



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

EARLY PRESIDENTIAL ELECTION

3 April 2011

OSCE/ODIHR Election Observation Mission Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the Ministry of Foreign Affairs of the Republic of Kazakhstan, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 1 March 2011 deployed an Election Observation Mission (EOM) for the 3 April early presidential election. For election-day observation, the OSCE/ODIHR EOM joined efforts with a delegation of the OSCE Parliamentary Assembly (OSCE PA).

Needed reforms for holding genuine democratic elections still have to materialize as this election revealed shortcomings similar to those in previous elections. While the election was technically well-administered, the absence of opposition candidates and of a vibrant political discourse resulted in a non-competitive environment.

The election was called shortly after the Constitution and the Election Law were hastily amended to allow for an early presidential election. Despite efforts by the authorities to improve the election-related legislation and incorporate some OSCE/ODIHR recommendations, a number of key recommendations have not yet been addressed. The legal framework continues to include major inconsistencies with OSCE commitments and other international standards, including excessive restrictions on the right to be elected, freedom of assembly and freedom of expression. The Election Law contains ambiguities and gaps regarding various aspects of the electoral process, and the Central Election Commission (CEC) did not adopt a sufficient regulatory framework to supplement the legislation. This created legal uncertainty and an inconsistent application of the law.

Election commissions at all levels handled technical aspects of the election in a professional manner in the pre-election period. Their sessions were generally open to observers and the media. As in previous elections, the CEC provided extensive training and produced instructive training materials. The CEC did adopt guidelines but no formal regulations on key aspects of the process, such as election-day procedures and the results tabulation. Political parties were entitled to nominate members of election commissions, with the notable exception of the CEC. However, the majority of members on many election commissions were *de facto* affiliated with the ruling Nur Otan party, and the number of opposition-nominated commission members was low. This caused a lack of trust in the impartiality of the election administration. Furthermore, there appeared to be no clear separation between the election administration and local authorities. In order to address public concern, the CEC decided not to use electronic voting in this election.

The registration process lacked inclusiveness and was marked by the absence of clear rules for the verification of supporting signatures and of clear criteria for evaluating the mandatory Kazakh language test. Opposition parties decided not to participate. Four candidates, including the incumbent president, were registered, out of an initial 22 nominees. The three candidates decided not to challenge the incumbent, which further reduced the competitiveness of the election and left voters with a limited choice. The lack of real political competition in the election led to an absence of vibrant, critical electoral debate.

While the campaign on behalf of the incumbent was highly visible, the activities of other candidates were far less prominent. There were cases when administrative resources were used by local authorities, employers and university administrations to instruct voters to attend campaign events for the incumbent, and to cast their vote in order to secure a high voter turnout. Such cases were

documented by the OSCE/ODIHR EOM in a number of regions and affected students and public as well as private employees. Some opposition political parties and civil society groups called for a boycott of the election. While generally they could hold meetings, on several occasions these were not authorized, and there were credible reports of pressure on people not to engage in pro-boycott activities.

Efforts were made to improve the quality of the voter lists by conducting a large-scale door-to-door verification and ensuring public review. However, no mechanism was in place to ensure that voters who voted in special polling stations had been temporarily excluded from the voter lists at their place of residence.

The restrictive media environment, criminalization of defamation and insult, as well as exorbitant damages awarded against media outlets in civil cases, induce self-censorship. Compared to the 2005 presidential election, the media provided more equality in covering candidates in the news programmes. Outside the news, however, analytical election-related programmes were virtually absent due to the fact that such coverage was considered paid political advertising. The right of the media to report freely on the campaign was reduced, so was the right of voters to receive fair, balanced and impartial information on the campaign from current affairs programmes outside the news. This hampered the ability of voters to make a fully informed choice. The incumbent received additional exclusively positive coverage in his official role. Further, extensive advertising promoting the achievements of the 20 years of Kazakhstan's independence and presenting the state's program until 2020 was broadcast, *de facto* benefiting the incumbent.

The Election Law does not establish a clearly defined complaints and appeals process with a single hierarchical structure of responsibility. There is no right to appeal court decisions on complaints against election commissions, government officials and authorities. Sometimes stakeholders lacked a clear understanding of the complaint process, with instances of complaints filed to improper authorities or courts. Moreover, relevant authorities did not always have a consistent and cohesive interpretation of various aspects of the complaint process. The adjudication of election disputes generally lacked consistency, transparency, due process and clarity of decision-making, which was also reflected in written decisions. This impaired the opportunity for effective legal redress and brought into question the impartiality of decision makers. The CEC did not decide on any complaint it received by voting in a plenary session as required by law, and courts improperly refused to consider some complaints.

Women were well-represented within the election administration but continue to be under-represented in the higher echelons of political parties and government; there were no women candidates in this election. Interethnic relations are stable and minority issues featured positively in the election campaign, reflecting the commitment of the state to a multi-ethnic society. Minorities were well-represented in the election administration, although less so in senior positions. Electoral and campaign materials were provided in both Kazakh and Russian.

High numbers of candidates' proxies and party-nominated observers, mostly representing the incumbent and the ruling party, respectively, were present. Two domestic civil society organizations launched sizeable observation efforts. Election day saw impediments to effective domestic and international observers' activity with reports of restricted access to polling stations and lack of transparency.

Election day was calm and a turnout of almost 90 per cent was reported. International observers rated the voting process positively in 90 per cent of polling stations visited but negatively in 10 per cent, which indicates systemic and significant problems. They noted serious irregularities, including

numerous instances of seemingly identical signatures on voter lists, cases of ballot box stuffing, and proxy, multiple and family voting. The secrecy of the vote was not always guaranteed.

The vote count was assessed negatively in one of five counts observed. International observers noted a failure to follow the counting procedures, improper organization of the count and a lack of transparency. On several occasions, they were restricted in their observation of counting and tabulation. In one of six counts observed, the PEC had problems completing the results protocol, and in over one of four, no copy of the protocol was posted for public display.

The CEC did not publish detailed election results, which seriously diminished transparency of the tabulation of results and of the electoral process as a whole. The CEC and Territorial Election Commissions (TECs) refused to provide copies of results protocols or aggregation tables to the OSCE/ODIHR EOM. Four of the five aggregation tables which the OSCE/ODIHR EOM was able to obtain from the District Election Commissions (DECs) showed discrepancies between the data in the table and the data of the results protocols received by international observers at the polling stations. The CEC registered Mr. Nazarbayev as the elected president before the legal deadline for adjudicating electoral disputes expired and while several complaints were still pending in courts.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Ministry of Foreign Affairs of the Republic of Kazakhstan, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 1 March 2011 deployed an Election Observation Mission (EOM) for the 3 April early presidential election. The OSCE/ODIHR EOM was headed by Ambassador Daan Everts and consisted of 16 analysts and 28 long-term observers (LTOs) from 27 OSCE participating States, who were based in Astana and 13 regional centers.

For election day, the OSCE/ODIHR EOM joined efforts with a delegation of the OSCE PA. Mr. Tonino Picula, Head of the OSCE PA delegation, was appointed Special Coordinator by the OSCE Chairperson-in-Office to lead the OSCE short-term observer mission. In total, there were 380 STOs, including over 260 seconded by 43 OSCE participating States. On election day, they observed the opening and voting in over 1,780 out of a total of 9,725 polling stations. Counting was observed in 151 polling stations and the tabulation of results in 123 out of 207 DEC's.

The OSCE/ODIHR EOM assessed the extent to which this election complied with OSCE commitments and other international standards for democratic elections, and domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions which was released at a press conference on 4 April and is available on the OSCE/ODIHR website.¹

The OSCE/ODIHR EOM wishes to thank the Ministry of Foreign Affairs of the Republic of Kazakhstan for the invitation to observe the elections, and the CEC for its co-operation and for providing accreditation documents. The OSCE/ODIHR EOM also wishes to express appreciation to other national and local state institutions, election authorities, media, candidates, political parties and civil society organizations for their co-operation, and to the OSCE Centre in Astana, embassies of OSCE participating States and Partners for Co-operation, and international organizations accredited in Kazakhstan for their support.

¹ <http://www.osce.org/odihr/76345>.

III. POLITICAL CONTEXT

The 3 April early presidential election came in the aftermath of a citizens' initiative to hold a referendum which would have extended the term of incumbent President Nursultan Nazarbayev until 2020. Between 26 December 2010 and 14 January 2011, over 5,200,000 signatures were reportedly collected in favor of the referendum. On 7 January, the president refused parliament's proposal to hold the referendum, but on 14 January both chambers of parliament adopted a law on changes to the Constitution, providing the legal basis for holding a referendum to extend the first president's term of office. The president expressed concern over the constitutionality of these amendments and referred them to the Constitutional Council which ruled on 31 January that the law was unconstitutional as it was too vague on the terms of extension. Following this ruling, the president proposed that an early presidential election be held. On 3 February, parliament adopted the constitutional amendments to allow the president to call an early presidential election, and the next day, the president set the election date for 3 April.

The political environment in Kazakhstan is characterized by the lack of strong opposition parties, genuine pluralism, and vibrant political discourse. Ten political parties are currently registered; the ruling Nur Otan party, which is chaired by the president, is the dominant force and holds all 98 elected seats in the *Majilis* (lower house of parliament). The opposition faces various constraints, such as denial of permission to hold peaceful rallies, detention of activists, and lack of access to the media. Some opposition parties claim that their development and capacity building are intentionally thwarted, and aspiring politicians have limited opportunities to build a public profile. The Alga party has been seeking registration since 2005 but was twice refused. Its most recent application, filed in 2009, is still pending, with no legal deadline, as the Ministry of Justice has suspended the verification of supporting signatures. The All-National Social Democratic Party (OSDP) and Azat decided to merge in 2009 but have since then faced problems registering a united party. NGOs operate in a restrictive environment, with those seen as critical of the authorities citing cases of harassment and intimidation, and are also handicapped by shortage of funds.

IV. THE LEGAL FRAMEWORK AND ELECTION SYSTEM

The primary legal framework for presidential elections includes the Constitution, the Constitutional Law on Elections (Election Law), and regulations of the CEC. Other relevant laws include, *inter alia*, the Law on the President, the Law on Political Parties, the Civil Procedures Code, the Criminal Code, the Administrative Offences Code, the Law on Peaceful Assemblies, and various local regulations related to public assemblies. The Constitution guarantees fundamental civil and political rights necessary for the conduct of democratic elections, although it unduly limits the right to be elected and freedom of expression in some respects. Kazakhstan is a party to major international and regional instruments relating to the holding of democratic elections.²

The president is elected in a two-round system. To be elected in the first round of voting, a candidate must receive more than half of all votes cast. If no candidate reaches the required majority, the two candidates receiving the most votes contest a second round within two months of the first round, in which the candidate who receives the higher number of votes is considered elected. A 2007 constitutional amendment reduced the presidential term from seven to five years and exempted the first president from the established limit of two consecutive terms. The unequal application of the two-term limit is contrary to paragraph 7.5 of the 1990 OSCE Copenhagen

² International Covenant on Civil and Political Rights (ICCPR), the 1990 OSCE Copenhagen Document, and Convention on Standards of Democratic Election, Voting Rights and Freedoms in the Member States of the Commonwealth of Independent States (CIS Convention).

Document.³ In 2010, the first president was given the privileged legal status of Kazakhstan's 'Leader of the Nation' and provided with significant political powers for life.⁴

The Constitution and legal framework were hastily adopted in February 2011, with the specific aim of allowing for an early presidential election. Changing the constitution based on current political interests undermines the integrity of the political process and the standing of the constitution as a country's fundamental law.⁵ Furthermore, the lack of comprehensive public debate on the constitutional change falls short of international good practice.⁶

The Election Law contains ambiguities and gaps in its regulation of various aspects of the electoral process, and the CEC did not adopt a sufficient regulatory framework to supplement the legislation. This created legal uncertainty and an inconsistent application of the law throughout the electoral process. Further, a number of key recommendations for legal reform made by OSCE/ODIHR in previous reports have not yet been addressed.⁷ Amendments to the Election Law adopted in February 2009 were mostly minor and did not offer significant improvements or sufficiently address previous recommendations with regard to presidential elections.⁸

Furthermore, the legal framework for elections continues to include inconsistencies with OSCE commitments and international standards, including undue restrictions on freedom of assembly and freedom of expression that are at odds with Paragraph 9.2 and Paragraph 9.1 of the 1990 OSCE Copenhagen Document respectively.

The Law on Peaceful Assemblies includes excessive limitations on the holding of public assemblies that are not in line with international standards and good practice.⁹ In particular, it requires advance approval (rather than notification) for meetings, which contradicts the principle of the presumption in favor of holding assemblies. Further, the minimum ten-day advance request is rather long and may reduce the ability of citizens to respond to events with reasonable promptness or to conduct an effective election campaign, especially since holding and attending unauthorized events are subject to penalty. The law also includes broad restrictions on locations for public meetings and very broad powers of local authorities to decide whether or not to grant permission or to alter the time and place of meetings.

³ Paragraph 7.5 of the 1990 OSCE Copenhagen Document provides that participating States will "respect the right of citizens to seek political or public office ... without discrimination". See also Article 25 of the ICCPR and Article 2(b) of the CIS Convention.

⁴ See the Law on the First President – Leader of the Nation.

⁵ According to the 'Report on Constitutional Amendment' by the Council of Europe's Commission for Democracy through Law' (Venice Commission)', December 2009, Paragraph 5, "the fundamental rules for the effective exercise of state power and the protection of individual human rights should be stable and predictable, and not subject to easy change." See [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)001-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)001-e.pdf).

⁶ *Ibid.*, Paragraph 245, "Constitutional reform is a process which requires free and open public debate, and sufficient time for public opinion to consider the issues and influence the outcome."

⁷ OSCE/ODIHR reports on previous elections in the Republic of Kazakhstan are available at <http://www.osce.org/odihr/elections/kazakhstan>.

⁸ The Law on Political Parties was also amended in 2009, with some easing of registration requirements, although the amendments are insufficient in light of international good practice for political party registration. See Paragraphs 65-73 of the OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation, http://www.osce.org/files/documents/2/b/77812_0.pdf.

⁹ Paragraph 9.2 of the OSCE 1990 Copenhagen Document provides that "everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards." See also OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd Edition), June 2010, [http://www.venice.coe.int/docs/2010/CDL-AD\(2010\)020-e.pdf](http://www.venice.coe.int/docs/2010/CDL-AD(2010)020-e.pdf).

Although the Constitution guarantees freedom of speech, it also contains provisions that protect the honor and dignity of all persons and provide for the inviolability of the president's honor and dignity.¹⁰ At the same time, Articles 50 and 59 of the Election Law provide for de-registration of candidates who have been found guilty of discrediting the honor and dignity of another candidate or of early campaigning prohibited by Article 27.2 of the Election Law. These provisions *de facto* make it difficult to critically talk or report about individuals or discuss matters of public concern and, thus, fall short of meeting OSCE commitments and international standards with regard to freedom of speech.¹¹ Defamation and insult continue to be public offences subject to criminal and administrative liability, with higher penalties for insulting the president and public officials.¹² January 2011 amendments to the Criminal Code intended to “humanize the criminal legislation” but did not eliminate the criminalization of defamation.

The Constitution and Election Law contain broad restrictions on the right to be elected. In particular, the ban to run for office of those with unremitted sentences, regardless of the gravity of the crime, violates the principle of proportionality.¹³ While residency is considered as an acceptable requirement for standing for office, the 15-year residence requirement appears unreasonably long and, thus, at odds with international standards and good practice.¹⁴ Further, the Election Law allows candidate de-registration on a very broad range of grounds, many of which could more proportionately be dealt with by imposition of monetary fines.¹⁵

Article 41.2 of the Constitution establishes fluency in the Kazakh language as a candidacy requirement. However, the legal framework does not include objective and reasonable criteria for the evaluation of candidates' fluency in Kazakh, which undermines the transparency, fairness, and consistency in the registration process. Such language requirements may also limit the possibilities for political participation of citizens belonging to national minorities, especially as Article 7.2 of the Constitution provides that in state bodies the Russian is an official language on an equal basis with the Kazakh.

A number of other aspects of the electoral legal framework fall short of international good practice, including, *inter alia*, lack of guarantees for genuinely pluralistic representation on election commissions at all levels, insufficient guarantees for equal campaign conditions, and insufficient requirements to ensure transparency in the tabulation process. Notably, the 2009–2012 National Human Rights Action Plan for Kazakhstan underscores major shortcomings in the Kazakh legal framework, including aspects that undermine the freedom of assembly, freedom of speech, the right to be elected, and other facets of democratic elections, and includes recommendations for legal

¹⁰ See Articles 34.1 and 46.1 of the Constitution.

¹¹ Paragraph 9.1 of the OSCE 1990 Copenhagen Document contains a commitment by the participating States to ensure freedom of expression and allows restrictions only by law, if consistent with international standards. Article 19.2 of the ICCPR states: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

¹² Articles 129, 130, 317–1, and 318 of the Criminal Code, and Article 100 of the Administrative Offences Code.
¹³ See Article 4.4 of Election Law. Paragraph 24 of the OSCE 1990 Copenhagen Document provides, in part, that “any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law.”

¹⁴ Paragraph 15 of the UN Human Rights Committee General Comment 25 states, in part, that “any restrictions on the right to stand for election...must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.” See also Paragraph 1.1(c) of the Venice Commission's Code of Good Practice in Electoral Matters, p.5, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

¹⁵ For example, Article 34 of the Election Law allows for de-registration for financial reporting errors.

reform.¹⁶ However, to date, recommended reforms in these areas have not been substantively implemented.

V. THE ELECTION ADMINISTRATION

The election was administered by a four-tiered system of election commissions. The election administration comprises the CEC, 14 Regional Election Commissions and the City Election Commissions of Astana and Almaty (hereafter referred to collectively as TECs), 207 DEC, and 9,725 Precinct Election Commissions (PECs). All commissions consist of seven members and are appointed for five years. The CEC chairperson and two CEC members are appointed by the president, while the Senate and the *Majilis* appoint two CEC members each. Lower-level commissions were mainly appointed by the respective *maslikhats* (local councils) in April–May 2009, based on proposals of political parties.¹⁷

The CEC informed the OSCE/ODIHR EOM that about 90 per cent of commission members nominated by opposition parties had been appointed. Some political parties, including OSDP and the Communist Party of Kazakhstan (CPK), raised concerns over the extremely low number of their representatives in election commissions,¹⁸ while the majority of members of many commissions was *de facto* affiliated with Nur Otan.¹⁹ This resulted in a lack of trust in the impartiality of the election administration. In a number of instances, commission members were not aware which political parties had nominated them.²⁰

OSCE/ODIHR EOM LTOs reported that in all regions, many election commissioners were being substituted, usually following their declarations that they were not available on election day (mainly due to family reasons).²¹ The substitution process lacked clarity and transparency with regard to the bodies in charge of appointing substitute commission members, the nomination rules for such members, and their term as commissioners. Substitutions were also implemented in an inconsistent manner – while in most regions new commission members were appointed by higher-level election commissions, in some regions such decisions were in addition approved by *maslikhats* or a corresponding higher-level commission.²²

According to the Election Law, an election commission may not consist of people from the same

¹⁶ See pp. 37–51, http://www2.ohchr.org/english/issues/plan_actions/docs/Kazakhstan2009-2012.pdf.

¹⁷ Some 94.5 per cent of all commission members were appointed by *maslikhats* (of which 76.5 per cent had been nominated by political parties, 16.6 per cent by other public associations, and 6.9 per cent by higher-level election commissions), while the remaining 5.5 per cent were appointed by higher-level election commissions.

¹⁸ According to data provided by the CEC, Ak Jol, the Communist Party and the OSDP were together represented by only 6 per cent of all election commission members. In 2009, Azat boycotted the nomination of election commissioners in all regions, while Ak Jol and the OSDP did not nominate their representatives in 13 regions, mainly to protest against what they perceived as unfair elections.

¹⁹ OSCE/ODIHR EOM LTOs reported such cases in particular in Akmola, Almaty, East, West and South Kazakhstan, Karaganda, Kostanai, Kyzylorda, Pavlodar and Zhambyl regions. For example, in the Shakhinsk town DEC in Karaganda region, the Kachirskiy district DEC and PECs 456, 459, 460, 463, 464, 466, 468, 469, 470, 472, 476, 478, 483, 484, 583 and 599 in Pavlodar region, members were formally nominated by different political parties and associations but were all Nur Otan members.

²⁰ OSCE/ODIHR EOM LTOs reported such cases from East Kazakhstan and Pavlodar regions and Almaty city.

²¹ Article 19.8 of the Election Law provides a higher-level election commission with the right to fill vacancies on lower-level commissions temporarily for the period up to the date when the corresponding *maslikhat* appoints a new commission member according to general rules for appointment of election commissions.

²² OSCE/ODIHR EOM LTOs reported that in Astana city, the TEC effected the replacements of PEC members, although this was the task of DECs. In Eastern Kazakhstan, the Semey Town Election Commission appointed three of its own members on 21 February 2011.

organization.²³ The CEC interpreted this provision as only prohibiting all seven members being from the same organization, which might be at odds with the principle of independence of the electoral bodies.²⁴ The OSCE/ODIHR EOM noted a number of cases where the majority of commission members were employed by the same organization.²⁵

According to the Election Law, political parties not represented in election commissions could appoint a non-voting representative to corresponding commissions for the election period; and a representative was entitled to the same access to all documentation and other resources as commission members.²⁶ However, the CEC declined to register non-voting party representatives for the CEC itself, based on a legal opinion of the Prosecutor General's office.²⁷ The CEC informed the OSCE/ODIHR EOM that candidates' proxies were also not entitled to be registered at CEC level, although the Election Law gives proxies the right to be present at the sessions of all election commissions, albeit without the rights enjoyed by non-voting party representatives. This limited the transparency of the CEC's activities and was in contravention of the principle reflected in Article 11.4 of the CIS Convention.²⁸

Election commissions at all levels, including the CEC, handled the technical aspects of the election in a professional manner. They held regular sessions which were generally open to the public, media and observers, and conducted a large-scale voter education campaign placing a strong emphasis on calls to vote. All formal CEC decisions were published without delay on the CEC website, in Kazakh and Russian; TECs and DEC's generally held few formal sessions and took few formal decisions. Election commissions at all levels operated in a timely manner, respecting legal deadlines. In the pre-election period, the OSCE/ODIHR EOM found that most lower-level commissions were well organized and co-operative. In general, TECs appeared knowledgeable and well-informed about the legislation. Transparency and the level of co-operation observers received from some TECs and DEC's decreased considerably during the counting and tabulation of election results.

The CEC did not issue rules on appointment and replacement of election commissioners, verification of the signatures collected in support of nominated candidates, registration of candidates' proxies and political party representatives, or official regulations on voting, counting and tabulation procedures. Instead, the CEC provided lower-level commissions with guidelines²⁹

²³ See Article 19.9 of the Election Law.

²⁴ Paragraph 3.1(b) of the Venice Commission's 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, from the national level to polling station level", see [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf). Moreover, under Article 19.2(j) of the CIS Convention, "the States party to the Convention commit themselves ... to ensure establishment of independent, impartial electoral bodies..."

²⁵ Such practice was reported to be widespread in Astana and Almaty cities, and in Pavlodar, Akmola and Almaty regions.

²⁶ OSDP reported that their representatives in some cases were refused registration as party representatives or that their registration was suspended in order to check their citizenship, place of residence, or convictions by courts which had not been cancelled, although such checks are not required by law.

²⁷ In its session on 15 March, the CEC refused to register the representative of the OSDP to the CEC. The CEC had earlier referred the matter to the Prosecutor General's office, which provided its legal opinion that parties were not eligible to have representatives at the CEC level since the CEC was not appointed based on party nominations.

²⁸ Under Paragraph 11.4 of the CIS Convention, "The Parties ... acknowledge the possibility of vesting the candidate ... with the right to appoint - in accordance with the procedure stipulated by the law - to the electoral body, which has registered the candidate..., as well as to lower electoral bodies, one member of the electoral body with a deliberative vote, representing the candidate who has appointed him or her..."

²⁹ The Russian-language version of the guidelines for PECs omitted mentioning a provision that observers and proxies are entitled to receive copies of results protocols (although it was included in the Kazakh-language

and training on some aspects of election commissions' activities³⁰ and voting and counting procedures. This lack of formal regulation led to inconsistent implementation of the relevant legal provisions throughout the country. In order to address public concern, the CEC decided not to use electronic voting in this election.

According to the legislation, local executive authorities (*akimats*) have some responsibilities in the organization of certain aspects of an election (e.g. compiling voter lists). However, OSCE/ODIHR EOM LTOs in all the regions reported that there did not appear to be a clear separation between local authorities and the respective election commissions, with officials of *akimats* often serving as chairpersons of DEC and TECs and handling all aspects of the election process.

VI. VOTER REGISTRATION

Akimats are responsible for the compilation of voter lists, based on data provided by the bodies in charge of the population register. They submit data about registered voters to the respective TEC twice a year, electronically and in hardcopy. The CEC maintains the nationwide electronic voter register to identify duplicate records. According to the CEC, 9,100,967 eligible voters were registered as of 1 January 2011. After a large-scale door-to-door verification of the voter lists, the number of voters in the voter list increased to 9,181,673 by the start of voting; it reached 9,200,208 by the close of polls.

Akimats supplied PECs with the voter lists, which were made available for public scrutiny in polling stations until 2 April. Voters could request corrections or their inclusion in the voter list from a PEC, up to and on election day, provided they could prove that they are resident within the precinct. Additional efforts were undertaken to encourage citizens to check their electoral registration and the location of their polling station. Voters were able to check their registration, initially on the CEC website and subsequently by e-mail. The Astana and Almaty city *akimats* set up telephone hotlines to provide additional information on voter registration, taking into account the large-scale demolition and construction of buildings in these cities, as well as changes of street names.

Not later than 30 days before election day, citizens who on election day were away from the place at which they were registered to vote could apply to be temporarily included in the voter list of their place of temporary stay. In addition, within two weeks before election day, voters could apply for an Absentee Voting Certificate (AVC), which allowed them to vote in any polling station outside the city, town or village where they are registered. Based on the CEC clarification and despite previous recommendation by the OSCE/ODIHR, the AVCs were produced, handled and accounted for with the use of serial numbers in a de-centralized manner on a regional level.

The Election Law provides that voters in rest homes, hospitals or other medical centers, in remote and out-of-reach places, in pre-trial detention centers, in representative offices and agencies of the Republic of Kazakhstan abroad, in military units and on ships sailing on election day can vote at specially established polling stations.³¹ In these cases, the voter lists are finalized the day before election day, with no mechanism in place to temporarily exclude these voters from the voter lists at

version). The CEC explained that this resulted from a technical error and assured that all commissions had been duly informed about that provision in the law.

³⁰ OSCE/ODIHR EOM LTOs reported that in Pavlodar and North Kazakhstan regions, lower-level commissions were instructed during trainings not to let observers move around polling stations freely.

³¹ According to the CEC, 525 special polling stations were established, including 269 in medical establishments, 146 in military units, and 35 for voters abroad.

their place of residence.

VII. NOMINATION AND REGISTRATION OF CANDIDATES

A presidential candidate may be nominated through self-nomination or by a public association, including a political party. The nomination is approved by the CEC if the prospective candidate is a citizen of Kazakhstan by birth, at least 40 years old, fluent in the Kazakh language, and officially resident in Kazakhstan for at least 15 years. Following the 16-day nomination period, prospective candidates had 10 more days to submit at least 91,010 valid supporting signatures, pay an election deposit of around EUR 4,000, and present tax declarations for themselves and their spouse in order to be registered.

The opposition – OSDP, Azat, Ak Jol, the Communist Party, Ruhaniyat and the unregistered Alga party – abstained from participation claiming that the sudden announcement of the election, the shortening of the nomination and registration period from two months to 26 days, and the strict registration requirements compromised their chances to mount a substantial political challenge. Ualikhan Kaisarov, a self-nominated candidate and a known member of Azat, was denied registration based on the result of his Kazakh language test. Most other prospective candidates were little-known to the public.

Of the 22 initial nominees, 5 failed the Kazakh language test and 4 did not take it, while 5 more withdrew before the registration deadline. Four nominees were denied registration by the CEC because they did not submit enough valid supporting signatures, present tax declarations, and/or pay the deposit. None of four rejected candidates were invited to attend (or attended) the CEC session where their candidacies were decided. In total, the CEC registered four candidates.

The Kazakh language test, which consisted of an examination of prospective candidates' reading, writing and speaking ability, presented an obstacle for some nominees. Despite previous OSCE/ODIHR recommendations, no clear criteria were established for how the nominees' language proficiency should be evaluated in practice, including how many and what types of mistakes would be acceptable. It remains partly unclear how the CEC-appointed Linguistic Commission arrived at its conclusions.³²

Previous OSCE/ODIHR recommendations to clarify legal provisions on candidate registration remain unaddressed.³³ The CEC did not issue any official regulations clarifying the grounds for invalidation of signatures collected in support of a candidate. The process of verification of these signatures lacked transparency. TEC verification protocols contained no reasoning for the invalidation of signatures,³⁴ and candidates or their proxies were routinely not invited to attend the signature verification procedures.³⁵ Furthermore, the absence of CEC clarifications for registering

³² For example, Mr. Kaisarov failed the test despite passing it in 2005 and being known for making speeches in Kazakh in the Senate. The Linguistic Commission established that he had made 28 mistakes. Upon Mr. Kaisarov's appeal, the Supreme Court upheld the CEC decision but only found 17 mistakes.

³³ See <http://www.osce.org/odihr/elections/kazakhstan/18153>.

³⁴ In Almaty city, West Kazakhstan and Kostanai TECs, protocols regarding all four registered candidates. In Kostanai, West Kazakhstan and South Kazakhstan TECs, protocols regarding Mr. Duambekov. In West Kazakhstan, the TEC protocol regarding Mr. Sapargali.

³⁵ This was reported by the proxies of Mr. Akhmetbekov in North, South and West Kazakhstan regions, of Mr. Sapargali in West Kazakhstan region, and of Mr. Duambekov in Kostanai region. The TEC of Akmola region acknowledged that no proxies had been invited to observe the signature verification procedure. According to the CEC response to the Statement of Preliminary Findings and Conclusions, "the above mentioned candidates could have appealed the actions of the TECs of the mentioned regions at court."

proxies effectively shortened the timeframe for signature collection.³⁶

VIII. THE CAMPAIGN ENVIRONMENT

Four candidates participated in this election: Mr. Nursultan Nazarbayev, the incumbent and leader of Nur Otan; Mr. Gani Kasymov, senator and leader of the Party of Patriots of Kazakhstan; Mr. Jambyl Akhmetbekov of the Communist People's Party of Kazakhstan (CPPK); and Mr. Mels Yeleusizov, chairperson of the Ecological Union 'Tabigat' of Kazakhstan.

The incumbent declared his intention not to campaign personally, arguing that his 28 January Address to the Nation contained his electoral pledges; he delegated the task to Nur Otan instead. The president's campaign was centered around stability, growth and welfare and presented the incumbent as the guarantor of interethnic accord. No apparent distinction was made between the incumbent as a candidate and his position as president, and local authorities and dignitaries usually took part in campaign events. Executive authorities were frequently involved in the organization of campaign events and the allocation of venues, and there was a direct involvement of *akimat* employees in the process of securing attendance at campaign rallies. The campaign events concentrated on the past achievements, and the information was typically presented to the audience in a way which did not solicit any debate.

The incumbent's campaign was highly visible; however, a number of OSCE/ODIHR LTO teams had difficulty in obtaining information from Nur Otan on forthcoming campaign events in their regions.³⁷ At several events where OSCE/ODIHR LTOs were present, participants told them that they had been instructed to attend.³⁸ The other candidates presented a semblance of competition as they did not seek to challenge the incumbent.³⁹ Mr. Kasymov and Mr. Yeleusizov's campaigns were generally low-key due to limited funds and organizational capacities and were barely visible outside Astana and Almaty. The CPPK relied on grass-root supporters and its network of local party branches to promote the party with a view to the next parliamentary elections.

To finance their campaign, all candidates could use their own funds and donations of citizens and organizations, up to a combined total of around EUR 1.6 million. Candidates nominated by parties or other public associations could in addition receive up to approximately EUR 560,000 from the nominating organization. All candidates also received campaign funds (about EUR 31,500) from the state budget. These funds were allocated to cover campaigning in mass media, campaign activities and publication of printed materials, as well as transportation costs, with candidates bound by the expenditure amounts for each of these categories as mandated by the CEC. Apart from the incumbent, candidates reported a shortage of campaign funds, given the size of the country and high costs for office rent and printing of materials. They sought to substitute campaign events by Internet campaigning, but online activity remained low-key.

The lack of real political competition in the election, without a meaningful choice between political alternatives, led to an absence of critical electoral debate. During the campaign, representatives of

³⁶ One of the rejected candidates, Salim Oten, informed the OSCE/ODIHR EOM that the West Kazakhstan TEC required him to submit notarized applications in order to register his proxies, while in other regions ordinary written applications were deemed sufficient. Mr. Duambekov, who eventually withdrew, provided notarized applications for his proxies in all regions, but four TECs nonetheless required written letters confirming that he had indeed sent proxies to their regions.

³⁷ In Almaty city, Kostanai, North Kazakhstan, Aktobe, Almaty region and West Kazakhstan.

³⁸ In Almaty, Kostanai, Pavlodar, and East Kazakhstan regions.

³⁹ Mr. Yeleusizov declared that he had voted for the incumbent. Mr. Akhmetbekov, when questioned publicly at a CPPK roundtable in Astana on 1 April, failed to state that he would vote for himself.

the law-enforcement and security agencies conducted door-to-door rounds, checking if prospective voters knew where to vote and asking about their intention to do so. In order to secure a high turnout, the authorities used administrative resources to pressure the electorate to turn out and vote. Such cases were documented by the OSCE/ODIHR EOM in a number of regions⁴⁰ and affected people working in the public as well as in the private sector.

The CPK and Alga, together with civil society groups in the *Narodovlastiye* (People's Power) bloc, established the 'Protect the Constitution' Committee. They questioned the legitimacy of the election and called for a boycott. A number of their public meetings took place without impediments. Some 80 people gathered in Shymkent, 60 in Oskemen, 50 in Pavlodar and over 400 in Almaty. In other instances, such as a protest meeting in Astana on 28 March, participants were intimidated and prevented from travelling.⁴¹ OSCE/ODIHR EOM LTOs confirmed one case in which pro-boycott posters were forcibly taken down by law enforcement. The boycott initiative was virtually not covered by media with nationwide outreach. Instead, official news agencies reported group resignations of Alga party members in two locations on the grounds of disagreement with the party's call for a boycott of the election.⁴² Alga denied that such group resignations had occurred and interpreted such reports as a sign of pressure on the boycott campaign.⁴³

IX. THE MEDIA

A. LEGAL FRAMEWORK FOR THE MEDIA

Freedom of speech is guaranteed by the Constitution but effectively restricted by constitutional provisions protecting "honor and dignity", the continued criminalization of defamation and insult,⁴⁴ and the higher protection afforded to the president and public officials. Furthermore, the Civil Code does not provide for a limit on damages awarded for defamation and insult or for a limitation period.⁴⁵ The fact that defamation and insult can still result in imprisonment and an increasing number of civil lawsuits with exorbitant damages awarded against journalists and media outlets induce restraint and self-censorship.

The legal framework equates all forms of Internet content, including forums and blogs, with media outlets, making them subject to existing criminal, civil and administrative legislation.⁴⁶ A number of OSCE/ODIHR EOM interlocutors also expressed serious concern over the draft Law on Television and Radio Broadcasting, which requires the licensing of satellite, cable, IP and Internet broadcasting. The law would substantially reduce media freedom in particular on the Internet, which serves increasingly as a source of alternative information in a highly restricted media

⁴⁰ Almaty city, Karaganda, Kostanai, Pavlodar, West Kazakhstan.

⁴¹ Two activists were sentenced to several-day jail penalties in Aktobe (by the Martuk district court) and in Kostanai. Police detained an activist for several hours in Kokshetau, intimidated activists in Almaty city, Almaty region, Taraz and Aktobe, and visited some activists in Pavlodar and Kostanai to question them about planned trips. Vehicles and buses carrying activists were stopped in Taraz, Kostanai and Akmola region.

⁴² According to these reports, 50 members left the unregistered Alga party in Veselovka village (East Kazakhstan region) on 15 March, and 40 members did the same on 17 March in Karmakcha district (Kyzylorda region), where they held an *Alga against Alga* press conference.

⁴³ Alga confirmed that only two members left in East Kazakhstan and that the one person in Kyzylorda who publicly renounced party membership left the party over a year ago. The party headquarters did not receive resignation letters of people leaving the party *en masse*.

⁴⁴ See *Regular Report to the Permanent Council by the Representative on Freedom of the Media* of 17 March 2011, available at <http://www.osce.org/fom/76158>.

⁴⁵ Article 187 of the Civil Code.

⁴⁶ Law "On changes and additions to some legislative acts of the Republic of Kazakhstan on issues related to information-communication networks", signed by the president on 10 July 2010.

environment.⁴⁷

The Election Law addresses candidates' rights to campaign in the media "under equal access conditions"⁴⁸ by granting state-funded airtime and print space and by providing the right to purchase airtime and space for political advertising.⁴⁹ However, the legal framework does not guarantee that the media can report on the campaign without interference and that voters can receive fair, balanced and impartial information on the campaign outside the strictly regulated news, e.g. in current affairs programmes.⁵⁰ The CEC interpreted the provisions in the Election Law on campaign coverage by the media, which in themselves do not regulate the matter in sufficient detail,⁵¹ by obliging state-owned and commercial broadcast and print media to provide equality in the coverage of candidates in news programmes. Campaign coverage outside the news, however, was considered to be campaigning/political advertising that should be paid for by the candidates. OSCE/ODIHR EOM media monitoring results show that this interpretation of the law by the CEC stifled political debate on matters of public interest in the media, as it gave candidates control over the content and *per se* deprived journalists of their right to question and criticize them.⁵²

B. THE MEDIA ENVIRONMENT AND OSCE/ODIHR EOM MEDIA MONITORING



Due to an insufficient advertising market, amplified by the recent economic crisis, broadcast and print media outlets depend on substantial state subsidies. Subventions are *de facto* often made contingent on favorable coverage. A lack of transparency in the disbursement of public money to media outlets, as well as media coverage 'purchased' by authorities but not marked as such,⁵³ conceal the media's dependence on the state from the public. The few opposition media outlets face serious obstacles.⁵⁴ Access to the websites of the newspaper *Respublika* and the TV station K+ from within Kazakhstan is regularly blocked.⁵⁵ Particular regional newspapers, considered to be more

⁴⁷ Article 35 of the Draft Law on Television and Radio Broadcasting.

⁴⁸ Article 28 of the Election Law.

⁴⁹ The Law does not provide for a limit on the amount of paid advertising candidates can purchase, which is only constrained by the general campaign spending limits.

⁵⁰ See Paragraph 7.7 of the 1990 OSCE Copenhagen Document. For international practice, see the Council of Europe's Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns, available at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1207243&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

⁵¹ Article 27.7 only obliges media "to exercise unbiased interpretation of the election campaign of candidates [and] political parties."

⁵² On 19 March, the CEC-appointed Public Council on Review of Media-Related Disputes, which advises the CEC on media-related issues, considered the publication of all four candidates' election manifestos by *Ukrainski novini* a violation, arguing that every media outlet has to indicate who paid for such content and is obliged to have the written permission of the respective candidate. The editor-in-chief argued that it is the duty of journalists to inform the public and that no preference was given to any candidate. The case was forwarded to the Prosecutor General's Office for review. Based on a decision of the Prosecutor General that the action was illegal, on 28 March the newspaper was officially warned by the Astana Prosecutor's Office.

⁵³ In 2009, the Ministry of Information and Communication granted a total of around EUR 10.4 million in subsidies following several public tenders. Ministries and regional authorities allocate significant amounts of means for public information policy. See <http://www.mediaalliance.kz/download/135/AnaliticheskijObzorMezhdunarodnogoTsentraZhurnalistikiMedianetgoszakazVSmiKazakhstanaPol'zalliVred.pdf>.

⁵⁴ Since 2009, the major opposition newspaper *Respublika* has been forced to distribute stapled photocopies since printing houses in Almaty have refused to print the newspaper. The only printing house which agreed to print the newspaper faced unannounced tax inspections and the seizure of *Respublika* copies by the financial police and the Committee of State Security in 2009.

⁵⁵ According to the CEC response to the Statement of Preliminary Findings and Conclusions, the website of *Respublika* "can be easily and freely accessed through numerous website 'mirrors' on popular public networks and blog-platforms, which are open for public."

independent, face continuous problems.⁵⁶ Low professional education and standards contribute to poor coverage of relevant topics and the rarity of investigative journalism.

In order to assess the conduct and coverage of the campaign in the media, the OSCE/ODIHR EOM conducted media monitoring of six selected television⁵⁷ stations and six newspapers,⁵⁸ in both the Kazakh and Russian languages, during the entire campaign period. Quantitative and qualitative analysis of the coverage was used to assess both the amount of time and space allocated to each contestant and the tone of the coverage. The media monitoring unit daily monitored six hours of prime-time broadcasting on each of the selected television stations and the content of the print media outlets.

The CEC interpretation of the Election Law on campaign coverage by the media was not available in writing,⁵⁹ which reduced transparency and left room for uncertainty. Consequently, analytical election-related programmes, including interviews and debates, which could have offered voters a wider range of views, were virtually absent. Furthermore, OSCE/ODIHR EOM LTOs and some journalists reported on interference by local authorities and party representatives in the work of regional media outlets⁶⁰ and on instructions not to cover the boycott initiative.⁶¹ Media monitoring results show that the boycott initiative was virtually not covered by media with nationwide outreach. Thus, direct interference by the authorities and self-censorship prevented journalists from covering important events and topics in the country. Consequently, voters were deprived of objective coverage and were limited in their ability to make an informed choice.

In line with their obligation, broadcast media provided by and large equal coverage of candidates in the news. OSCE/ODIHR EOM media monitoring results reveal that the state-owned broadcasters Kazakhstan TV and Khabar devoted 19 per cent and 13 per cent, respectively, to Mr. Nazarbayev, while Mr. Akhmetbekov received 29 and 26 per cent, Mr. Kasymov 25 per cent and 28 per cent, and Mr. Yeleusizov 28 and 33 per cent. Channel 7, Channel 31 and KTK devoted less coverage to the incumbent (16, 14 and 3 per cent, respectively), while Astana TV devoted 39 per cent of its news coverage of candidates to Mr. Nazarbayev.⁶²

The OSCE/ODIHR EOM noted that outside the news programmes of the monitored broadcasters, the incumbent received more than two hours of exclusively positive additional coverage in his official capacity, in particular regarding his visits to the regions. The CEC guideline that coverage of candidates in their institutional role should not be considered as campaign coverage is problematic, as it unfairly amplifies the advantage of incumbency. In addition, monitoring results show that a total of more than four hours of advertising promoting the achievements of the 20 years

⁵⁶ The accounts of the *Uralskaya Nedelya* newspaper were seized and its property was confiscated in order to pay civil damages of KZT 20 million (approximately EUR 100,000) in a libel case against the newspaper of April 2010. After the case was raised by international institutions, the plaintiff, the *Tengizneftestroi* oil contractor, renounced the damages awarded against the newspaper. On 3 March, the same newspaper was fined KZT 20 million in civil damages in a separate case. The judgment is currently under appeal.

⁵⁷ TV Kazakhstan, *Khabar*, Channel 31, Channel 7, KTK and Astana TV.

⁵⁸ *Vremya*, *Kazakhstanskaya Pravda*, *Panorama*, *Svoboda Slova*, *Zhas Alash* and *Respublika*.

⁵⁹ On 10 March, seven days into the campaign, the CEC's interpretation of the legal provisions on campaign coverage was presented at a seminar at the Ministry of Information and Communication.

⁶⁰ Reportedly, just before the start of the campaign, the Aktobe City *akimat* repeatedly called regional media representatives to attend a meeting where the *akim* expressed his wish that media may focus on the achievements of Aktobe city and on positive issues, rather than negative ones. Furthermore, a journalist reported on a call by Nur Otan's secretary asking how the journalist was going to cover the president's upcoming visit to Aktobe.

⁶¹ In addition, when asked why the boycott initiative was not covered in the respective media outlets, journalists reported that this was due to self-censorship.

⁶² These figures refer to candidates' campaign coverage only, excluding coverage of their institutional duties.

of Kazakhstan's independence and presenting the state's program until 2020 was broadcast, *de facto* promoting the incumbent.

The monitored print media outlets, which were bound by the CEC guidance to provide impartial and balanced coverage, displayed a different picture. Monitoring results reveal that certain candidates did not receive any campaign coverage in some newspapers. *Vremya* refrained from covering the candidates' election campaign altogether. While *Kazakhstanskaya Pravda*, *Panorama* and *Zhash Alash* devoted a significant majority of their campaign coverage to Mr. Nazarbayev (51, 58 and 48 per cent, respectively), *Respublika* and *Svoboda Slova* did not cover the incumbent's campaign at all. The latter two newspapers devoted more than half of their campaign coverage to Mr. Akhmetbekov (62 and 75 per cent, respectively), while Mr. Yeleusizov received 38 and 12 per cent coverage, respectively. *Respublika* did not cover Mr. Kasymov's campaign at all, while *Svoboda Slova* devoted 13 per cent of its campaign coverage to him.

X. PARTICIPATION OF WOMEN

The Constitution and Election Law provide the basis for equal participation of women and men in the electoral process. Women are actively involved in political life, but few hold leadership positions. Out of 22 cabinet ministers of the government appointed after the election, only 3 are women, and there are no women among the regional-level *akims*. In the parliament, 17 out of 107 members of the *Majilis* and 2 of the 47 senators are women. There are no female party leaders, but women are well represented in regional branches of political parties, in particular among the opposition. Still, barriers to women's participation in politics and public administration remain, in large part due to a lack of awareness of gender issues among men and women, as well as insufficient state action to promote women into positions of power.⁶³ For example, Kazakhstan has yet to adopt a Gender Equality Law. In March 2011, President Nazarbayev requested that an action plan be worked out to promote women to the decision-making level in state bodies by 2016.

Women were well-represented in the election administration; 2 of 7 CEC members, 3 of 16 TEC chairpersons (and 30.4 per cent of all TEC members) and 44 of 207 DEC chairpersons (and 44.5 per cent of all DEC members) were women. OSCE/ODIHR LTOs reported that women from national minorities were much less represented at the DEC and TEC level than Kazakh women and men from minority groups. Women make up the bulk of PEC members. International observers reported that women accounted for 73 per cent of PEC members in polling stations visited on election day and that 44 per cent of these PECs were chaired by women. There was no woman candidate in this election, although 4 out of the 22 initial nominees were women. Women's issues featured in the campaign, partly due to the fact that International Women's Day was celebrated during the campaign period.

XI. PARTICIPATION OF NATIONAL MINORITIES

Kazakhstan is a multi-ethnic country, comprised of some 100 ethnic groups.⁶⁴ According to the

⁶³ See conclusions of the Concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW), Thirty-seventh session 15 January-2 February 2007, Paragraphs 13, 21, 22, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/62/PDF/N0724362.pdf?OpenElement>.

⁶⁴ According to the 2009 census, 63.1 per cent of the population is Kazakh. Russians, who are the largest minority, account for 23.7 per cent. The second largest minority are Uzbeks (2.9 per cent) concentrated in South Kazakhstan. Other groups include Ukrainians (2.1 per cent), Uyghurs (1.4 per cent), Tatars (1.3 per cent), and Germans (1.1 per cent). See http://www.eng.stat.kz/perepis_nasl/Pages/n1_12_11_10.aspx.

Constitution, the Russian language has equal footing with Kazakh in communications in state institutions and local self-government bodies, but the degree to which this legal policy is adhered to varies depending on the region.⁶⁵ Minorities abstain from promoting group-specific demands but have opportunities to participate in politics through existing political parties.

The state policy demonstrates commitment to the values of a multi-ethnic society, reinforced by the adoption of the Doctrine on National Unity in 2010. Interethnic relations are largely peaceful, but remain a sensitive issue, especially when it comes to cultural rights and representation in the higher echelons of administration, in the security and law-enforcement sectors.

Election and campaign materials were provided in both Kazakh and Russian. Minorities are well-represented in the election administration, but less well in senior positions of higher level election commissions.⁶⁶ According to information provided by the CEC, 73.1 per cent of all election commissioners are Kazakhs, while 16.7 per cent are ethnic Russians, 1 per cent is ethnic Uzbeks, and 0.7 per cent are Uyghurs.⁶⁷ Underrepresentation of minorities was noticed in South Kazakhstan oblast, where only 5 out of 112 TEC and DEC members belong to minorities (3 Russian and 2 Uzbeks), and where there were no Uzbek members in the Sairam DEC, although Uzbeks form a 65 per cent majority in the district.⁶⁸

XII. DOMESTIC AND INTERNATIONAL OBSERVERS

The Election Law provides for international observation, as well as for domestic observation by political parties and other public associations, and by candidate-nominated proxies who had the same rights as observers. Domestic observers did not require formal accreditation but had to present a formal letter from their nominating organization and their identification documents to the election commission where they observed. Candidate-nominated proxies were required to pass through a more formalized accreditation procedure.

The vast majority of candidate proxies in this election represented Mr. Nazarbayev,⁶⁹ while at the same time the overwhelming majority of party-nominated observers were from Nur Otan. Among public associations, only the Society of Young Professionals and the Republican Public Commission for Control of the Early Presidential Election launched sizable observer efforts. Some domestic observer groups focused on observation of the turnout rather than on the entire elections process. A total of 1,059 international observers were accredited by the CEC, including 357 from the OSCE/ODIHR, 80 from the OSCE Parliamentary Assembly, and 426 from the CIS.

The requirement for international observers to have prior election observation experience was removed from the Election Law in 2009, in line with previous OSCE/ODIHR recommendations.

⁶⁵ While in Astana and Almaty both Kazakh and Russian are widely used in public life, the situation is different in several other regions.

⁶⁶ In ethnically-mixed West Kazakhstan oblast (72 per cent Kazakh, 22 Russian), out of the 98 members of the 14 ECs (1 TEC & 13 DEC) 90 are Kazakh, 7 are Russian and 1 is Tatar. All chairpersons and secretaries are Kazakh, and three deputy chairpersons are ethnic Russians. In Mangystau region, 100 per cent of DEC members and 93 per cent of TEC members are Kazakh, as compared to population statistics of 88 per cent Kazakh, 8 per cent Russian and 3.5 percent of 'other ethnic groups' in the region.

⁶⁷ According to information reported by LTOs on TECs and DEC's composition, 72.9 percent of chairs were Kazakh, 19.1 percent were Russians and 8 percent were 'others'.

⁶⁸ Ethnic composition of South Kazakhstan region is as follows: 72.3 per cent Kazakh, 16.2 per cent Uzbek, 5.5 per cent Russian, http://www.stat.kz/p_perepis/Documents.

⁶⁹ The CEC informed the OSCE/ODIHR EOM that as of 28 March, 31,916 proxies had been registered across the country, of which 28,902 represented Mr. Nazarbayev.

The law still requires domestic observers to make remarks based on “documented, true and verifiable facts”, which may discourage or constrain observation and reporting.

XIII. COMPLAINTS AND APPEALS

The complaints and appeals process is primarily regulated by the Election Law, which does not establish a single hierarchical structure of responsibility and does not specify how due process is guaranteed. In addition to the Election Law, the election dispute resolution is regulated by various laws which are not referred to in the Election Law, including the Civil Procedures Code and the 2007 Law on Procedures for Consideration of Petitions by Individuals and Legal Entities.

Complaints against decisions and (in)actions of election commissions can be submitted within 10 days to a higher election commission and/or court. Other complaints on election law violations can be filed with election commissions, courts, and/or prosecutor’s offices; however, election-related complaints against local administration and government bodies and officials must be filed in court. The fact that the Election law provides for multiple avenues for election disputes resolution and lacks a clear delineation of the jurisdiction and remedial powers of the various decision-making bodies is not in line with the international good practice.⁷⁰

A 2009 amendment to the Civil Procedures Code substantively altered the level of court jurisdiction in the election dispute process, providing the lowest level (district/city) courts with first instance authority over all civil election disputes, except for two specific types of cases (complaints against CEC decisions on candidate registration or de-registration and against refusal or failure by the CEC to declare the elected president) that go directly to the Supreme Court and are not subject to further appeal. There is also no right to appeal decisions of district/city courts on election-related cases challenging election commissions, government officials and authorities.⁷¹ Denial of the right to at least one instance of appeal to a higher court is at odds with the principle of effective remedy.⁷²

Electoral stakeholders lacked a clear understanding of the election dispute resolution process, with instances of complainants filing cases to incorrect courts⁷³ or improperly filing complaints to the CEC⁷⁴ and prosecutor’s offices.⁷⁵ Moreover, the election administration and courts did not always have a consistent and cohesive understanding of election-related deadlines, jurisdictions and remedial powers in the election dispute resolution process. It was apparent that complainants generally do not have the necessary skills to prepare well reasoned complaints. Further, there were instances of identical complaints filed with election commissions, courts and prosecutors.

⁷⁰ Paragraph 3.3(c) of the Venice Commission’s Code of Good Practice in Electoral Matters, p.11, states: “The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.” See, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

⁷¹ See Articles 272 and 274 of the Civil Procedures Code.

⁷² Paragraph 3.3(a) of the Venice Commission’s Code of Good Practice in Electoral Matters, p.11, states: “The appeal body in electoral matters should be either an electoral commission or a court. ... In any case, final appeal to a court must be possible.” See [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

⁷³ For instance, complaints were filed at the incorrect level of court, e.g. Supreme Court instead of district court, or at the wrong type of court, e.g. administrative court instead of civil court or economic district court instead of general district court.

⁷⁴ A number of election-related complaints against local administration and government bodies were filed with the CEC, rather than the courts as required under Article 49 of the Election Law.

⁷⁵ The Prosecutor General’s office reported that a number of complaints against actions and decisions of election commissions were filed with prosecutor’s offices. However, Article 20.9 of the Election Law provides that such complaints can only be filed to a higher election commission or a court.

Overall, the adjudication of election disputes lacked transparency, consistency, due process, and well reasoned decision-making, thus impairing the opportunity for effective legal redress and bringing into question the impartiality of the election commissions, courts and prosecutors. Many opposition parties and some NGOs expressed a complete lack of trust in these authorities to act impartially and effectively in addressing election complaints.

The CEC received 14 complaints,⁷⁶ none of which were decided by voting in a plenary session, as required by law.⁷⁷ The majority of complaints were dismissed. The manner in which complaints were decided was not transparent, though it appeared they were dealt with by the CEC deputy chairperson himself, with responses signed by the CEC Secretary.⁷⁸ The CEC did not provide an opportunity for complainants to present arguments personally to the examining official(s) and routinely did not explain the right to appeal to court in its responses, as required by law.⁷⁹ There were instances of incomplete investigations, and responses often lacked comprehensive and sound factual-legal reasoning.⁸⁰ The Election Law requires all CEC decisions be posted electronically for public access,⁸¹ but as formal decisions on complaints were not made, the responses were not published. The CEC considers election complaints to be “private matters”, so copies of complaints and responses were not provided to the OSCE/ODIHR EOM or the public,⁸² limiting transparency of the complaint process.

The OSCE/ODIHR EOM became aware of 21 election-related complaints and appeals filed to district/city and regional courts, and of 5 filed to the Supreme Court.⁸³ The majority of cases were refused consideration while the others were dismissed. There were many instances of lower and higher-level courts refusing to consider cases based on improper grounds, including application of incorrect deadlines and misapplication of jurisdiction provisions that denied claimants access to judicial redress in violation of domestic law and international standards.⁸⁴ There were also instances

⁷⁶ Complaints related to, *inter alia*, irregularities in the formation of PECs, campaign-related violations, hindrance to campaign activities by local authorities, interference into the work of election commissions by local authorities, and violation of the right to register party representatives to PECs.

⁷⁷ See Articles 12.5, 20.1, 20.5, and 49 of the Election Law. The CEC informed the OSCE/ODIHR EOM that it does not view it as a legal obligation to consider complaints as a collegial body and does not believe it would be practical to do so, considering complaints a “distraction” from their usual business.

⁷⁸ There is no standard operating procedure for handling of complaints by election commissions at all levels.

⁷⁹ See Articles 10 and 14 of the Law on Procedures for Consideration of Petitions Submitted by Individuals and Legal Entities.

⁸⁰ The OSCE/ODIHR EOM was also aware of 20 complaints filed to TECs, with instances of complaints not considered in a collegial manner, partial investigations, and inadequately reasoned decisions.

⁸¹ See Article 20.6 of the Election Law.

⁸² The CEC permitted the OSCE/ODIHR EOM to view complaints and responses at the CEC premises.

⁸³ Complaints were filed by rejected candidates, opposition parties, and NGOs and related to, *inter alia*, denial of candidate registration, improper formation of election commissions, obstruction of opposition party commission members, campaign-related violations, obstruction of observers, and voting and counting irregularities.

⁸⁴ Eight district courts in two regions refused to hear complaints against *Maslikhat* decisions on PEC formation, on the erroneous ground that the ten-day deadline for complaints against election commissions established in Article 20.9 of the Election Law had passed, instead of applying the valid three-month non-binding deadline for complaints against local authorities established in Article 280 of the Civil Procedures Code and Article 12 of the Law on Consideration of Petitions Submitted by Individuals and Legal Entities. The Supreme Court refused to consider a complaint against the incumbent on grounds that courts do not have authority to consider cases alleging campaign irregularities and seeking candidate de-registration, or appeals against CEC decisions dismissing such complaints, despite established court jurisdiction under Articles 20.9 and 49 of the Election Law. The Supreme Court provided an alternate erroneous ground to refuse consideration of another similar complaint: that more than ten days had passed from the date of registration of the candidates alleged to have committed the campaign violations. A district court refused to consider a complaint that a DEC decision to appoint its own members – rather than appointment by the *maslikhat* or higher commission as required by law – was made without jurisdiction, on grounds that the ten-day deadline for complaints against decisions had

of courts improperly refusing to provide the right to appeal or not providing the legal grounds for denial of appeal of their decisions.⁸⁵ There were cases of refusal to consider complaints and appeals based on technical irregularities.⁸⁶ International good practice in election dispute resolution is “to eliminate formalism, and so avoid decisions of inadmissibility on technical grounds, especially in politically sensitive cases.”⁸⁷ Court decisions generally lacked comprehensive and sound factual and legal reasoning. Most requested court decisions were approved for release to the OSCE/ODIHR EOM and the general public does not have a right to access court decisions⁸⁸ which limited the transparency of the judicial system and electoral process.

Public prosecutors, responsible for overseeing the legality of the election process,⁸⁹ received numerous election-related complaints⁹⁰ and requests for explanations of the election law. The necessity for prosecutors to act as adjudicators of election disputes and to clarify the election law, in addition to election commissions and courts, increases the risk of conflicting interpretations and decisions.⁹¹ It was apparent from prosecutors’ written responses that some complaints were not given due consideration, with partial investigations and decisions that were not well-reasoned.⁹² There were also instances of complaints which were not considered by prosecutor’s offices but instead forwarded to election commissions. There were several cases of individuals found liable for election-related administrative offences, including two cases in which relevant witnesses were not invited by prosecutors to testify in court.⁹³ Based on findings by a regional prosecutor’s office, a regional health department deputy head was dismissed for ordering heads of all health institutions to ensure 100 per cent voter turnout of their staff; although such action constitutes a criminal offence, no prosecution was initiated.⁹⁴ Despite numerous complaints and reports on pre-election day offences, the Prosecutor General’s office informed the OSCE/ODIHR EOM that no further investigations were to be initiated.

The OSCE/ODIHR EOM became aware of some 100 complaints filed to election commissions, prosecutor’s offices and courts on election day by opposition parties and NGOs, relating to, *inter alia*, pressure on citizens to vote, obstruction of observers, threats to party representatives,

expired; the decision was upheld on appeal.

⁸⁵ For instance, a district court refused the right to appeal its decision on ‘freezing’ a complaint due to filing irregularities, in contravention of Article 344.1 of the Civil Procedures Code.

⁸⁶ For instance, a district court refused to accept a complaint by an opposition party’s regional branch office, in part on grounds that it was not a legal body authorized to submit complaints, although, according to the party’s lawyer, a letter of authorization from the party headquarters had been submitted with the complaint.

⁸⁷ See p. 30 of the Venice Commission’s Code of Good Practice in Electoral Matters, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

⁸⁸ In practice, the release of court decisions to persons not party to the case is at the sole discretion of the court.

⁸⁹ Article 83.1 of the Constitution provides the Public Prosecutor’s office with broad powers over supervising the “exact and uniform implementation of laws”.

⁹⁰ According to the Prosecutor General’s office, prosecutor’s offices countrywide received 47 complaints prior to election day, mainly related to campaign violations and hindrance of campaign activities by local authorities.

⁹¹ The CEC also received requests for explanations of the law and provided responses pursuant to its duties under Article 12.5 of the Election Law.

⁹² For instance, in response to a complaint filed by the OSDP regarding a PEC’s refusal of its observer to accompany the mobile ballot box, the Mangistau District Prosecutor dismissed the complaint in writing on 3 April merely stating that, although observers are entitled to accompany the mobile box, it “found out” that the observer declined to accompany the mobile box.

⁹³ In one of the cases, it was discovered that a person was found liable for an assault on members of the unregistered Alga party in Pavlodar, although victim witnesses confirmed after the court proceeding that he was not involved. In other administrative cases, one person was fined for destruction of a campaign billboard of the incumbent and another for distribution of false campaign materials against the incumbent.

⁹⁴ See Article 146 of the Criminal Code that prohibits violation of voting rights, which under Article 3.3 of the Election Law includes the right not to take part in elections. Higher penalties apply to persons who use their official office or position in the commission of the crime, with a maximum penalty of five years imprisonment.

irregularities in polling and counting procedures, and tampering with results protocols.⁹⁵ The manner in which complaints to PECs were handled was not transparent, while political parties and domestic observers reported that some complaints were left unconsidered.⁹⁶ Although numerous offences occurred on election day,⁹⁷ the Prosecutor General's office informed the OSCE/ODIHR EOM that no election-day related investigations were ongoing, except in one case of threats to opposition observers.

XIV. ELECTION DAY

Election day was calm and a turnout of almost 90 per cent was reported. On election day, international observers reported on the opening of 161 polling stations, voting in 1,622 out of 9,725 polling stations, and counting in 151 polling stations. They followed the handover of election material and the tabulation of results in 123 DECs.

International observers reported some cases where university students, factory workers and employees of enterprises appeared at polling stations in large groups to vote, often in an organized manner.⁹⁸ Moreover, OSCE/ODIHR EOM LTOs received a number of documents showing that students, workers and employees were pressured and instructed to go to vote by local *akimats*, faculty staff or their employers, in particular in Almaty city and the regions of Almaty, North Kazakhstan, Karaganda and West Kazakhstan.⁹⁹ Nine of the 11 PEC result protocols from military units which the OSCE/ODIHR EOM was able to obtain showed 100 per cent voter turnout, with more than 99 per cent of votes cast in favor of one candidate in 5 of those units.¹⁰⁰

A. OPENING AND VOTING

Opening procedures were assessed positively in most polling stations visited, although six polling stations openings were assessed negatively due to procedural shortcomings such as late opening, failure to compile the opening protocol or to count the ballots, presence of unauthorized persons, as well as improper sealing of ballot boxes.¹⁰¹ In four polling stations, international observers were restricted in their observations during the opening.¹⁰² Observers also reported several cases of

⁹⁵ The CEC reported that no complaints were filed to the CEC on election day or in the following days.

⁹⁶ The CEC declined to provide the OSCE/ODIHR EOM with information on complaints submitted to PECs.

⁹⁷ As directly observed or verified by international observers; see section on election-day voting, counting and tabulation.

⁹⁸ Organized voting was observed in Semey city and Katon-Karagayskiy district of East Kazakhstan region (PECs 161, 845, 1129), Karaganda city (PECs 180, 181), Petropavlovsk city (PEC 264), Terekinskiy district of West Kazakhstan region (PEC 396), and Almaty city (PECs 57, 181). In Almaty region (PECs 511, 512) and in Petropavlovsk city (PEC 264), over 50 students and around 30 students, respectively, were observed in front of the polling station, being instructed by teachers for whom they should vote.

⁹⁹ In Almaty, the acting head of Kainar University issued an instruction, dated 24 March 2011, to organize students' voting and threatened to consider expulsion of students and to apply "severe punishment" against the deans for "failure of the election". In Karaganda city, the *akimat* issued an instruction, dated 25 March 2011, to private companies on how to coordinate the voting of their employees and their families and on how to keep track of who had voted. As confirmed by the LTOs, workers of a factory in Burlinskiy rayon (West Kazakhstan region) were requested by the head of the factory to sign a paper declaring that they would vote. The healthcare department of Uralsk city issued an instruction to organize 100 per cent of employees of all medical organizations to go to vote on election day.

¹⁰⁰ In Almaty (PEC 902), Mangistau (PECs 4, 8, 51, 56, 61, 162, 163) and Zhambyl (PEC 478) regions, and in Almaty city (PECs 137, 434).

¹⁰¹ International observers reported that ballot boxes were not sealed tightly enough, leaving a gap between the box and its lid, in PECs 28 and 110 in Astana city, PECs 64 and 467 in Aktobe region, PECs 17 and 558 in Karaganda region, PEC 145 in Pavlodar region, and PEC 94 in South Kazakhstan region.

¹⁰² In PEC 167 in Aktobe region, PEC 60 in Almaty city, PEC 363 in Almaty region, and PEC 13 in Astana city.

speeches made by local authorities during the opening of polling stations, praising the incumbent, as well as Nur Otan signs or portraits of Mr. Nazarbayev posted inside polling stations.¹⁰³

Polling stations were to be open for voting from 07:00 to 20:00 hrs. on election day. In line with the possibilities provided under Article 38.1 of the Election Law, DEC's changed the voting hours of 1,494 polling stations, or more than 15 per cent of all polling stations in the country.¹⁰⁴

International observers assessed voting positively in 90 per cent of polling stations visited, but their assessment was negative in 10 per cent, a figure which indicates systemic and serious problems. There was no difference in the assessment of urban and rural polling stations. However, there were significant differences in the overall assessment across the regions; voting was assessed negatively in 32 per cent of polling stations visited in Almaty region, in 16 per cent of polling stations in South Kazakhstan region, and in 12 per cent of polling stations in Zhambyl and Karaganda regions.

Although the understanding and application of voting procedures by PEC members was assessed positively or neutrally in 97 per cent of polling stations visited, international observers were not given full access to the process in 133 cases, being told instead to remain in a reserved area from where they were unable to observe all aspects of the voting process. In isolated cases, PEC members refused to provide information to international observers.

Party observers and candidate proxies, mostly representing the incumbent and Nur Otan, were present in 88 per cent of polling stations visited. International observers noticed several instances when Nur Otan observers or proxies of Mr. Nazarbayev instructed PECs and directed voters.¹⁰⁵ By contrast, civil society observers were identified in 47 per cent of polling stations visited. Domestic observers faced many impediments to their activity.¹⁰⁶ Most typical patterns included refusal to register domestic observers and denying them access to polling stations, preventing them from moving freely around polling stations to closely observe the election procedures. Unauthorized persons were identified in 152 polling stations visited and were seen interfering in or directing the process in 16 instances.¹⁰⁷

International observers reported a number of serious irregularities, including series of seemingly identical signatures on the voter list (241 cases),¹⁰⁸ strong indications of ballot box stuffing (42

¹⁰³ For example, Nur Otan signs were seen posted at the entrances to polling stations in Kostanai region, and photos of Mr. Nazarbayev at the entrances to polling stations in Akmola and Almaty regions. A big picture of the incumbent had been posted in one polling station in Zharminskiy Rayon (East Kazakhstan region).

¹⁰⁴ In Aktobe region, 224 polling stations (43 per cent), in North Kazakhstan region, 288 polling stations (38 per cent), in East Kazakhstan region, 241 polling stations (22 per cent) had voting hours which had been shifted.

¹⁰⁵ For example, in Saryagashskiy rayon (South Kazakhstan region), the PEC chairperson consulted with a Nur Otan observer before issuing a copy of a protocol to an observer.

¹⁰⁶ Ample reference to hindrance of domestic observers' work is contained in election monitoring reports by the Republican Public Committee "ZaKon" (http://www.algadvk.kz/files/otchet_final.doc) and Kazakhstan International Bureau for Human Rights and Rule of Law (<http://www.bureau.kz/news/download/176.pdf>), as well as the Preliminary Report on Election Monitoring by OSDP-Azat. Cases of hindrance of domestic observers were also reported by international observers.

¹⁰⁷ For example in Almaty region (PECs 57, 161), East Kazakhstan region (PECs 138, 648), Pavlodar region (PEC 470), South Kazakhstan region (PECs 94, 99, 347, 675, 940), Atyrau region (PEC 16), and Aktobe region (PECs 227, 304).

¹⁰⁸ For example in Almaty region (PECs 1, 226, 363, 413, 481, 779, 832), in Almaty city (PECs 398, 415, 420), in East Kazakhstan (PECs 73,162, 217, 442, 471), in Karaganda region (PECs 31, 223, 611, 614, 682), in Zhambyl region (PECs 122, 134, 165, 280), in South Kazakhstan (PECs 66, 172, 210, 528, 865), in Kyzylorda region (PECs 195, 294), in North Kazakhstan (PECs 403, 453, 454), in Astana city (PECs 181, 191), in Kostanai region (PECs 306, 572, 750, 858), in Aktobe region (PECs 178, 307, 315, 525), in West Kazakhstan (PECs 16, 22, 453), in Atyrau (PECs 62, 71, 115), and in Akmola region (PECs 270, 659, 768).

cases),¹⁰⁹ and cases of proxy voting (78 cases, often with one person voting for other family members).¹¹⁰ Group (family) voting was observed in 135 cases.¹¹¹ Multiple voting was observed in 46 polling stations in several regions.¹¹²

Other violations observed during the voting process included ballot boxes that were not properly sealed (116 cases)¹¹³ and violations of the secrecy of the vote.¹¹⁴ In 89 polling stations visited, people who did not present any form of prescribed ID were still allowed to vote.¹¹⁵ In 138 polling stations, the required official information on the candidates was missing.

B. COUNTING

International observers assessed the vote count as bad or very bad in 24, and good or very good in 115, of the 151 polling stations where the count was observed. The regions with the most negative assessment were Aktobe region, Pavlodar region, South Kazakhstan region, Almaty city, and Almaty region. Among the main reasons for the negative assessment were failure to follow the counting procedures, lack of transparency and improper organization of the count.

Party and candidate proxies were present in 125 of the polling stations where the count was observed, with Nur Otan representatives being present in 123 of those. Police, local officials and other unauthorized persons were present in 22 polling stations where the count was observed and were interfering in or directing the process in 7 polling stations.¹¹⁶

International observers noted a wide range of procedural violations, including failure to follow required procedures prior to opening the ballot boxes.¹¹⁷ The procedures for opening the mobile

¹⁰⁹ For example in Astana (PECs 51, 181) and Almaty cities (PECs 138, 139, 405), in the regions of Almaty (PECs 244, 751, 777), Pavlodar (PECs 155, 473), Karaganda (PEC 7), Zhambyl (PECs 134, 150, 280), South Kazakhstan (PECs 210, 498), Kyzylorda (PECs 265, 289), Akmola (PECs 561, 712, 717), Aktobe (PEC 56), West Kazakhstan (PEC 448), and Atyrau (PECs 50, 62, 93).

¹¹⁰ For example in Astana (PECs 35, 50, 186) and Almaty cities (PECs 343, 398), in regions of Almaty (PECs 131, 197, 732), East Kazakhstan (PECs 132, 1093, 1102), Pavlodar (PECs 40, 488, 510), South Kazakhstan (PECs 210, 307, 675), North Kazakhstan (PECs 404, 453), Kostanai (PECs 185, 236), Aktobe (PECs 46, 64, 178), and West Kazakhstan (PECs 220, 366, 507).

¹¹¹ In Astana (PECs 52, 88, 183) and Almaty cities (PECs 218, 316, 419), in regions of Almaty (PECs 7, 189, 415), East Kazakhstan (PECs 177, 231, 1086), Pavlodar (PECs 100, 455, 580), Karaganda (PECs 40, 560, 602), Zhambyl (PECs 127, 340, 487), South Kazakhstan (PECs 12,307, 518), Kyzylorda (PECs 127, 177, 288), North Kazakhstan (PECs 12, 274, 343), Kostanai (PECs 230, 739), Aktobe (PECs 34, 178, 307), West Kazakhstan (PECs 27, 451, 507), Atyrau (PECs 39, 131, 239), and Akmola (PECs 97, 270, 717).

¹¹² For example, in Astana (PECs 9, 50, 214) and Almaty cities (PECs 100, 343, 398), East Kazakhstan (PECs 162, 1102), Zhambyl (PECs 114, 127, 280), South Kazakhstan (PECs 210, 569), Aktobe (PECs 157, 315) and Almaty regions (PECs 415, 832, 845).

¹¹³ In Aktobe, Akmola, Almaty, Karaganda, Kyzylorda, Pavlodar, South Kazakhstan regions and Astana city.

¹¹⁴ Reports on compromised secrecy of the vote were filed from East Kazakhstan (PEC 231), Karaganda (PEC 241), South Kazakhstan (PECs 177, 216), and Kyzylorda (PEC 127) regions.

¹¹⁵ For example, in Almaty region (PECs 3, 57, 197, 832, 836), Almaty city (PECs 337, 452, 679), Pavlodar region (PECs 145, 249), Karaganda region (PECs 17, 225, 554, 691), Zhambyl region (PECs 280), South Kazakhstan region (PECs 40, 66, 70, 687), Astana city (PECs 44, 105, 115), Kostanai region (PECs 149, 236, 572), Aktobe region (PECs 55, 178), West Kazakhstan region (PECs 225, 335, 383, 507), and Akmola region (PECs 132, 656, 705, 710).

¹¹⁶ In Almaty (PEC 484), a police officer instructed the PEC on the counting process. In Akmola region (PEC 664), a PEC protocol was transported to the DEC by a police officer and the *akim*, rather than by PEC members.

¹¹⁷ For example, unused ballots were not cancelled before opening the ballot boxes in 19 per cent; unused and cancelled ballots not packed and sealed separately in 18 per cent; PECs did not determine the number of ballots issued based on the signatures in the voter list in 43 per cent; PECs did not determine the number of ballots issued by each PEC member in 51 per cent; PEC did not determine the number of voters who voted with AVCs in 32 per cent; and the data were not cross-checked in 47 per cent of vote counts observed.

boxes were not followed in 17 polling stations.¹¹⁸ Twenty-seven ballot boxes contained stacks or clumps of ballots suggesting that ballot box stuffing had taken place earlier. Contrary to the law, voters' choices were not announced aloud as ballots were examined in 112 polling stations, and observers were not able to clearly see the marks on the ballots in 38 of the counts observed. In 50 of the 97 counts observed where ballot validity was disputed, the validity was not decided by a vote of the PEC members. In 44 polling stations where the count was observed, the data established during the count were not cross-checked for mathematical consistency before being entered into the results protocol.

In 21 polling stations, not all observers had a clear view of the counting procedures, and in 19 polling stations, international observers were restricted in their observation of the counting process. The general transparency of the counting process was also undermined by the fact that observers were not granted full co-operation by the PECs in 17 counts observed.

In 24 polling stations where the count was observed, the PEC had problems completing the results protocol. Results protocols were often not provided to observers and were not posted for public display in 35 polling stations where the count was observed, which significantly decreased transparency. In 22 polling stations in 11 regions,¹¹⁹ results protocols had been pre-signed.

The OSCE/ODIHR EOM reviewed 333 PEC and 34 DEC results protocols obtained by international observers from all regions. In many PEC protocols discrepancies in the calculation of the reconciliation formulas established by the CEC were small and appeared to be due to mathematical errors. In 10 of the reviewed PEC protocols, the number of ballots received was not equal to the sum of ballots issued to voters and the number of cancelled ballots; in 31 PEC protocols, the total number of ballots issued was not equal to the sum of ballots issued by each election commissioner; in 72 protocols, the numbers of ballots issued by each election commissioner were not filled in or was filled in improperly. In 17 PEC protocols, the number of voters who received ballots was not equal to the sum of valid and invalid ballots. Some protocols were not fully completed, or contained mistakes and corrections.

XV. TABULATION AND ANNOUNCEMENT OF RESULTS

The tabulation process throughout the whole country was non-transparent. This was mainly due to the position of the CEC not to publish detailed election results by polling stations, or the aggregation tables and protocols at district, regional and national level on the CEC website or in newspapers. The OSCE/ODIHR EOM was informed that the law does not oblige election commissions to publish election results, apart from the overall national results. Such a position diminished a possibility to verify that the results "are counted and reported honestly" as provided by Paragraph 7.4 of the 1990 OSCE Copenhagen Document.

After completing their observation of the vote count, 123 international observer teams went to the respective DECs to observe the transfer and handover of the electoral material. They assessed the tabulation process negatively in 27 of DECs observed (22 per cent). In 15 DECs, international observers were restricted in their observations.¹²⁰ In 36 DECs, they did not have a clear view of all

¹¹⁸ Furthermore, PECs did not determine the number of signed requests for mobile voting in 23 per cent of counts observed, and the number of ballots in the mobile ballot boxes was not compared with the number of voters' requests for mobile voting.

¹¹⁹ Almaty city, Almaty region, East Kazakhstan, Pavlodar, Karaganda, Zhambyl, South Kazakhstan, Kyzylorda, North Kazakhstan, Kostanai and West Kazakhstan.

¹²⁰ For example, Esilsky DEC (North Kazakhstan region), Temirsky DEC (Aktobe region), Zhylyoyskiy DEC

relevant procedures. International observers reported that in 52 DEC, some PECs were completing the results protocols at the DEC premises, and that in 31 DEC, PECs corrected the protocols without a formal DEC decision. Figures in PEC protocols did not always reconcile correctly in 54 DEC observed.

The OSCE/ODIHR EOM obtained five DEC aggregation tables with the relevant data from PEC protocols. In four of these tables, there were discrepancies between the data in the table and the data in the results protocols received by international observers at the polling stations.¹²¹ The TECs and the CEC refused to supply the OSCE/ODIHR EOM with copies of the TEC aggregation tables and protocols and with the CEC decision establishing the election results.

The official final turnout was announced at 89.98 per cent. There were no significant regional differences in turnout, except Almaty and Astana cities which showed around 70 per cent turnout. On the morning of 5 April, the CEC announced the final number of votes and percentages for each candidate at the national and regional level and published these data the next day in the state-funded *Kazakhstanskaya Pravda* newspaper, as provided by Article 44.5 of the Election Law. On 6 April, the CEC registered Mr. Nazarbayev as the elected President of the Republic of Kazakhstan and set the inauguration date for 8 April.

XVI. CHALLENGES TO ELECTION RESULTS

Notably absent from the Election Law is a specific and clearly stated process for a voter, a candidate, or a political party to challenge the election results and seek invalidation of the results in one or more polling stations, or to challenge the tabulation of results by one or more election commissions.¹²² This shortcoming is compounded by the fact that the legal provisions do not provide objective legal criteria for the CEC or courts to determine whether to invalidate election results or refuse the registration into office of an elected candidate. Moreover, the authorities have an inconsistent interpretation of the law regarding the process for challenging election results.¹²³

In practical terms, the president's constitutional power to submit a challenge to the Constitutional Council to dispute the election results gives him undue opportunity to virtually invalidate the elections, considering that he can veto any decision of the Council which can be overruled only by a

(Atyrau region), Tselinogradskiy and Zerendinskiy DEC (Akmola region) did not provide international observers with any information about the protocols being tabulated, while Taranovskiy DEC (Kostanai region), Inderskiy and Zhylyoyskiy DEC (Atyrau region) required observers to stay too far to be able to observe the procedures.

¹²¹ For example, according to the Talas DEC (Zhambyl region) summary, Mr. Nazarbayev received 1,592 votes at PEC 410, whereas according to the PEC protocol he had received 1,552, while the number of invalid ballots in the DEC summary was 40 less than in the PEC protocol. According to the Semey town DEC (East Kazakhstan region) summary, Mr. Akhmetbekov received 4 votes, Mr. Yeleusizov 2 votes, Mr. Kasymov 10 votes, and Mr. Nazarbayev 1,729 votes at PEC 262, while the officially certified PEC protocol contained 24, 32, 30 and 1,659 votes, respectively. According to the Burlinskiy DEC (West Kazakhstan region) summary, at PEC 80 Mr. Akhmetbekov received 6 votes, Mr. Yeleusizov 4 votes, Mr. Kasymov 2 votes and Mr. Nazarbayev 1,697 votes, with 64 invalid ballots, while the official PEC protocol contained 44, 22, 64 and 1,653 votes, respectively, with 14 invalid ballots. According to the Martykskiy DEC (Aktobe region) summary, at PEC 166 Mr. Akhmetbekov received 13 votes, Mr. Yeleusizov 1 vote, Mr. Kasymov 6 votes and Mr. Nazarbayev 1,512 votes, with 107 cancelled ballots, while the PEC protocol obtained by international observers contained 23, 3, 26 and 1,512 votes, respectively, with 75 cancelled ballots.

¹²² Article 68.1 of the Election Law (detailing Article 72.1 of the Constitution) provides the right to challenge the results within ten days after their determination with the Constitutional Council to the president, prime minister, chairpersons of the Senate and *Mazhilis*, or one-fifth of all members of parliament.

¹²³ The CEC is of the opinion that complaints against final results are to be filed with district courts, whereas a Supreme Court judge informed the OSCE/ODIHR EOM that the Supreme Court is the proper jurisdiction.

two-thirds majority of the Council members.¹²⁴ This is particularly problematic in presidential elections where the president is also a candidate, as it gives the incumbent a greater power than other candidates to challenge and veto the results.

The inauguration of the president was held on 8 April, only three days after the announcement of the final results, prior to exhaustion of the ten-day deadline for filing complaints against decisions of election commissions or against election results and while various complaints were still pending in the courts.¹²⁵ Two cases requesting invalidation of results were filed in courts. In one case requesting invalidation of results at a city level based on irregularities in the DEC composition, the city court held that the matter is not subject to judicial review; on appeal, the regional court upheld the city court decision.¹²⁶ A complaint requesting invalidation of PEC results based on numerous voting and counting violations was dismissed by a city court, in part, on grounds that the final results have already been published and the president installed into office.¹²⁷

XVII. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of the Republic of Kazakhstan, in further support of their efforts to conduct elections in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with other recommendations offered previously by the OSCE/ODIHR. The OSCE/ODIHR stands ready to assist the authorities to further improve the electoral process.

A. PRIORITY RECOMMENDATIONS

Commensurate efforts need to be made with regard to implementation of OSCE commitments and to create an environment for a pluralistic political system and genuine elections with fair conditions for all competitors. This includes:

1. Amending the legal framework for elections to bring it in line with OSCE commitments and other international standards, to lift excessive restrictions on the right to be elected, freedom of assembly, and freedom of speech as well as to eliminate ambiguities and gaps.
2. Guaranteeing inclusive composition, as well as impartial and independent performance, of election commissions at all levels. To this end, consideration could be given to revising the way the CEC is appointed, ensuring adequate representation of all political parties in election commissions at all levels, removing the possibility for members of one party to act as election commissioners for another party, allowing political parties to nominate non-voting members to the CEC, as well as prohibiting interference of local authorities in the work of the election administration.
3. Ensuring transparency and consistency of the candidate registration process by amending the legal framework to establish clear, minimum, objective and reasonable criteria for

¹²⁴ See Article 73.4 of the Constitution.

¹²⁵ Article 3.2 of the Law on the President provides that the inauguration for early elections should be held within one month of the announcement of results but does not expressly provide that the inauguration cannot take place less than ten days after the announcement of the final results or while complaints are pending decision.

¹²⁶ The plaintiff opposition party informed the OSCE/ODIHR EOM that the appeal hearing lasted approximately five minutes.

¹²⁷ The complainant NGO reported to the OSCE/ODIHR EOM that the city court at first refused to register the complaint until a representative of the NGO threatened to involve the media.

- transparent evaluation of language fluency, as well as the deadline for submission and the procedures and criteria for verification of supporting signatures.
4. In order to further the development of a pluralistic multi-party system, consideration could be given to setting a fixed time limit for party registration. Political parties should not face undue impediments to their legitimate activities, including the requirement of advance approval, rather than simple notification, of meetings and rallies.
 5. Considering amending the Civil Code to introduce a limit on damages for defamation and providing a limitation period, and amending the Criminal Code to repeal provisions referring to defamation and insult.
 6. Amending the Election Law to ensure the right of the media to report on the campaign without undue interference and the right of voters to receive fair, impartial and balanced coverage, also outside the news broadcasts. Additionally, authorities could consider tasking an independent body with developing supplementary guidelines on campaign coverage by the media that comply with international good practice on freedom of expression.
 7. Steps should be undertaken to prevent and prosecute cases of the undue influence and abuse of authority by authorities, as well as misuse of administrative resources in elections for partisan ends. To this end, measures could be taken to clearly separate election administration from government structures, including with regard to the premises where election commissions are located. Adoption of a binding Code of Conduct on the non-use of administrative resources by the electoral competitors, as well as training on ethical and professional standards, could be considered.
 8. Executive authorities and other government structures at all levels should refrain from putting pressure on voters. Where such cases occur, the judiciary should deal with them in a timely manner and in line with the law. The law should explicitly prohibit law-enforcement and security personnel from questioning private citizens about their intention to vote.
 9. Amending the Election Law to provide for a clearly defined election dispute resolution process with a single hierarchical structure, expressly defined authorities and remedial powers, as well as fundamental due process guarantees, such as fair and public hearing, transparency of proceedings, an opportunity to appeal to court, and an effective remedy. Various provisions in other laws that pertain to the election dispute resolution should be incorporated into the Election Law to increase transparency and ease of reference.
 10. Ensuring that all election complaint adjudicators thoroughly and impartially investigate and adjudicate election complaints; that they issue legally and factually sound decisions in written form. Consideration should be given to publishing all decisions on complaints in a timely manner, and providing copies of all complaint-related documents and decisions to accredited observers and the public upon request.
 11. Amending the Election Law to provide for expedient publication of detailed PEC results protocols, as well as the aggregation tables and protocols of DEC, TECs and the CEC, on the CEC website and in the media, while guaranteeing that all parties and observers have full access to all stages of the tabulation and aggregation process without impediments.

B. OTHER RECOMMENDATIONS

LEGAL FRAMEWORK

12. Legal provisions granting the first president privileged legal status, including the right to hold presidential office for unlimited terms, should be reconsidered by parliament to reinforce constitutional guarantees for equality before the law and international standards for equality of political rights.

ELECTION ADMINISTRATION

13. Ensuring that regulations, rather than non-binding guidelines, are adopted by the CEC to clarify provisions in the Election Law and other election-related legislation. Such regulations should include rules for the registration of candidate proxies and political party representatives; official instructions for voting procedures (including those ensuring the secrecy of the vote) and uniform procedures for the sealing of ballot boxes; procedures pertaining to the vote count and ballot reconciliation at the PEC level; and tabulation procedures, including mechanism for checking protocols for mathematical consistency.
14. Conditions that ensure sufficient transparency for meaningful election observation should be created in polling stations and in DEC and TEC premises. Consideration could be given to explicitly guaranteeing that observers are allowed to closely follow all aspects of the process without undue restrictions on their ability to move around as polling station, distributing certified result protocols to individuals wishing to receive a copy and removing the legal requirement for domestic observers to make remarks based on “documented, true and verifiable facts.”

VOTER REGISTRATION

15. The CEC could consider establishing a centralized cross-checking mechanism to ensure that each voter is registered at only one polling station both before and on election day. In particular, it is important to ensure that voters registered at the special polling stations are excluded from the voter lists of the polling stations of their residence.

ADJUDICATION OF ELECTION DISPUTES

16. It should be ensured that the CEC and lower-level commissions decide complaints in a collegial manner in plenary session to ensure transparency of the process. The CEC could consider developing comprehensive standard operating procedures for internal handling of complaints at all levels of the election administration.
17. To ensure a balance between timeliness and respect for electoral rights in the election dispute process, the Election Law could be amended to provide a three to five-day deadline for submission of all complaints and at least one instance of appeal against court decisions in all election disputes, with a three-day appeal submission deadline and a three to five-day deadline for appeal consideration.
18. The Election Law should be amended to expressly provide the right for election stakeholders to file complaints against election results at all levels, as well as specify jurisdiction over such complaints, and objective criteria for invalidation of election results. The law should ensure that the installation of the president not take place prior to exhaustion

of the complaints and appeals process.

19. Consideration could be given to limiting the role of prosecutors in the election process to investigating and prosecuting election offences, not adjudicating civil election disputes. The Prosecutor General's office and Ministry of Interior should actively pursue investigations and prosecutions of persons who committed election offences throughout the election period, including on election day.

MEDIA

20. Consideration could be given to transforming the state-owned broadcasters into a public-service broadcaster and amending the media legal framework correspondingly, in order to establish a publicly accountable independent broadcaster in Kazakhstan which would provide electoral competitors with equitable access, and unbiased and thorough coverage.

ELECTION DAY

21. Consideration could be given to allowing voting hours to be changed only under exceptional, clearly defined conditions. Decisions on changing voting hours should be adopted well in advance before election day and widely published to increase transparency.

ANNEX: ELECTION RESULTS

Total number of registered voters	9,200,298
Total number of voters participated	8,279,227
Total number of valid votes	8,216,370
Total number of votes cast during mobile voting	211,142
Total voter turnout	89,98%

Region	Mr. Akhmetbekov		Mr. Yeleusizov		Mr. Kasymov		Mr. Nazarbayev	
	Votes	%	Votes	%	Votes	%	Votes	%
Akmola	5,430	0.07	3,545	0.04	8,301	0.10	431,451	5.25
Aktobe	3,631	0.04	3,793	0.05	5,003	0.06	391,052	4.76
Almaty	8,444	0.10	7,009	0.09	8,613	0.10	820,358	9.98
Atyrau	3,793	0.05	2,698	0.03	6,945	0.08	253,682	3.09
East Kazakhstan	8,292	0.10	9,741	0.12	11,673	0.14	775,336	9.44
Zhambyl	3,002	0.04	2,956	0.04	18,938	0.23	437,012	5.32
West Kazakhstan	5,851	0.07	6,029	0.07	11,095	0.14	333,777	4.06
Karaganda	7,479	0.09	6,099	0.07	7,697	0.09	704,833	8.58
Kostanai	5,544	0.07	7,271	0.09	10,722	0.13	499,507	6.08
Kyzylorda	4,154	0.05	9,977	0.12	7,137	0.09	333,788	4.06
Mangistau	2,648	0.03	2,459	0.03	2,980	0.04	228,386	2.78
Pavlodar	4,364	0.05	3,011	0.04	6,084	0.07	392,138	4.77
North Kazakhstan	4,161	0.05	1,861	0.02	6,642	0.08	352,294	4.29
South Kazakhstan	1,6970	0.21	9,807	0.12	19,946	0.24	1,055,240	12.84
Astana city	5,678	0.07	3,493	0.04	4,118	0.05	243,118	2.96
Almaty city	22,483	0.27	14,703	0.18	23,142	0.28	598,986	7.29
TOTAL	111,924	1.36%	94,452	1.15%	159,036	1.94%	7,850,958	95.55%

Source: Central Election Commission of the Republic of Kazakhstan;
http://election.kz/portal/page?_pageid=73,1584869&_dad=portal&_schema=PORTAL

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).