. *Senat* electoral committees were eligible for 5 hours of free time on *TVP* and 10 hours on public radio combined. Per an NBC regulation from 2011, most of the free airtime on *TVP* was allotted outside of primetime. Regional public media also allocated free airtime to *Sejm* and *Senat* candidates in proportion to their participation in the respective region. In addition, *TVP* organized one national debate for the *Sejm* elections, as required by the Election Code, which was limited to a 46-minute session that lacked meaningful discussion and substantial interaction between candidates, none of whom were women.⁸¹ A number of debates were also organized in national private media and regional public broadcasters.

Both public and private broadcasters were entitled to sell airtime for political advertising, at equal prices for all contestants and at a rate less than or equal to commercial advertising prices. Such advertisements were to be counted within the legal limit of 12 minutes per hour for commercial advertisements set in the Broadcasting Act.

The Electoral Code does not provide any specific requirements for editorial coverage of the campaign.⁸² The Broadcasting Act requires the programmes of public broadcasters to be “pluralistic, impartial, well-balanced, independent and innovative”. The public broadcasters are also obliged to “serve to strengthen family ties”, and all broadcasters are obliged to “respect the Christian system of values”.⁸³

To supplement the general requirements of the Broadcasting Act, the Election Code should be amended to include requirements for equitable, balanced and impartial coverage of the campaign in public media.

⁸⁰ The Ministry of Justice informed the ODIHR LEOM that between 1 January and 10 October 2019 a total of 1,148 cases were initiated related to access to public information. Paragraph 26.2 of the [1991 OSCE Moscow Document](#) provides that “[t]he participating States will not discriminate against independent media with respect to affording access to information, material and facilities”. See also Article 19.2 of the ICCPR and Article 10.1 of the ECHR.

⁸¹ During the debate, each candidate was allotted a single opportunity for a 30 second response.

⁸² Principle II.1 of the [Council of Europe’s Committee of Ministers Recommendation CM/Rec\(2007\)15](#) prescribes that “[r]egulatory frameworks should also provide for the obligation to cover election campaigns in a fair, balanced and impartial manner in the overall programme services of broadcasters. Such an obligation should apply to both public service media and private broadcasters”.

⁸³ In the [2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation](#), OSCE RFoM, UN Special Rapporteur on Freedom of Opinion and Expression affirmed, that “[r]estrictions on freedom of expression [...] should never be used to protect particular institutions, or abstract notions, concepts or beliefs, including religious ones.” Principle II.10 of the Council of Europe’s Committee of Ministers [Recommendation CM/Rec\(2007\)3](#) states that “the public service media should promote better understanding among peoples and contribute to intercultural and inter-religious dialogue”.

The NBC is vested with a mandate to monitor campaign coverage. In these elections, however, the NBC only reacted to complaints brought to its attention.⁸⁴ Electoral contestants could also seek an injunction from regional courts to retract false information disseminated in the media.⁸⁵

An independent authority, such as the National Broadcasting Council, could be legally required to actively monitor the broadcast media for their compliance with the legal framework and to offer timely remedy for identified violations.



C. MEDIA MONITORING FINDINGS

[Click Here to Read Media Monitoring Results](#)

The ODIHR LEOM media monitoring⁸⁶ results indicated that, in their newscasts, *TVPI* and *TVP Info* displayed a clear bias against KO and PSL candidates, contrary to their legal obligations and public mandate.⁸⁷ Journalists on these newscasts often referred to opposition candidates with such terms as “pathetic”, “incompetent” or “lying.” During the monitored period, KO and PSL received 40 and 6 per cent of political coverage on *TVPI* and 40 and 4 per cent of coverage on *TVP Info*, which was predominantly negative in tone. By contrast, PiS and the government received 17 and 24 per cent of political coverage on *TVPI* and 25 and 18 per cent on *TVP Info*, which was mainly positive. Coverage of the ruling party was often intertwined with the coverage of the government, with its achievements often being attributed to PiS.⁸⁸ On 10 October, *TVPI* and *TVP Info* aired during primetime a 30-minute film entitled “Invasion”, which targeted the LGBTI community, who were portrayed as a threat to Polish culture and identity, echoing a primary campaign message of PiS.

The public broadcasters should ensure that all parties are presented in an impartial and objective manner. Favourable treatment of a political party by public media should be treated as an illegal use of public funds.

Although private media generally demonstrated a less prejudiced approach, the news coverage of *TVN* and *TVN24* were mainly critical of the government and PiS, which received 32 and 30 per cent on *TVN* and 29 and 23 per cent on *TVN24* respectively. The same media outlets devoted 18 and 20 per cent of coverage to KO. While the coverage of KO was predominantly neutral and positive on *TVN*, it was more balanced on *TVN24*. Other contestants were also visible on *TVN* and *TVN24*, with

⁸⁴ In September 2019, the NBC, responding to an inquiry by the Human Rights Commissioner, [indicated](#) that monitoring would only be possible if outsourced to an external entity with appropriate knowledge and experience that is not available on the Polish market. The NBC informed the ODIHR LEOM that it received four complaints during the election campaign filed by *Konfederacja* and KO regarding the coverage by national or regional public broadcasters. The NBC dismissed three of them, and in the fourth case informed the TVP, that candidates should not be presented only in a satirical way.

⁸⁵ The ODIHR LEOM is aware of five complaints filed to various district courts by *Konfederacja* and KO candidates against *TVP*. In four of these cases, the courts ordered the *TVP* to air an apology and a correction. *TVP* complied in only three cases, and supplemented its apologies with strong criticism of the judiciary and personal attacks against the respective judges. On their website, the *TVP* characterized these decisions as censorship and announced plans to contest the relevant legal provisions to the Constitutional Tribunal.

⁸⁶ From 18 September until 11 October, the ODIHR LEOM monitored primetime content of five TV stations (public *TVPI* and *TVP Info*; private *TVN*, *TVN24* and *Polsat*) and five daily newspapers (*Fakt*, *Gazeta Polska Codziennie*, *Gazeta Wyborcza*, *Rzeczpospolita* and *Super Express*).

⁸⁷ Paragraph 8.10 of the [2019 PACE Resolution 2254](#) calls on states to “guarantee the editorial independence of public service media, putting an end to any attempts to influence them or transform them into governmental media: the use of public service media to promote a specific political party or candidate must be classified as illegal misuse of public funds”. See also Principle II.1 of the [Council of Europe’s Committee of Ministers Recommendation CM/Rec\(2007\)15](#).

⁸⁸ Paragraph 10.3 of the 2019 PACE Resolution 2254 calls on the media to “clearly distinguish between the activities of those in power and the activities of representatives of political parties running for election, ensuring that no preferential treatment is given to those in power”.

Lewica receiving 10 and 14 per cent of coverage, and PSL receiving 6 and 7 per cent, respectively. *Polsat* devoted only a marginal portion of their mainly neutral news coverage to politics and allotted some 23 per cent of political coverage to the government, 24 per cent to PiS, 31 per cent to KO, 7 per cent to *Lewica* and 8 per cent to PSL.

Among the monitored print media, *Fakt* was largely critical of the government and of PiS while providing more favourable coverage to KO, and to a lesser extent to PSL and *Lewica*. *SuperExpress* visibly supported the government while covering PiS and KO in a balanced manner. *Gazeta Polska Codziennie* showed explicit support of the government and PiS, while covering KO negatively.⁸⁹ By contrast, *Gazeta Wyborcza* was extensively critical towards the government and PiS.⁹⁰ In addition, while *Rzeczpospolita* provided more balanced coverage of the two main contestants, it was more critical of KO and supportive towards *Lewica*.

The Election Code does not regulate the publication of results of opinion polls, but prohibits their publication during the campaign silence period. The ODIHR LEOM media monitoring results indicate, that during the campaign, media were actively publishing the results of opinion polls, but the detail of information provided did not allow viewers to make a judgement on the value of the polls. In particular, in 63 per cent of observed cases, the publication of the polls did not include the size of the sample, in 87 per cent the margin of error was not published, and in 53 per cent the polling period was not noted.⁹¹

To ensure the public receives sufficient information regarding opinion polls, the Election Code could be amended to require media to publish information such as sample, margin of error, polling period and methodology applied.

Women candidates and politicians received limited coverage during the campaign. Although some 46 per cent of *Sejm* and 16 per cent of *Senat* candidates were women, broadcast media devoted between 12 and 16 per cent of their coverage to women candidates during the campaign.

XI. COMPLAINTS AND APPEALS

The legal framework affords opportunities for legal redress against decisions related to the registration of voters and electoral contestants, creation of voting precincts, rejection of campaign finance reports by the NEC, as well as against election results. These complaints and appeals can be brought by the subjects whose legal interests are affected; citizen observers may file only challenges to election results, and only as voters. In line with a previous ODIHR recommendation, the Election Code now provides for appeals against NEC normative decisions. Still, only NEC decisions specifically indicated in the law are subject to judicial review, which leaves other NEC decisions or actions without a legal remedy.⁹²

⁸⁹ On 9 October, *Gazeta Polska Codziennie* published a 2,000,000 copies special edition, which was distributed for free. It strongly praised PiS activities and achievements and alleged KO's intentions to reverse them.

⁹⁰ During the monitored period, *Gazeta Wyborcza* published four special inserts of 20-28 pages each that alleged abuse of power and corruption by the PiS government, including 1,100,000 copies of a special edition on 7 October, distributed for free, which described negative consequences of the continued PiS rule.

⁹¹ See Principle I.8 of the Council of Europe's Committee of Ministers Recommendation [CM/Rec\(2007\)15](#) to member states on measures concerning the dissemination of results of opinion polls in elections.

⁹² Paragraph 5.10 of the 1990 OSCE Copenhagen Document commits participating States to ensure that "everyone have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Principle 1A of [Recommendation Rec\(2004\)20](#) of the Council of Europe's Committee of Ministers advises that "all administrative acts should be subject of judicial review".

Rejections of candidates and lists by CECs can be appealed by an electoral committee to the NEC within two days of the CEC decision, and further to the Supreme Court within two days of the NEC decision. Several electoral committees made such appeals in these elections. All appealed decisions of election commissions were upheld.⁹³ Positively, the relevant decisions of election commissions and judgments of the Supreme Court were promptly posted by the NEC on its website, enhancing transparency.

During the campaign, complaints alleging unlawful use of public resources and other campaign-related irregularities were made to different institutions, including election commissioners, CECs, the NEC, police and public prosecutors.⁹⁴ The ODIHR LEOM observed that some of these complaints did not receive a response prior to election day, in the absence of clear responsibilities and procedures, including legal deadlines.⁹⁵ Many ODIHR LEOM interlocutors expressed doubts that electoral offenses would be investigated independently and effectively by prosecutors, given the political function of the Prosecutor General as the Minister of Justice.⁹⁶

Complaints on election-related irregularities should be investigated in a timely and effective manner. The legal framework should be reviewed to clarify the legal remedies against violations of campaign regulations, including unlawful use of public resources.

Complaints challenging election results may be filed by voters, electoral committees, and PEC chairs to the Supreme Court within seven days of announcement. Such complaints are reviewed by three-judge panels. On the basis of the panels' opinions, as well as reports by the NEC and the Prosecutor General, the Supreme Court is required to validate election results within 90 days. ODIHR and other international organizations have previously criticized the appointment procedure for the new Supreme Court chamber which is responsible for the validation of election results.⁹⁷ Taken together with the merged function of the Prosecutor General and the Minister of Justice, these changes detract from the perceived independence of the entities responsible for the validation of election results and adjudication of other election-related disputes.⁹⁸

⁹³ The NEC received 18 complaints against CEC decisions, 3 of which were not admitted due to late or incorrect submission. Eight NEC decisions were further appealed to the Supreme Court. The law requires all appeals to be received in hard copy.

⁹⁴ Local prosecutors throughout the country received some 30 complaints related to the elections.

⁹⁵ For example, KO representatives filed complaints to the local prosecutor and the election commissioner regarding campaigning by the Minister of Justice, who is also a PiS candidate, in the city hall of Zamość on 4 September. *Konfederacja* complained to the election commissioner in Poznań about the distribution of poster space in the city and the in-kind contribution to the PiS campaign by the public media. Both complaints remained unaddressed as of election day.

⁹⁶ See Paragraph 5.10 of the 1990 OSCE Copenhagen Document. Paragraph 15 of the [2004 UN CCPR General Comment 31 to the ICCPR](#) prescribes an “obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies”.

⁹⁷ A new Chamber on Extraordinary Control and Public Affairs was introduced to the Act on the Supreme Court in December 2017. See the [2017 Venice Commission Opinion](#) which expressed concern that “judges appointed by a [National Council on Judiciary] dominated by the current political majority would decide on issues of particular importance, including the regularity of elections.” See also the [2017 ODIHR Final Opinion](#) on Draft Amendments to the Act on the National Council for the Judiciary and [2017 ODIHR Opinion](#) on Certain Provisions of the Draft Act on the Supreme Court of Poland.

⁹⁸ In its [2017 Opinion](#), the Venice Commission noted that the merged political and prosecutorial functions creates “insurmountable problems as to the separation of the prosecution system from the political sphere (as required by Article 103 of the Constitution)”. See also the [2019 report](#) of the Council of Europe’s Commissioner for Human Rights.

XII. CITIZEN AND INTERNATIONAL ELECTION OBSERVATION

In line with previous ODIHR recommendations, recent amendments to the Election Code provide for citizen observation of the electoral process.⁹⁹ Associations which are, per their founding documents, active in democracy, civil rights and civil society development, may appoint observers to election commissions, and enjoy similar rights to party and candidate proxies; however, they may not enter comments on PEC protocols or follow the transport of protocols to higher commissions. Like party and candidate proxies, citizen observers do not require accreditation from the NEC or CECs.¹⁰⁰ The Election Code provides international observers the right to observe the work of election commissions at all levels.

For the first time in national elections, several civil society organizations recruited and trained observers in different regions of the country. These citizen observation efforts predominantly focused on election day, and did not follow campaigning or the NEC's organisation of elections.¹⁰¹ Some of these organizations also trained observers to serve as party proxies, or PEC members, including those members nominated by political parties. Many ODIHR LEOM interlocutors associated some citizen observation activities with specific political parties or coalitions, and civil society organizations at times declared their intent to field observers for specific candidates.¹⁰² Such practices, while not prohibited by legal provisions on observation, blurred the line between citizen and party observation activities.¹⁰³

XIII. ELECTION DAY

In accordance with standard ODIHR methodology for LEOMs, the mission did not undertake comprehensive and systematic observation of election day proceedings. However, mission members followed opening, voting and counting in a limited number of polling stations, as well as the tabulation process in some constituencies.

In the polling stations visited, the voting process was calm despite occasional overcrowding. According to the NEC, all polling stations opened on time, and voting proceeded uninterrupted. All polling stations visited by the ODIHR LEOM displayed various information for voters, including on candidates, and instructions on how to mark and cast a ballot. PEC members were generally knowledgeable about specific tasks and responsibilities and PECs were equipped with all necessary materials.

Many of the visited polling stations were too small to accommodate the number of assigned voters in an orderly way.¹⁰⁴ Recent amendments to the Election Code increased the maximum size of a precinct from 3,000 to 4,000 inhabitants, contrary to a prior ODIHR recommendation. In addition, despite new requirements introduced in the law and NEC instructions and contrary to international

⁹⁹ Paragraph 8 of the 1990 OSCE Copenhagen Document provides that “the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place”.

¹⁰⁰ Citizen observers had to present a letter from their nominating organizations to the PEC on election day.

¹⁰¹ Civil society organizations did however monitor campaign coverage in the media, as well as in social media, and followed post-election appeals in the Supreme Court.

¹⁰² For example, the ODIHR LEOM was informed by one citizen observer organization that they would provide observers for a candidate for *Senat* in Siedlce.

¹⁰³ See articles 4 and 5 of the section “Non-partisan, Independent Scrutiny of Electoral Processes” of the 2012 [Declaration of Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations](#).

¹⁰⁴ Many PECs reported that voters often arrived in large groups after attending mass or social engagements.

obligations, many of the visited PECs did not enforce the secrecy of the vote. While voting booths or tables with screens were present in all visited polling stations, poor layout or positioning of the screens often compromised the secrecy of the vote.¹⁰⁵ In many observed cases, voters opted to mark their ballot openly, and several instances of family and group voting were observed.

The layout and vicinity of many of the visited polling stations did not provide for independent access for persons with limited mobility.¹⁰⁶ For example, while several visited polling stations were located in accessible buildings, doors of these polling stations were often difficult to open or were only partially unlocked and the placement of voting booths often could not accommodate a person in a wheelchair. The height of the ballot box also compromised accessibility.

Consideration should be given to decreasing the maximum number of voters assigned to each polling station. The layout of all polling stations should accommodate all voters, including the needs of persons with different disabilities, and to provide for secrecy of the vote.

Training for PEC members should include guidance on creating greater access to and within polling stations, and on facilitating the voting rights of persons with different types of disabilities. To promote the consistent implementation of laws and regulations, all PEC members should be encouraged to attend training programmes.

Voters received separate ballots for the Sejm and Senat elections, each of which was to be marked with a single “cross”. In line with a previous ODIHR recommendation, ballot marking provisions were liberalized to permit the validity of more types of marks. However, these changes did not go so far as to allow the inclusion of a vote based on a determination of a clear intent of the voter. Additionally, a voter who made a mistake in marking the ballot could not be issued a replacement ballot.

Provisions on ballot validity could be reviewed to allow inclusion of the vote in cases when the intention of the voter is clear, and for voters who make mistakes when marking the ballot to obtain a new ballot.

Throughout the election day, the NEC provided regular updates on voter turnout per constituency and polling station, as well as on election-related incidents. During the voting hours, 322 violations were reported by police, mostly related to breaking the electoral silence and the destruction of campaign materials. The closing and counting process in visited PECs was conducted in a transparent manner and results protocols were publicly posted following the count. Positively, the 2018 amendments to the Election Code entitled PEC members, party agents and citizen observers to obtain a copy of the protocols, and provided that these protocols be available to all citizens for 30 days at the local municipality. The NEC published preliminary results disaggregated by polling station in a timely manner, starting on election night, further enhancing transparency.

Final results for *Sejm* and *Senat* elections were announced on 14 October, within the legal deadline. All results were posted on the NEC’s website, including all data from each polling station protocol.

¹⁰⁵ The Election Code now requires polling stations to be organized in such a way that voters have sufficient, accessible places where they can mark their ballots in secrecy, and that a member of the PEC be positioned next to the ballot box to ensure secrecy of votes. Paragraph 7.4 of the 1990 OSCE Copenhagen Document commits participating States to “ensure that votes are cast by secret ballot or by equivalent free voting procedure”. See also Article 25 of the ICCPR and Article 3 of the ECHR.

¹⁰⁶ Article 29 of the CRPD calls on states to ensure that “voting procedures, facilities and materials are appropriate, accessible and easy to understand and use”.

The official turnout rate was reported at 61.74 per cent. Invalid votes for *Sejm* and *Senat* elections constituted 1.11 per cent and 2.55 per cent of ballots cast, respectively, a significant decrease from the previous parliamentary elections.¹⁰⁷

XIV. POST-ELECTION COMPLAINTS

The Supreme Court received 277 challenges to election results submitted by electoral committees and voters. Many of these complaints sought to annul results based on a variety of alleged irregularities in the electoral process, including unlawful candidate registration, mistakes in the voter register, bias in the public media, and violations of election-day procedures. Most complaints were rejected by the Court as outside the scope of the law or unsubstantiated by evidence, including six requests from PiS to recount ballots in several constituencies in which their candidates lost by a narrow margin.¹⁰⁸ A few complaints were substantiated but were not determined to have influenced the election result.¹⁰⁹

All complaints were reviewed by Supreme Court panels in non-public sessions, with the participation of representatives of the NEC and occasionally the respective CEC, as well as the Prosecutor General's Office, which submitted its views on each complaint. The resultant Court opinions did not disclose whether applicants had the opportunity to participate in court sessions and to present supporting evidence. Opinions issued by Supreme Court panels were reasoned and consistent, and were published on the Court's website, at times with a delay. The Court also issued press-releases regarding some electoral cases, contributing to transparency.

XV. RECOMMENDATIONS

These recommendations as contained throughout the text are offered with a view to further enhance the conduct of elections in the Republic of Poland and to support efforts to conduct elections in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations that have not yet been addressed.¹¹⁰ The legislative reforms should be undertaken well in advance of elections and through an inclusive consultation, including with civil society. ODIHR stands ready to assist the authorities of the Republic of Poland to further improve the electoral process and to address the recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. The legal framework should be reviewed to address the shortcomings identified in this and prior ODIHR reports, following an inclusive and meaningful public debate. The legal framework

¹⁰⁷ In 2015, 2.53 per cent of votes cast for the *Sejm* were invalid, as were 3.88 per cent of votes for the *Senat*.

¹⁰⁸ For example, in *Senat* constituency no. 75 (Katowice), the difference in votes between the elected KO candidate and the losing PiS candidate was 1.8 per cent of votes, and invalid votes constituted 2.89 per cent of votes. The Court held that the applicant did not provide any evidence of incorrect ballot determination, and could not request a verification of results in the absence of such evidence.

¹⁰⁹ Such as, for example, one candidate's claim that PEC results in Szczepczeszyn (*Sejm* constituency no. 7 – Chelm) did not include his and his friends' votes for his candidate list.

¹¹⁰ In paragraph 25 of the [1999 OSCE Istanbul Document](#), all OSCE participating States committed themselves "to follow up promptly on ODIHR's election assessments and recommendations". The follow-up of prior recommendations from the [final report on 2015 parliamentary elections](#) is assessed by the ODIHR LEOM as follows: recommendations 5 and 16 are fully implemented; recommendation 3 is mostly implemented; and recommendations 1, 6 and 12 are partially implemented.

should ensure the independence and impartiality of institutions which are responsible for safeguarding the integrity of the electoral process, including the National Election Commission.

2. To ensure a clear separation between state and party, measures should be taken to separate government administration and party campaigning, including by amending legislation to adequately define and regulate campaigning by public officials, and to explicitly prohibit the abuse of state resources in election campaigns.
3. Relevant legislation, including the criminal code, should be revised to provide for clear mechanisms for authorities to prevent and counter instances of hate speech. Electoral contestants should refrain from using intolerant rhetoric and authorities should promptly condemn any such cases.
4. The public broadcasters should ensure that all parties are presented in an impartial and objective manner. Favourable treatment of a political party by public media should be treated as an illegal use of public funds.
5. As previously recommended, all provisions that envisage the criminal prosecution of defamation, libel, insult and slander should be repealed in favour of civil sanctions.
6. To supplement the general requirements of the Broadcasting Act, the Election Code should be amended to include legal requirements for equitable, balanced and impartial coverage of the campaign in public media.
7. All restrictions on the electoral rights of persons with intellectual or psychosocial disabilities should be removed.

B. OTHER RECOMMENDATIONS

Legal Framework and Electoral System

8. In order to ensure the equality of the vote, the authorities should periodically review and update the boundaries and number of mandates per constituency.

Election Administration

9. Legal and administrative measures could be taken to promote women's membership in the election administration at all levels, including the National Election Commission.
10. The procedures for nominating and selecting Precinct Election Commission (PEC) members could be reviewed. If PECs are comprised of electoral committee representatives, priority could be given to electoral committees that are contesting seats in the constituency.
11. The authorities should continue efforts to facilitate the direct participation of all citizens in the electoral process, including persons with disabilities, thereby eliminating a need for proxy voting.

Voter Registration

12. Municipalities could consider expanding the means by which citizens can review and confirm their inclusion in the voter lists, including publication of the voter lists.

Candidate Registration

13. Clear instructions and procedures for the verification of support signatures should be elaborated, with the intent to ensure consistent application of legal provisions.
14. In line with previous recommendations, the authorities and political parties could consider supplementing the gender requirement with affirmative measures to encourage the nomination of women candidates.

Campaign Finance

15. To enhance the transparency of campaign financing, consideration should be given to requiring parties and coalitions to disclose private donations, and all electoral contestants to submit interim reports on income and expenditures, before election day.
16. The legal framework should be reviewed to introduce clear rules regarding third party campaigning, including on the financing of such activities and subsequent reporting requirements. Proportionate sanctions should be in place to aid in the enforcement of these rules.
17. Any sanctions for campaign financing infringements should be proportionate to the severity of the violation. Annual reports of political parties should not be rejected for minor violations.
18. Legal and administrative mechanisms could be introduced, and such monitoring sufficiently resourced, to enable comprehensive and proactive campaign finance oversight during the campaign period.

Media

19. The legal framework should be amended to require the appointments of senior management positions in the public media and their supervisory body from professionals rather than those politically affiliated.
20. An independent authority, such as the National Broadcasting Council, could be legally required to actively monitor the broadcast media for their compliance with the legal framework and to offer timely remedy for identified violations.
21. To ensure the public receives sufficient information regarding opinion polls, the Election Code could be amended to require media to publish information such as sample, margin of error, polling period and methodology applied.

Complaints and Appeals

22. Complaints on election-related irregularities should be investigated in a timely and effective manner. The legal framework should be reviewed to clarify legal remedies against violations of campaign regulations, including unlawful use of public resources.

Election Day

23. Consideration should be given to decreasing the maximum number of voters assigned to each polling station. The layout of all polling stations should accommodate all voters, including the needs of persons with different disabilities, and to provide for secrecy of the vote.
24. Training for PEC members should include guidance on creating greater access to and within polling stations, and on facilitating the voting rights of persons with different types of disabilities. To promote the consistent implementation of laws and regulations, all PEC members should be encouraged to attend training programmes.
25. Provisions on ballot validity could be reviewed to allow inclusion of the vote in cases when the intention of the voter is clear, and for voters who make mistakes when marking the ballot to obtain a new ballot.

ANNEX I: FINAL ELECTION RESULTS

Total number of registered voters ¹¹¹	30,253,556
Total number of valid ballots cast	18,677,930 (<i>Senat</i>) 18,678,457 (<i>Sejm</i>)
Turnout	61.74 %

Sejm Elections

Electoral Committee	No. of votes	Percentage	No. of seats	Percentage
Law and Justice (PiS)	8,051,935	43.59%	235	51.09%
Civic Coalition (KO)	5,060,355	27.40%	134	29.13%
Democratic Left Alliance (<i>Lewica</i>)	2,319,946	12.56%	49	10.65%
Polish People's Party (PSL)	1,578,523	8.55%	30	6.52%
Confederation	1,256,953	6.81%	11	2.39%
German Minority	32,094	0.17%	1	0.22%

Senat Elections

Electoral Committee	No. of votes	Percentage	No. of seats	Percentage
Law and Justice	8,110,193	44.56%	48	48%
Civic Coalition	6,490,306	35.66%	43	43%
Polish People's Party	1,041,909	5.72%	3	3%
Democratic Left Alliance	415,745	2.28%	2	2%
Lidia Staron – Always on People's side	106,035	0.58%	1	1%
For Election of Krzysztof Kwiatkowski	79,348	0.44%	1	1%
For Election of Wadim Tyszkiewicz	63,675	0.35%	1	1%
For Civil Democracy	44,956	0.25%	1	1%

¹¹¹ According to the final results for the [Sejm](#) and for the [Senat](#) as published by the National Election Commission.

ANNEX II: LIST OF OBSERVERS IN THE LIMITED ELECTION OBSERVATION MISSION

ODIHR LEOM Long-Term Observers

Gazmend Agaj	Albania
Tereza Lewis	Czech Republic
Marketa Nekvindova	Czech Republic
Mariam Tabatadze	Georgia
Ilona Salaba	Germany
Michael Wiersing	Germany
Elena Gherciu	Moldova
Vidosava Vulcanović	Montenegro
Berta Imeri	North Macedonia
Milos Stojadinović	Serbia

ODIHR LEOM Core Team

Ambassador Jan Petersen	Norway	Head of Mission
Vasil Vashchanka	Belarus	
Tamara Otiashvili	Georgia	
Zarona Ismailova	Germany	
Jane Kareski	North Macedonia	
Valentina Kremleva	Russian Federation	
Jelena Stefanović	Serbia	
Farrukh Juraqulov	Tajikistan	
Egor Tilpunov	Ukraine	
Gavin Weise	United Kingdom	

ABOUT ODIHR

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

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 150 staff.

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 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, 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. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

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 people, 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**, 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. 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.

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).