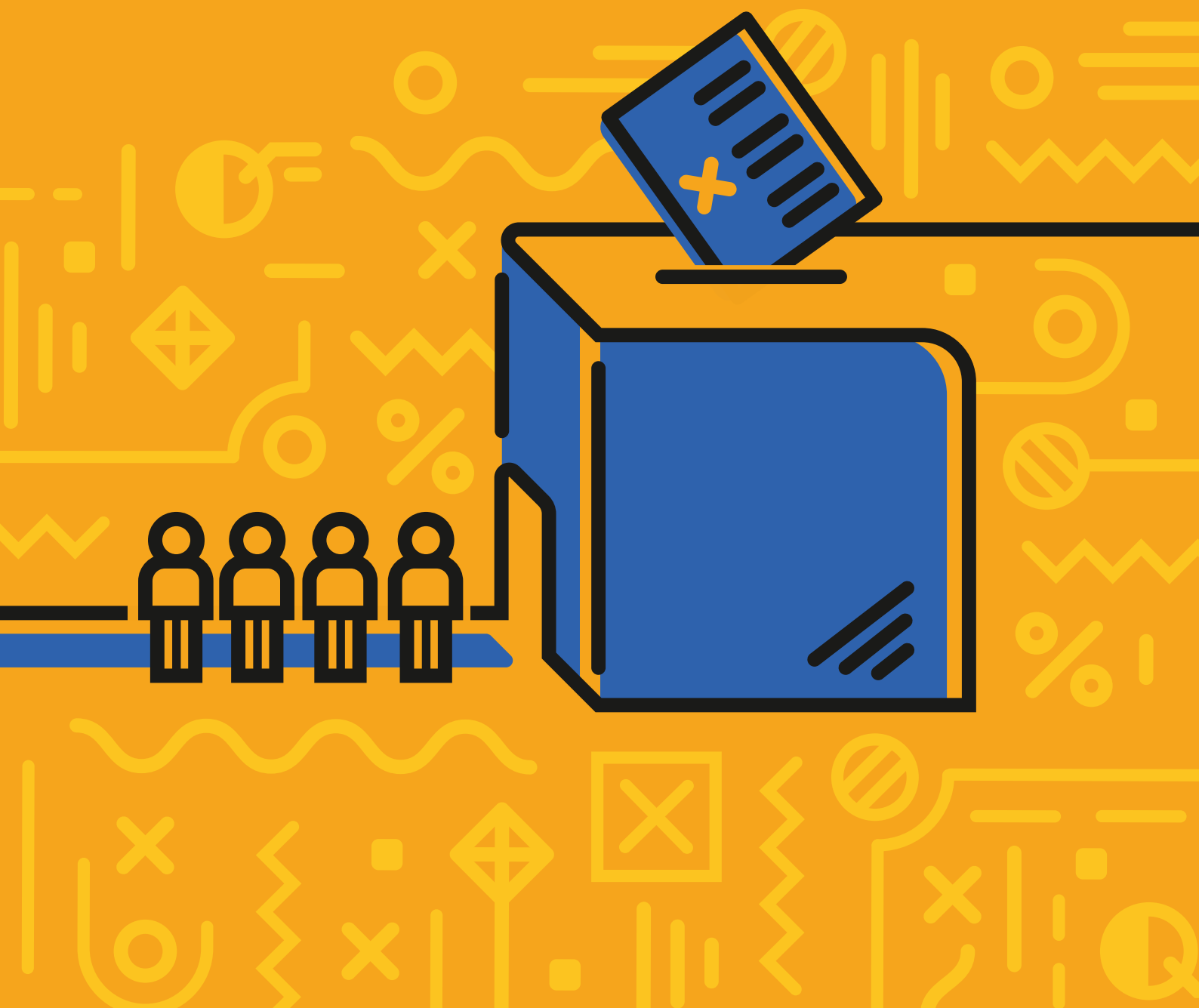


Polish parliamentary elections 2023



Political
Accountability
Foundation

Conclusions and recommendations from
domestic election observation



Observation mission team:

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**Fundusz Obywatelski
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Summary and conclusions

The parliamentary elections held in conjunction with the national referendum were exceptional in terms of civic engagement, with a voter turnout of 74.38%. The electoral process itself proceeded without significant incidents during the voting process that would have had a significant impact on the election results or the referendum outcome. However, the abuse of public resources observed during the election campaign, may have negatively affected the equality of electoral opportunities.

Elections to the Sejm and Senate were called by the President of the Republic of Poland on 8 August 2023, just over four months after the wide-ranging amendments to the Electoral Code came into force. These amendments however, did not include an adjustment to the number of seats in electoral districts, despite repeated appeals by the National Election Commission. A month later, the Sejm called a nationwide referendum on issues of particular importance to the state for 15 October 2023, the day of voting day in the parliamentary elections. The decision to call the referendum was preceded by an amendment to the law on the nationwide referendum, adopted less than a month earlier. The introduction of significant and far-reaching changes to the laws governing the electoral process shortly before the date of the elections and referendum is an infamous tradition that goes against, for example Polish Constitutional Court rulings as well as international standards.

The National Election Commission (NEC) together with the National Election Office (NEO) administered the election process efficiently, fulfilling all the obligations imposed on both institutions by the electoral calendar. The NEC issued the necessary guidelines and the election commissions were established at the right time and with the required composition.

The NEC guidelines relating to the rights of citizen observers, including interpretations of the provisions of the Electoral Code limiting the scope of observation, were challenged by civil society organisations before the Supreme Court (SC). This court in its decisions confirmed the legitimacy of the complaints. Taking into account the decisions of the Supreme Court, the NEC modified the wording of some parts of the guidelines, leaving others unchanged. Not all precinct election commissions (PECs) were informed in time and in an appropriate manner about the changes introduced.

For the first time, the voter lists for PECs were drawn up on the basis of the Central Register of Voters (CRV). Its introduction allowed to limit the problems observed during previous elections, e.g. related to changing the place of voting. However, entrusting the maintenance of the register to the Minister of Digitalisation – while depriving the NEC of this function and the power to supervise the Minister’s activities – negatively affects the transparency of the electoral system and is inconsistent with recommendations of international organisations.

Observation of the use of public resources during the electoral campaign indicates their significant impact on the equality of the elections. Public resources provided additional support to selected electoral committees/candidates, putting them in a privileged position vis-à-vis other participants of the electoral process. It is worth noting that the use of public resources was not exclusively the domain of the ruling coalition, but – especially at the local level – also became part of the campaign of opposition candidates.

In addition, the decision to call a national referendum for the same day as the parliamentary elections allowed the ruling coalition to use the privilege of holding power to promote its electoral programme under the pretext of fostering participation in the referendum and advocating for the selection of specific answers to the referendum questions. Some candidates also used the referendum campaign to present their electoral programme or their candidacy.

The counting process was carried out without unnecessary delays and votes from all election commissions, including – despite concerns – those located outside of Poland, arrived on time and were taken into account during the establishment of election results. The presentation of results by the NEC was transparent and accessible.

The observation of the work of the PECs, in particular of the vote counting process, confirmed once again the deficiencies in the training of the commission members, which impacted the improper execution or omission of steps set out in the NEC guidelines. This referred, for example, to the issue of determining the validity of ballots and the validity of votes jointly by all members of the commission, a procedure that was not followed in a significant number of observed polling stations.

The principle of the secrecy of the vote was not respected in a significant number of observed polling stations and its violations manifested itself in group/family voting or the insufficient number of properly prepared voting places. This, combined with the widely observed lack of reaction from the polling station staff and the significant overcrowding of many polling stations, created conditions that made it impossible to properly safeguard the principle of secrecy.

A separate problem concerned the way in which the binding nature of the referendum was determined on the basis of the number of valid ballots taken out of the ballot box, which meant that in practice the only way not to participate in the referendum (if it was combined in time with other elections) is to refuse to collect a referendum ballot. At the same time, however, this violated the secrecy of the vote, as it forced the voter to reveal his or her will to the PEC members and other voters present at the polling station.

In the current system of rather limited scope of electoral complaints (both in terms of entities eligible to submit a complaint and the scope of irregularities subject to such a challenge), they do not constitute an important element of the electoral process and do not have a significant impact on its outcome or validity. The Supreme Court, ruling on the validity of the elections and referendum, received 1,177 election protests for the parliamentary elections, out of which as many as 1,152 protests were left by the Supreme Court without further proceedings due to the failure to meet formal requirements. Thus, it seems that voters' familiarity with the procedure for lodging electoral protests leaves much to be desired.

The Electoral Code provides for the possibility of assessing the documents attached to the financial reports submitted by election committees taking part in the parliamentary elections and verifying them for possible irregularities, as well as submitting objections to the verified reports within a certain time limit. The issues here are the traditional (paper) form of the reports submitted by the committees, as well as the number of participating committees. The overlap between the holding of local and European Parliament elections and the period for the reception and publication of financial reports from the parliamentary elections also did not help with facilitating civic oversight of campaign expenditures. All the above elements lead us to the conclusion that the ability to submit reservations to financial reports is more of an 'ornament in the legislation' than a real instrument of civic oversight over the way election campaigns are financed.

Recommendations

The goal of citizen observation of the electoral process is, among other things, to increase public interest in electoral matters and to foster citizen engagement in the process, which should result in the improvement of the quality of the electoral process and the legal regulations underpinning it. An increase in the participation of citizen and party observers in Polish elections may be evidence of the effectiveness of these efforts. Below, you will find the most important recommendations developed on the basis of the monitoring of parliamentary elections. **Priority recommendations are in bold.**

Stability of electoral law

- 1. Every effort should be undertaken to ensure that legislative changes regarding electoral law are not implemented less than 6 months before the elections are called, as stipulated by the Constitutional Court.**

Equality of elections

2. The division of seats among electoral districts should be immediately adjusted basing on the request of the National Election Commission addressed to the Speaker of the Sejm on 21 October 2022.
- 3. An automatic (sans Parliament) adjustment of the distribution of seats between electoral districts in the elections to the Sejm should be implemented and powers should be granted to the National Election Commission to determine and formally announce each time before the parliamentary elections the number of seats allocated to each electoral district.**
- 4. The 24-hour limit for the transmission of voting results' protocols by Precinct Election Commissions abroad should be abolished.**
5. The National Election Commission should be granted the power to declare the voting results in a precinct (In Poland and abroad) null and void only in the event of a permanent impossibility to determine and transmit the results of the vote from a given precinct due to force majeure.

Electoral administration

6. Oversight over the Central Register of Voters should be transferred to the National Election Commission.
7. The National Election Commission should intensify its efforts regarding increasing voters' awareness of the importance of respecting the principle of secrecy of the vote.
8. **The upper limit on the number of inhabitants per permanent voting precinct located within Poland should be decreased from 4,000 to at most 3,000.**

National referendum

9. Entities that carry on paid referendum campaign should be required to submit separate financial reports on such campaign activities.
10. In order to ensure the secrecy of the vote in a nationwide referendum that is conducted together with a general election the method of determining the number of eligible persons who participated in the referendum (establishing its binding character) should be changed.

Out of country voting

11. Postal voting for voters abroad should be reinstated.

Rights of citizen observers and party proxies

12. The ability to conduct the observation of a national referendum should be confirmed in the law on the nationwide referendum.
13. The deadline by which international observers should submit their accreditation applications to the National Election Commission should be formally established in the Electoral Code. The National Election Commission should be granted the power to determine the format of the application for accreditation for international observers, in consultation with the Ministry of Foreign Affairs.

- 14. A standard for an electronic certificate for citizen observers and party proxies should be developed together with political parties and non-governmental organisations.**
15. Organisations delegating citizen observers should be granted (on par with the plenipotentiaries of electoral committees) the right to submit complaints on the guidelines and explanations of the National Electoral Commission under the procedure provided for in Article 161a of the Electoral Code.
16. The right of party proxies and citizen observers to document (audio/video) the work of the Precinct Election Commission should be restricted to activities preceding the start of voting and following its completion.
17. Observers and proxies who have documented the work of the PECs should be allowed to use the recording as evidence in proceedings before law enforcement authorities and as part of an election protest, as well as to give it to the delegating organisation to be used for training purposes.
18. The 'Mąż Zaufania' (party proxy) system (an electronic service provided by the Minister responsible for informatisation) should be decommissioned. If it remains, its supervision should be transferred to the National Election Commission.

Training system for members of precinct electoral commissions

- 19. All members of precinct electoral commissions should be part of the compulsory training regardless of their assigned role.**
20. The training format should be modernised. More emphasis should be put on issues related to correct counting procedures, the role of the commission members to address violations of the secrecy of the vote, and the rights and duties of party proxies, citizen and international observers.

Verification of the validity of elections

21. The requirement (for the purpose of lodging an election protest) to be included in the electoral roll for voters residing abroad in countries where no polling districts have been established, should be removed.
22. The catalogue of entities entitled to submit an electoral protest should be extended to include candidates, party proxies and citizen observers.

Oversight over campaign financing

23. **The rules for submitting financial reports by election committees should be amended to allow for the digitalisation of both the report and the attached documents.**
24. The resources of the National Election Office should be increased to enable more efficient execution of tasks related to the monitoring of campaign finance.

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