



ODIHR SPECIAL ELECTION ASSESSMENT MISSION Republic of Poland – Presidential Election, 28 June 2020

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

The 28 June 2020 presidential election in the Republic of Poland was administered professionally despite the legal uncertainty during the electoral process. The constitutionally mandated election coincided with the outbreak of the COVID-19 pandemic, and the decision to continue with the holding of the election necessitated legal and practical adjustments. The changes jeopardized the stability and clarity of the otherwise suitable election legislation and had practical implications for candidate registration, campaigning and campaign finance, voting methods, and resolution of election disputes. The campaign was characterized by negative and intolerant rhetoric further polarizing an already adversarial political environment. In an evidently polarized and biased media landscape, the public broadcaster failed to ensure balanced and impartial coverage, and rather served as campaign tool for the incumbent.

The presidential election was initially scheduled to take place on 10 May following the announcement by the Speaker of the *Sejm* on 5 February 2020. After the outbreak of the COVID-19 pandemic, the government decided to not declare a state of emergency and proposed measures to hold the election.¹ The decision to proceed with the election was strongly criticised by the opposition. On 8 May, an act providing for casting of ballots exclusively via postal vote and partially reassigning important functions of organizing elections from the National Election Commission (NEC) to the Ministry of State Assets came into force. On 10 May, the planned election day, the NEC issued a resolution that it had not been possible for voters to cast ballots for candidates and therefore the election had not taken place. A new election date (28 June with a potential second round on 12 July) was not announced until 3 June after a new law governing the presidential election was adopted on 2 June.² Despite stark opposition to the measures initially proposed to hold this election, key political actors did not ultimately indicate concerns with the holding of the 28 June election.

Generally, the legal framework for holding presidential elections is comprehensive and provides detailed regulations of key components of the electoral process. A number of previous ODIHR recommendations remain unaddressed, including those related to the abolition of criminal liability for defamation, suffrage rights for persons deprived of legal capacity, transparency and oversight of campaign finance, an impartial and objective public broadcaster and legal sanctions for hate speech. Amendments adopted following the COVID-19 pandemic and applicable solely to this election significantly altered key aspects of the electoral legal framework. The 8 May Act was annulled by adoption of the “Act on special regulations for general elections of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting” (2 June Act). The Act provides for the option of voting by post as well as in person at polling stations. It also alters the rules for candidate registration, introduces changes to composition of lower level election administration bodies, shortens deadlines for contesting the result of the election, and regulates certain aspects of campaign financing. In addition, the Act mandates the Speaker of the *Sejm* (lower house of the Parliament) to alter the

¹ The legal framework does not regulate the possibility of postponement of the election date. The Constitution provides for the opportunity of declaring a State of Natural Disaster and introduction of extraordinary measures during which period and 90 days following its termination no election can be held. According to the Constitution and the Election Code, the presidential election must be held no earlier than 100 days and no later than 75 days before the expiration of the term of the serving president. The current mandate expires on 6 August and thus the last possible date to hold the election was 17 May.

² ODIHR previously issued legal opinions on the both Draft Acts on [27 April](#) and [29 May](#).

deadlines for all electoral activities in consultation with the NEC and the Minister of Health. The Acts were adopted under an expedited procedure without sufficient discussion, contrary to Paragraph 5.8 of the 1990 Copenhagen Document which provides that legislation be adopted at the end of a public procedure. Both Acts made substantial changes to the manner in which ballots are cast and elections are administered less than a month prior to the election day thereby undermining the stability and clarity of the electoral law.

Elections are managed by a three-tier administration: the NEC and its executive body, the National Election Office (NEO), the entities that lead the process, 49 District Election Commissions (DECs), and 27,230 Precinct Election Commissions (PECs). While the NEC is permanent, the DECs and the PECs are temporary bodies. Following changes made after the 2019 parliamentary elections, the NEC comprises two judges (from the Constitutional Tribunal and the Supreme Administrative Court) and seven members designated by the *Sejm* from candidates nominated by political parties in proportion to their representation in the *Sejm*. Although some ODIHR SEAM interlocutors expressed doubts about the new method of appointment, the election administration at all levels enjoyed confidence among stakeholders. There are no provisions for representation of each gender. All NEC members are men; the head of the NEO is a woman. Women chaired 9 out of 49 DECs and comprised 35 per cent of all DEC members.

Despite the radically shortened timeframe, and uncertainty brought about by the legal changes, the election administration met all legal deadlines and conducted its activities professionally. NEC resolutions were published online in a transparent and timely manner. The operations of the NEC were affected by the necessity to follow measures to contain the spread of COVID-19, new procedures for the formation, recruitment and training of lower commissions, and the extended option of postal voting.³ Training of election officials occurred both in person and at distance. On 15 June, the Ministry of Health issued a regulation on sanitary and protective measures to be taken in polling stations on election day. On 19 June, within its legal mandate and at the request of the Ministry of Health, the NEC decided to conduct voting exclusively by post in two municipalities, in which the rate of COVID-19 infection cases was higher than 100 cases per 10,000 inhabitants. Braille overlay was to be made available at polling stations as well in the postal voting package upon request. The NEC identified more than half of the polling stations as independently accessible for persons with physical disabilities, thus fulfilling the statutory requirement.

ODIHR SEAM interlocutors expressed overall trust in the accuracy and maintenance of the voter list. Voter registration is passive, and voters could verify their inclusion in the voter list at their respective municipality in person. The final voter register contained a total of 30,006,154 voters, including 373,068 (out of whom 343,279 applied for postal voting) citizens registered to vote abroad at designated diplomatic representations in 86 countries and also 8 ships and platforms. Less than 1 per cent of voters (194,075) registered in-country requested to vote by mail.

The candidate registration for the 10 May election process was inclusive. However, registration was effectively annulled by the passing of the 2 June Act. The candidates registered for the 10 May election were re-registered upon request from their respective electoral committees. The 2 June Act entitled new candidates to register, upon collection of at least 100,000 signatures by 10 June. Twenty-three electoral committees registered with the NEC for 28 June election and were eligible to apply to register their candidates. NEC ultimately approved 11 candidates – 9 previously registered, 1 new candidate upon collection of the required number of signatures, and 1 following the decision of the

³ The 2 June Act stipulates that DECs shall be composed of 4 to 10 members appointed from among persons who have a degree in law but unlike in previous elections are not necessarily judges. Notwithstanding the amendment, judges account for 83 per cent of current DEC members. The minimum number of PEC members was reduced from 5 to 3.

Supreme Court on 12 June. While a woman candidate had been registered for the 10 May election, she withdrew and all the 11 candidates were men.

The official campaign period began on 5 February. Due to measures to prevent the COVID-19 pandemic, in-person campaign activities were limited to a maximum of 50 participants. From 31 March public gatherings were officially prohibited which had the effect of inhibiting the capacity for campaigning through the usual means. The uncertain legal basis of not holding an election on 10 May meant that campaigning and campaign finance were in a legal limbo between 9 May and the passing of the law on 2 June. Campaigning after the passing of the 2 June Act was able to take place generally uncurtailed as restrictions of public gatherings were eased on 29 May allowing for up to 150 participants. Several candidates organized some large-scale rallies. Although regulations on the number of participants and social distancing measures were not always respected, according to the police, no action was taken on any of the campaigns by law enforcement bodies.

The outbreak of the COVID-19 pandemic overshadowed the pre-election period, necessitating restrictions on fundamental freedoms of movement and assembly. Contestants resorted to campaigning through the broadcast and online media, and social networks as means of traditional outdoor canvassing including display and distribution of paraphernalia were used less. The incumbent president, Andrzej Duda, supported by the ruling Law and Justice party (*Prawo i Sprawiedliwość*, PiS), was standing for re-election. The prominent challenger was Rafał Trzaskowski, the current mayor of Warsaw, backed by the Civic Platform (*Platforma Obywatelska*, PO) and its coalition partners. Negative campaign tactics primarily by the two contenders leading in the opinion polls contributed to further polarizing and already confrontational environment. The COVID-19 pandemic was a central campaign issue, with both ruling and opposition parties accusing each other of exploiting the crisis for electoral gain. The prevalent themes were domestic economic issues in the aftermath of the COVID-19 measures, such as unemployment, retirement and social benefits. Inflammatory language was prominent with instances of xenophobic and homophobic rhetoric by the incumbent and his campaign.

The electoral committees are the only entities with the right to finance campaigns. They can do this through private donations, loans and the designated electoral funds of political parties. The 2 June Act substantially amended the campaign finance legal framework by, among other things, allowing electoral committees to use funds accumulated during the first part of the campaign, duplicating the limits on donations by natural persons and by candidates as well as on guarantees on loans, and increasing the expenditure limit for electoral committees registered for the 10 May election by 50 per cent. For electoral committees created newly for the 28 June election, the campaign spending limit was capped at 50 per cent of the spending limit envisaged by the Election Code.

These changes compound the effects of a regulatory framework which is lacking transparency as previous ODIHR assessments indicate. The oversight of campaign finance conducted by the NEC is focused on *ex post* control and there is no obligation for any interim reporting to any institution. While committees must declare private donations and loans exceeding one legal minimum monthly salary on their websites within seven days of receipt, they are not obliged to declare transactions received from parties' electoral funds. For this election, only 7 out of 11 committees published their registers of donations and loans on their websites. According to the 2 June Act, electoral committees are obliged to submit a single joint financial report, together with an external audit of the financial report for both campaign periods three months after the election. Electoral committees will only be required to submit an annual financial report to the NEC by 31 March 2021.

While freedom of expression is enshrined in the Constitution, primary legislation unduly restricts it and gives grounds for concern about infringement of free speech. Despite previous recommendations

by ODIHR and the OSCE Representative on Freedom of the Media (RFoM), defamation remains a criminal offence with which the media are often charged. Public insult of the president is also criminal offence. During the campaign, police filed charges against two people for publicly displaying slogans criticising the president. Civil litigation is also actively used both against and by the media themselves. For example, Mr. Trzaskowski, filed a lawsuit against the public television, *Telewizja Polska (TVP)* citing distortion of his candidacy to which *TVP* announced its intention to countersue. Restricted access for some private media companies to information of public interest held by the state institutions undermines the right to access to information.

Owing to the pluralistic, but sharply polarised media landscape, debate on key issues is limited to opponents simply restating their positions. The governance and funding of the public broadcaster *TVP* does not ensure editorial independence and enables the government to exert pressure on *TVP* content. During this campaign, in the period qualitatively followed by the ODIHR SEAM, the *TVP* failed in its legal duty to provide balanced and impartial coverage. Instead, it acted as a campaign vehicle for the incumbent and frequently portrayed his main challenger as a threat to Polish values and national interests. Some of the reporting was charged with xenophobic and anti-Semitic undertones. *TVP* provided the legally mandated free airtime to all candidates and organised the only joint televised debate. The debate format in which one-minute-long statements were made in response to identical questions, did not allow meaningful engagement which would enable voters to judge policy proposals on a competitive basis. After the debate, the incumbent was afforded the opportunity to respond in a lengthy live interview, while only short pre-recorded soundbites by other candidates were aired. According to the National Broadcasting Council (NBC), the electronic media regulator in charge of ensuring plurality in media, of 39 complaints received in the run-up to the election 36 directly concerned *TVP*'s coverage of the election. Despite having the mandate to do so, the NBC did not independently monitor the campaign. Editorial bias across the media landscape, combined with the lack of an effective oversight, reduced voters' ability to access comprehensive information that helps to inform their choices.

The Supreme Court informed the ODIHR SEAM that it received 36 complaints concerning the NEC resolution from 10 May, declaring that it would not be possible to conduct voting. Of these, 33 cases were rejected as inadmissible on formal grounds; ruling is pending in 3 cases. In the event of an appeal, the Supreme Court reviews the legality of the NEC's resolutions concerning registration of the electoral committees and candidates. In total, the Supreme Court received 8 appeals on registration of electoral committees, and 13 regarding registration of candidates one of which was upheld. On 6 May, the Speaker of the *Sejm* requested clarification from the Constitutional Tribunal regarding the authority of the Speaker to change an already set election date under extraordinary circumstances. Although such a provision, while included in the 8 May Act, was not included in the 2 June Act, a response is pending. Deadlines in election dispute resolution were significantly shortened by the 2 June Act. Complaints challenging election results have to be filed with the Supreme Court within 3 days and the Court has to rule on the validity of election results within 21 days rather than the respective deadlines of 14 and 30 days as stipulated in the Election Code, reflecting how threats to the stability of election law may have an effect on the means of redress.

The legal framework allows for citizen observation without registration from the NEC by associations which are, per their founding documents, active in democracy, civil rights and civil society development. Over 1,000 representatives of four different organizations observed the election.

The ODIHR SEAM did not undertake systematic or comprehensive observation of election-day proceedings. In the limited number of polling stations visited, the voting and counting process was orderly and procedures were followed. However, voters occasionally did not make use of the voting screens and cast their votes openly. Protective equipment was consistently used by both polling staff

and voters. The visited PECs reported slower processing of voters due to the need to observe all sanitary measures. Combined with the relatively high turnout (estimated at 63 per cent), this led to voter queues. Unofficial exit poll results were publicized online during the day, in breach of the campaign silence provisions.

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

MISSION INFORMATION & ACKNOWLEDGEMENTS

Warsaw, 29 June 2020 – This Statement of Preliminary Findings and Conclusions is an assessment made to determine whether the election complied with OSCE commitments, international obligations and standards for democratic elections, and with national legislation.

ODIHR has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process.

The ODIHR SEAM, headed by Thomas Boserup, was deployed from 15 June and consists of a core team of eight international experts based in Warsaw. The ODIHR SEAM did not carry out systematic or comprehensive observation of the voting, counting and tabulation proceedings on election day, in line with ODIHR's methodology for election assessment missions. Mission members did, however, visit a limited number of polling stations on election day.

The ODIHR SEAM wishes to thank the authorities of the Republic of Poland for their invitation to observe the election, and the National Election Commission and the Ministry of Foreign Affairs for the assistance. They also express their appreciation to other state institutions, political parties, media and civil society organizations, and international community representatives for their co-operation.

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