



Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights

The Director

Warsaw, 20 February 2023

Senator Krzysztof Kwiatkowski
Chairman on the Legislative Committee
Senate of the Polish Republic
Warsaw

Dear Senator Kwiatkowski,

Further to your request, dated 7 February requesting ODIHR to provide a legal review of the draft law amending the Election Code and certain other acts (Senate paper nr. 911, Parliamentary papers nr. 2651, 2800, 2897, 2930, 2930-A), please find attached ODIHR's Opinion. The opinion assesses the draft law's compliance with OSCE commitments, international obligations and standards for democratic elections, and international good practice.

I look forward to our continued co-operation.

Yours sincerely,

Matteo Mecacci

cc: H.E. Ambassador Adam Hałaciński, Permanent Representative of the Republic of Poland to the OSCE

Warsaw, 20 February 2020

OPINION ON THE DRAFT ACT AMENDING THE ELECTION CODE AND CERTAIN OTHER ACTS (SENATE PAPER NO. 911)

POLAND

Based on an unofficial English translation of the Bill commissioned by the OSCE Office for Democratic Institutions and Human Rights (ODIHR).



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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Draft Act, which introduces extensive amendments to the 2011 Election Code and other legal acts, was adopted by the lower house of parliament (*Sejm*) in a short period of time and without the support of opposition parties. Civil society organizations have criticized the adoption process for being hasty and lacking consultation with key stakeholders.

The stability of electoral law is a key element of the credibility of the electoral process, recognized in international good electoral practice. Changes in the electoral legal framework too close to the election may confuse voters and risk creating the perception that such amendments favour certain political interests. Such changes may also adversely affect electoral preparations, leaving the implementing bodies insufficient time to plan and adjust their activities. Among other changes, the Draft Act introduces substantial changes to the system of voter registration and the composition and appointment of election commissions, with elections expected in the autumn of 2023.

A number of changes proposed by the Draft Act bring improvements to the electoral process and take steps towards addressing prior ODIHR recommendations. At the same time, other amendments raise concerns and certain aspects of the Draft Act should be improved in order to ensure the effective exercise of electoral rights in line with international standards for democratic elections. Consequently, ODIHR makes the following key recommendations:

- amendments to the electoral legal framework should be adopted through a public and inclusive consultative process, which allows for a meaningful consideration of stakeholders' views and facilitates building broad support among the key stakeholders;
- to provide for stability of electoral law, in line with international good practice, it is not advisable that changes to fundamental elements of the electoral legal framework be adopted within one year ahead of the next regular elections;
- ensure adequate time for the development, testing and roll-out of the Central Register of Voters and a periodic independent assessment of the process in order to build public confidence in the new system; as the authority in charge of the election administration and ensuring compliance with electoral law, the National Election Commission should be given appropriate powers to oversee the development and maintenance of the Central Register of Voters;
- consideration should be given to lowering the maximum number of inhabitants per electoral precinct, in order to avoid overcrowding at polling stations, safeguard the secrecy of the vote, and to optimize the workload of precinct election commissions;
- any changes to the appointment of constituency and district election commissions should be based on clearly defined selection criteria and selection process that ensures impartial and merit-based recruitment, to safeguard public confidence in election administration bodies;
- the authorities are encouraged to consider prior ODIHR recommendations, including those related to the participation of voters with disabilities as well as improving trust in the integrity and fairness of the election process, as a tool of encouraging greater participation in the elections;

- The proposed system for remuneration for proxies of electoral contestants should be reconsidered, as should provisions allowing these proxies and citizen observers to record the voting process, and provisions requiring proxies and citizen observers to transmit their recordings of opening, voting (if permitted), and counting to the minister of digitalization;
- the Draft Act should address current imbalances in the equality of the vote and include provisions guaranteeing the periodic review of constituencies to ensure equal suffrage with respect to the allocation of parliamentary mandates between the constituencies.

These and additional recommendations, as highlighted in bold, are included throughout the text of this opinion.

As part of its mandate to assist OSCE participating States in implementing OSCE human dimension commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

OPINION ON THE DRAFT ACT AMENDING THE ELECTION CODE AND CERTAIN OTHER ACTS (SENATE PAPER No. 911)

BACKGROUND AND SCOPE OF THE OPINION

On 7 February 2023, the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) received a request from Mr. Krzysztof Kwiatkowski, Chair of the Senate Legislative Committee, to provide a legal opinion (hereinafter “opinion”) on the Draft Act of 26 January 2023 amending the Election Code and certain other acts of the Republic of Poland (hereinafter “Draft Act”). By letter of 9 February 2023, ODIHR confirmed its readiness to provide a legal opinion on the Draft Act.

This opinion reviews the Draft Act for compliance with OSCE commitments, other international standards and good practices for democratic elections. The scope of this opinion covers only the Draft Act submitted for review. To the extent necessary, references are made to the Constitution and other legislative acts of Poland. Thus limited, the opinion does not constitute a comprehensive review of the entire electoral legal framework. Given the indicated urgency to publish this legal review, ODIHR decided to prepare an Urgent Opinion, which does not provide a detailed analysis of all the provisions of the Draft Act but primarily focuses on the most salient issues from the perspective of international human rights standards and OSCE human dimension commitments related to democratic elections.

The ensuing recommendations take into account findings and conclusions of ODIHR’s previous election observation activities in Poland. This Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on electoral legislation of Poland in the future.

This Opinion is based on an unofficial English translation of the Draft Act, which is attached to this document as an Annex. Errors from translation may result.

ANALYSIS AND RECOMMENDATIONS

The Draft Act introduces extensive amendments to the 2011 Election Code and introduces changes to selected provisions of the 1997 Act on Political Parties, the 1997 Act on Restrictions on Conduct of Business Activities by Persons Performing Public Functions, the 2000 Act on the National Criminal Register, the 2000 Act on Local Referendum, the 2003 Act on Nationwide Referendums, and several other legislative acts. Given the short timeframe permitted for preparing this opinion, it focuses chiefly on the amendments to the Election Code and highlights the provisions which raise concerns or appear to be in need of improvement.

Legislative process

The Draft Act (Senate paper no. 911) combines several bills introduced in the lower chamber of parliament, *Sejm* (Sejm papers nos. 2651, 2800, 2897, 2930, 2930-A). Many of these amendments were introduced in parliament on 22 December 2022 and all were adopted in the second and the third (and final) reading on the same day of 26 January 2023, without the support of opposition parties (230 votes for to 220 votes against). The parliament’s record also indicates that two parliamentary committee meetings took place between 11 January and 26 January.¹ ODIHR takes note that over 50 civil society organizations made a public appeal, objecting to the lack of consultations with key stakeholders and the hasty adoption of these

¹ According to [information](#) on *Sejm* website (in Polish).

amendments, many of which they regard as insufficiently considered and lacking adequate justification or proper assessment of their impact.²

In this respect ODIHR takes the opportunity to reiterate its long-standing position, shared also by the Council of Europe's Commission for Democracy through Law (Venice Commission), that electoral legislation should be adopted through a public, inclusive and effective consultative process, facilitating consensus-building among the key stakeholders.³ Broad political consensus on electoral rules contributes to acceptance of election results and enhances legitimacy of the electoral process.

The Draft Act introduces substantial changes to the work of public administration and election officials at different levels, as discussed below. It is essential that these officials are consulted, and their views and experience is given due consideration in the process. All changes envisioned by the Draft Act should be made with the confidence that the responsible officials will be able to properly fulfill their statutory tasks, electoral rights are safeguarded, and the quality of the process is not diminished.

ODIHR notes with regret the lack of a fully inclusive process to prepare these amendments and recalls that efforts to build cross party support and significantly engage key stakeholders, including relevant civil society organizations is key to garnering public trust in the changes. Further, ODIHR notes that any successful amendments of electoral legislation should be based on clear and comprehensive draft legislation that meets international obligations and standards and addresses prior recommendations.

It is recommended that amendments to the electoral legal framework are adopted through a public and inclusive process, which allows for a meaningful consideration of stakeholders' views and facilitates building broad support among the key stakeholders.

Stability of electoral law

The stability of electoral law is a key element of credibility of the electoral process. In the words of the Venice Commission, "stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections."⁴ Changes in the legal framework too close to the election may also adversely affect electoral preparations, leaving the implementing bodies insufficient time to plan and adjust their activities.

Moreover, the timing of the currently proposed changes to the election legislation, less than one year before the next parliamentary elections may be found not in line with international good practice if the amendments relate to fundamental aspects of the elections, including changes to the composition of the electoral commissions.⁵ An exception to the principle of

² See joint [statement](#) "NO to hasty and ill-considered changes in the Election Code!" (in Polish).

³ Paragraph 5.8 of the 1990 OSCE Copenhagen Document provides that "legislation, adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability." See, among other, [Opinion on the Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020](#) (Senate Paper No.99). See also the Venice Commission's [Rule of Law Checklist](#).

⁴ See the Venice Commission's [Code of Good Practice in Electoral Matters](#), at paragraph II.2.b (Guidelines) and paragraphs 63 – 65 (Explanatory Report).

⁵ Guideline II. 2.b. of the Code of Good Practice in Electoral Matters states that "[t]he fundamental elements of the electoral system proper, membership of electoral commissions and the drawing of

stability of electoral law is admissible if there is a broad consensus on the reform. The Draft Act also introduces substantial changes to the system of voter registration.

Further, the Polish Constitutional Court has ruled on multiple occasions that substantial changes to electoral legislation should not be adopted within six months of the call for elections.⁶

To provide for stability of electoral law, it is not advisable that changes to fundamental elements of the electoral legal framework be adopted within one year ahead of the next regular elections.

Central register of voters

One of the central changes proposed in the Draft Act is the introduction of a Central Register of Voters. The Central Register is to replace the current system, where voter registers are maintained by municipalities with assistance from the National Election Office's regional branches, under the supervision of the National Election Commission.⁷ The Draft Act specifies the responsibilities for maintaining and updating the Central Register of Voters. According to draft Article 18.4 of the Election Code, the overall responsibility for maintaining and developing the Central Register is vested with the minister responsible for digitalization (*minister właściwy do spraw informatyzacji*), with the municipalities retaining the task of updating the information on their residents (draft Article 26.2 of the Election Code).

Positively, the introduction of a Central Register of Voters is a step in the direction previously recommended by ODIHR.⁸ A centralized register may potentially improve the compilation of voter lists, changes of residence, and temporary inclusions in the voter lists both in the country and abroad, among other issues. However, it is also an extensive undertaking, requiring building a system that is reliable, secure, and accessible for its many thousands of users. The extent to which the potential advantages of this register are attained will depend on the design and implementation of the new system, which should be given adequate time for the development, trials, and roll-out. It will be beneficial for this process to be independently assessed at critical junctures, for example by an *ad hoc* inter-disciplinary expert panel. Such assessment could serve both as an instrument of troubleshooting and as a tool for building public confidence in the new system. The provisional clauses of the Draft Act, including *vacatio legis*, should reflect the necessity to ensure smooth operation of the new Central Register before it is rolled out for nationwide electoral events.

It is recommended to ensure adequate time for the development, testing, and roll-out of the Central Register of Voters and a periodic independent assessment of the process in order to build public confidence in the new system.

The Draft Act vests the National Election Commission (NEC) with the authority to “oversee the updating of data collected in the Central Register of Voters and the compilation of voter lists” (draft Article 160.1.2 of the Election Code). This wording conveys only limited authority on the NEC, which is mandated to oversee compliance with electoral law (Article 160.1.1 of the Election Code). As the national election management body, the NEC (and the NEO as its

constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law”.

⁶ See, among other, judgments of 3 November 2006 and 28 October 2009.

⁷ The National Election Office (NEO) is a permanent executive body responsible to the National Election Commission for the administrative, financial and logistical organization of the elections. The NEO has regional offices around the country.

⁸ See Recommendation 13 of the [Final Report of the ODIHR Special Election Assessment Mission](#) to Poland's 2020 Presidential Election.

executive arm) should have oversight of the Central Register of Voters, and be given the requisite powers to effectively exercise this oversight. This will enable the NEC to assess the trials of the Central Register of Voters and determine when it is ready to be rolled out, identify any shortcomings in its operation in a timely manner, and maintain the trust of stakeholders in the new system, which is essential for its credibility.

It is recommended that the National Election Commission, as the authority in charge of the election administration and ensuring compliance with electoral law, be given appropriate powers to oversee the development and maintenance of the Central Register of Voters.

Voter lists

The introduction of the Central Register of Voters prompts changes in numerous provisions of the Election Code, which are amended by the Draft Act. It is important that these changes do not result in the weakening of existing safeguards of electoral integrity. For example, the existing possibility for anyone to examine the voter list at the municipality (Article 36 of the Election Code) is replaced in the Draft Act with a process where a person may electronically access and verify only one's own data in the voter list (draft Article 36 of the Election Code). The opportunity for scrutiny of the voter lists by at least electoral contestants and given protection of private data safeguards are in place strengthens the integrity of the voter lists by creating the possibilities for detecting inaccuracies, such as records of deceased people.

Another draft amendment allows voters who are not on the voter list to be added to the list and allowed to vote by the precinct election commission "if the mayor confirms that the omission from the list is the result of a mistake" (draft Article 51.2.2 of the Election Code). It is not clear how the mayor's confirmation is to be made and what verification is to be undertaken, if any. This provision replaces a more robust requirement for the voter to provide evidence that s/he permanently resides in the precinct and the municipality office to confirm that the voter has the right to vote and has not been entered on the voter list in another precinct (Article 51.2.2 of the Election Code).

It is recommended that existing safeguards of electoral integrity are retained, particularly in relation to the possibility for scrutiny of the voter lists with safeguards for the protection of private data and the requirement for evidence of residency confirmed by the municipality in support of addition of voters to lists on election day.

Electoral precincts

The Draft Act lowers the minimum number of inhabitants for the creation of a regular electoral precinct from 500 to 200 (draft Article 12.3 of the Election Code) and includes other arrangements for facilitating the creation of additional electoral precincts. Positively, this measure will decrease the workload for some of the precinct election commissions (PEC) that will now have a smaller number of voters. In areas where additional suitable premises are available for polling, this measure may reduce the distance to polling stations for some voters. However, the anticipated increase in the number of polling stations will require additional resources to be allocated, including for the recruitment and training of PECs and efforts to inform voters about the changed location of their polling stations. Also positively, the Draft Act eliminates the existing dual PEC system (one PEC for administering voting and a different one for counting votes), which will allow for the more efficient allocation of resources.

At the same time, the Draft Act does not address a related problem identified in previous ODIHR election observation reports – the high maximum number of inhabitants per electoral precinct. The increase of this number from 3,000 to 4,000 ahead of the 2019 parliamentary

elections, contrary to a prior ODIHR recommendation, led to polling stations often being too small to accommodate the number of assigned voters in an orderly way, with overcrowding contributing to breaches of the secrecy of the vote, in violation of international standards.⁹ Additionally, the high number of ballots to be counted by large PECs on election night may in practice diminish the effectiveness of the measures envisioned in the Draft Act to strengthen the transparency and accuracy of the ballot count, namely the obligation to show each ballot to all PEC members (draft Article 71.1b of the Election Code) and the prohibition to perform counting procedures in groups of PEC members rather than all together (draft Article 69.3b of the Election Code).

It is recommended that the maximum number of inhabitants per electoral precinct be lowered, in order to avoid overcrowding at polling stations, safeguard the secrecy of the vote, and optimize the workload of precinct election commissions. Further, if additional polling stations are created as a result of amendments, the issues of recruitment and training of election officials and informing voters needs to be addressed well in advance of the elections.

Composition of election commissions

The Draft Act introduces changes to the formation of constituency election commissions (*okręgowa komisja wyborcza*) and district election commissions (*rejonowa komisja wyborcza*). While the current Election Code requires that members of these commissions be serving or retired judges, the Draft Act changes this requirement to a “university degree in law” and “a guarantee of due execution of this function” (draft Articles 170.1 and 174.1 of the Election Code). Positively, the Draft Act eliminates the role of the minister of justice from the appointment process and provides for these commissions to be appointed directly by the NEC (draft Article 170.2 of the Election Code).

It should be recalled that the independence and impartiality of election administration bodies serve as safeguards of electoral integrity and stakeholders’ confidence in the electoral process.¹⁰ Prior ODIHR election observation reports in Poland noted that election administration bodies have generally enjoyed such confidence.¹¹ International good practice encourages the inclusion of judges along with political party representatives on election commissions provided that the judges appointed enjoy guarantees of independence and impartiality, their appointment is transparent and those appointed do not come under the authority of those standing for office.¹²

The departure from the current composition of constituency and district election commissions, especially undertaken without sufficient consideration of the impact and consultation and close to the election, may erode these important guarantees of independence and impartiality,

⁹ See [Final Report of the ODIHR Limited Election Observation Mission](#) to Poland’s 2019 Parliamentary Elections, pp. 22-23 and Recommendation 23. Paragraph 7.4 of the 1990 [OSCE Copenhagen Document](#) commits participating States to “ensure that votes are cast by secret ballot or by equivalent free voting procedure”. See also Article 25 of the [International Covenant on Civil and Political Rights](#) and Article 3 of Protocol 1 to the [European Convention on Human Rights](#).

¹⁰ Paragraph 20 of [General Comment No. 25](#) by the UN Human Rights Committee provides that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant”. Section II.3.1.b of the Code of Good Practice in Electoral Matters states that “where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels”.

¹¹ See the [Final Report of the ODIHR Special Election Assessment Mission](#) to Poland’s 2020 Presidential Election, p. 7.

¹² See [Code of Good Practice in Electoral Matters](#), at paragraph II.3.1.d (Guidelines) and paragraph 75 (Explanatory Report).

potentially to the detriment of public confidence in election administration bodies. It is not clear from the draft amendments how an impartial and merit-based recruitment of commission members will be ensured.¹³ Such recruitment process requires transparent and clear selection and appointment criteria, as well as procedures for announcing, receiving, and evaluating nominations and applications.

Any changes to the appointment of constituency and district election commissions should be based on clearly defined selection criteria and selection process that ensures impartial and merit-based recruitment, to safeguard public confidence in election administration bodies.

Draft Article 182.3 of the Election Code significantly increases the number of PEC members for special electoral precincts created in medical, penitentiary, and educational institutions: from the current five members to as many as eleven PEC members if the precinct covers more than 500 persons. The reasons for such an increase are not sufficiently evident.

Measures to increase voter turnout

The Draft Act places particular emphasis on boosting voter turnout, including by changing the title of Chapter 5a in Section I of the Election Code from “Informing voters about the election” to “Activities to increase participation”. To this end, the Draft Act provides for, among other measures, organizing free transport to and from polling stations in areas where public transportation is not available on election day for voters with disabilities and those over the age of 60 (draft Articles 37e to 37g of the Election Code). Such measures facilitating the exercise of the right to vote are welcome but should be coupled with safeguards against abuse of the measures to pressure or influence voters. Consideration should be given to providing the same opportunity also to voters who, due to reduced mobility, are unable to make use of available public transportation on election day. Other measures could be undertaken to improve electoral participation of voters with disabilities, as previously recommended by ODIHR.¹⁴

Recognizing the legislator’s aim to address turnout in elections, ODIHR reiterates the importance of public trust in the fairness and integrity of the electoral process and the direct correlation of this with voter turnout. The consideration of amendments to the legal framework for elections is an important opportunity for parliament to consider prior ODIHR recommendations aimed at improving the integrity and fairness of the election process, in particular by preventing abuse of state resources in election campaigns and ensuring the impartiality of public media.¹⁵

The authorities are encouraged to use the opportunity to consider prior ODIHR recommendations, including those related to the participation of voters with disabilities as well as improving trust in the integrity and fairness of the election process, as a tool of encouraging greater participation in the elections.

¹³ Paragraph 26 of the OSCE Copenhagen Document states that “the OSCE participating States [...] will therefore encourage, facilitate and, where appropriate, support [...] the development of an impartial and effective public service where recruitment and advancement are based on a merit system”.

¹⁴ Recommendations 7, 23 and 24 of the [Final Report of the ODIHR Limited Election Observation Mission](#) to Poland’s 2019 Parliamentary Elections; Recommendations 9 and 10 of the [Final Report of the ODIHR Special Election Assessment Mission](#) to Poland’s 2020 Presidential Election.

¹⁵ Specifically, see Recommendations 2, 4, 6, 19 and 20 of the [Final Report of the ODIHR Limited Election Observation Mission](#) to Poland’s 2019 Parliamentary Elections; Recommendations 2, 3, 5 and 20 of the [Final Report of the ODIHR Special Election Assessment Mission](#) to Poland’s 2020 Presidential Election.

Proxies of electoral committees and recording in polling stations

The Draft Act introduces several new measures related to the role of trusted persons (proxies) of the contestants' electoral committees, some of which raise concerns. Contestants' proxies (*mężowie zaufania*) serve as observers in election commissions for their parties and candidates and are entitled to follow the activities of the election commissions to which they are delegated (Articles 103a and 103b of the Election Code). The Draft Act proposes that contestants' proxies to PECs should receive an allowance, equaling 40 per cent of the allowance payable to PEC members. This remuneration is to be paid by the mayor, upon certification by the PEC chair that the proxy observed at least five hours of voting and the entire process of determining voting results in the polling station (draft Article 103aa of the Election Code).

The consequences of this proposal are a concern. In particular, as a trusted person of a particular electoral contestant, a proxy is meant to serve their interest. Putting a proxy into a relationship of dependency upon the PEC or the mayor interferes with the electoral contestants' entitlement to have their own observer in election commissions. Further, this indirect public subsidy may stimulate a growing number of proxies in often already crowded polling stations.

It is recommended that the proposed system for remuneration for proxies of electoral contestants should be reconsidered.

The Draft Act also changes Article 42.5 of the Election Code, which currently allows contestants' proxies to make recordings of the activities of the PEC before the beginning of voting and after the closing of the polling station. In the amended version, proxies would be allowed to also record the process of voting. By virtue of Article 103c.2 of the Election Code, these provisions will apply also to citizen observers (*obserwatorzy społeczni*). Allowing the recording of the voting process by party and contestant proxies or observers compromises the secrecy of the vote and may lead to the voters being subject to pressure, contrary to international standards.¹⁶ Recording the voting process could result in ill-intentioned partisan agents influencing voters through inducements or intimidation. Such recording may also create perceptions among vulnerable voters that their vote is not secret. Further the secrecy of the vote extends to whether or not a voter voted. Restrictions on the distribution of such recordings, discussed below, do not eliminate the possibility that they may be shared without authorisation, e.g. through social media, further raising concerns about personal data protection.

Provisions allowing proxies of electoral committees and citizen observers to record the voting process in polling stations should be reconsidered.

Further, the Draft Act introduces an obligation for contestants' proxies and citizen observers to transmit their recordings made in polling stations to the government minister responsible for digitalization, via an application or an electronic portal, and delete these recordings from the proxies' own devices (draft Articles 42.6a to 42.6d of the Election Code). Electoral officers are charged with reporting to the minister of digitalization the lists of contestants' proxies and citizen observers who will carry out recording in polling stations (draft Article 103a.2a of the

¹⁶ Paragraph 7.7 of the 1990 [OSCE Copenhagen Document](#) commits the participating States to ensure that voters are able to cast their votes "free of fear of retribution". Paragraph 19 of [General Comment No. 25](#) by the UN Human Rights Committee states that "[v]oters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind".

Election Code). The current provisions allow proxies and observers to record the opening as well as closing and counting procedures in polling stations and to retain these records for potential use in election complaints. The new provisions interfere, on the one hand, with the role of observers in a democratic electoral process, by unreasonably restricting the ability of contestants' proxies and citizen observers to collect evidence of wrongdoing in polling stations during the opening and counting and retain that evidence for future proceedings. Further, the centralized collection of lists of proxies and citizen observers by the government may have an intimidating effect. On the other hand, these provisions entail the creation of a governmental repository of recordings, without specifying how, if at all, these recordings may be accessed for any investigative purposes, or be used as evidence in court challenges against voting results or how the database is maintained.

It is recommended that provisions requiring proxies of electoral committees and citizen observers to transmit their recordings of opening, voting (if permitted), and counting to the minister of digitalization be reconsidered.

Electoral appeals

Throughout the Election Code, the Draft Act reduces the time for Supreme Court decisions on electoral appeals. In particular, these timeframes are reduced from three to two days in Article 205.2 (appeal against rejection of notification of creation of an electoral committee in parliamentary elections), in Article 300.2 (appeal against rejection of notification of creation of an electoral committee in presidential election), in Article 304.7 (appeal against rejection of registration of a presidential candidate), and in Article 404.2 (appeal against rejection of notification of creation of an electoral committee in local elections). Such reduction puts into jeopardy the effectiveness of judicial remedies against violations of electoral rights, and are at odds with international standards.¹⁷

To ensure an effective remedy, the court should have adequate time for reviewing the appeal, examining the evidence, and for issuing a reasoned decision. Given the exigencies of the electoral process, this time must necessarily be short, but it cannot be such as to effectively turn the appeal into a formality. The Venice Commission has recommended for such appeals to be decided by courts within three to five days, noting, however, that a longer period may be appropriate for Supreme Courts.¹⁸

It is recommended that the reduction of time for Supreme Court decisions on electoral appeals be reconsidered.

Further, the Draft Act eliminates the possibility for voters to appeal to the NEC against the electoral commissioner's decisions regarding the establishment of special electoral precincts in medical, penitentiary, and educational institutions. Such decisions would be subject to appeal only directly to the Supreme Administrative Court, and would have to be decided within two days, instead of three (draft Article 12.13 of the Election Code). The elimination of an administrative remedy (appeal to the NEC) for these cases does not appear to be justified.

¹⁷ The European Court of Human Rights has held that "owing to the complexity of the electoral process and associated time-restraints necessitating streamlining of various election-related procedures, the relevant domestic authorities may be required to examine election-related appeals within comparatively short time-limits in order to avoid retarding the electoral process. [...] Nevertheless, these considerations may not serve to undermine the effectiveness of the appeal procedure, and it must be ensured that a genuine effort is made to address the substance of arguable individual complaints concerning electoral irregularities and that the relevant decisions are sufficiently reasoned." (Case of [Namat Aliyev v. Azerbaijan](#), paragraph 90).

¹⁸ See [Code of Good Practice in Electoral Matters](#), at paragraph II.3.3.g (Guidelines) and paragraph 95 (Explanatory Report).

Given the vulnerability of voters in special precincts, particularly in penitentiary institutions, this elimination leads to the reduction of means of protection of electoral rights.

It is recommended that the possibility of appeal to the NEC in Article 12.13 of the Election Code be retained.

Distribution of mandates between constituencies

The Draft Act does not address the outstanding obligation of parliament to re-allocate *Sejm* mandates proportionately to constituencies based on their population (Article 203 of the Election Code).¹⁹ The lack of action from parliament on this issue is at odds with international obligations to ensure equal suffrage, guaranteed also by Poland's Constitution.²⁰ The NEC has repeatedly addressed the *Sejm* regarding the need to update this distribution based on the current population numbers, most recently in October 2022.²¹

It is recommended that the Draft Act addresses current imbalances in the equality of the vote and includes provisions guaranteeing the periodic review of constituencies to ensure equal suffrage with respect to the allocation of parliamentary mandates between the constituencies.

¹⁹ See also p. 6 and Recommendation 8 of the [Final Report of the ODIHR Limited Election Observation Mission](#) to Poland's 2019 Parliamentary Elections.

²⁰ Paragraph 7.3 of the 1990 [OSCE Copenhagen Document](#) commits participating States to "guarantee universal and equal suffrage to adult citizens"; see also Article 25 of the [International Covenant on Civil and Political Rights](#) and Article 3 of Protocol 1 to the [European Convention on Human Rights](#). Article 96.2 of the [Constitution of Poland](#) provides: "Elections to the Sejm shall be universal, equal, direct and proportional and shall be conducted by secret ballot."

²¹ See [application of the NEC](#) to the Speaker of the Sejm, 21 October 2022 (in Polish).