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25 August 2020

## **Bureau of the Assembly**

### **Memorandum**

**prepared by Mr Stefan Schennach (Austria, SOC), Head of the PACE election assessment mission of the Presidential election in the Republic of Poland (28 June and 12 July 2020)**

1. On 28 January 2020, the Parliamentary Assembly of the Council of Europe decided to open a procedure to monitor Poland's honouring of its statutory obligations vis-à-vis the Council of Europe. The observation of elections in a state subject to a monitoring procedure is an inalienable right of the Assembly.
2. On 31 January 2020, the President of the Parliamentary Assembly wrote to the Minister of Foreign Affairs of Poland informing him about the opening of a monitoring procedure in respect of Poland concerning compliance with Council of Europe statutory obligations. In addition, the President of the Assembly pointed out that the Rules of Procedure of the Assembly stipulate that the observation of parliamentary and presidential elections, as well as of referenda in a state under the monitoring procedure, is an inalienable right of the Assembly. Consequently, the Assembly expected the Polish authorities to send the invitation to the Assembly in time to establish an ad hoc election observation committee for the observation of the upcoming presidential election.
3. On 31 January 2020, the Bureau decided, subject to receiving an invitation, to observe the presidential election. On 5 March 2020, the Bureau approved the composition of the delegation and appointed Mr Stefan Schennach as its Chairperson.
4. On 12 June 2020, with the approach of the new date of the Presidential election, scheduled for 28 June 2020, the President of the Assembly, in a letter addressed to Mr Tomasz Grodzki, Marshal of the Senate, recalled that under the Rules of Procedure of the Assembly the observation of elections in a State under monitoring procedure is an inalienable right of the Assembly. The President of the Assembly in the same letter also recalled that the Assembly had not yet received an invitation letter.
5. On 18 June 2020, the Marshal of the Senate of Poland, in his letter to the President of the Assembly, noted that, according to the Election Code of Poland, the invitation letter is drawn up by the National Electoral Commission (NEC), in consultation with the minister competent for foreign affairs. Therefore, the President of Senate requested the President of the NEC and the Minister of Foreign Affairs "to undertake measures to enable a visit of such international observers to Poland".
6. On 23 June 2020, on behalf of the Chairman of the National Electoral Commission and the Secretary of the National Electoral Commission, the secretariat of the Division of election observation of the Assembly received a confirmation of the status of international observers of the delegation of the Assembly and also the confirmation of a meeting with the Chairman of the NEC.
7. Taking into consideration the pandemic situation and the restricted travel possibilities only four members of the Assembly's observation delegation were able to participate in this mission (see appendix 1 – composition of the delegation).

8. The Assembly's election assessment mission visited Warsaw from 26 to 29 June to observe the presidential election. During the visit, the members of the mission met the Head of the ODIHR Special Election Assessment Mission (SEAM), the experts of that mission and the Chairperson and officials of the National Electoral Commission. On election day, the members of the delegation observed the voting process in a limited number of polling stations in Warsaw and surrounding areas (see appendix 2 – programme of the visit). The delegation wishes to thank the ODIHR Special Election Assessment Mission for their efficient co-operation and assistance.
9. Under the terms of Article 15 of the co-operation agreement signed between the Parliamentary Assembly and the Venice Commission, the Bureau of the Assembly invited an expert from the Venice Commission to join the Assembly's assessment mission as an advisor. The Assembly's delegation was accompanied by an expert and a member of the secretariat of the Venice Commission.
10. On 29 June, the Assembly's assessment mission made a statement in which it pointed out that the last time the Assembly had observed an election in Poland was in 1991 (for the parliamentary elections). Initially, the presidential election was scheduled to be held on 10 May. The authorities of Poland opted not to declare a State of Emergency but instituted a state of epidemiological emergency to deal with the pandemic and enacted a special law to hold the elections entirely by postal vote. In this regard, the Assembly's Monitoring Committee co-rapporteurs for Poland issued a statement in which they welcomed the authorities' wish to ensure the continuation of the democratic process but concluded that the appropriate conditions for holding democratic elections were not in place at that time. The co-rapporteurs therefore urged the authorities to postpone the elections until such time as genuine democratic elections could be held.
11. A new law providing for the possibility of voting either in polling stations or by post was passed on 2 June. Regrettably, the enactment process was not fully inclusive and participatory. The main political stakeholders agreed on the new date of 28 June for the presidential election.
12. The Assembly delegation was of the opinion that the legal framework for this election, held under emergency circumstances, should have been adopted through a public and inclusive process in order to avoid any political speculation on such sensitive issues. In this regard, the delegation commended the spirit of the recommendations made in the ODIHR Opinion on the Draft Act on Special Rules for the Organisation of the General Election of the President of the Republic of Poland. In particular, those recommendations sought to ensure that any amendments complied fully with the principles of legality and the rule of law.
13. The Assembly delegation recognised that it was a considerable challenge, from both a legal and a practical point of view, for all political stakeholders and the election administration of Poland to organise a presidential election during a pandemic. The Council of Europe's Venice Commission noted in its Report on "Respect for democracy, human rights and the rule of law during states of emergency: reflections" that in order to guarantee elections satisfying the principles of universal, equal, free, secret and direct suffrage, it must be possible not only to vote, but also to have open and fair electoral campaigning. A genuine campaign and real public debate are just as important for democratic elections as the opportunity to vote.
14. The Assembly delegation was informed by the ODIHR SEAM that the election campaign had focused on a number of high-profile themes: traditional family structure, social benefits, unemployment and economic issues in the aftermath of COVID-19. However, the campaign was characterised by negative campaigning, a polarised environment, inflammatory language, xenophobic and homophobic rhetoric and hate speech. The delegation was also informed of allegations of involvement of church officials in campaign activities.
15. According to the preliminary findings and conclusions of ODIHR SEAM, issued on 29 June, "interlocutors expressed overall trust in the accuracy and maintenance of the voter list. 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 eight ships and platforms. Less than one per cent of voters (194,075) registered in-country requested to vote by mail".
16. Concerning the functioning of the election administration, the Assembly delegation was told that, despite the short time available, the National Electoral Commission had worked in a professional and transparent manner, meeting all legal deadlines and had enjoyed the trust of the main stakeholders. The National Electoral Commission informed the delegation that 11 presidential candidates had been registered.

17. As for the election campaign funding, the electoral committees of candidates 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. 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. According to the preliminary findings and conclusions of ODIHR SEAM, for this election, only 7 out of 11 committees published their registers of donations and loans on their websites.

18. With regard to media coverage of the campaign, the ODIHR mission did not itself carry out any media monitoring, but during this campaign, in the period qualitatively followed by the experts of ODIHR, the *Telewizja Polska TVP* failed in its legal duty to provide balanced and impartial coverage. The Assembly delegation was informed that the National Broadcasting Council had ensured neither impartial, balanced coverage nor effective oversight of the campaign.

19. The ODIHR SEAM, in its preliminary findings and conclusions, mentioned that during the campaign, police filed charges against two people for publicly displaying slogans criticising the president. Moreover, Mr. Trzaskowski, had 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 undermined the right to access to information.

20. On 28 June, the Assembly delegation visited a limited number of polling stations in Warsaw and the surrounding area. Voting was well organised in the polling stations visited. The delegation noted the high motivation of citizens exercising their right to vote despite long queues and the health-protection measures in place. Members of polling stations fully co-operated with observers. All polling stations were well prepared, had the necessary protective equipment at their disposal and their members were well trained. The delegation noted that there needed to be greater observance of the principle of secrecy of the vote, as voters did not systematically fold their ballot papers, which made their votes visible, nor did they always make use of the booths.

21. The PACE delegation in its statement after the first round of election underlined the importance of co-operation between the relevant authorities of Poland and the Venice Commission, and in the context of the Assembly's monitoring procedure.

22. According to the official results announced by the National Electoral Commission, the main candidates obtained the following results: the incumbent President Andrzej Duda obtained 43.50%; Rafal Trzaskowski – 30.46%; Szymon Holownia – 13.87%; Krzysztof Bosak – 6.78%. Other candidates obtained less than 3%. The turnout was 64.51%. The two best-placed candidates, Andrzej Duda and Rafal Trzaskowski took part in the second round of the Presidential election on 12 July.

23. The second round of the presidential election was observed by the same assessment mission. The delegation visited Warsaw, met the ODIHR Special Election Assessment Mission (SEAM). On 12 July the Assembly's assessment mission observed the second round visiting a limited number of polling stations in and around Warsaw.

24. On election day, voting was well organised in all the polling stations visited by the members of the mission. The PACE delegation highlighted with satisfaction the motivation of citizens exercising their right to vote, demonstrated by the high turnout, and this in spite of the precautionary measures put in place due to the pandemic. The mission noted, that as in the first round, there needed to be greater observance of the principle of secrecy of the vote. Voters did not always make use of the booths, nor did they systematically fold their ballot papers which made their votes visible. In a few cases, voters were observed taking pictures of their completed ballots (see appendix 3 – statement of the PACE assessment mission).

25. On 13 July 2020, the National Electoral Commission announced the results of the second round of the presidential election in Poland: the incumbent President Andrzej Duda obtained 51.03% and Rafal Trzaskowski – 48.97%. The turnout was 68.18%.

## **Appendix 1 - Composition of the delegation**

Based on the proposals by the political groups of the Assembly, the election assessment mission was composed as follows:

**Chairperson:** Mr Stefan SCHENNACH, Austria (SOC)

### **Socialists, Democrats and Greens Group (SOC)**

Mr Stefan SCHENNACH, Austria

Ms Yuliya LOVOCHKINA, Ukraine

Mr Gerardo GIOVAGNOLI, San Marino

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

Mr Reinhold LOPATKA, Austria

### **Venice Commission**

Ms Renata TARDIOLI, Expert

Mr Gaël MARTIN-MICALLEF, Legal advisor, Venice Commission

### **Secretariat**

Mr Chemavon CHAHBAZIAN, Head, Election Observation and Interparliamentary Cooperation

Ms Anne GODFREY, Assistant, Election Observation and Interparliamentary Cooperation Division

**Appendix 2 – Programme of the first round visit**

**Programme  
PACE ad hoc Committee for the observation  
of the Presidential election in Poland  
28 June 2020**

**On Thursday 25 June afternoon or 26 Friday morning**

Arrival of members of the delegation to the hotel Hilton

**On Friday 26 June**

10:00-12:00	Preparation of deployment plan for members
19:00-20:00	Internal meeting of the members of the PACE ad hoc Committee

**On Saturday 27 June**

10:00 - 11:30	Meeting with Thomas BOSERUP, Head of the ODIHR Special Election Assessment Mission and experts of core team
12:00 - 13:30	Meeting in the National Electoral Commission
14:00 - 15:00	Meeting with interpreters and drivers

**On Sunday 28 June**

06:00 – 21:00	Observation of voting in polling stations Polling stations open
21:00 – 23:00	Debriefing meeting of the delegation

**On Monday 29 June**

Afternoon	Departure of the members of the delegation
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### **Appendix 3 – Statement of the PACE Election Assessment Mission in Poland (2nd round)**

The Parliamentary Assembly's election assessment mission visited Warsaw from 10 to 13 July to observe the second round of the presidential election in Poland. During the visit, the PACE mission met the Head and experts of the ODIHR Special Election Assessment Mission (SEAM). The PACE assessment mission was accompanied by legal experts from the Venice Commission.

Regarding the functioning of the election administration, the mission was informed that all deadlines had been met. The election administration enjoys the confidence of candidates and performed its duties professionally and in a transparent manner. On election day, the members of the mission observed the voting process in a limited number of polling stations in Warsaw and surrounding areas. The Head of Mission also visited a polling station in a pre-trial detention center in Warsaw. Voting was well organised in all polling stations visited by the members of the mission. The PACE delegation highlighted with satisfaction the motivation of citizens exercising their right to vote, demonstrated by the high turnout, and this in spite of the precautionary measures put in place due to the pandemic. The mission noted, that as in the first round, there needed to be greater observance of the principle of secrecy of the vote. Voters did not always make use of the booths, nor did they systematically fold their ballot papers which made their votes visible. In a few cases, voters were observed taking pictures of their completed ballots.

The Assembly assessment mission was informed by the ODIHR SEAM that the election campaign between the two rounds was characterised by increasing confrontation and polarisation, verbal and physical clashes, as well as negative campaigning and mutual harsh accusations between the two candidates. The Assembly mission noted with regret that the 2 June Act did not include provisions for the conduct and the timeframe of the campaign for the second round.

With respect to the media coverage between the two rounds, the Assembly's mission pointed out that despite the high expectations of Polish citizens, no joint TV debate had been held between the two candidates, thus depriving voters of a direct exchange on their respective platforms. Such debates remain important moments of political life. The Assembly's mission also noted that there were no changes regarding effective oversight by the National Broadcasting Council. Senior public officials were actively involved in the election campaign promoting both candidates via social media. This can be qualified as misuse of administrative resources in cases where public figures used their functions and official accounts to promote such candidates. In this regard, the assessment mission recalls the Council of Europe's Venice Commission Guidelines on the use of administrative resources during elections.

As for voting abroad, the assessment mission noted the increased number of voters registered for the second round. While recognising the logistical challenge of operating in a very tight timeframe between the two rounds, the Assembly's mission considers that all voters should be granted equal conditions for effective participation in elections.

Concerning the funding of the election campaign, the Assembly's mission was informed about the considerable difference in campaign expenditure limits between the candidates, namely 28M PLN for the incumbent and 9.5M PLN for his opponent. In addition, the mission noted the lack of an efficient oversight mechanism for campaign expenditure. The relevant bodies of the Council of Europe, in particular GRECO and the Venice Commission, remain at the disposal of the authorities of Poland to improve the legal framework on the funding of campaigns and its transparency as well as reporting, according to Council of Europe standards.

As underlined in the statement following the first round of the election, the Assembly's mission recalls the importance of the co-operation between the relevant authorities of Poland, and the Venice Commission, in the context of the Assembly's monitoring procedure.