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Observation of the parliamentary elections in Poland (15 October 2023)

Election observation report

Ad hoc Committee of the Bureau

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1. Introduction

1. On 8 August 2023, the President of the Republic of Poland called for elections to the Sejm and the Senate for Sunday 15 October 2023. A week later, the Sejm ordered a nationwide referendum on matters of particular importance to the State for the same day. On 24 August 2023, the Speaker of the Sejm invited the Parliamentary Assembly to observe the parliamentary elections.

2. In anticipation of observing these regular elections, the Bureau of the Assembly, at its meeting on 19 June 2023, decided to observe these elections,¹ subject to receiving an invitation, and to set up an ad hoc committee composed of 30 members as well as the two co-rapporteurs of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) and to conduct a pre-electoral mission. At its meeting on 23 June, the Bureau approved the composition of the ad hoc committee (revised by the Bureau on 14 September, see Appendix 1) and appointed Ms Mireille Clapot (France, ALDE) as its Chairperson.

3. In line with the co-operation agreement signed between the Assembly and the European Commission for Democracy through Law (Venice Commission) on 4 October 2004, a representative of the Venice Commission was invited to join the ad hoc committee as a legal adviser.

4. A pre-electoral delegation visited Warsaw on 26 and 27 September 2023 to assess the pre-electoral climate. The programme of the pre-electoral mission is set out in Appendix 2. The delegation noted a particularly heated and polarised campaign environment in the run-up to the parliamentary elections and the widespread concerns about the uneven playing field, which undermined public trust in the fairness of the electoral process (see the statement in Appendix 3).

5. The Assembly's ad hoc committee (PACE delegation) worked from 13-16 October 2023 as part of an International Election Observation Mission (IEOM) together with a delegation from the OSCE Parliamentary Assembly (OSCE PA) and the Limited Election Observation Mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR LEOM). The programme of the delegation's meetings is set out in Appendix 4.

6. The IEOM concluded that the parliamentary elections in Poland were competitive but marred by the misuse of public resources and public media bias. The elections were characterised by record high voter participation, there was a wide choice of political options and candidates were able to campaign freely, but the

1. It is the first time since 1991 that the Assembly decided to send a full-fledged mission to observe parliamentary elections in Poland. In January 2020, the Assembly opened a procedure to monitor Poland's honouring of its membership obligations to the Council of Europe. The observation of elections in a State subject to a monitoring procedure is an inalienable right of the Assembly. In June 2020, a 4-member election assessment mission observed the presidential election; however, because of the Covid-19 pandemic, its scope was very limited.



campaign was tarnished by the notable overlap between the ruling party's messages and government information campaigns. Together with distorted and openly partisan coverage by the public broadcaster, this provided a clear advantage to the ruling party, undermining the democratic separation of State and party. The joint press release is reproduced in Appendix 5.

2. Political context

7. Since 2005, Poland's political landscape has been shaped by the rivalry between two major parties, Law and Justice (PiS) and Civic Platform. Both parties have consistently won parliamentary elections and formed governments either independently or in coalition. From 2005 to 2015, governments alternated between PiS and Civic Platform. However, a landslide victory in the 2015 elections, enabled PiS together with its partners in the "Unified Right" to govern with majority.

8. Andrzej Duda's presidential win in 2015 helped further solidify PiS's dominance. Prime Minister Mateusz Morawiecki has led the government since 2017. PiS's rise can be attributed to its commitment to supporting the social groups excluded by the political and economic transformation of the 1990s, especially in rural areas. However, this era also witnessed a consolidation of national power, the diminishing of local authorities' autonomy, threats to the judiciary's independence, the curbing of democratic freedoms, and a decline in parliamentary transparency.

9. Poland's relationships with the European Union and Council of Europe became strained due to concerns about rule of law violations, leading to Article 7 of the Treaty on European Union's activation as a result of legal reforms introduced by the government which jeopardised the independence of the judiciary. The European Commission initiated several infringement proceedings against Poland, questioning its commitment to EU law.

10. In 2019, PiS secured 43.59% of the parliamentary votes, translating to 235 seats in the Sejm. The subsequent year saw Andrzej Duda's re-election as president, narrowly beating Civic Platform candidate Rafał Trzaskowski. Interestingly, the 2019 parliamentary elections resulted in an unprecedented-in-Poland power distribution, with different political groups controlling both parliamentary chambers.² This dynamic affected the proper functioning of the system of checks and balances, created legislative challenges and impacted the election of key state officials.

11. The period post-2019 witnessed further judicial reforms, affecting judges' independence and strengthening the government's control over the courts. These reforms led to an international backlash, with institutions such as the European Court of Human Rights and the European Court of Justice (ECJ) challenging the legitimacy of certain Polish courts. In December 2019, the Sejm passed a judicial reform, popularly known as the "muzzle" law, the main aim of which was to prevent Poland's legitimate judges from reviewing the irregular judicial appointments made by the reformed National Council of the Judiciary, thus preventing Polish judges from refusing to rule with or overturning the acts of deficiently appointed "judges". The appointment of individuals by the reformed National Council of the Judiciary, including to the Chamber of Extraordinary Review and Public Affairs, among the tasks of which is also the final validation of election results, further politicised the justice system.

12. In 2020, the ruling of the Constitutional Tribunal on abortions spurred massive public protests highlighting concerns about police brutality and fuelling societal divisions.

13. The Assembly, concerned about the state of Poland's democratic institutions, initiated a monitoring procedure in 2020. The situation in the country did not improve as can be seen from the comprehensive analysis contained in an [Information note by the co-rapporteurs on Poland on their fact-finding visit to Warsaw](#).³

2. The agreement between the opposition forces in the elections to the Senate (the so-called "Senate Pact") resulted in the victory of the opposition in the elections to the upper chamber of parliament and meant that the PiS, which controls the Sejm and forms the government, had to reckon with the necessity of overcoming the veto of the Senate in certain legislative procedures, as well as with taking into account the position of this chamber in the election of certain state offices (for example, the election of the Ombudsperson, which took place in the summer of 2021, was significantly prolonged due to the lack of agreement between the chambers).

3. Information note by the co-rapporteurs on their fact-finding visit to Warsaw (13-15 March 2023), [AS/Mon \(2023\)07](#) of 30 May 2023.

14. In June 2023, the Sejm passed the “Law on the State Commission to Investigate Russian Influence on the Internal Security of the Republic of Poland in the period 2007-2022”, also known as the Anti-Tusk act. An urgent opinion⁴ by the Venice Commission’s strongly criticised the law, also as it lacked guarantees against political abuse and instrumentalisation to eliminate political opponents. By September, although the State Commission had been formed, it had not begun its operations.

15. Reports in 2019 hinted at surveillance activities in Poland using the Pegasus program, intensifying by 2021. The Senate, in response, set up a commission in 2022 to investigate illegal surveillance. Its findings revealed the use of the Pegasus program on individuals who were openly critical of PiS policies. The Assembly in its [Resolution 2513 \(2023\)](#) “Pegasus and similar spyware and secret state surveillance” concluded that “the Polish parliamentary election of 2019 was not fair as Pegasus was used against political opponents during the electoral campaign”.⁵

16. In the lead-up to the 15 October parliamentary elections, three further contentious developments impacted the electoral process:

- local elections were delayed from autumn 2023 to spring 2024, extending the term of local authorities;
- the Election Code was reformed less than six months ahead of the elections (Chapter 3.2);
- a referendum was set to occur simultaneously with the parliamentary elections (Chapter 3.3).

17. Poland's local elections were set for autumn 2023. However, a 2018 government reform increased local government terms from 4 to 5 years. To avoid clashing with parliamentary elections, the Sejm extended the current local government term to 30 April 2024. This adjustment means local elections scheduled between 31 March and 23 April 2024, might overlap with European Parliament elections.

3. Electoral system and legal framework

3.1. Legal electoral framework

18. Elections in Poland are primarily regulated by the relevant articles of the 1997 Constitution regarding parliamentary elections; the Election Code (2011, last amended in March 2023), the Law on Political Parties (1997, last amended in 2016), the Law on the National Media Council (2016) and supplemented by the regulations of the National Electoral Commission (NEC). Poland is party to major international and regional instruments related to the holding of democratic elections.⁶

19. The 460 seats in the Sejm (the lower chamber) are elected in 41 multi-member constituencies, using a proportional representation system in which voters can express a preference for one of the candidates on the list. For this reason it is referred to as an “open list proportional system”, although technically it is not a fully open list. The small size (in terms of number of seats allocated) of constituencies mitigates the effect of the proportionality of the system. In fact, the constituency sizes combined with the electoral thresholds produce majoritarian outcomes, strengthening the representation of the two major parties.

20. In order to participate in the distribution of constituency seats, a party list or a citizen group list must obtain at least 5% of all valid votes cast at the national level, while coalition lists are required to obtain at least 8% of the vote. However, lists representing national minorities, such as the German minority, are exempt from the electoral threshold requirements.

4. Venice Commission, Urgent Opinion on the Law on the State Commission to Investigate Russian Influence on Internal Security in the Republic of Poland between 2007 and 2022 and on the Draft Law amending that Law, [CDL-PI\(2023\)021](#).

5. On 11 October 2023, the Assembly adopted [Resolution 2513 \(2023\)](#) and [Recommendation 2258 \(2023\)](#) “Pegasus and similar spyware and secret state surveillance”, concluding that States should refrain from using such spyware until their laws and practices on secret surveillance are in line with the European Convention of Human Rights and other international standards. Its use should be limited to “exceptional situations as a measure of last resort”.

6. Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), 2003 Convention Against Corruption (CAC), and 2006 Convention on the Rights of Persons with Disabilities (CRPD). Poland is also a party to the 1950 European Convention on Human Rights (ETS No. 5) and the 1995 Framework Convention for the Protection of National Minorities (ETS No. 157).

21. Elections to the Senate, which is composed of 100 members, take place under a plurality vote system in an equal number of single-member constituencies. Most of the opposition parties have signed the so-called “Senate pact”, under which they have agreed to enter one commonly accepted candidate in each district. This strategy granted them a majority in the Senate in the 2019 elections despite being in a minority in the Sejm.

22. Electoral constituencies are created within the boundaries of pre-existing administrative divisions. Sejm mandates are allocated proportionately to constituencies based on the population size. Notwithstanding legal obligations and despite a proposal submitted by the NEC in 2022,⁷ the parliament has not adopted changes to the distribution of seats amongst constituencies for the Sejm since 2015 and to the boundaries of the Senate constituencies, since 2011.

23. The Venice Commission's Code of Good Practice in Electoral Matters refers to “passive electoral geometry” when an initially correct distribution of seats ends up generating inequality as a result of its failure to adapt to demographic changes. To avoid passive electoral geometry, the Code states that seats should be redistributed at least every ten years, preferably outside election periods, so as to limit the risks of political manipulation.

24. Although the 10 years have not been exceeded, the lack of revision in the case of Poland has clearly led to the fact that constituencies in rural areas, which have lost population, are now over-represented and constituencies in urban areas, which have gained population, are under-represented. This is a breach of the principle of equality of the vote and it is a particularly serious one because it is a politically biased inequality that favours one of the competitors that traditionally has a majority in the over-represented areas.

25. In addition, the current system of assigning all overseas voters to existing Sejm and Senate constituencies in Warsaw without increasing the number of seats, has also an impact on the equality of the vote.⁸ In the current electoral process, 606 265 voters were registered to vote in 416 polling stations abroad. All these votes were incorporated into the Warsaw I constituency, which was already under-represented due to the lack of revision, so the under-representation effect was doubled.

3.2. Recent amendments

26. The Code of Good Practice in Electoral Matters highlights that the stability of the law is crucial to the credibility of the electoral process. According to the Venice Commission, changes to fundamental aspects of the election system should not take effect less than one year prior to an election.⁹ The Polish Constitutional Tribunal ruled in 2019 that no significant amendments should be made to electoral legislation within a period of less than six months.

27. On 26 January 2023, the Sejm passed legislation amending the Election Code and certain others, which was published in the Journal of Laws on 16 March 2023 and, with certain exceptions, entered into force on 31 March – during the legislative silence period, which began on 14 February.

28. The amendment introduced a number of significant changes, including:

- the introduction of the Central Register of Voters (CRV), which centralised the database of voters, streamlining the electoral process;
- a reduction in the minimum number of inhabitants covered by the boundaries of a polling district (from 500 to 200), without reducing the maximum number (4,000 inhabitants), which resulted in the creation of 3 664 new polling stations throughout the country – most of them in rural areas;
- providing free transport to the polling station from the place of residence/stay alternatively with free transport from the agreed place for persons meeting certain conditions of disability or those over 60,¹⁰ organised by the municipality;

7. The NEC sent a proposal to the Sejm in November 2022 indicating the necessary changes to the seats apportioned to constituencies, that would result in 10 constituencies losing a single mandate, while nine would increase by one and a single constituency would gain two seats in the Sejm. The NEC emphasised that the deadline for making changes in the division into electoral constituencies expired on 14 May 2023, but these changes were not adopted by the legislature.

8. In the 2019 legislative elections there were 316 000 votes from abroad.

9. Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023 rev2-cor](#), part II.2.b and Explanatory Report, paras 63-67.

10. Be it noted that retirement age is 65 in Poland.

- extending the right of proxies and citizen observers to record the activities of polling stations to the time of voting as well, while at the same time requiring the recorded material to be handed over to the State authorities – be it the Election Commission or the ministry of digitalisation;
- the addition of a requirement that before the precinct election commission (PEC) determines the validity of a ballot paper, the validity of a vote or the casting of a vote for a particular list or candidate, each ballot paper shall be presented to all members of the PEC present. This provision, intended to increase the transparency of the determination of the results of the vote, has been criticised as unduly prolonging the counting process.

29. Some of the provisions introduced in the Election Code affected the procedure and are likely to become highly problematic regarding the counting and transmission of results. For example, the wording of Article 230(2) of the Election Code imposes an obligation on PECs set up abroad and on Polish maritime vessels to communicate the voting result to the Warsaw I constituency within 24 hours after the polling ends. If this deadline is not met, voting in such a PEC will be considered null and void, and consequently any votes cast will not be counted in the voting.

30. Although the aforementioned provisions have been in force at least since the Election Code was enacted and the NEC indicated that there had never been a case before where a vote in a foreign precinct had been declared null and void, the situation differed from previous elections in at least three respects: these elections were combined with a national referendum, the introduction of the new provision concerning the presentation of each ballot to all commission members, which increased the time needed for counting, and there was a considerable increase of interest in voting by the Polish communities abroad.¹¹

31. In reaction to several complaints, the ministry of foreign affairs increased the number of PECs abroad from 320 (in 2019) to 416. Nevertheless, as well as the unreasonably rigid deadlines imposed on the PECs abroad, other problems remain with regard to out-of-country voting, such as the cancellation of postal voting for voters abroad, excessive numbers of voters registered in some of these polling stations and the attachment of all foreign votes (608000 voters registered) to one Warsaw electoral district which, according to several civil society organisations, could encourage so-called “electoral tourism” on election day.

3.3. Controversial referendum

32. The parliamentary elections of 15 October were held in conjunction with a national referendum. Although the Assembly delegation was not invited to observe the referendum as such, it is impossible to ignore its impact on these elections.

33. On 17 August 2023, the Sejm voted on a motion by the Council of Ministers to hold a nationwide referendum on matters of particular importance to the State and passed a resolution to this effect. It was decided that four questions would be put to citizens:

“Do you support the selling off of State assets to foreign entities, leading to the loss of Poles’ control over strategic sectors of the economy?”

“Do you support an increase in the retirement age, including the restoration of the increased retirement age to 67 for men and women?”

“Do you support the removal of the barrier on the border between the Republic of Poland and the Republic of Belarus?”

“Do you support the admission of thousands of illegal immigrants from the Middle East and Africa, in accordance with the forced relocation mechanism imposed by the European bureaucracy?”

34. Many electoral experts immediately expressed their criticism of what they saw as an explicitly partisan use of one of the most important consultation mechanisms in any democracy. The PACE pre-electoral delegation also echoed the concerns of various interlocutors suggesting that the referendum was intended to

11. Taking into account the principles of universality and equality of elections, a number of civil society organisations advocated for the extension of this limit to 48 hours or for it to be abolished. The Senate came up with a relevant legislative initiative, which was however not considered by the Sejm, and these regulations were not amended. Several prominent candidates invited the NEC to issue a guideline that would instruct polling stations to count votes in the elections first, as no similar exclusionary rule applied to counting the votes in the referendum. The NEC refused to do so. Senator and candidate Krzysztof Kwiatkowski appealed to the Chamber of Extraordinary Review, which dismissed his complaint.

mobilise voters sympathetic to the ruling party, to polarise electoral discourse on issues that do not constitute a real social problem and to circumvent campaign financing regulations and other restrictive measures applied to the parliamentary elections.

35. In order for the referendum to be binding, at least half of those eligible to vote must participate. As part of the referendum campaign, the opposition called to boycott the referendum by actively refusing to take the referendum ballot paper. This however raised serious concerns about the violation of the secrecy of the vote for those wanting to participate in the elections but not in the referendum. A voter wanting only to take part in the electoral vote and not the referendum was forced to indirectly reveal his/her electoral preferences to the election commission in a polling station by actively refusing to take the referendum ballot. This refusal was then recorded in the register of voters. PACE delegation members were informed of some cases of elderly voters in villages preferring not to go to vote for fear of being socially stigmatised as a consequence of not taking the referendum ballot.

4. Election administration, voters lists and registration of candidates

36. The parliamentary elections and the national referendum were conducted by the NEC together with its administrative arm, the National Election Office (NEO), and its 49 delegate offices, 41 constituency election commissions (CECs) and 31 073 precinct election commissions (PECs). In addition, the ministry of foreign affairs established 416 PECs in diplomatic representations in 91 countries.

37. The NEC is a permanent decision-making body and supervisory body responsible for the overall conduct of elections and referenda. These were its first parliamentary elections after being restructured. It now comprises of two judges from the Constitutional Tribunal and the Supreme Administrative Court, and seven members nominated by the Sejm from various political parties. Their selection is based on the parties' representation, and these members are expected to possess qualifications fit for a judge. This was a change from the previous setup, which involved nine judges drawn from different courts.

38. The NEO, as the executive body, is crucial for the elections' administrative and logistical aspects. The role of the NEC, on the other hand, concerns oversight; it ensures that electoral laws are adhered to, maintains voter lists, and announces the final election results. Decisions within the NEC require a majority vote with at least 2/3 of members present.

39. Women are under-represented in the upper echelons of election administration. Currently, the NEC has no female members, but the NEO's chairperson is a woman and 37% of CEC members are women. There are no requirements for gender representation within the election administration.

40. CECs, temporary entities set up 48 days before the elections, ensure the proper implementation of electoral rules. They are also responsible for registering candidate lists and overseeing election day procedures. Recent amendments have removed the requirement for CEC members to be serving or retired judges and require CEC nominees to hold a "university degree in law" and provide "a guarantee of proper performance of this function". These changes potentially increase the candidate pool, while they may contribute to the appointment of less experienced individuals.

41. PECs, formed at least 21 days prior to an election, play a crucial role in the actual voting process. They consist of 9 to 13 members nominated by electoral committees, with a chairperson appointed by each PEC from among its members. The training of PECs members is based on a standardised curriculum and is conducted by election officials and other representatives of the NEO and the local administration.

42. Citizens over 18 are eligible to vote. Voter registration is passive and centralised. The 2023 amendments provided a legal basis for the creation of a centralised voter register to replace the 2 477 separate voter registers previously maintained by individual municipalities. Municipalities are now responsible for gathering information on residents while the ministry of digitalisation maintains the voter register. There is general confidence in the accuracy and maintenance of the voter lists, but the introduction of large-scale changes close to the elections may have negatively affected the process of voter registration and identification. Citizens can check their inclusion on the lists and apply to vote in a place of temporary residence.

43. By default, voters were assigned in the central voter register to a specific PEC based on their official registered address regardless of their voting address. One-time changes could be made up to three days before election day. Over 900 000 voters requested to vote at a temporary residence, and 450 540 collected

Absentee Voter Certificate's permitting them to cast their vote in any polling station in Poland. On election day, this system permitted "electoral tourism": opposition parties openly encouraged their supporters to go to vote in rural areas where the ruling party had a traditionally strong position.

44. According to the Constitution, persons deprived of their legal capacity, including on the grounds of mental or psychosocial disability, automatically lose the right to vote and, consequently, the right to be elected. Furthermore, the Act on Associations prohibits persons with legal incapacities from forming public associations or initiating public meetings. The disenfranchisement and other restrictions on freedom of assembly and association are contrary to international standards.

45. Public information on elections was widely disseminated. The NEC and NEO used traditional and social media platforms to ensure citizens were informed. Provisions were made to cater to various needs, such as sign language interpretation and large-print texts for the visually impaired.

46. Expatriate voters cast their ballots in person at consulates and embassies and must actively register for each election. Voters can register in person, by email or through an online portal, and the ministry of foreign affairs is responsible for identifying and setting up polling stations abroad. Votes cast abroad are attributed to the first electoral district of the Warsaw municipality. Given the recently clarified counting procedures and the impact this would have on a number of very large polling stations abroad, there were some concerns about legal provisions that would invalidate all the votes coming from that overseas precinct if the results were not received by the relevant CEC within 24 hours of the close of polls. In addition, on this occasion, polling stations abroad also had to count referendum votes, which it was feared would affect their ability to complete the count within 24 hours.

47. Vote counting is comprehensive. The CECs verify the counts from PECs, which are then sent to the NEC for final validation. The NEC distributes the seats among the eligible lists of candidates according to the D'Hondt method and assigns the mandates to the individual members of each list, taking into account the number of preferential votes received. After verifying the fairness of the electoral process, the NEC announces the results of the elections, which are published in the Official Journal of the Republic of Poland.

48. Eligibility criteria and regulations for candidates are explicit. Candidate lists are submitted to the relevant CEC at least 40 days before election day, with a requirement of 5 000 supporting signatures for Sejm candidate lists and 2 000 signatures for each Senate candidate. Electoral commissions that register Sejm candidate lists in more than half of all constituencies are automatically registered nationwide, without requiring supporting signatures from the remaining constituencies. The law does not prescribe specific standards or procedures for the verification of signatures, except that the signatures must come from voters in the district according to the registry.

49. Citizens with the right to vote who are at least 21 or 30 years old have the right to stand as a candidate for the Sejm and the Senate respectively. The Constitution prohibits standing for elections to those who were convicted of an intentional crime prosecuted *motu proprio*, as well as those who have been incapacitated by a court decision, including on the grounds of mental or psychosocial disability.

50. The Election Code provides for 35% representation of each gender on each list of candidates but does not require a specific gender order on the lists; the voting system allows voters to indicate their preference on the list for a particular candidate. Some parties indicated that they have internal requirements for the order of candidates in order to increase representation.

51. In total, 44 % of the Sejm candidates were women and women led 83 out of the 320 lists. The share of women candidates in the first fifth of the positions on candidate lists varied from 52% to 11%. Only 19% of the senatorial candidates were women.

52. The process of candidate registration was open and inclusive. Candidates can only be nominated by electoral committees formed by political parties, coalitions or by groups of over 15 voters, the latter having to present at least 1 000 supporting signatures. By the 28 August deadline, 85 electoral committees had registered with the NEC. These committees could then nominate candidates or lists of candidates to the respective CEC, after obtaining the required number of supporting signatures. In an inclusive process, the CEC registered 6 655 candidates on 320 lists for the Sejm, presented by 13 electoral committees, and 359 candidates for the Senate (from 49 committees). In total, 56 Sejm lists and 27 senatorial candidates were rejected, which was attributed to stricter verification of supporters' data.

53. The work of the NEC and NEO was positively assessed by most civil society organisations. They fulfilled the obligations imposed on them by the electoral calendar. The NEC issued the necessary guidelines within the legal deadlines and the polling station commissions were formed on time and with the required composition.

5. Election campaign and financing

5.1. Election Campaign

54. The official campaign period began on 8 August 2023. By law, the official campaign period begins upon the announcement of elections, and contestants may campaign upon registration, with a campaign silence period, including the prohibition of publishing opinion polls, taking effect 24 hours before election day. The regulation of the use of public space for contestants during the campaign is under the purview of the municipalities.

55. The Election Code does not explicitly regulate campaigning by public officials, which has been a long-standing recommendation by ODIHR. However, they are obliged to maintain impartiality in the performance of their official duties and to strictly separate official acts from campaign activities. In the period leading up to the elections, there was intense pre-election campaigning, with some publicly funded events demonstrably promoting the incumbent party's campaign messages. While the campaign was pluralistic, the playing field was extremely uneven, with the incumbent party benefiting in many ways from the use of State resources.

56. The Referendum Act provides for the campaign to be conducted by citizens, political parties, associations, foundations and other entities. The NEC issued guidelines stating that participants in both campaigns should strictly separate these activities. The government was allowed to campaign for the referendum, and there were no requirements for it to remain neutral in the referendum campaign. Several PACE interlocutors suggested that the referendum was intended to mobilise voters sympathetic to the ruling party. The fact that the referendum was held at the same time as the election campaign led to an overlap of messages between the two campaigns.

57. A number of state-owned foundations registered to campaign for the referendum, using free airtime on public television and radio, and the referendum campaign of a state-owned energy company reinforced the messages of the ruling party, as did some public officials. To cite some particularly striking examples, foundations of large state-owned banks, energy companies, the railway company, the main state-owned insurance company as well as the agri-food group promoted by the ministry of agriculture were registered and were participating in the campaign. Some individual candidates were reported to have used the referendum campaign to promote themselves.

58. Fundamental freedoms were generally respected during the campaign period. All candidates actively campaigned throughout the country, focusing on small-scale local activities and events. In addition, Civic Coalition (KO) organised a rally in Warsaw that attracted hundreds of thousands of people, and PiS held large congresses across the country.

59. The campaign environment was extremely polarised, highly confrontational and often negative. Candidates repeatedly used inflammatory and discriminatory rhetoric. Despite this, the campaign period was largely peaceful, with only isolated incidents and threats. Campaign rallies focused on the economy, national security, migration, the state of democracy, relations with the European Union and Ukraine, and personal freedoms.

60. The ruling party's campaign focused on its achievements in office and recent promises of social benefits, as well as messages on national sovereignty and security, which often overlapped with the referendum issues. PiS and Confederation used anti-migrant narratives, some of which were highly negative and at times xenophobic and misogynistic. Personal verbal attacks against the main party leaders were widespread.

61. Criticism of the government's foreign policy, its handling of Covid-19 and controversies over alleged corruption, including in the issuing of visas by the ministry of foreign affairs, were prominent themes in the opposition groups' campaign. KO's campaign also promised to reverse changes to the judiciary and improve relations with the European Union, implement health and education reforms, and guarantee women's rights, including a right to abortion up until 12 weeks of pregnancy.

62. The Confederation's main messages revolved around limiting the country's welfare system and restricting aid to Ukraine and refugees, while Third Way focused on reinstating national unity and breaking the PiS-KO dual polar political spectrum, and the New Left on social issues and women's rights. Some members of the Roman Catholic clergy campaigned for the ruling party, which, although not prohibited, was seen by many as a clear advantage.

63. Candidates of the incumbent party reportedly participated in publicly funded events, inaugurations and opening ceremonies in their own constituencies, contrary to international standards and OSCE commitments. Several government officials, including ministers, campaigned at such events. Some local authorities amplified KO's messages. The ruling party's campaign was reflected in government information messages and in the advertising and information campaigns of state-controlled enterprises.

64. All parties ran extensive social networking campaigns and used online advertising. The ODIHR LEOM, which monitored the campaign activities of 40 accounts belonging to political parties or coalitions and key politicians and political actors on X and Facebook, reported that most politicians relied on X, yet the promotion of events was also widespread on Facebook. Political parties and their leaders, with the notable exception of Jarosław Kaczyński, were active on these platforms, with video messages and live video conferences, sharing content from campaign events, reflecting on political developments and promoting campaign promises. Overall, the tone of the posts was often negative, with mutual accusations, mirroring the offline campaign.

5.2. Campaign financing

65. The Election Code¹² and the Law on Political Parties provide the legal framework for the regulation of political and electoral campaign financing, establishing public financing and specifying permissible sources of private financing. Annual public funding is granted to parties having received more than 3% of the votes in the previous Sejm election and to coalitions having received more than 6% of the votes. In addition, a one-off State subsidy is granted to political parties, coalitions or electoral committees of groups of voters who obtain at least one seat in the Sejm, the Senate or the European Parliament.

66. The legislation has evolved to make parties less dependent on private sources of funding and more reliant on public subsidies. This system has promoted a substantial equalisation of the resources available to each party, establishing a direct link between subsidies and electoral results. However, political financing has been at the centre of political debate in recent years. A referendum in 2015 asked voters whether the public financing system should be maintained.

67. Campaign finance rules allow private sources of funding and set limits on donations and spending. Private donations are allowed from citizens permanently resident in the country. Anonymous donations, contributions from foreign sources and legal entities are prohibited. Specific campaign spending limits are set for each electoral committee on the basis of the number of registered candidates (for the Sejm) or contested constituencies (for the Senate). Electoral committees may not spend more than 80% of the spending limit on campaign advertising.

68. Third-party campaigning is prohibited by law, but there are no sanctions for such activities. Certain forms of in-kind contributions to election committees are permitted, a point of concern raised by many IEOM interlocutors, including the election administration. In March 2023, the NEC issued an explanatory note on the activities of third parties campaigning on behalf of political parties on the Internet, stressing that these are subject to the same rules as the provision of services to political parties by commercial entities.

69. Supervision is carried out by the NEC on the basis of post-election audits of candidates' financial reports on campaign income and expenditure. Under the 2023 amendments to the Election Law, committees are required to submit these reports electronically with an external audit within three months of the election. There is no pre-election campaign finance reporting requirement. Violations of campaign finance regulations result in a reduction in State subsidies, and parties whose annual financial reports are rejected are denied public funding for three years, regardless of the severity of the violation. While campaign finance regulations are strict, the current monitoring system lacks mechanisms to monitor and investigate potential violations during the election campaign.

70. Holding a referendum and parliamentary elections at the same time provided an opportunity for the ruling party to circumvent campaign finance regulations by using referendum spending to promote the party's core election issues. In addition, foundations with links to state-owned companies, which had donated heavily

12. See Art. 125ff. of the Election Code.

to PiS, could participate in the referendum campaign. Campaign spending limits under the Election Code apply only to elections, not to referenda; there are no limits on spending, donations and contributions and on who can donate to a referendum campaign.

6. Media environment

71. Freedom of expression and the right to receive information are enshrined in the constitution, yet some existing legal provisions limit their full exercise. Acts such as defamation still falls under criminal offenses, contrary to previous recommendations from international bodies, and are often used in strategic lawsuits against public participation (SLAPPs) targeting the media and activists. The selective allocation of advertisements by government and state-run entities tends to favour media outlets with favourable editorial policies, impacting media independence.

72. The media landscape in the country is both diverse and pluralistic, but it is sharply divided along political lines. Although online media platforms and social networks have been gaining traction, television remains the predominant source for political news. Public broadcaster Telewizja Polska (TVP) has the largest viewership, followed by private channels such as TVN and Polsat. Notably, in 2022, a decision was made that exclusively permitted TVP to continue broadcasting in an older digital format, limiting access to other media for many households. The National Broadcasting Council (NBC) register includes more than 200 private television and radio stations.

73. While the physical circulation of print media has declined, regional newspapers remain the main source of local news. In 2021, PKN Orlen, a state-controlled fuel entity, acquired media giant Polska Press. This takeover, which saw a reshuffling of senior editorial roles, was widely seen as an attempt by the governing party to strengthen its influence over regional media. The subsequent challenges faced by opposition parties in placing advertisements in Polska Press publications further fuelled these concerns. That same year, a controversial law intended to curb foreign media ownership faced widespread criticism and was eventually vetoed, although not without causing licensing challenges for channels like TVN24.

74. The NBC is the constitutional body charged with safeguarding freedom of expression and the public interest. It is composed of five members for a six-year term (two appointed by the Sejm, two by the President and one by the Senate). All current members of the NBC were appointed in October 2022.

75. Alongside it, another body, the National Media Council (NMC) has been set up, which is composed of five members appointed for six years (three appointed by the parliament and two representing members of opposition parties appointed by the President). It appoints and replaces the management of public television and radio stations at national and local level. Many IEOM interlocutors perceived this body and its powers as a means of exerting political influence over public broadcasters. Many warned that, in the run-up to the elections, it had begun to exercise control over the management teams of the public media.

76. Campaign committees contesting at least half of the available Sejm seats are entitled to a total of 15 hours of free airtime on national public television and 30 hours on national public radio, and Senate candidates are entitled to a free allocation of 5 hours and 10 hours on television and radio respectively. Sejm and Senate candidates are also legally entitled to free airtime on regional public media. Private media are obliged to offer the same conditions to all candidates for the purchase of airtime for paid political advertising. Broadcasters must report to the NBC on their allocation of airtime to electoral candidates.

77. The NBC did not proactively monitor the media landscape. Instead, it mainly reacted to complaints received, and its efforts were seen as insufficient in addressing evident media bias. The NBC met four times during the campaign period, in closed sessions, to discuss the allocation of frequencies and license-related matters. Despite its mandate, the NBC did little to address the clear partiality and bias evident in public television broadcasts. In total it reviewed 44 complaints, including 40 concerning the public broadcaster. Overall, the body failed to curtail the evidently partial and biased coverage of the public television despite its constitutional obligation to safeguard the public interest in broadcast media. Many IEOM interlocutors mentioned that this bias was not only affecting elections but it skewed the political playing field in general.

7. Complaints and appeals

78. The legal framework offers both judicial and administrative channels for voters and electoral contestants to seek legal remedies. However, some NEC decisions can only be challenged by contestants. Appeals against the NEC's refusal to register electoral committees go to the Supreme Court, while candidates whose registration is rejected by the CEC can appeal to the NEC and then the Supreme Court. Issues such

as free airtime distribution on public media and campaign finance issues are overseen by the NEC. Disputes relating to the dissemination of false information are handled by district courts, while challenges to the election results must be sent to the Supreme Court's Chamber of Extraordinary Control and Public Affairs within 7 days.

79. The NEC had to address 42 appeals against the CEC's decision to deny candidate registrations. A predominant reason for these denials was not meeting the signature requirements. Out of these, just one was upheld, with 19 not considered due to procedural grounds, and 22 dismissed outright.

80. The Supreme Court dealt with over 60 election-related cases. A significant number of these pertained to appeals against the NEC's decisions on candidate registration, some also questioning NEC and CEC decision-making processes. The Supreme Court's verdicts on several key issues either upheld, overturned, or reviewed various NEC decisions. On 6 October 2023, it dismissed an appeal which challenged procedural aspects of handling election and referendum ballots concurrently, among others, relating to secrecy of the vote for those choosing not to vote in the referendum.

81. Importantly, the transparency and efficiency of the legal process were evident as both NEC and Supreme Court provided well-reasoned and timely decisions, which were promptly made public on their websites, thus enhancing transparency. However, despite these efforts, concerns remained about the independence and impartiality of the judiciary, especially in the wake of recent reforms. There were also voices of criticism hinting at perceived politicised decisions by the Supreme Court, especially as the elections approached.

82. Decisions of election commissions may be appealed to each respective higher-level commissions up to the NEC. NEC decisions related to a voter's exclusion from the voter register may be appealed to the regional court, and the court's decisions are final. Decisions related to rejected candidate lists may be appealed initially to the NEC and subsequently to the Supreme Court. The 2023 changes to the Election Code reduced the time for Supreme Court decisions on appeals against the rejection of an electoral committee from three to two days, which may diminish the effectiveness of this judicial remedy. Electoral committees can file complaints related to the distribution of free public airtime to the NEC. Certain election related crimes such as interference, violation of the freedom of the vote, and electoral bribery, all of which are punishable by imprisonment, are elaborated in the Criminal Code.

83. Complaints pertaining to the validity of the elections may be lodged with the Supreme Court by any registered voter, a chairperson of an election commission, or by a representative of an electoral committee, within seven days of the announcement of the results. The Court determines whether a breach of the Code has taken place and whether it had an influence on the outcome of elections. The Chamber of Extraordinary Review and Public Affairs is responsible for validating elections within 90 days of the election.

84. Although stakeholders did not raise specific concerns about election dispute resolution procedures prior to the 2023 elections, a general concern persisted over the independence of the Supreme Court chamber responsible for validating election results. Indeed, even the European Court of Human Rights, in the case of *Dolińska-Ficek and Ozimek v. Poland*,¹³ ruled *expressis verbis* that this Supreme Chamber "is not a court established by law" within the meaning of the Convention.

8. Citizen and international observers

85. The Election Code allows for both local and international observers. It allows electoral committees to assign representatives to all election commissions, including to polling stations on election day. Candidates' proxies may observe at polling stations and monitor the activities of the electoral commissions they are assigned to.

86. The 2023 amendments provided for candidate proxies to be paid for observing, potentially compromising their independence with a transactional relationship with the PECs they observe.

87. Citizen observers do not need formal accreditation but must have a certificate from their nominating bodies. In August, the NEC stated in its guidelines that public observers were not allowed for the referendum, restricted citizen observers' scope of activities to election day only and banned them from commenting on or tracking the transport of the protocols to the PECs. Despite the Supreme Court overturning this, the NEC left

13. *Dolińska-Ficek and Ozimek v. Poland*, applications nos. 49868/19 and 57511/19, judgment of 8 November 2021

this information online, causing confusion. The last revision of the guidelines did not take place until 12 October 2023, namely three days before election day, which caused some confusion in the polling stations on election day.

88. The PACE delegation believes that the need to defend the rights of observers at the level of the Supreme Court is not conducive to co-operation between observers and electoral management bodies.

89. Recent amendments allow proxies and citizen observers to record the voting process at polling stations, but these recordings must be given to the PECs or a ministry of digitalisation database. This might compromise the secrecy of the vote and intimidate observers, potentially limiting the collection and retention of important evidence for use in court cases.

90. While international observers get accreditation from the NEC, delays and lack of transparency have hindered their work. The PACE delegation deplores that as many as 6 members of the IEOM and 120 observers from international non-governmental organisations were not accredited even a day before the elections, a move it deems unacceptable. No explanation was given as to why, three days before the elections, 29 accreditations of IEOM observers were first withdrawn, then six were retained and finally, under international pressure, these accreditations were accepted. It was unprecedented for observers to learn of their non-accreditation after arriving in the country.

91. Overall, the elections and referendum garnered significant interest not only from the observers but also from the voters. On election day, observers were mostly free to observe the process, with most polling stations providing the necessary information. Where hesitations arose about the rights of citizen observers, these were mainly due to committee members being unaware of guideline changes.

9. Election Day

92. Election day saw a record turnout of 74.4%, the highest since 1989, a sign of exceptional voter engagement. The process itself proceeded calmly, without any significant incidents.

93. The PACE delegation was divided into 14 teams and observed the election day procedures in 144 polling stations in Warsaw and its surroundings (11 teams), Gdansk (2 teams) and Krakow (1 team), as well as the closing and vote counting in 11 polling stations in Warsaw. As the OSCE/ODIHR did not send any short-term observers, no general statistics were provided on IEOM observations. Almost all PACE observations were positive about the various stages of election day procedures.

94. PACE teams observed the opening in 14 polling stations, all of which were assessed as very good or good. Voting materials were available and voting started on time. However, some procedural problems were observed during the opening, such as the ballot box not being properly sealed, namely only taped and not closed with a lock or the plastic seal provided for this purpose.

95. The delegation noted the high motivation of citizens to exercise their right to vote, starting in the early hours of the morning, resulting in sometimes long queues and some polling stations in Warsaw and Krakow running out of ballot papers.¹⁴ The high turnout, combined with poor queue management and sometimes inadequate polling station layout, led to overcrowding in many polling stations.

96. In contrast to the election campaign, which was marked by heightened rhetoric, fabricated tensions over relations with neighbouring Germany and Ukraine, and the government's decision to add a controversially worded referendum to the two ballots for the Sejm and Senate, the atmosphere at the polling stations observed was very different: Voters queued in large numbers, patiently and in good spirits and polling stations were mostly run calmly and politely, although sometimes in a somewhat chaotic or disorderly manner.

97. The main shortcoming noted in all polling stations was the general violation of the secrecy of the ballot. The lack of secrecy manifested itself in a number of ways – and often in combination: the lack of an adequate number of places to ensure secrecy; the inadequate size of some of the polling stations; and the overall massive practice of group or family voting, which occurred almost everywhere. Even where secrecy was available, it did not seem to be relevant to voters. In many cases, voters did not fold their ballot papers properly and their choices were easily visible to bystanders. On several occasions, however, observers noted instances of one person trying to help several others, which could have been intended to influence voters.

14. Each polling station received a number of ballots which corresponded to approximately 80% of the voters in the list. However, Polish voters, who had requested a permission to vote elsewhere than their normal constituency, could vote anywhere and this created a situation whereby voting had to be suspended and more ballots requested.

98. In the vast majority of cases, electoral commissions did not react to breaches of the secrecy of the ballot. In a number of cases, the presiding officers of the observed polling stations explained that family voting was an accepted, if not traditional, practice in Poland. There seemed to be a general lack of awareness of the importance of secrecy. However, this was partly due to organisational problems, such as overcrowded polling stations, the simultaneous handling of election and referendum ballots, the large size of the Sejm ballot paper, and the lack of general instructions or prior voter awareness campaign on how to fold the different ballot papers.

99. For the PACE delegation, by far the most serious problem with regard to ballot secrecy was the secrecy of the referendum vote. The principle that the binding nature of the referendum was determined by the number of valid ballots taken from the ballot box meant that, in practice, the only way of not participating in the referendum was to refuse to take the referendum ballot. However, this was a gross violation of the secrecy of the vote, as it revealed the will of the voters to those working in the commission and those present in the polling station. Again, although the PACE observers did not observe any intimidation of voters by this procedure within the polling stations, they were told of cases of people who did not come to vote because they did not want to be stigmatised by their acquaintances in the electoral commissions after the vote.

100. The fact that voters had to state their wish not to participate in the referendum when they received their ballot paper made the process of issuing ballots more difficult. Cases were reported of PS commission members asking voters whether they wanted a referendum ballot paper, and of commissions issuing referendum ballots to voters who had stated that they did not want them. The NEC issued a communique to all polling stations, stressing that their members should not ask voters whether they wanted a referendum ballot. The NEC stressed that it was the voters' right to refuse the ballot but the polling station members were obliged to hand out all three ballots.

101. In a number of polling stations observed, campaign posters and materials were present directly in front of the polling station. In most polling stations, at least one civil society representative was present to observe the process, while PACE observers did not meet any party proxies.

102. The majority of polling stations visited had proper access for voters with disabilities or it was clearly posted outside the polling stations where people with mobility disabilities could vote. Voting was also available in brail.

103. PACE delegation members observed vote counting in 11 polling stations, assessing the process in all but one case as very good or good, despite the extremely lengthy procedures. Civil society observers reported some cases of non-compliance with the procedures as foreseen in the guidelines, motivated by the desire to speed up the process or to simplify it. In a number of polling stations observed, the commission did not count the valid ballots before counting the votes cast for individual candidates and the referendum.

104. The Warsaw I district election commission was reported to have received all protocols from the PECs abroad within the 24-hour limit.¹⁵ Nonetheless, the problems raised in paragraph 31 remain pertinent.

105. The NEC announced the final results on 17 October 2023:

The Sejm (460 seats):

- United Right - Law and Justice (PiS): 35.4% (194 seats)
- Civic Coalition (KO): 30.7% (157 seats)
- Third Way: 14.4% (65 seats)
- The Left: 8.6% (26 seats)
- Confederation: 6.8% (18 seats)

The Senate (100 seats)

- Civic Coalition (KO): 28.91% (41 seats)
- United Right - Law and Justice: 34.81% (34 seats)
- Third Way: 11.5% (11 seats)
- The Left: 5.29% (9 seats)

15. <https://tvn24.pl/wybory-parlamentarne-2023/wybory-2023-co-sie-dzieje-z-glosami-zza-granicy-doniesienia-miedzy-innymi-o-problemach-z-protokolami-7394480>.

- Senate Pact Independents: 2.68% (4 seats)
- Independents: 2.98% (1 seats)

106. PiS remained the largest party in the Sejm, but with about 35% of the vote, lost its majority and will most likely be unable to form a government. The three main opposition groups, Civic Coalition, Third Way and The Left, took 54% of the votes, winning enough seats (248) to allow them to take power. The German Minority Electoral Committee failed to win any parliamentary seat for the first time in 32 years.

107. The opposition parties owe their high score to the extraordinary mobilisation of young voters and women. Moreover, the various campaigns targeted at women and the share of female candidates on electoral lists give grounds to expect that the future parliament will have the highest percentage of female MPs in Polish history. 74.7% of women (compared to 73.1% of male voters) cast their vote. Whereas over 80% of voters in their 40s and 50s cast their votes, over 70% of young people between 18 and 29 came to vote, which is an exceptionally high turnout, especially considering that there is no electronic way of voting in Poland.

108. The new composition of the Sejm will include 135 female members (29,3%) and 20 new female senators (20%). The previous composition of the Sejm included 132 women, thus these elections added only three more female legislators to the Sejm. With the high level of participation of women voters in these elections, it may be hoped that the next elections in Poland would see more women entering politics and that political parties themselves would introduce quotas for gender balance in top positions.

109. In other aspects of electoral demographics,¹⁶ it is interesting to note that the support to the ruling party grew in a linear way with age (from 14.4% of 18-29-year-olds to 52.8% for 60 and older) whereas support to KO was very even among all age groups (between 27.6% – 34.5%). 47.6% of the rural population supported PiS whereas the support diminished proportionally to the size of towns and cities (33.7% in towns smaller than 50 000 to 21% in towns with population over 500 000 inhabitants, compare with KO – 33.4% to 42.9%). By professional profiling, company owners, managers, experts, administrative services and students voted predominantly for KO candidates, whereas farmers, workers, retired and unemployed gave their overwhelming support to PiS.

110. 29 532 595 persons or 40.91% of the registered voters participated in the referendum, which fell below the minimum validity threshold of 50%.

111. On 6 November 2023, President Duda asked Mateusz Morawiecki to form a government. This move was criticised by the opposition, as no party that would allow PiS to reach a majority agreed to join them for coalition talks. In protest, on 10 November, Civic Coalition, Poland 2050, Polish People's Party and New Left signed a coalition agreement. The Sejm was summoned on 13 November. If Mateusz Morawiecki does not secure the Sejm's vote of confidence before 27 November, the Sejm will then elect a new Prime Minister, who is then supposed to be officially appointed by President Duda before 11 December 2023.

10. Conclusions and recommendations

112. Poland's parliamentary elections in 2023 were characterised by fierce competition, offering voters a wide range of political options. However, the ruling party's disproportionate control over State resources and public media gave it an undue advantage. The historic voter turnout demonstrated the deep-rooted concern of the Polish public about the democratic future of their country.

113. The PACE delegation recalls that an election, and its observation, does not only concern the polling day, but is a process with several stages, all of which need to be analysed and evaluated in order to assess the entire electoral process.

114. The political atmosphere in the run-up to these elections was highly polarised. They were perceived by the population as being critical to Poland's future on key matters, including the resilience of democratic institutions, personal freedoms and foreign policy approach.

115. While the candidates campaigned openly, the electoral discourse was marred by rhetoric characterised by intolerance, xenophobia and misogyny, particularly at the expense of their opponents and migrants.

16. Source: "Wyniki sondażowe". Archived from the original on 16 October 2023. Retrieved 17 October 2023

116. The electoral administration functioned effectively and, despite doubts about its neutrality, enjoyed general public confidence. However, its decision-making lacked transparency. While questions remain about the independence of the judiciary, the Supreme Court's handling of election-related cases was transparent and encouraged greater participation by observers.

117. However, the legitimacy of key courts remains an issue. As underlined by the European Court of Human Rights' position on the Chamber of Extraordinary Review and Public Affairs, there is an urgent need for the new authorities to prioritise the restoration of the rule of law and respect for human rights in the country.

118. The electoral framework is adequate for the conduct of democratic elections. However, major last-minute changes without substantive public debate deviated from international best practice. In order to insulate the electoral process from abrupt legislative changes, mechanisms should be put in place to prevent any changes to election and referendum procedures within six months of an event, as mandated by the Constitutional Tribunal. This would allow sufficient time for all stakeholders to adapt and prevent any undue advantage.

119. New legislation focused on increasing voter turnout favoured pro-government rural areas and neglected the recalibration of seats based on current population figures. Recommendations from previous elections regarding suffrage rights, the misuse of administrative resources and improved transparency of campaign financing have yet to be addressed.

120. The inaction of the Sejm in adjusting the distribution of electoral seats is a cause for concern and calls for the introduction of a mechanism for automatic demographic realignment of the distribution of Sejm seats among electoral districts, which should take place before each parliamentary election and be based on the latest data from the NEC (without the need for parliamentary involvement). It is also proposed to reduce the number of voters per constituency from 4 000 to 3 000 in the interests of efficiency.

121. The central register of voters functioned satisfactorily despite its recent introduction. The PACE delegation sees potential benefits in a digitalised voter verification system, a feature common to many European countries.

122. Election day ran smoothly. However, the secrecy of the vote was compromised by overcrowded polling stations, poorly prepared polling booths and a lack of voter awareness. The NEC should intensify voter education on ballot secrecy and ensure that voting remains confidential. The size of the ballot paper and how preferences are marked on it should also be reconsidered for future elections.

123. In light of the additional (time) pressure put on polling stations abroad, Polish authorities should review without further delays, and in due time before the next elections, the regulations guiding voting abroad, and consider the methods of voting (such as reintroduction of postal voting, or introduction of electronic voting) as well as the allocation of votes (which are concentrated in one constituency, thus triggering "electoral tourism").

124. The government-initiated referendum held concurrently with the elections served to reinforce the ruling party's campaign. The referendum clearly helped the ruling party to circumvent stricter campaigning and campaign finance regulations. The overlap between the ruling party's campaign messages and the government's information campaigns, as well as state-controlled companies and their foundations campaigning for the referendum, gave the ruling party another significant advantage. The lack of detailed campaign finance reporting prior to election day, as well as ineffective regulation of the referendum, had a negative impact on the accountability of political parties and campaign finance. Given the complexities that arise when parliamentary elections and a national referendum are held simultaneously, it is crucial to develop strategies that ensure the compatibility of procedures and the secrecy of the ballot in both cases.

125. Freedom of expression is enshrined in the Polish Constitution, but defamation and public insult remain criminal offences, despite previous international recommendations. The media landscape shows increasing political influence, which should be addressed. The public broadcaster showed a clear bias towards the ruling party, which was not regulated by the National Broadcasting Council.

126. Gender equality, although guaranteed by the Constitution, is not reflected in political representation. Further efforts are needed to increase women's political participation.

127. While the Election Code allows for both domestic and international observers, the accreditation process for many international observers was marred by delays and a lack of transparency. A standardised procedure for the accreditation of international observers should be established by the NEC in co-operation with the ministry of foreign affairs. This should include a clear deadline for the submission of applications and the delivery of accreditations.

128. The rights of citizen observers also need to be harmonised and enshrined in law, including during a nationwide referendum. A universal electronic certificate for proxies and observers could help to streamline procedures. It would also be fair for organisations sending citizen observers to have the right to lodge complaints against guidelines or statements issued by the NEC.

129. All in all, the PACE observers found that Polish voters, regardless of which party they supported, voted in a way and in a manner that reflects their hopes for a calmer and less divided political future.

130. The Assembly stands ready to work with the Polish authorities to address the issues highlighted, guided by the Reykjavík Principles of Democracy adopted at the Reykjavík Summit of Heads of State and Government. This work should be carried out within the framework of the Assembly's monitoring procedure and in close co-operation with the Venice Commission.

Appendix 1 – Composition of the ad hoc committee

Based on the proposals by the political groups of the Assembly, the ad hoc committee was composed as follows (* members of the pre-election delegation):

Chairperson: Ms Mireille CLAPOT

Socialists, Democrats and Greens Group (SOC)

- Mr Constantinos EFSTATHIOU, Cyprus
- Mr Yunus EMRE, Türkiye
- Ms Aurora FLORIDIA, Italy
- Ms Blerina GJYLAMETI, Albania
- Mr. Didier MARIE, France
- Mr Givi MIKANADZE, Georgia
- Mr Stefan SCHENNACH, Austria*

Group of the European People's Party (EPP/CD)

- Mr Corneliu-Mugurel COZMANCIUC, Romania*
- Ms Marie-Christine DALLOZ, France
- Mr Reinhold LOPATKA, Austria
- Mr Chris SAID, Malta
- Mr Andrius VYŠNIAUSKAS, Lithuania

Alliance of Liberals and Democrats for Europe (ALDE)

- Ms Mireille CLAPOT, France*
- Mr Jean-Pierre GRIN, Switzerland
- Ms Valentina GRIPPO, Italy
- Mr Robert TROY, Ireland
- Ms Lesia ZABURANNA, Ukraine

European Conservatives Group and Democratic Alliance (EC-DA)

- Mr Thibaut FRANCOIS, France
- Mr Oleksii GONCHARENKO, Ukraine
- Lord Simon RUSSELL, United Kingdom*
- Mr Jose Maria SÁNCHEZ GARCIA, Spain

Group of the Unified European Left (UEL)

- Mr Andrej HUNKO, Germany*

Co-rapporteur AS/MON (ex officio)

- Ms Azadeh ROJHAN, Sweden

Venice Commission

- Mr Óscar SÁNCHEZ MUÑOZ, Substitute member, Spain
- Mr Michael JANSSEN, Administrator, Venice Commission

Secretariat

- Ms Ivi-Triin ODRATS, Secretary of the ad hoc committee, Election Observation and Support Division
- Ms Anne GODFREY, Assistant, Election Observation and Support Division
- Ms Carine ROLLER-KAUFMAN, Assistant, Election Observation and Support Division

Appendix 2 – Programme of the pre-electoral delegation of the Parliamentary Assembly

Tuesday, 26 September 2023

- 8:45-9:25 Delegation meeting with introductory words by:
- Mireille Clapot, Head of Delegation
 - Pawel Wierdak, Head of the Council of Europe Office in Warsaw
 - Practical information from the secretariat
- 9:30-11:00 Meeting with Mr Douglas Wake, Head of the OSCE/ODIHR Limited Election Observation Mission, Ms Tamara Otiashvili, Deputy Head of Mission, and members of the core team
- 11:30-12:45 Meeting with the President and judges of the Chamber of Extraordinary Control and Public Affairs of the Supreme Court:
- Joanna Lemańska, President of the Supreme Court, managing the work of the Chamber of Extraordinary Control and Public Affairs,
 - Aleksander Stępkowski, Judge of the Supreme Court, Spokesman of the Supreme Court
 - Marcin Stębelski (Ph.D.), member of the Office of Studies and Analyses of the Supreme Court
 - Przemysław Szuty, judicial assistant of the Supreme Court
- 12:50-14:15 Working lunch with Mr Radosław Fogiel (MP), Chairperson of the Foreign Affairs Committee
- 14:30-16:00 Meeting with representatives of civil society:
- Patryk Wachowiec – Civil Development Forum
 - Maciej Nowicki – Helsinki Foundation for Human Rights
 - Adam Gendźwiłł – Warsaw University, Batory Foundation
 - Zofia Lutkiewicz – Responsible Politics Foundation
- 16:15-17:45 Meeting with representatives of media monitoring organisations
- Sylwester Oracz – Responsible Politics Foundation
 - Konrad Siemaszko – Helsinki Foundation for Human Rights
 - Krzysztof Bobiński, Andrzej Krajewski – Towarzystwo Dziennikarskie/ Journalistic Society
 - Dominika Bychawska-Siniarska – Batory Foundation and Prague Civil Society Center
- 18:15-19:00 Meeting with Tomasz Grodzki, Speaker of the Senate
- 19:30 Meeting with members of the diplomatic corps (Austria, United Kingdom, Germany, Romania), hosted by Etienne de Poncins, Ambassador of France in Poland

Wednesday, 27 September 2023

- 08:00-08:45 Meeting with Mr Marek Suski (MP) and Mr Daniel Milewski (MP) – Law and Justice (PiS)
- 08:45-09:45 Meeting with the Head and members of the National Election Commission (NEC)
- Sylwester Marciniak, Chairman of the National Electoral Commission
 - Magdalena Pietrzak, Secretary of the National Electoral Commission
 - Lech Gajzler, Director of the Legal and Election Organisation Team
 - Krzysztof Lorentz, Director of the Team for Control of Financing of Political Parties and Election Campaigns
- 10:00-10:45 Meeting with Małgorzata Paprocka, Secretary of State
- 11:00-12:15 Meeting with Kamila Gasiuk-Pihowicz (MP) and Aleksander Pociąg (MP) – Civic Coalition

Doc. 15861 Election observation report

12:30-13:45	Working lunch with Tomasz Giziński, Advisor to National Media Council (NMC)
14:00-14:40	Meeting with Anna Maria Żukowska (MP) – Lewica
14:40-15:20	Meeting with Krzysztof Paszyk (MP) and Mr Marek Sawicki (MP) – Koalicja Polska
15:20-16:00	Meeting with Paweł Zalewski (MP) and Mr Stanisław Zakroczyński, Director of the Office – Polska 2050
16:00-16:20	Meeting with Paweł Kukiz (MP) – Kukiz'15
17:00-18:00	Debriefing meeting of the pre-electoral delegation and preparation of the statement

Appendix 3 – Statement of the pre-electoral delegation of the Parliamentary Assembly

Poland: PACE pre-electoral delegation notes a heated and polarised campaign environment

A PACE pre-electoral delegation, concluding a visit to Poland (26-27 September 2023), has noted a heated and polarised campaign environment in the run-up to next month's parliamentary elections. The delegation listened to widespread concerns about potential democratic backsliding, threatening to undermine public trust in the fairness of the electoral process.

The five-member¹⁷ cross-party delegation, led by Mireille Clapot (France, ALDE), conducted its assessment in Warsaw, engaging with high-ranking state officials, members of the judiciary, election authorities, political party representatives, civil society organisations and independent media monitors, as well as representatives of the diplomatic corps.

The delegation highlighted concerns surrounding the simultaneous referendum during the parliamentary elections, which various interlocutors suggested was intended to circumvent campaign financing regulations. The delegation was also worried that the wording of the referendum questions pre-empted the answers, and felt that the obligation for voters to actively refuse to take the referendum ballot paper might endanger the secrecy of the vote for those wanting to participate in the elections but not in the referendum.

Furthermore, the delegation expressed concerns about the legitimacy of key courts being questioned domestically and internationally, as well as the European Court of Human Rights no longer recognising the Chamber of Extraordinary Review and Public Affairs of the Polish Supreme Court as a legally established tribunal. These factors could lead to uncertainty if the election results were to be challenged.

The members of the pre-electoral mission were informed about several amendments to the Electoral Code introduced during a period of legislative silence, including a switch to a central voter register without large-scale testing prior to the elections. Moreover, they expressed their disappointment at the Parliament's failure to adjust the number of seats in constituencies to reflect changing population levels, as mandated by law and proposed by the State Electoral Commission. However, the delegation was pleased to note that there was a high level of trust in the ability of local election officials to carry out their roles.

The delegation noted with satisfaction that candidates' freedom to campaign remains unhampered in Poland but echoed the concerns of certain interlocutors about unbalanced media coverage by public outlets.

The delegation also took note of concerns raised about the blurring of the line between state and party activities by political parties and the transparency of campaign financing.

The voting process for Polish citizens residing abroad was also an issue raised by some of the delegation's interlocutors, particularly the changes to legal provisions which might invalidate out-of-country precinct votes if they are not received by the National Election Commission within 24 hours of polls closing.

The delegation acknowledges that addressing some of these issues before election day may be challenging, but it strongly urges action on those that can still be rectified.

A fully-fledged PACE delegation comprising 30 members, accompanied by legal experts from the Venice Commission, will travel to Poland to observe the vote on 15 October.

PACE – which represents parliamentarians from 46 European nations – is observing elections in Poland with a full-scale delegation for the first time since the Parliamentary Assembly decided to open a procedure in January 2020 to monitor Poland's honouring of its statutory obligations vis-à-vis the Council of Europe.

17. Composition of the delegation: Mireille Clapot (France, ALDE), head of delegation, Stefan Schennach (Austria (SOC), Corneliu Mugurel Cozmanciuc (Romania, EPP/CD), Lord Simon Russell (United Kingdom, EC/DA) and Andrej Hunko (Germany, UEL).

Appendix 4 – Programme of the meetings of the International Electoral Observation Mission

Friday, 13 October 2023

- 09:00-10:15 PACE delegation meeting
- Welcome by the Head of the delegation, Mireille Clapot
 - Presentation of the pre-electoral mission by its members
 - Intervention by the co-rapporteur, Azadeh Rojhan
 - Presentation by Óscar Sánchez Muñoz, member of the Venice Commission
 - Practical information from the secretariat
- 10:30-10:45 Welcome and Introductory Remarks
- Pia Kauma, Special Co-ordinator
 - Mireille Clapot, Head of PACE Delegation
 - Pere Joan Pons, Head of OSCE PA Delegation
- 10:45-12:45 Briefing by the ODIHR Limited Election Observation Mission
- Welcome and overview of the EOM's work – Douglas Wake, Head of Mission
 - Political overview, the Contestants and the Election Campaign – Julia Manchin, Political Analyst
 - Campaign Finance – Jeffrey Carlson, Campaign Finance Analyst
 - Media – Ivan Godarsky, Media Analyst
 - Legal Framework, Electoral dispute resolutions – Eirini Skouzou, Legal Analyst
 - Election Administration and E-Day– Peter Michalik, Election Analyst
 - Security – Michal Galkowski, Security Expert
- Questions and Answers
- 14:00-15:30 Political and Social Context
- Piotr Buras, Head, ECFR Warsaw
 - Kinga Łozińska, Deputy Chairperson, Committee for the Defence of Democracy
 - Zosia Lutkiewicz, President of the Management Board, Political Accountability Foundation
 - Maciej Nowicki, President of the Board, Helsinki Foundation for Human Rights
 - Monika Wiszyńska-Rakowska, Commissioner for Human Rights
- 16:00-18:00 Party Representatives and Candidates
- Jakub Banaś, Confederation Freedom and Independence
 - Włodzimierz Czarzasty, Co-Chair, The Left (SLD, Wiosna & Razem)
 - Miłoslawa Zagłoba, Senior Legal Advisor and representative of the Third Way (Polska 2050 & Koalicja Polska)
 - Aleksander Pociąg, Senator, Civic Coalition (KO)

Saturday, 14 October 2023

- 08:30-10:30 Election Campaign and Media Coverage
- Marcin Duma, President, IBRIS
 - Piotr Kierzkowski, Chief of TVP3, Public Television
 - Bartosz Wieliński, Deputy Editor-in-Chief, Gazeta Wyborcza
 - Michał Samul, Editor-in-chief, TVN24
 - Maciej Swirski, Chairperson, National Broadcasting Council
 - Bartosz Weglarczyk, Editor-in-Chief, Onet.pl
- 11:00-12:00 Election Administration
- Dariusz Lasocki, member of the National Electoral Commission
 - Krzysztof Lorentz, Head of Department of Financial Control of Political Parties and Election Campaigns, National Electoral Office

- Aleksander Stępkowski, Supreme Court Chamber of Extraordinary Control and Public Affairs / Spokesman
- Janusz Cieszyński, Minister of Digital Affairs

12:00-12:30

ODIHR EOM Briefing continuation

- Briefing by **Long Term Observers** deployed in Warsaw

Sunday, 15 October 2023

All day Election Day – Observation in polling stations

(Polling stations open at 07:00 and close at 21:00)

Monday, 16 October 2023

08:00-09:00 Debriefing for PACE Delegation

15:00 Joint press conference

Appendix 5 – Press release of the International Election Observation Mission

Poland's parliamentary elections were competitive but marked by misuse of public resources and public media bias, international observers say

WARSAW, 16 October 2023 – Poland's parliamentary elections were characterized by record high voter participation with a wide choice of political options and candidates able to campaign freely, but the campaign was tarnished by notable overlap between the ruling party's messages and government information campaigns. Together with distorted and openly partisan coverage by the public broadcaster, this provided a clear advantage to the ruling party, undermining the democratic separation of state and party, international observers said in a [statement](#) today.

Yesterday's elections took place in a highly polarised atmosphere and were regarded by many as critical to Poland's democratic future. The joint observation mission from the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the OSCE Parliamentary Assembly (OSCE PA) and Council of Europe's Parliamentary Assembly (PACE), found that the legal framework provided a sufficient basis to hold democratic elections. While recent legal amendments incorporated some previous recommendations made by ODIHR, their adoption occurred shortly before the elections and without meaningful public consultation.

"This Sunday's parliamentary elections, while offering Polish voters different political alternatives, took place in a complex and polarized political environment," said Special Co-ordinator Pia Kauma. "This translated into a campaign dominated by a highly confrontational tone, with regular use of inflammatory rhetoric and personal attacks against the main party leaders."

Over 29 million voters were registered for yesterday's elections, including over 600,000 who applied to vote abroad. The national election commission prepared for the elections efficiently and despite some questions being raised about their impartiality, generally enjoyed public trust. All sessions were closed to the public, resulting in a lack of transparency in their decision-making process. Election day itself was calm, and the process was efficient and well organized in the polling stations visited by observers. However, the secrecy of the vote was frequently compromised by overcrowding, voting booths not being spacious enough to conceal large ballots, and voters marking ballots outside the booths. While concerns about independence of the judiciary remain, the handling of election-related cases by the Supreme Court was transparent and supported greater observer participation.

"We witnessed a polarized campaign environment where heightened rhetoric, recent changes to the legal electoral framework and serious concerns over the judicial system undermined citizens' trust in the institutions," said Azadeh Rojhan, alternate head of the PACE delegation. "Nevertheless, the historic high turnout demonstrated the commitment of citizens to upholding democracy in Poland."

While freedoms of association and assembly were respected in a pluralistic campaign, it was marred by the misuse of state resources. The overlap between the ruling party's campaign messages and government information campaigns as well as state-controlled companies and their foundations, including on the referendum, gave a further significant advantage to the ruling party. In addition, the lack of detailed campaign finance reporting ahead of election day as well as ineffective regulation for the referendum had a negative impact on the accountability of political party and campaign finance.

The run-up to the election remained peaceful overall. However, the campaign was highly confrontational and often negative, with candidates repeatedly using intolerant, misogynistic and discriminatory language, including anti-migrant narratives from some parties that were at times xenophobic. Personal verbal attacks against the main party leaders were widespread.

"While the elections in Poland were competitive, we noted the erosion of checks and balances to gain further control over state institutions by the governing party, including the courts and the public media," said OSCE PA head of delegation Pere Joan Pons. "This tilted the playing field, which meant the opposition did not have fully equal opportunities."

While Poland's media landscape is diverse, the purchase of most regional daily newspapers and many other regional media outlets by a state-controlled energy company, attempts to limit foreign media ownership, and protracted license renewal processes indicate increasing political control by the government. The observer mission found that while public television gave free airtime to all contestants, its political coverage clearly promoted the ruling party and its policies and at the same time demonstrated open hostility towards the opposition. Most monitored private media adopted a critical editorial line against the ruling party, while some clearly favoured the opposition.

“Equality, inclusiveness and transparency are key to good election administration and vital for an election to fully meet democratic standards,” said Douglas Wake, head of the ODIHR limited election observation mission. “But while Poland’s election administration performed efficiently, transparency was regrettably limited. More troublingly, we observed that the ruling party and its candidates gained a clear advantage from the misuse of state resources, undermining the separation between state and party.”

The international election observation mission to the Polish parliamentary elections totalled 154 observers from 44 countries, consisting of 33 ODIHR-deployed experts and long-term observers, 94 parliamentarians and staff from the OSCE PA, and 27 from PACE.