



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

EARLY PARLIAMENTARY ELECTIONS

15 January 2012

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) deployed an Election Observation Mission (EOM) on 11 December 2011 to observe the 15 January 2012 early elections to the *Majilis*. The OSCE/ODIHR assessed the electoral process for compliance with OSCE commitments and other international standards for democratic elections as well as with national legislation. For election-day observation, the OSCE/ODIHR joined efforts with observer delegations from the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE).

Notwithstanding the government's stated ambition to strengthen Kazakhstan's democratic processes and to conduct elections in line with international standards, the 15 January early parliamentary elections still did not meet fundamental principles of democratic elections. The preparations were technically well administered and certain legal changes were passed, aimed at introducing at least a second party into the parliament; yet, the necessary conditions for the conduct of genuinely pluralistic elections, which are a prerequisite for functioning democratic institutions, were not provided for by the authorities.

The electoral legislation underwent several changes since the 2007 parliamentary elections. While these changes constituted slight improvements, some other amendments were introduced that raise concerns in terms of Kazakhstan's international commitments. In general, the legal framework for parliamentary elections remains inconsistent with several OSCE commitments and other international standards, while a number of key OSCE/ODIHR recommendations remain to be addressed.

The competitiveness and pluralism of the electoral environment was undermined as several political parties and candidates were barred from competing. Several political parties could not participate in the elections due to being refused registration by the Ministry of Justice for a number of years, being suspended by a court or having an electoral list de-registered by the Central Election Commission (CEC). A number of candidates were de-registered by the CEC shortly before the election day, based on alleged discrepancies in their tax declarations. Due process was not observed during de-registration of the said party list and candidates.

The CEC adequately handled the technical preparations of the election and met legal deadlines. The CEC and lower-level election commissions were co-operative overall towards the OSCE/ODIHR EOM and initially forthcoming with information. The CEC ran an extensive voter education campaign. Particular concerns were, however, noted regarding transparency and

¹ The report is also available in Kazakh and Russian. However, the English version remains the only official version.

collegiality of the CEC decision making and the publication of election results. Composition of lower-level election commissions and their conduct of election day activities raised concerns over their integrity and impartiality. Furthermore, while lower-level commissions appeared to have experience in preparing for elections, lack of formal training instructions and accompanying CEC materials may have limited the consistency of procedures at lower levels.

Overall, the OSCE/ODIHR EOM positively assessed the quality of the voter lists. The results of the voter lists verification at the Precinct Election Commission (PEC) level were, however, not reflected in the lists maintained by the *akimats*. No measures were taken to cross-check and temporarily exclude the voters included in the lists at the special polling stations from the voter lists at their place of permanent residence.

Although campaign activities intensified slightly in the last two weeks before election day, overall the campaign was subdued, especially in rural areas. Limited political competition coupled with a truncated choice among political alternatives, led to a lack of pluralistic and genuine electoral debate. Positively, the OSCE/ODIHR EOM received no reports of major impediments to the campaigns of those parties that were permitted to contest these elections. The 16 December violent events in Zhanaozen and the subsequently imposed state of emergency became a national campaign issue and affected the post-election environment.

Continuing criminalization of defamation and exorbitant damages claimed in civil defamation cases, as well as the special protection afforded to the president and public officials, *de facto* limit the constitutional prohibition of censorship and guarantees of freedom of speech. The coverage of the election campaign was conditioned by special election-related defamation provisions in the law and was largely based on reporting of campaign events and paid advertisements, lacking a robust and open exchange of opinions about matters of public concern. This limited voters in receiving information on political alternatives.

The legislation does not provide for a clear and comprehensive procedure of electoral dispute resolution, which led to the conflict of jurisdictions and confusion of electoral stakeholders as to the fora for review of complaints and the procedural deadlines. Moreover, court decisions on a number of election-related complaints are not subject to appeal. In general, electoral dispute resolution was inconsistent and not entirely transparent – it was largely characterized by a selective approach and an absence of well-reasoned decisions and due process. This impaired the opportunity for effective legal redress.

Ethnic minority candidates were generally under-represented on political party lists and in the *Majilis*. With some exceptions, minorities were relatively well-represented in election administration bodies. Electoral and campaign materials were provided in both Kazakh and Russian languages, although not in other minority languages.

On election day, election officials were observed to be largely knowledgeable and experienced. Although the opening procedures were assessed positively overall by OSCE/ODIHR observers, voting procedures were found to have certain shortcomings. The quality of the process was evaluated at a considerably lower level during counting and tabulation due to lack of respect for procedures and transparency. Significant irregularities, including serious indications of ballot

box stuffing were noted. In many instances, it was not possible for observers to fully determine whether voter choices were honestly reflected.

The overall processing of results lacked transparency as the ability to verify PEC protocol information was limited. The CEC only published summaries of final results for all regions but did not make public results by polling station and summary tables from Territorial Election Commissions, Regional Election Commissions, and the CEC. Election commissions were not obliged to provide copies of summary tables to observers. Nevertheless, from the limited comparisons that were possible, the OSCE/ODIHR EOM determined significant changes in figures between the PEC results declared and those reported by TECs at the higher level that require proper explanation in order to raise public confidence in the electoral process.

The CEC registered the new members of the *Majilis* on 18 January, before the legal deadline for adjudicating disputes expired, and while several complaints were still pending in courts. In total, 26 women were awarded mandates. The inauguration session of the new *Majilis* took place on 20 January.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

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) deployed an Election Observation Mission (EOM) on 11 December 2011 to observe the 15 January 2012 early elections to the *Majilis* (parliament). The OSCE/ODIHR EOM was led by Miklós Haraszti and consisted of a 21-member core team based in Astana and 28 long-term observers deployed in 13 regions of the country. For election-day observation, the OSCE/ODIHR joined efforts with observer delegations from the OSCE Parliamentary Assembly (OSCE PA), and the Parliamentary Assembly of the Council of Europe (PACE). João Soares, Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term observer mission. The PACE delegation was led by Elsa Papademetriou.

On election day, some 361 short-term observers from 41 OSCE participating States were deployed, including 44 members from the OSCE PA delegation and 15 from the PACE. Voting was observed throughout Kazakhstan in some 1,173 polling stations, and counting was observed in some 129 polling stations in 93 electoral districts. The tabulation of votes was observed in 91 Territorial Election Commissions (TECs).

The election process was assessed for its compliance with OSCE commitments and other international standards for democratic elections, as well as with domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions released at a press conference on 16 January 2012.² Elections to the local councils (*maslikhats*) took place in parallel with the *Majilis* elections. The OSCE/ODIHR EOM followed the local council elections only to the extent that they affected the conduct of the *Majilis* elections.

² For all previous OSCE/ODIHR reports on Kazakhstan, see <http://www.osce.org/odihr/elections/kazakhstan>.

The OSCE/ODIHR wishes to thank the authorities of the Republic of Kazakhstan for the invitation to observe the elections, the Ministry of Foreign Affairs, the Central Election Commission (CEC), as well as representatives of political parties, the media, civil society, and other interlocutors in Kazakhstan for their co-operation. The OSCE/ODIHR also wishes to express its appreciation to the OSCE Centre in Astana, diplomatic representations of OSCE participating States and international organizations in the country for their support and co-operation throughout the course of the mission.

III. BACKGROUND

The calling of early parliamentary elections for 15 January 2012 by the President followed an appeal by 53 deputies to dissolve the lower chamber of parliament (*Majilis*).³ They cited an expected global economic downturn in 2012, during which, in their opinion, the government should focus on solving economic challenges rather than on preparing for elections as one among other reasons for the dissolution.⁴

Ten political parties are currently registered with the Ministry of Justice (MoJ). The MoJ has refused registration to several other political parties for a number of years. The registration of the *Alga* party has been refused since 2005 due to ‘technical’ problems with application documents.⁵ Two other parties, *Khalyk Rukh* and *Ata Meken*, have been previously denied registration for similar problems with their members’ lists.⁶ The merger of the All-National Social Democratic Party (OSDP) and the Democratic Party *Azat* was rejected by the MoJ due to technical issues with the dissolution of the latter. As a result, the parties could not participate in the elections jointly, as OSDP-*Azat*, and members of *Azat* had to formally join the OSDP in order to compete in these elections. The Communist Party of Kazakhstan (CPK) was suspended by a court in October 2011 and thus unable to stand in these elections.⁷

The last parliamentary elections were held on 18 August 2007, during which the National Democratic Party *Nur Otan* obtained 88 per cent of the votes and took all seats in the *Majilis*.⁸ In its final report, the OSCE/ODIHR concluded that “the election did not meet a number of OSCE commitments, in particular with regard to elements of the legal framework and to the vote count and tabulation.”

The 2012 elections were the third consecutive national elections to be called early. According to the Constitution, if the *Majilis* is dissolved, the Senate, in the interim, assumes the responsibility

³ According to the Constitution, the president can dissolve the parliament at any time.

⁴ <http://www.parlam.kz:80/Parliament/ru/mazhilis/news-details/id391/2/1>.

⁵ *Alga* last applied for registration in 2009, but its application was rejected on the basis of inaccuracies in the list of members.

⁶ Facing issues with registration of their party, members of *Khalyk Rukh* joined *Rukhaniyat* before the elections. *Ata Meken* has not been active in politics for several years.

⁷ The activities of the CPK were suspended for six months by a court decision on 4 October 2011 due to the participation of the party leader in the activities of an unregistered political association, the *Khalykh Maidany* (National Front). The decision of the district court on suspension of the activities of the party was upheld by the appellate court in Almaty on 24 October.

⁸ Voter turnout was announced at 68.4 per cent.

to pass laws. As a result, laws may be passed by a body not carrying the direct mandate of the people.⁹

IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

Kazakhstan has a bi-cameral parliament comprising a 107-member *Majilis* and an indirectly-elected 47-member upper house (Senate).¹⁰ Ninety-eight *Majilis* deputies are directly elected for a five-year term through a proportional system with party lists in one nationwide constituency. The remaining nine are elected by the Assembly of the People of Kazakhstan (APK).¹¹ This provision continues to be at odds with Paragraph 7.2 of the 1990 OSCE Copenhagen Document which provides for “all seats in at least one chamber of the national legislature to be freely contested in a popular vote.” In addition, members of the APK enjoy the right to vote for the directly-elected *Majilis* deputies. Thus, APK members effectively enjoy two votes in the same elections, which violates the principle of equal suffrage.¹²

The Constitution stipulates an imperative mandate: deputies lose their mandate if they leave or are excluded from their party, or if the party ceases its activity. This contradicts paragraph 7.9 of the 1990 OSCE Copenhagen Document.¹³ Candidate lists are arranged in alphabetical order, and it is only after the announcement of the final results that the governing bodies of the winning parties decide upon which candidates will take up the mandates. This mechanism of mandate allocation also raises concerns as to its compliance with Paragraph 7.9 of the 1990 OSCE Copenhagen Document. Independent candidacies and the formation of electoral blocs are not permitted, in contrast with Kazakhstan’s OSCE commitments.¹⁴

Parties need to obtain at least seven per cent of the total number of votes to enter the *Majilis*. As per a 2009 amendment to the Election Law, if only one party passes the threshold, the party receiving the second highest number of votes will also be given at least two seats in the *Majilis*.¹⁵

⁹ The controversial Law on Television and Radio Broadcasting was passed by the Senate on 28 December 2011 while the *Majilis* was dissolved.

¹⁰ The representative bodies of each of the 14 regions of the country, as well as the cities of Astana and Almaty, elect two senators each. In addition, the President appoints 15 senators.

¹¹ The legal status of the Assembly of the People of Kazakhstan is defined by a law. The Assembly is an advisory body appointed by the president of Kazakhstan whose primary role is to provide recommendations on the consolidation of the society and assist the President in his/her activity as a guarantor of the rights of the citizens regardless of their race, ethnicity, social status, faith and beliefs.

¹² See Article 25 (b) of the International Covenant of Civil and Political Rights (ICCPR), as well as Paragraph 7.3 of the 1990 OSCE Copenhagen Document which states that participating States will “guarantee universal and equal suffrage to adult citizens.”

¹³ Paragraph 7.9 of the 1990 OSCE Copenhagen Document requires that participating States “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”

¹⁴ Paragraph 7.5 of the 1990 OSCE Copenhagen Document states that “participating States will [...] respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

¹⁵ The maximal number of seats is dependent on two variables: the total number of parties competing and the number of votes gathered by each party.

Elections are primarily regulated by the Constitution, the Constitutional Law on Elections (Election Law), as well as regulations of the Central Election Commission (CEC). Other election-related legislation includes the Law on Political Parties, the Law on the Procedure for Organizing and Conducting Peaceful Assemblies, Meetings, Marches, Pickets and Rallies (Law on Peaceful Assembly), the Criminal Code, the Code of Administrative Offences, and the Code of Civil Procedures. Kazakhstan has also been party to the International Covenant of Civil and Political Rights (ICCPR) since 2006, as well as to the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) since 2001 and has signed the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2008. It is also party to the CIS Convention on Standards of Democratic Election, Voting Rights and Freedoms. A Gender Equality Strategy was adopted for 2006–2016, which commits to the objective of at least 30 per cent representation of women in all elected and appointed positions by 2016.¹⁶ The legal framework, however, contains no incentives for political parties to involve women in politics.

The legal framework for elections remains inconsistent with several OSCE commitments and other international standards for democratic elections. A number of key OSCE/ODIHR recommendations remain to be addressed, while the legislation continues to contain undue restrictions on freedoms of assembly and expression. These include the requirement of a 10-day advance approval to hold public assemblies, restrictions regarding their permitted locations, broad discretion for the authorities in rejecting assemblies or altering their location/time, provisions on the protection of the honour and dignity of individuals, particularly regarding the honour and dignity of the President and other public officials, and criminal defamation provisions. These restrictions are at odds with Paragraph 9.2 and Paragraph 9.1 of the 1990 OSCE Copenhagen Document, respectively.¹⁷

Electoral legislation has undergone several changes since the 2007 parliamentary elections. Besides the above-mentioned change stipulating that the *Majilis* will be composed of at least two parties, the amendments included a slight easing of the conditions for political party registration,¹⁸ removal of the requirement that international observers have prior election observation experience, and amendments concerning liability for defamation.¹⁹

While the mentioned changes constituted minor improvements, some other amendments raise concerns in terms of Kazakhstan's commitments. In particular, a 2009 amendment to the Election Law introduced additional candidate eligibility requirements. As a result, a person with a criminal record that has not been expunged and anyone found guilty by a court of corruption-

¹⁶ Women are actively involved in public life, mostly in civil society and to a lesser extent in political parties. They are, however, not represented well at higher decision-making levels. Women held 17 out of 107 seats in the previous *Majilis* and 3 of 19 ministerial positions in the previous cabinet. There are only 2 women among 47 Senators.

¹⁷ See also the OSCE/ODIHR and Venice Commission Guidelines on Freedom of Peaceful Assembly (2nd edition), 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).

¹⁸ The number of party members needed for registration was reduced from 50,000 to 40,000. Additionally, the Law on Political Parties was amended in 2009 to provide that if the party presents a sufficient number of valid signatures, the number of invalid signatures will not be used as a reason for denial of registration. Furthermore, the deadline for submission of documents for party registration was extended to four months. Despite these modifications, the number of the registered parties has not increased since 2007.

¹⁹ Criminal liability for defamation and insult can now be imposed only in case of repeat violations, and moral damage claims against media can only be brought by individuals and not legal entities.

related crimes or administrative offences cannot stand for office. In both cases, the restriction is disproportionate as it applies regardless of the gravity of a crime or a violation.²⁰

The legislation provides for a ten-year residency requirement to run for the *Majilis*, while such lengthy residency requirements are at odds with Kazakhstan's commitments and international good practice.²¹ The legal framework also contains disproportionate provisions that allow for non-registration and de-registration of both political parties and candidates.²² The application of such provisions before and during these elections has led to the limitation on the right to stand for some parties and a number of candidates.

V. ELECTION ADMINISTRATION

The elections were administered by four levels of election commissions: the CEC, 16 Regional Election Commissions (RECs), 207 TECs, and 9,764 Precinct Election Commissions (PECs).²³ Each election commission has seven members, appointed for a five-year term. The CEC is a permanent body,²⁴ while lower-level commissions are only active during election periods. Current election commissions were appointed in April 2009. Within the election administration, two of seven CEC members were female. Women were, however, better represented at lower levels, especially at the PEC level where they constituted 62.7 per cent of members.²⁵

The CEC adequately handled the technical preparations of the elections and met legal deadlines. Particular concerns were, however, noted regarding transparency of the CEC decision-making

²⁰ This is at odds with the principle of proportionality, as provided in Paragraph 24 of the 1990 OSCE Copenhagen Document: "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."

²¹ 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." Kazakhstan has recognized the competence of the Human Rights Committee to receive and consider communications from individuals by ratifying Optional Protocol 1 to the ICCPR in 2009. See also Paragraph 1.1 (c) of the Code of Good Practices in Electoral Matters of the Venice Commission of the Council of Europe, [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), which details that "a length of residence requirement may be imposed on nationals solely for local or regional elections."

²² For example, the Law on Political Parties (Article 13) allows suspension of a political party for up to six months in case of violation of the legislation by the party without specifying the gravity of the violation. Similarly, the Election Law (Article 89) allows the CEC to deregister a party list in case of early campaigning or in case of violation by the party of the rules for nomination of the party list, without specifying whether this should constitute serious misconduct. See Paragraph 227 of the Joint Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation, which states that "Sanctions should always be compatible with the principle of proportionality", <http://www.osce.org/odihr/77812>.

²³ One REC was established in each of the 14 *oblasts* (regions), as well as in the cities of Astana and Almaty. While RECs are also referred to as TECs in the Election Law, in practice they represent a higher tier. CEC established 561 special PECs in rest homes, hospitals and other health centres, remote places, pre-trial detention centres, diplomatic and consular representations abroad, and military units. These included 56 PECs in 46 countries for out-of-country voting.

²⁴ CEC chairperson and two CEC members are appointed by the president, while the Senate and the *Majilis* each appoint two members.

²⁵ Women comprised 31.2 per cent of REC members, 42.6 per cent of district TEC and 51.4 per cent of city TEC members. Out of a total of 68,348 PEC members, 43,145 were female.

and the publication of election results. Moreover, the composition of lower-level election commissions and the conduct of election-day activities raised concerns over their integrity and impartiality and the overall transparency of the process.

All levels of commission were co-operative overall towards the OSCE/ODIHR EOM and were forthcoming with information in most cases. The CEC sessions, held in Russian and Kazakh, were open to observers and the media, who were permitted to ask questions at the conclusion of deliberations. In some instances, the CEC took decisions before the holding the respective session and voting by the commission took place, including on the de-registration of a party list and on the striking of certain candidates from the lists.²⁶ In such cases, CEC sessions were reduced to a procedural formality, which undermined the public nature of sessions and the collegiality of decision-making provided for by law. The CEC ran an extensive voter education campaign using billboards, various TV spots and posted materials on its website, including information on voter registration, the use of absentee voter certificates (AVCs), and general voter information.

While lower-level commissions appeared to have experience in the preparation for elections, international observers noted that the execution of election day procedures was sometimes improper, in particular with regard to counting and tabulation. This appeared to be partly due to a lack of comprehensive regulations and structured training, and partly due to a lack of commitment by some lower-level election commissions to ensure the integrity of the electoral process. The CEC issued guidelines on procedures, but official regulations were not adopted.²⁷ The lack of detail concerning some aspects of voting and, especially, counting and results tabulation in the available guidelines led to varying interpretations of the Election Law.

In addition, the CEC did not develop formal training instructions and accompanying material. While RECs were responsible for organizing cascade training for lower-level commissions, OSCE/ODIHR EOM observers noted that techniques and effectiveness of these trainings varied among regions. This limited the consistency of understanding of procedures, in particular by the newly-appointed members.²⁸ User-friendly election day reference materials for staff were not developed.

The CEC did not use electronic voting in these elections due to continued issues of public confidence and the stated need to update the system.²⁹

Members of lower-level commissions were appointed in different ways. Primarily, *maslikhats* elected members of the lower-level commissions based on nominations from political parties. The law envisages but does not, however, guarantee multi-party representation in the commissions, as nominations from the parties are not binding for the *maslikhats*. If parties do not submit proposals within established deadlines, the nominations can be solicited from public

²⁶ Press releases on CEC decisions were distributed prior to sessions held on 28 and 30 December.

²⁷ CEC guidelines focused on voting and counting procedures. Omissions noted were how to add voters to the voter lists, crossing off deregistered parties, mobile voting requests, sealing of ballot boxes, and mixing the ballots from the mobile and stationary ballot boxes. No guidelines or procedures on results tabulation were issued by the CEC.

²⁸ OSCE/ODIHR EOM reports referred to a variety of training methods: phone calls, role-plays, tests, and reading extracts from the Election Law.

²⁹ Electronic voting was last used during the 2007 parliamentary elections.

associations and higher-level election commissions. Since the selection of election commission members in 2009, there have been numerous resignations and replacements, including after the announcement of the *Majilis* elections.³⁰

Moreover, the law allows the higher-level election commissions to temporarily appoint members to the lower-level commissions during the pre-election period to replace the members who resign. As reported by OSCE/ODIHR observers, this process was neither consistently implemented nor was it fully transparent. It lacked procedural clarity regarding the terms of appointment and the origin of temporary members, and did neither require nor ensure pluralistic representation on election commissions.³¹

The OSCE/ODIHR EOM found that a number of commission members were apparently not aware of which political party had nominated them. It was also reported that in many cases members nominated by other parties or public associations in fact belonged to *Nur Otan*.³² Such practices circumvented the pluralistic nature of election commissions. This, combined with the overwhelming representation of *Nur Otan* members among commission chairpersons, undermined the impartiality of lower-level commissions in the eyes of electoral stakeholders.³³ OSCE/ODIHR EOM also noted concerns of various interlocutors, including political parties and civil society, over impartiality and independence in cases when the majority of PEC members were employed by the same organization and their place of employment also served as the polling station. In many of such cases senior staff also presided over their subordinates as election commission chairpersons.³⁴

There was a lack of clarity regarding the role of non-voting members within election commissions. The CEC and RECs received a number of requests for clarification on the rights and responsibilities of non-voting members before and on election day. However, clarifications were issued only to those lower-level commissions that requested them and not to all commissions. This led to an inconsistency of information received by lower-level commissions on this issue. The CEC also reaffirmed its position that provisions allowing for non-voting members are not applicable to the CEC, but only to the lower-level election commissions.³⁵

The sometimes ambiguous distinction between local executive bodies and election commissions

³⁰ OSCE/ODIHR EOM observers reported that during 2011 lower-level commission replacements amounted to approximately 50 per cent of all staff in Almaty city, 10 – 30 per cent in Almaty region, approximately 20 per cent in Atyrau region, 20 – 30 per cent in Karaganda region, and approximately 25 per cent for some TECs in Akmola region.

³¹ From those processes observed by the OSCE/ODIHR EOM, commissions appointed replacements themselves, were appointed by higher-level election commissions, or by *maslikhats*. The CEC informed the OSCE/ODIHR EOM that it did not collect data on a breakdown on the political affiliation of temporary members.

³² OSCE/ODIHR EOM observers reported such cases from Almaty city, Almaty, Karaganda, Kostanai, and Pavlodar regions. In at least two cases in Almaty City party membership details posted at PECs differed from what was published in the media.

³³ OSCE/ODIHR EOM observers reported such cases from Karaganda, Kostanai, Kyzylorda, North Kazakhstan, Pavlodar, and Zhambyl regions.

³⁴ OSCE/ODIHR EOM observers reported such cases in particular from Almaty and Astana cities, and the regions of Zhambyl and Akmola (especially with regard to various schools and academic institutions).

³⁵ Original CEC clarification on 15 March 2011, reaffirmed to OSCE/ODIHR EOM on 30 December.

further challenged the independence of election commissions.³⁶ OSCE/ODIHR EOM observers reported that local *akimats* and *maslikhats* appeared to have considerable influence on the work of election commissions. Such situations resulted in direct linkages and a lack of distinction between election officials and the government, thereby creating a perceived or real conflict of interest.³⁷ Numerous interlocutors reported a general lack of trust in the election administration to perform their duties impartially.

VI. VOTER REGISTRATION

Voters are entered into the voter lists based on their registered place of residence. The voter lists are compiled and updated by *akimats*, based on information provided by the bodies in charge of the population register. Further, they are sent to the CEC, which maintains a nationwide electronic voter register and checks voter lists for errors and duplications. Further to these checks, *akimats* submit data about registered voters to the respective TECs bi-annually on 1 January and 1 July, both electronically and in hard copy.

Closer to elections, *akimats* send voter lists for verification directly to the PECs. As prescribed by law, on 25 December *akimats* forwarded voter lists to the PECs, and on 30 December the PECs commenced verification of voter lists. Voters could verify their data and polling location by visiting a respective PEC, calling the hotlines established for that purpose, through e-mail or the government web portal. Additionally, some PECs conducted door-to-door visits. As a result of the verification, the number of voters changed from 9,305,106 to 9,303,693. Overall, the OSCE/ODIHR EOM assessed the quality of the voter lists positively. The CEC has, however, informed the EOM that the results of the voter lists verification at the PEC level will not be reflected in the voter lists maintained by the *akimats*.

Not later than 30 days before election day, any citizen who was going to be away from the place of his/her registration on election day could apply to be temporarily included in the voter list at a place of temporary stay. Moreover, voters who were planning to be away from their domicile on election day could apply for absentee voting certificates (AVCs) at their PECs until 18:00 on the day preceding the election day. AVCs were handled in a de-centralized manner on a regional level. The number of AVCs issued did not exceed one per cent of voters registered.

A voter not included in the voter list, and who could prove residence in the precinct, was to be added to the list before or on election day. In the special polling stations, voter lists were finalized the day before the election. No measures were taken to cross-check and temporarily exclude the voters included in the lists at the special polling stations from the voter lists at their place of permanent residence.

³⁶ Election commissions were often located in the *akimat* (local government authority) buildings in the cities of Almaty and Astana as well as in Almaty, Akmola, Karaganda, Mangistau, North Kazakhstan, and Pavlodar regions. Commission members were often employees of *akimats* and *maslikhats* in Astana city, Akmola, Almaty, and Kyzylorda regions. *Akimats* provided voter education in Zhambyl region and the city of Taraz. The REC in Kyzylorda received financial support from the regional *akimat* to organize a seminar for PEC chairpersons. Training sessions were, at times, conducted by the local administration in Karaganda region.

³⁷ OSCE/ODIHR EOM observers reported from Kyzylorda that most members of the TECs work in districts administration and have different members representing *Nur Otan* in TECs.

VII. CANDIDATE REGISTRATION

The candidate nomination process for these elections commenced on 16 November and ended on 5 December. Of the ten registered political parties, eight submitted candidate lists and all were registered by the CEC within the legal deadlines – they included the governing *Nur Otan* party, the Party of Patriots of Kazakhstan (PPK), the Democratic Party of Kazakhstan *Ak Jol*, the OSDP, Communist People's Party of Kazakhstan (CPPK), the Kazakhstan Social Democratic Party *Auyl*, the Democratic Party *Adilet* and *Rukhaniyat*.³⁸ Women constituted 21 per cent of the candidates in the political party lists.

The *Rukhaniyat* party list was subsequently de-registered by a CEC decision on 28 December, based on alleged violations of the prescribed rules for the nomination of candidate lists.³⁹ The investigation, conducted by the Prosecutor General's office, established a lack of a quorum in the committee of the party necessary for calling the extraordinary convention for nomination of the party list, as well as the failure of the party's regional chapters to hold sessions for nominating delegates to the extraordinary convention. *Rukhaniyat* acknowledged that some technical mistakes, but argued that no party could properly comply with the prescribed rules in the short timeframes allowed by the early elections. The CEC and the Prosecutor General's office confirmed in writing that no other parties were subjected to probes into their nomination processes. Thus, the de-registration process appeared selective.⁴⁰

Beyond the selectiveness of this procedure, the manner in which de-registration of the party list of *Rukhaniyat* took place raises concerns about whether due process was fully observed. The Prosecutor General's office submitted its conclusions on *Rukhaniyat's* alleged violations to the CEC on 27 December 2011. The CEC decided to de-register the party's list the next day, following a brief hearing in an open session. While *Rukhaniyat* was able to present its position during the session, the CEC press release regarding the decision was prepared and distributed before the session started.

Furthermore, a number of candidates, including one of the leaders of the OSDP, were de-registered by CEC decisions on 6 and 10 January, based on alleged discrepancies in their tax declarations in a manner that did not respect due process.⁴¹ The CEC acknowledged that it has neither screened the evidence on the discrepancies nor looked into their nature, and that the candidates were de-registered based solely on notifications obtained from the tax authorities.⁴²

³⁸ Lists of *Nur-Otan* (127 candidates), PPK (20), *Rukhaniyat* (27), *Ak-Jol* (60), OSDP (54), CPPK (21), *Auyl* (18), and *Adilet* (59) were all registered by 15 December. As noted in the Background, due to the rejected merger of the OSDP and *Azat*, members of *Azat* joined the OSDP in compete in these elections. The CPK was unable to stand due to court suspension.

³⁹ A district court upheld the decision of the CEC upon appeal.

⁴⁰ Please see Complaints and Appeals section for further details about the case.

⁴¹ This affected four candidates from *Nur-Otan*, five from *Ak-Jol*, six from the OSDP, two from *Auyl*, four from *Adilet*, and three from the PPK. The OSCE/ODIHR EOM is also aware of widespread deregistration of candidates for local elections based on alleged inaccuracies in tax declarations.

⁴² In one public statement, the Deputy Chairman of the CEC accepted that violations which led to deregistration might be of purely technical nature, sometimes even related to inaccurate indication of the account numbers or addresses of the candidates. However, he commented that the CEC does not verify the assessment of the tax office, and that the candidates are to be blamed for the inaccuracies. See http://tengrinews.kz/kazakhstan_news/205624/.

A number of interlocutors mentioned that in many cases the discrepancies were minor or technical, and hence de-registrations were largely perceived as disproportionate. In addition, prior to their de-registration, the candidates concerned were neither notified by the tax authority or the CEC about the stated inaccuracies in their tax declarations, nor were they given the opportunity to present their objections or arguments.

VIII. ELECTION CAMPAIGN

The electoral campaign was subdued overall, especially in rural areas, although activities increased slightly in the last two weeks before election day. Winter weather conditions, festivities to mark the 20th anniversary of Kazakhstan's independence as well as New Year's celebrations limited the time and public attention devoted to the campaign. Limited political competition coupled with a truncated choice among political alternatives, led to a lack of a pluralistic and genuine electoral debate.

Positively, the OSCE/ODIHR EOM received no reports of major impediments to the campaigns of those parties that were permitted to contest these elections. *Nur Otan's* campaign was, by far, the most visible. Campaign materials for *Ak Jol*, the CPPK, and *Adilet* were also evident, but to a much lesser extent. The campaigns of the remaining parties were considerably less visible. The campaign was mainly conducted through the use of billboards, banners, posters, and leaflets with New Year wishes, as well as through the media and small-scale meetings with voters, including in the form of sports, social or cultural events. Some parties engaged in door-to-door canvassing in the last two weeks prior to election day. Several rallies took place in the final week of the campaign.

The campaign centered on themes of social and economic development, growth and welfare in light of an anticipated economic crisis and from the gender perspective, environmental concerns, development of the political system, as well as issues of regional economic integration. *Nur Otan* presented the President and the ruling party as guarantors of stability, prosperity, and inter-ethnic accord. Official announcements of the elections and advertisements for the 20th anniversary of Kazakhstan's independence were almost identical to *Nur Otan's* campaign materials. This effectively blurred the distinction between the State and the party. Furthermore, country-wide celebrations of the 20th anniversary of Kazakhstan's independence were extensively referred to by *Nur Otan* in its campaign.

The start of the campaign on 16 December coincided with deadly clashes between law enforcement personnel and energy sector workers who had been on strike for several months in Zhanaozen, Mangistau region.⁴³ A state of emergency was declared in the town from 17 December to 5 January. The limitations imposed during the state of emergency led to a significant restriction of the freedoms of expression, assembly and movement in the locality. The extension of the state of emergency from 4 January until the end of the month remained publicly unexplained. The Constitutional Council had initially issued an opinion that the *Majilis* elections could not be held in Zhanaozen, but the President objected, and the CEC rescinded its cancellation of the *Majilis* elections there. Nevertheless, the limitations of other civic rights

⁴³ As of 25 January 2012, the Prosecutor General's office confirmed 14 people had died as a result of the violence and 64 people have sustained gunshot wounds.

remained in place.⁴⁴

The events in Zhanaozen and the subsequently imposed state of emergency became a national campaign issue. *Nur Otan* publicly stated its decision to adjust its electoral programme to draw more attention to social issues. OSDP cancelled its campaign in Mangistau region. The *Rukhaniyat* leadership stated that it was their criticism of the law enforcement agencies' handling of the situation that had resulted in the de-registration of their party's list. The unregistered *Alga* party also said that two of its leading members were detained for criticizing the government's handling of the situation in Zhanaozen.⁴⁵

In the aftermath of the elections, a number of independent journalists and opposition politicians were detained in Almaty. On 24 January, law enforcement officers raided the office of the unregistered opposition party *Alga* and arrested the leader of the party on charges of inciting social discord, in ostensible connection with the Zhanaozen events. Moreover, three leaders of the opposition OSDP were detained and sentenced to 15 days of administrative arrest following a peaceful rally held on 28 January in Almaty to protest alleged manipulations of the election process and the results.⁴⁶

IX. CAMPAIGN FINANCE

Political parties contesting the elections were required to establish electoral funds to cover all election-related expenditures. The Election Law and CEC regulations prescribed the sources of funding and the amounts of income that could be received.⁴⁷ Since political parties could only pay for their electoral activities from the electoral funds, the law effectively introduces a ceiling for campaign expenditure. Financing of electoral campaigns by foreign citizens and organizations is prohibited. Parties were required to retain all records of expenses, while the CEC regularly reviewed fund activities. The CEC reported that no violations were discovered with regard to account activities and made its information on parties' expenditures available to the OSCE/ODIHR EOM.

Upon the establishment of election results, parties had five days to submit their campaign expenditure reports to the CEC, based on which the body would conduct a more detailed review of expenses. According to the law, any infringements of the campaign finance regulations contained in the Election Law or CEC regulations could result in the de-registration of the party

⁴⁴ Introduced emergency measures limited, among other things, movement within and into and out of the city, the use of copying machines, certain communication devices, and audio and video recording equipment. Telephone communication with Zhanaozen was also cut.

⁴⁵ The chairperson of the *Alga* Astana branch was detained in Astana on 29 December. The chairperson of the *Alga* Almaty branch was arrested on 6 January in Aktau.

⁴⁶ The Director of OSCE/ODIHR raised the concern about "clampdown on Kazakh opposition" in his statement on 1 February, see <http://www.osce.org/odihr/87500>.

⁴⁷ CEC regulations established the following limits for electoral funds: contribution of a political party to a fund was not to exceed a total of 87,195,000 KZT (approximately 440,000 EUR), voluntary contributions were not too exceed a total of 174,390,000 KZT (approximately 890,000 EUR). Correspondingly, the maximum size of an electoral fund for each party was 261,585,000 KZT (approximately 1,330,000 EUR).

list; such a provision is disproportionate in terms of international good practice.⁴⁸ The CEC, however, registered deputies elected on the basis of party lists on 18 January, prior to the deadline for parties to submit their campaign expenditure reports for review.

X. MEDIA

A. LEGAL FRAMEWORK FOR FREEDOM OF EXPRESSION

The constitutional guarantee of freedom of speech and the prohibition of censorship are limited by criminal responsibility for defamation and the special protection afforded to the President and public officials. Although the January 2010 amendments to the Criminal Code replaced criminal penalties with administrative sanctions for defamation and insult for first-time offenders,⁴⁹ defamation of the President and public officials can still result in imprisonment.⁵⁰ The absence of a ceiling on compensation for defamation and of a limitation period for such offences in the Civil Code further contributes to self-censorship among journalists.⁵¹ In November and December 2011, a number of lawsuits were filed against media outlets (most of them by public officials) seeking up to 500 million KZT (some 2.5 million EUR) in damages.⁵² On 28 December 2011, when the *Majilis* was already dissolved, the Senate passed a new law “On Television and Radio Broadcasting”. The law raised concerns among national and international media experts as imparting broad control over broadcasting to the government.⁵³ Vaguely formulated provisions leave room for indiscriminate or arbitrary refusal to register foreign and satellite TV stations. Furthermore, the law does not oblige the state and the broadcasting regulator to promote pluralism and editorial independence which could enable the public to receive information from a variety of sources. Just after the law was passed by the

⁴⁸ Article 34 Paragraph 10 of the Election Law. See Paragraph 225 of the Joint Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation, which states that “sanctions must bear a relationship to the violation and respect the principle of proportionality.” Further, Paragraph 216 details that “In the area of finance violations, this should include consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is of a recurring nature.” See <http://www.osce.org/odihr/77812>.

⁴⁹ Article 10-1 of the Criminal Code

⁵⁰ Article 317-1 Paragraph 2 of the Criminal Code, introduced in June 2010, provides for up to three years of imprisonment for public insult of the honor and dignity of the First President through mass media. Article 320 Paragraph 2 of the Criminal Code provides for up to one year of imprisonment for insult of public officials through mass media.

⁵¹ Amendments to the Civil Code of April 2011, which prohibit legal entities from obtaining moral damages from media outlets and limit remedies for defamation to requesting corrections and the right of response, were regarded by the OSCE Representative on Freedom of the Media (RFoM) as “a small step toward liberalizing the country’s civil defamation law”. See Regular Report to the Permanent Council available at <http://www.osce.org/fom/78951>. Article 143 (6) of the Civil Code, however, still provides for compensation for defamation of the professional reputation of legal entities.

⁵² Two defamation lawsuits were filed against the *Public Opposition* newspaper seeking 500 million KZT (approximately 2.5 million EUR) and 50 million KZT (approximately 253,000 EUR) in compensation, respectively. In the former case, on 8 December, the Almaty district court in Astana ordered the owner, the editor-in-chief and a journalist of the newspaper to pay a former parliamentarian 5 million KZT (approximately 25,250 EUR) in damages over an article based on public accusations made against the plaintiff by a businessman.

⁵³ See <http://www.article19.org/resources.php/resource/2906/en/kazakhstan:-broadcasting-draft-law-threatens-free-expression>.

Senate, the OSCE RFoM called on the President to veto it.⁵⁴ Various national media outlets and civil society representatives did the same in a separate initiative. The law was, however, signed by the President on 18 January. Furthermore, the law “On National Security”, also adopted by the Senate in absence of the *Majilis* and signed by the President on 6 January, raises concerns as potentially providing the grounds for arbitrary restriction on freedom of expression in vaguely defined circumstances considered as threats to national security.⁵⁵

B. MEDIA ENVIRONMENT

The newly-adopted law on broadcasting does not envisage transformation of state-owned broadcasters into independent public service media outlets. Leading commercial TV stations are considered to be affiliated with the ruling party. The resulting lack of editorial freedom makes political pluralism virtually absent on television between elections. The few oppositional media outlets face serious restrictions. The website of the *Respublika* newspaper is constantly blocked and the newspaper reported that the authorities denied journalists access to Zhanaozen on election day. On 17 January 2012 and during the following days, 15 journalists with the online news portal Stan TV were interrogated by the National Security Committee.⁵⁶ The editor-in-chief of the newspaper *Vzglyad* was detained on 23 January on the grounds that he had called for the forcible overthrow of the constitutional order in 2010.⁵⁷ The OSCE RFoM called for his release.⁵⁸ Despite legal restrictions and the blocking of access to websites by the authorities,⁵⁹ the Internet continues to display a degree of pluralism of opinions and news sources.

C. ELECTION COVERAGE AND OSCE/ODIHR EOM MEDIA MONITORING



The Election Law stipulates unbiased coverage of political parties’ campaigns by mass media.⁶⁰ OSCE/ODIHR EOM was informed by the CEC that it interpreted this provision as obliging state-owned and commercial broadcast and print media outlets to provide an equal amount of

⁵⁴ Press release available at <http://www.osce.org/fom/86713>.

⁵⁵ Article 6 Paragraph 17 of the law defines “informational impact on public and individual mind related to deliberate distortion and dissemination of inaccurate information” as threat to national security, while Article 23 Paragraph 6 specifically bans that kind of “informational impact”.

⁵⁶ On 23 January the General Prosecutor informed the OSCE/ODIHR EOM that interrogations have been undertaken in order to obtain footage of the violent events in Zhanaozen on 16 and 17 December 2011.

⁵⁷ According to *Respublika*, a criminal case was opened against the editor-in-chief based on Article 170-2 of the Criminal Code, calling for violent overthrow or change of the constitutional structure or forced violation of the integrity of the territory of the Republic of Kazakhstan, committed with the help of media or an organized group. Possible sanctions include fine of 1000-5000 monthly wages or imprisonment from three to seven years.

⁵⁸ Press release from 25 January is available at <http://www.osce.org/fom/87260>. Editor-in-chief of *Vzglyad* was released under amnesty on 15 March 2012, which was welcomed by OSCE RFoM, see <http://www.osce.org/fom/89002>.

⁵⁹ The 2010 Law “On changes and additions to some legislative acts of the Republic of Kazakhstan on issues related to information-communication networks” equates all forms of Internet content, including forums and blogs, with media outlets, making them subject to existing criminal, civil and administrative legislation. According to official information from the Prosecutor General’s Office, access to over 400 websites was blocked in 2011. On 16-18 December, during the events in Zhanaozen, journalists were not allowed to enter the town, mobile phone lines were cut, and websites were blocked in Zhanaozen itself. Social media platform Twitter was inaccessible in the entire country during the two days following the events with the *Kazakhtelekom* communications operator citing technical problems.

⁶⁰ See Article 27 Paragraph 7 of the Election Law.

coverage of electoral contestants in all formats. Neither the interpretation nor further guidance for journalists on the practical implementation of this requirement were, however, made available to the public.

On 30 December, at its first public meeting, the Public Council for Consideration of Information Disputes, an advisory body to the CEC, presented results of media monitoring conducted by the Ministry of Information and Communication for the period from 16 to 28 December.⁶¹ The Council concluded that state-owned media outlets followed their legal obligation to provide equality in coverage. Although official monitoring results also demonstrated that monitored commercial TV stations provided unequal coverage in favor of *Nur Otan*, the CEC refrained from explicitly considering this a violation of the law and instead issued a recommendation to commercial TV stations.⁶²

Special defamation provisions in the Election Law, which include the protection of the professional reputation of candidates and political parties, might further undermine the media's ability to provide a critical public debate.⁶³ Thus, apart from campaign coverage within newscasts, the OSCE/ODIHR media monitoring noted the absence of discussion programmes, such as interviews and debates, on the monitored television stations.⁶⁴ One debate with the participation of a representative of each contesting party was broadcasted during the last week of the campaign period. However, the format of the debate limited the opportunity of the participants to freely choose which contestants to challenge with their questions.⁶⁵

EOM media monitoring results showed that campaign coverage of contestants on state-owned television was less imbalanced than on commercial channels. On state-owned Kazakhstan TV and *Khabar*, 24 per cent and 21 per cent of the campaign coverage respectively was devoted to *Nur Otan*. In comparison, *Adilet*, *Ak Jol*, *Auyl*, the CPPK, the OSDP and the PPK received between 11 and 14 per cent on Kazakhstan TV, while *Khabar* devoted between 12 and 15 per cent to the above mentioned parties. Astana TV and Channel 7 displayed significant bias towards *Nur Otan*, giving it 80 per cent and 51 per cent of its campaign coverage respectively, while the other commercial television stations displayed a less imbalanced approach. Coverage of *Nur Otan* in a negative tone was virtually absent (up to two per cent on Channel 31) on the monitored television stations. However, *Rukhaniyat* and OSDP did receive negative coverage on

⁶¹ Monitoring unit of the Ministry of Information and Communication conducted "quantitative and qualitative" monitoring of 53 print media outlets, 13 television stations, and 5 radio stations. Quantitative and qualitative media monitoring was also conducted by the NGO *Ar Rukh Khak* with three reports for the period from 30 November to 22 December available at <http://www.arukhak.org/component/content/article/209-monitoring3.html>.

⁶² The Code on Administrative Offences (Article 105) provides for a fine in case of violations of campaign provisions prescribed by the law. Furthermore, Article 13 Paragraph 3 of the Law on Mass Media provides for a suspension of mass media activities by a court decision for breaches of electoral campaign provisions. The CEC explained that it is problematic to oblige commercial broadcasters, in particular the ones owned by political parties, to provide equality in coverage.

⁶³ See Article 27 Paragraph 7 of the Election Law.

⁶⁴ The OSCE/ODIHR EOM conducted quantitative and qualitative media monitoring of six TV stations during the entire campaign period: Channel 31, Astana TV, *Kazakhstan TV*, *Khabar*, KTK and Channel 7.

⁶⁵ As per Article 28 Paragraph 3 of the Election Law, the CEC was tasked to organize the debates and determine their formats. The debate was broadcast pre-recorded, and a dispute about a limited ability of participants to pose question to any other contestant was edited from the aired version.

state-owned *Kazakhstan TV* and *Khabar* news programmes.⁶⁶ A significant amount of coverage, in particular on the state-owned TV stations, was devoted to the achievements of the 20 years of Kazakhstan's independence, de facto promoting the achievements of the President and the ruling party. Further, the additional institutional coverage of government officials gave the ruling *Nur Otan* a distinct advantage.⁶⁷

Monitoring of the newspapers disclosed a different approach. Four out of six monitored newspapers devoted most of their campaign coverage to *Nur Otan*.⁶⁸ Qualitative assessment of the tone of the coverage, however, disclosed various political biases of the newspapers.⁶⁹

Further, according to OSCE/ODIHR EOM media monitoring results, five out of seven parties contesting the election purchased airtime for paid political advertising. Political parties' representatives informed the EOM that prices were twice as high for prime-time airtime during the campaign period.

The *de facto* advantage of the ruling *Nur Otan* in the broadcast media coverage, coupled with the predominance of reports of campaign events and paid advertising, compromised the media's ability to provide a robust and open exchange of opinions about matters of public concern and about political alternatives. This limited voters' in receiving information on political alternatives.

XI. COMPLAINTS AND APPEALS

The legislation does not provide for a clear and comprehensive procedure or a single hierarchical structure for the resolution of electoral disputes. The provisions pertinent to electoral disputes are dispersed in the Election Law, Civil Procedures Code and the Law on Procedures for Consideration of Petitions by Individuals and Legal Entities. The Election Law allows for filing complaints regarding violations of election legislation simultaneously with election commissions, courts, and prosecutors. Complaints against decisions and (in)actions of

⁶⁶ *Rukhaniyat* was covered in a negative tone in 61 per cent of coverage during the entire campaign. The OSDP received negative coverage in 14 per cent, starting from 7 January.

⁶⁷ The figures above refer to the political parties' campaign coverage. If the coverage of political actors during the institutional events is included, the predominance of the ruling *Nur Otan* becomes evident with 46 and 45 per cent of total coverage on the state-owned *Kazakhstan TV* and *Khabar* respectively devoted to the ruling party. In total, 9 hours of coverage devoted to the achievements of the 20 years of independence were broadcast on state-owned television.

⁶⁸ *Golos Respubliki* 67 per cent, *Kazakhstanskaya Pravda* 39 per cent, *Panorama* 67 per cent and *Vzglyad* 63 per cent. *Svoboda Slova* devoted most of its coverage to *Ak Jol* (52 per cent) and the Kazakh-language *Zhas Alash* to the OSDP (49 per cent).

⁶⁹ In *Golos Respubliki* 86 per cent of *Nur Otan*'s coverage was in a negative tone (14 per cent neutral), while 76 per cent of the OSDP coverage was in a neutral tone (12 per cent in a positive and 12 per cent in negative tone); other contesting parties were exclusively covered in a neutral tone. The state-owned *Kazakhstanskaya Pravda* covered 88 per cent of *Nur Otan*'s campaign in a positive tone; while the coverage of other parties was predominantly neutral, the OSDP and the PPK received negative coverage of 8 per cent and 9 per cent respectively. *Svoboda Slova* displayed bias in favour of *Ak Jol* (85 per cent positive coverage), while giving *Nur Otan* 80 per cent negative coverage. *Vzglyad* favoured *Adilet* and the OSDP by giving 74 and 65 per cent positive coverage respectively, while giving *Nur Otan* 80 per cent negative coverage. *Panorama* and *Zhas Alash* devoted a significant amount of negative coverage to *Nur Otan* (40 and 67 per cent respectively) and did not favour particular parties.

election commissions can be submitted to either a higher-level election commission or a court, or to both at the same time. The lack of clear distinction of jurisdictions among decision-making bodies in adjudication of electoral disputes is at odds with international good practice.⁷⁰ Moreover, in practice, these provisions led to the conflict of jurisdictions and confusion of electoral stakeholders as to the fora for review of complaints and procedural deadlines in electoral dispute resolution.

The OSCE/ODIHR EOM noted a number of cases when courts, election administration and prosecutor's offices referred the complaints to an improper avenue or reviewed cases which were not in their jurisdiction on the merits. Similarly, complainants often had limited knowledge of where and how to lodge election-related complaints and appeals. As a result, they were mainly addressed to the CEC and the Prosecutor General's office, or simultaneously to both, even in instances when only courts or local election administration were entitled to adjudicate them.

The law also prescribes that decisions and actions of local government and self-government bodies, enterprises and organizations as well as their officials,⁷¹ and PEC decisions regarding voter lists⁷² can be challenged solely in district courts, without possibility of further appeal.

In general, electoral disputes resolution was inconsistent and not entirely transparent; it was largely characterized by an absence of well-reasoned decisions and due process. The OSCE/ODIHR EOM noted that election administration and prosecutors often applied selective approach to similar cases. Of note is the case of de-registration of *Rukhaniyat's* party list by the CEC.⁷³

Consideration of complaints submitted to the election administration and prosecutors' offices often exceeded prescribed legal timeframes for their review. It happened predominantly because the authorities often disregarded the initial date of submission of the complaint and each authority counted the timelines anew from the date the complaint was received by them. Thus, in practice, if complaints were referred to other institutions, complainants received final responses to them approximately 10 days after submission, or later. The Prosecutor General's office informed the OSCE/ODIHR EOM that after election day, all election-related complaints

⁷⁰ See Paragraph 3.3 (c) of the Venice Commission's Code of Good Practice, which says: "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. 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 Article 49 of the Election Law in conjunction with Articles 272 and 274 of the Civil Procedures Code.

⁷² Article 26 Paragraph 4 of the Election Law.

⁷³ The Prosecutor General's office received a complaint from the former leader of the party alleging illegal calling and holding of the extraordinary convention for nomination of the candidates' lists. On the basis of this complaint, regional prosecutors carried out an investigation, which confirmed allegations of the complainant. The Prosecutor General's office then presented its conclusion to the CEC, which used these findings as a basis to de-register *Rukhaniyat's* party list. However, earlier, the regional branch of the OSDP filed a complaint with the CEC on illegal holding of the extraordinary convention of the OSDP. The CEC forwarded this complaint to the Prosecutor General's office for investigation. The prosecutor, without taking any actions, referred the complaint back to the CEC as the only competent body to review this type of complaints. The CEC then decided to leave this case without any examination considering it as anonymous for absence of the complainant's full name.

are considered within the timeframe established for regular (non-election) complaints.⁷⁴ Such practices limited the effectiveness of electoral dispute resolution in light of the short electoral timelines and are in conflict with international good practice.⁷⁵

Prior to election day, the CEC received 52 complaints in connection with the *Majilis* elections. These mainly concerned campaigning activities, rights of non-voting members, and exclusion of certain candidates from party lists. Despite the longstanding recommendation of the OSCE/ODIHR, only four complaints were considered by the CEC collegially in an open session.⁷⁶ The CEC explained to the OSCE/ODIHR EOM that it decided whether a complaint was to be examined in a plenary session, taking into consideration the scale of the issue and whether it is lodged by a central office of a political party.⁷⁷ Review of the complaints in plenary sessions had a formal character with the complaint and a pre-drafted decision announced to the CEC members. Each time the CEC voted unanimously for adoption of a decision without hearing the interested sides.⁷⁸ Thus, transparency of dispute adjudication and due process were not fully ensured.

All other complaints that were not referred to the prosecutors or other relevant bodies for determination of facts⁷⁹ were reviewed by the CEC legal staff in absentia of parties with responses issued in the form of ‘clarification’. This also went contrary to the principle of CEC collegiality that is provided for by the Election Law and affected the right of the complainants to a due process.⁸⁰

The OSCE/ODIHR EOM is aware of 12 complaints and appeals related to the *Majilis* elections filed to courts. These concerned de-registration of a party list, violations of campaign provisions and the right to be elected, de-registration of candidates, and validity of elections. Many cases were not considered on the grounds of falling outside the jurisdiction of the respective court; one complaint in regard to illegal removal of a campaign material was satisfied and the defendant was charged for administrative offence; all other complaints were dismissed. In at least two cases, district courts erroneously denied consideration of appeals as being not in their

⁷⁴ In general within 15 days, or, when additional information or verification is needed, within 30 days. See Article 8 of the Law on Procedures for Consideration of Petitions by Individuals and Legal Entities.

⁷⁵ Paragraph 3.3 (g) of the Code of Good Practice in Electoral Matters of the Venice Commission “The time-limits for lodging and deciding appeals must be short (three to five days for each at first instance).” 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).

⁷⁶ Two complaints were filed by regional branches of the OSDP and concerned the short timeline for nomination of non-voting representatives to the election commissions. The CEC satisfied the complaints and granted additional time to all political parties to nominate their non-voting representatives. Another complaint of the OSDP was in regard to remuneration of non-voting members. The fourth complaint was filed by *Ak Jol* against the actions of a chairperson of the Kyzylorda TEC.

⁷⁷ In practice, even this non-written rule was applied selectively. In a number of cases when the CEC received complaints that had systematic character, such as regarding the rights of non-voting party members, and complaints filed by central offices of parties, these were still addressed in form of letters by the CEC legal staff.

⁷⁸ The OSCE/ODIHR EOM could observe two open sessions, where complaints were considered.

⁷⁹ Twenty-seven cases were referred to the prosecutor’s offices and 15 to lower-level election commissions for determination of facts.

⁸⁰ Par. 3.3 (h) of the Code of Good Practice in Electoral Matters of the Venice Commission says that “the applicant’s right to a hearing involving both parties must be protected”. 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).

jurisdiction, thus depriving appellants of the right to legal redress.⁸¹

The majority of election-related complaints and requests for clarification of the election legislation were addressed to the prosecutors. Prior to election day, a total of 64 complaints on violation of election legislation were filed to the prosecutors' offices throughout the country. In many instances, both the Prosecutor General's office and the CEC issued clarification on the same electoral issue, lodged by one complainant. The Prosecutor General's office was also inconsistent as it sometimes referred similar cases to the CEC or responded to them directly. These cases mainly concerned clarification of the election legislation.

On election day, complaints were lodged predominantly with the CEC and prosecutors.⁸² The CEC informed the OSCE/ODIHR EOM that it had received only one complaint on election day, although the EOM is aware of numerous complaints addressed to the CEC and the Prosecutor General's office on election day regarding irregularities in PECs. The Prosecutor General's office forwarded many complaints to the CEC even though they were already simultaneously lodged with the CEC. The CEC reacted to them only the next day by referring almost all complaints to lower-level election commissions which prolonged adjudication of election day complaints to several days. This deprived the complainants of their right to immediate consideration of their complaints on election day, as provided for by law.⁸³ Moreover, the OSCE/ODIHR EOM observers reported a number of cases when complaints submitted by domestic observers were not accepted by the heads of PECs on election day.⁸⁴ Election day complaints were not addressed adequately by the election administration and prosecutors, thus undermining the right to due process and effective legal redress.

The Election Law neither envisages the possibility of voters, candidates or political parties challenging election results overall nor does it provide a clear procedure for the invalidation of results in polling stations and of the tabulation results. The law provides a ten-day deadline for a limited category of people to challenge election results.⁸⁵ The CEC, however, registered elected members of *Majilis* already on 18 January, before the deadline for appeal lapsed and while there were numerous complaints still pending with election commissions and prosecutors regarding various violations in polling stations. The EOM is aware of one complaint made by a voter on 19 January to a district court requesting the invalidation of election results in Kokshetau city; this was subsequently dismissed.

⁸¹ In one case, a judge refused to examine an appeal of a voter against a CEC decision on registration of a *Nur Otan* candidates on the grounds that, according to the Article 272 of the Civil Procedure Code, only decisions violating the right to elect and be elected and to participate in the elections can be appealed to courts. However, the Election Law allows for broader interpretation and does not limit the subject of appeal only to right to elect and be elected and participation in the elections. In another case, the judge of Bostandyk district court in Almaty denied consideration of an appeal challenging election results in PEC 175 in Almaty, stating that PEC decisions should be appealed only to higher election commissions.

⁸² The OSCE/ODIHR EOM was aware of only one complaint filed with the district court regarding access of observers of a political party to a polling station.

⁸³ See Article 49 of the Election Law, Article 273 of the Civil Procedure Code.

⁸⁴ PECs 187, 157, 218, 196, 300, 55 in Almaty city; PEC 170 in Astana city, PEC 492 in West Kazakhstan, PEC 989 in South Kazakhstan.

⁸⁵ Article 100 of the Election Law provides that the Constitutional Council decides on the validity of the elections within ten days after announcement of election results upon request of the President, chairperson of Senate, chairperson of *Majilis*, not less than one fifth of the total number of members of the Parliament or the Prime-Minister.

XII. PARTICIPATION OF NATIONAL MINORITIES

According to the most recent (2009) census, Kazakhs constitute the country's largest ethnic group (63.1 per cent). Russians are the largest minority, accounting for 23.7 per cent of the population. Other minorities include Uzbeks (2.9 per cent), Ukrainians (2.1 per cent), Uyghurs (1.4 per cent), Tatars (1.3 per cent), and Germans (1.1 per cent). Over 100 other ethnic groups make up the remaining 4.5 per cent of the population.

National minority issues did not feature significantly in the campaign, although the *Rukhaniyat* party – excluded from the race – sought to make the development of the state language (Kazakh) a key electoral issue. The Constitution provides for Russian to be used on an equal basis with Kazakh in public administration bodies. Voter education materials were provided in both Kazakh and Russian, although apparently not in other minority languages.

Kazakhstan's Law on Political Parties prohibits the organization of parties based on ethnic origin, gender and religion. This renders all the more important the meaningful participation of ethnic minority representatives within mainstream political parties. Ethnic minority candidates appeared to be generally under-represented on political parties' candidate lists. Only three out of seven lists included more than 25 per cent of candidates from ethnic minority groups. Around a quarter of the eventually registered *Majilis* deputies are from ethnic minority groups.

In addition, 9 of the 107 seats in the *Majilis* were reserved for representatives of ethnic groups and were therefore not contested in a popular vote. Nine candidates – eight from national minority groups and one from the Kazakh majority – were nominated on 26 December and elected on 16 January by the APK. While commendable in itself, the stated objective of boosting national minority representation could be achieved through other means. It also does not give national minority voters a say in who will represent their interests, resulting in nine deputy mandates whose representativeness are questionable.

National minorities were represented in the election administration. Apart from some exceptions reported by OSCE/ODIHR EOM such as in Zhambyl region, they seemed to be generally well represented on commissions in regions in which they are concentrated; for instance, ethnic Russians in North and East Kazakhstan and ethnic Uzbeks in South Kazakhstan. According to CEC data, national minorities' highest representation rates were at the TEC level, where they accounted for about 35 per cent of members. Between 22 and 28 per cent of election officials at other levels were drawn from ethnic minority groups.

XIII. DOMESTIC AND INTERNATIONAL OBSERVERS

The law provides for international as well as domestic observation of elections. Domestic observers may be nominated by either political parties or public associations. Although there is no formal accreditation procedure in place, observers are required to present a letter from their nominating organization and their identification documents to the election commission where they observe. Political parties can nominate proxies to be present at the polling stations on

election day. Some 20,029 party proxies were registered by TECs, of which 18,734 represented *Nur Otan*.⁸⁶

The largest number of domestic observers was deployed by the ‘Republican Public Commission for Control of the Early Parliamentary Elections’, who reportedly fielded 5,000 people. Interlocutors of the OSCE/ODIHR EOM expressed varying opinions as to the independence of this body. The NGO ‘Republican Network of Independent Monitors’ (RNIM) launched a sizeable observation activity by deploying both long and short-term observers.⁸⁷ Other domestic public associations, including the coalition of NGOs ‘*Sailau*’⁸⁸ and the Society of Young Professionals conducted pre-election observation, media monitoring and fielded election day observers in relatively small numbers. Overall, as confirmed by the reports of OSCE/ODIHR observers, domestic observers were impeded in their work, at times intimidated and their rights were restricted by PEC members. These observers were made aware of such restrictions throughout the election day by the domestic observers. In most cases, domestic observers were required to sit in specially designated places at such a distance from the commission that did not allow for meaningful observation.

The CEC accredited international observers from OSCE/ODIHR, OSCE PA, PACE, Commonwealth of Independent States (CIS), Shanghai Cooperation Organization (SCO), Cooperation Council of Turkic Speaking States, Organization of Islamic Cooperation, and Parliamentary Assembly of Turkic Speaking States as well as bi-lateral election commissions and officials. In total, 819 international observers were accredited to monitor these elections.⁸⁹

XIV. ELECTION DAY

Election day was calm throughout the country with voter turnout reported by the CEC at 75.45 per cent. The international observers followed the process throughout election day in 115 polling stations during opening, 1,173 during voting, 129 during counting, and in 91 TECs during result tabulation.

Overall, the opening and voting in polling stations were assessed positively by OSCE/ODIHR observers and election officials were observed to be largely knowledgeable and experienced. However, the quality of the process deteriorated considerably during counting and tabulation due to lack of respect for procedures and transparency. Reports of irregularities, including indications of ballot box stuffing were noted. Observers often lacked access to processes in PECs, which diminished the transparency of the process. As a result, in many instances, it was

⁸⁶ In some PECs there were several *Nur Otan* proxies present at the same time.

⁸⁷ RNIM received funding from the EU Commission delegation to conduct pre-election and election day observation and deployed 13 long-term and some 2,000 short-term observers.

⁸⁸ The NGOs ‘*Ak Rukh Kakh*’, the Fund for Development of Parliamentarism, Liberty, the Youth Information Service and ECHO joined efforts in the coalition of NGOs ‘*Sailau*’ and operated a website www.sailau.crowdmap.org where information on election irregularities was posted.

⁸⁹ Out of a total of 819 international observers, 309 represented OSCE/ODIHR, 46 OSCE PA, 15 the PACE, 262 the CIS, 11 the SCO, 9 Cooperation Council of Turkic Speaking States, 7 Organization of Islamic Cooperation, 10 Parliamentary Assembly of Turkic Speaking States, 150 more came from 29 foreign states.

not possible for observers to determine whether voters' choices were honestly reflected although in some cases it was clear that they were not.

A. OPENING AND VOTING

Opening procedures were positively assessed in the majority of polling stations.⁹⁰ At the same time, both procedural and transparency problems were identified by international observers. They reported that in 19 cases ballots were not counted and the number was not entered in the protocol, and in 15 stations the opening protocol was not fully completed.⁹¹ Reports about restrictions to observers were received from six polling stations.

During voting, evaluations were positive in 91 per cent of polling stations observed – a bad to very bad voting process was observed in 104 polling stations (9 per cent of observations, still inordinately high). Negative assessments to be caused by such serious irregularities as 126 observed cases of seemingly identical signatures in the voter lists, 15 observed cases of multiple voting, as well as indications of ballot box stuffing that were reported from 23 polling stations.⁹² Observed cases of group and proxy voting, as well as allowing voters to cast ballots without proper IDs and failing to retain voters' AVCs also contributed to negative assessments of the voting.⁹³

While PECs were generally co-operative towards OSCE/ODIHR observers during voting, concerns over transparency were reported as well. Observer teams were restricted in observation in 109 cases, and reported that in some 100 polling stations observers lacked a clear view of voting procedures. In what can be considered as instances of active hindering of transparency, observers were often instructed by PEC members to remain seated at a considerable distance from voting activities, ostensibly not to interfere in their work, but effectively undermining their capacity to properly observe. Concerns over transparency often led observers to negatively assess the voting process.

Significant differences were noted between regions in the country. Of note are the regions of Almaty and Kyzylorda, where voting was assessed negatively in 22 and 15 per cent of observations, respectively. In particular, negative assessments from Almaty city and Almaty region correlated with reports of such irregularities as proxy voting, being allowed to vote without proper ID, and seemingly identical signatures in the voters list.

Candidate and party proxies were present in 89 per cent of PECs observed during voting, mostly representing *Nur Otan* (77 per cent), followed by the OSDP (31 per cent) and *Ak Jol* (28 per cent). In 36 per cent of the polling stations observed, only one party proxy was present, typically from *Nur Otan* (in 86 per cent of such cases). While domestic civil society observer groups were present throughout election day, some organizations reported restrictions in polling stations.

⁹⁰ Only three PECs received bad or very bad assessments for opening.

⁹¹ Official guidelines of the CEC instructed the PECs to conduct these procedures.

⁹² PECs 156, 225 in TEC Magzhan Zhumabaeva, PECs 224, 225, 241, 255, 989 in TEC Turkestan, PECs 373, 374, 376, 400, 404 in TEC Turksibskiy, PECs 205, 206, 232, 233 in TEC Makhambetskiy, PECs 688, 698 in TEC Sarkandskiy, PEC 248 in TEC Atbasarskiy, PEC 38 in TEC Atyrau, PEC 417 in TEC Karatapskiy, PEC 965 in TEC Saryagashskiy, PEC 698 in TEC Tselinogradskiy.

⁹³ Group voting was reported from 8 per cent, proxy voting from 2.6 per cent, voting without proper ID from 6 per cent, and not retaining AVCs from voters from 18 per cent of polling stations observed.

RNIM instructed their observers not to file complaints due to pressure experienced from various government offices.⁹⁴

B. COUNTING

Counting was evaluated significantly more negatively than voting. In 59 of 129 observations, counting was assessed negatively with 37 polling stations assessed as bad and 22 as very bad. Negative assessments appeared to be due both to serious departures from prescribed counting procedures and limited transparency and obstructed observer access, with such problems often coinciding.

Observers noted numerous procedural errors already prior to the opening of the ballot boxes. In 50 cases, the number of ballots issued was not determined on the basis of signatures in the voter list, while in 43 polling stations unused and cancelled ballots were not properly packed and sealed, which presents a potential danger to the integrity of the results.

Once ballot boxes were opened, observers continued to report procedural irregularities. PEC members did not announce voter choice for each ballot as required by the law in 99 stations. Additionally, observers reported that ballot validity was not determined in a reasonable and consistent manner in 32 polling stations, and that validity of contested ballots was not decided by a vote in 46 cases. Indications of ballot box stuffing were reported in 2 cases for mobile ballot boxes and in 12 cases for stationary boxes – this is a significant number for any election and need to be eliminated to improve public confidence in the electoral process.⁹⁵ Notably, in Karaganda Region, observers reported two separate cases of results manipulation with shuffling of ballots from one party stack (*Nur Otan*) to another (*Ak Jol*) and re-opening counted and sealed ballots for redistribution.⁹⁶ Observers also reported that from one polling station in Astana city, ballots cast for one party (*Aul*) were misallocated for another party (*Nur Otan*).⁹⁷ Such serious infractions as changing voter choice should also be properly investigated by the authorities.

As protocols were being completed, the process remained opaque. Checks for mathematical consistency of protocols were not done in 57 polling stations, results were not announced aloud before being entered in the protocols in 51 stations, and protocols were not completed fully and in pen in 29 cases, allowing for the danger of them being changed at a later stage. Overall, observers reported that PECs did not fill in protocol properly in 101 of 129 polling stations observed.

Transparency was lacking throughout the counting process. Observers were restricted in their activities in 23 polling stations. In addition to observers' reports that they were not able to clearly see voter choices on ballots in 55 polling stations, there were some reports that

⁹⁴ Confirmed to OSCE/ODIHR EOM on 23 January 2012.

⁹⁵ For stationary ballot boxes – PEC 382 in TEC Turksibskiy, PEC 717 in TEC Shetskiy, PEC 380 in TEC Maktaaralskiy, PEC 225 in TEC Turkestan, PEC 38 in TEC Saryarkinskiy, PEC 872 in TEC Fedorovskiy, PEC 206 in TEC Makhambestskiy, PEC 390 in TEC Mugalzgarskiy, PEC 60 in TEC Atyrau, PEC 181 in TEC Almatinskiy, PEC 1167 in TEC Zelenovskiy, PEC 161 in TEC Kurmangazinskiy. For mobile ballot boxes - PEC 473 in TEC Glubokovskiy, PEC 206 in TEC Makhambestskiy.

⁹⁶ PEC 416 in TEC Saran City, PEC 717 in TEC Shetskiy.

⁹⁷ PEC 38 in TEC Saryarkinskiy.

international observers were not allowed to examine the ballots upon request. Observers did not receive copies of result protocols in 6 polling stations, and in 23 polling stations signed protocols were not publicly posted. Thus, key measures that could ensure the integrity of the electoral process were not respected. A number of OSCE/ODIHR observers reported deliberate and extended delays and breaks before, during and after counting. Despite CEC instructions, delays in the immediate transfer of PEC results to TECs were reported in 24 cases.

C. TABULATION

The tabulation process was negatively assessed in 32 out of 194 observations at the TECs. OSCE/ODIHR observers evaluated the organization of the tabulation process negatively mostly due to the lack of transparency. Observers often could not observe every step of the tabulation and, in many cases, TECs silently tabulated results making it difficult to follow the process. Transparency of the tabulation process was highlighted as a concern in 16 of 194 TECs observations. Observers reported obstruction to a clear view of the tabulation procedures in 21 reports and a lack of full co-operation from TEC officials in 10 reports.

While procedures were generally followed, OSCE/ODIHR observers reported a significant number of cases of PECs changing protocols without a formal TEC decision, PECs completing protocols at TECs, and figures in the PEC protocol not always reconciling correctly.⁹⁸ Additionally, during busy periods TECs faced difficulties with processing PEC protocols.

The presence of domestic observers was significantly lower during the tabulation with party proxies and civil society observers noted only in 20 per cent and in 6.7 per cent of observations, respectively.

Although the OSCE/ODIHR EOM requested TEC and REC summary tables in all regions, these were only provided by a limited number of TECs and RECs. Nevertheless, the EOM was able to compare TEC summary tables against available copies of PEC protocols and REC summary tables against available copies of TEC protocols. This comparison revealed that the voting results in 8 TECs in South Kazakhstan differed significantly from the initial results documented in some 60 PEC protocols. The altered results show three patterns – the subtracting of votes for *Nur Otan* in favour of the CPPK and *Ak Jol* or the subtracting votes for the OSDP, *Adilet*, and *Auyl*, the adding of votes for *Nur Otan*, the CPPK, and *Ak Jol*, and significant adjustment of the quantity of total valid votes cast.⁹⁹ Additionally, discrepancies were found between REC summary tables and TEC protocols in several regions.

Such significant changes in figures between the PEC results declared and those reported by the higher-level election commissions require proper explanation in order to raise public confidence in the electoral process.

⁹⁸ PECs correcting protocols without a formal decision of the TEC were noted in 37 reports, PECs filling in the protocol at the TEC premises – in 47 reports, figures in the PEC protocol not always reconciling correctly – in 74 TEC reports.

⁹⁹ See Annex II for details.

XV. ANNOUNCEMENT OF RESULTS

The CEC announced preliminary results the day after the elections and approved final results two days after the elections, on 17 January. The overall processing of results lacked transparency as the ability to verify PEC protocol information was limited. According to the CEC's interpretation of the Election Law, publication of election results is only required for the CEC and not for the lower-level commissions, including the PECs. The CEC only published summaries of final results for all regions and the cities of Astana and Almaty on its website. It did not publish results by polling station, nor did it make available summary tables from TECs, RECs, or the CEC. In addition, election commissions were not obliged to provide copies of summary tables to observers.¹⁰⁰ Thus the observers were not able to fully conclude whether the votes were "counted and reported honestly" as required by paragraph 7.4 of the 1990 OSCE Copenhagen Document. Moreover, the CEC decision on the final results was approved prior to all election complaints being reviewed and adjudicated.

According to the final results announced, *Nur Otan* obtained 80.99 per cent of the votes and received 83 mandates (of them, 23 were awarded to female candidates), *Ak-Jol* received 7.47 per cent and 8 mandates (2 to female candidates), and CPPK received 7.19 per cent and 7 mandates (1 to a female candidate). Of the remaining parties that were declared not to have passed the seven per cent threshold, the OSDP received 1.68 per cent of votes, *Auyl* 1.19 per cent, the PPK 0.83 per cent, and *Adilet* 0.66 per cent.

XVI. RECOMMENDATIONS

The following recommendations are offered with a view to enhance the conduct of elections in Kazakhstan and bring them in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. OSCE/ODIHR stands ready to assist the authorities of Kazakhstan to further improve the electoral process and in following up on the recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. The legal framework should be amended to ensure that all *Majilis* deputies are elected by popular vote.
2. The legal framework should be amended to unambiguously provide for relevant, reasonable and objective criteria and mechanisms for political party registration. In this regard, consideration could be given to detailing the process of verification of signatures in the law to ensure equal treatment and allowing voters to sign in support of more than one party to promote greater pluralism.
3. Consideration should be given to amending the laws to ensure that de-registration and suspension of political parties and candidates respects the principle of proportionality.

¹⁰⁰

While the CEC made its protocol available to OSCE/ODIHR EOM, it was not published.

4. Strong political will should be demonstrated to improve the integrity of the electoral process by preventing serious violations such as ballot box stuffing and alterations of results protocols. Authorities should investigate all allegations seriously and hold accountable those found guilty of violations of the law.
5. Consideration should be given to introducing a legal requirement to publish without delay detailed election results for each polling station along with all TEC, REC and CEC protocols and summary tables on the CEC website and in the media.
6. Measures should be taken to ensure genuine and unhindered access of domestic and international observers to the entire electoral process, especially free and unhindered movement within polling stations during voting, counting, and tabulation so that they are able to observe all parts of the process.
7. Consideration should be given to amending the recently introduced legislation governing the media to bring it in line with international standards and good practice.
8. Measures should be taken to protect the freedom of expression by amending civil defamation law to ensure that defamation cases are settled fairly and proportionately to the offense committed.

B. OTHER RECOMMENDATIONS

Legal Framework

9. The law should allow parties to form electoral coalitions in order to promote the competitiveness of the electoral process and more pluralistic representation in the *Majilis*.
10. The law should be amended to remove excessive restrictions on candidate eligibility. The requirements of a 10-year residency and membership in a political party should be eliminated, while restrictions on candidate eligibility should be proportional to the committed offences or corruption-related violations. Candidates should not be de-registered on the basis of the correctness of their tax declarations, as this inappropriately limits the fundamental freedom to stand.
11. Consideration could be given to amending the Election Law and the Law on Emergency Situations to ensure that possible restrictions of fundamental freedoms, including suffrage rights, are in line with international law.

Election Administration

12. Measures should be taken to ensure the impartiality and full independence of election commissions from local government authorities.
13. Consideration could be given to clarifying rules and regulations for appointment of

election commission members, in particular for temporary appointments in order to ensure a genuinely balanced representation of political parties.

14. Consideration could be given to developing practical and user-friendly guidelines on electoral procedures and a comprehensive training programme mandatory for all election commission members.

Voter Registration

15. The CEC could consider establishing a centralized cross-checking mechanism to ensure both before and on election day that each voter is registered at only one polling station and to prevent potential multiple voting.
16. The Election Law could be amended to provide for a mechanism to reflect the results of voter list verification at the PEC level in the voter lists currently maintained by the *akimats*.

Complaints and Appeals

17. The Election Law should be amended to explicitly provide for the right for electoral stakeholders to file complaints against election results at all levels, to specify jurisdiction over such complaints, as well as to set objective criteria for the invalidation of election results.
18. Election Law should clearly envisage and guarantee that complaints are accepted, without hindrance or a requirement for a complainant to provide documented proof, and reviewed, with all decisions made public and at all levels during the entire electoral period, including on election day.
19. Measures could be taken to ensure that electoral disputes are adjudicated in a timely manner without undue prolongation of the period for the review of complaints. For instance, the law could be amended to expressly prescribe the application of legal deadlines from the date of initial receipt of a complaint or an appeal.

Media

20. The legal framework should protect editorial freedom in covering the election campaign, including through abolishing special election-related defamation provisions to provide for a critical and vibrant public debate. The right of voters to receive diverse information on contestants and the right of the media to report on the campaign without undue interference should be reflected in the Election Law.
21. Consideration could be given to tasking an independent supervisory body to conduct monitoring of public service broadcasters, outside and during electoral periods, with a methodology able to establish the level of pluralism and the results made public.

ANNEX I

Final Election Results as Announced by the CEC (on 17 January 2012).

Total number of registered voters	9,303,693
Total number of ballots issued	7,019,390
Total number of ballots cast	7,018,927
Total number of invalid ballots	77,707
Turnout (percentage)	75.44%

Party List	Valid Votes	%	Mandates
<i>Nur Otan</i>	5,621,436	80.99	83
<i>Ak-Jol</i>	518,405	7.47	8
CPPK	498,788	7.19	7
OSDP	116,534	1.68	0
<i>Auyl</i>	82,623	1.19	0
PPK	57,732	0.83	0
<i>Adilet</i>	45,702	0.66	0
Total	6,941,220	100	98

Comparison of the PEC Protocols and TEC Summary Tables from South Kazakhstan region.

		Nur Otan			PPK			Ak-Jol			OSDP			CPPK			Auyl			Adilet					
TEC Name	PEC No.	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	Total valid votes according to PEC	Total valid votes according to TEC	Difference in reported total valid votes
Sayramskiy																									
	590	1219	1001	-218	8	35	27	118	125	7	20	21	1	66	184	118	40	11	-29	52	18	-34	1523	1395	-128
	619	1796	1587	-209	8	15	7	219	158	-61	15	29	14	16	158	142	118	16	-102	2	18	16	2174	1981	-193
	1008	1973	1506	-467	19	15	-4	280	162	-118	0	16	16	6	169	163	50	12	-38	3	19	16	2331	1899	-432
Shymkent City																									
	43	521	521	0	12	12	0	60	60	0	65	25	-40	32	92	60	14	14	0	30	10	-20	734	734	0
	137	491	491	0	3	33	30	35	35	0	45	15	-30	11	11	0	2	2	0	1	1	0	588	588	0
	151	319	319	0	3	63	60	175	125	-50	20	10	-10	7	17	10	7	7	0	6	6	0	537	547	10
Saryagash																									
	692	696	836	140	22	22	0	65	65	0	146	6	-140	61	141	80	46	6	-40	42	2	-40	1078	1078	0
	675	695	925	230	16	16	0	58	58	0	233	3	-230	14	154	140	104	4	-100	43	3	-40	1163	1163	0
Kentay City																									

TEC Name	PEC No.	Nur Otan			PPK			Ak-Jol			OSDP			CPPK			Auyl			Adilet			Total valid votes according to PEC	Total valid votes according to TEC	Difference in reported total valid votes
		PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results			
	195	1427	1869	442	13	2	-11	14	159	145	262	29	-233	10	159	149	17	27	10	10	9	-1	1753	2254	501
	196	380	681	301	5	3	-2	118	64	-54	40	11	-29	5	66	61	9	10	1	6	3	-3	563	838	275
	197	754	823	69	27	1	-26	72	76	4	93	12	-81	20	79	59	20	11	-9	19	5	-14	1005	1007	2
	199	480	875	395	6	2	-4	29	86	57	43	13	-30	7	87	80	5	11	6	10	4	-6	580	1078	498
	200	485	917	432	9	1	-8	117	87	-30	414	16	-398	30	88	58	28	14	-14	16	6	-10	1099	1129	30
	202	166	266	100	11	1	-10	95	36	-59	37	5	-32	14	34	20	7	5	-2	10	1	-9	340	348	8
	204	127	155	28	9	0	-9	18	14	-4	4	1	-3	2	9	7	4	3	-1	3	1	-2	167	183	16
	205	538	867	329	18	2	-16	87	69	-18	127	14	-113	38	70	32	47	11	-36	13	4	-9	868	1037	169
	206	1178	1445	267	17	4	-13	122	157	35	151	25	-126	26	126	100	24	20	-4	28	9	-19	1546	1786	240
	207	897	888	-9	13	4	-9	201	110	-91	72	16	-56	11	113	102	7	16	9	9	4	-5	1210	1151	-59
	208	330	351	21	0	1	1	60	34	-26	33	5	-28	7	34	27	1	6	5	0	2	2	431	433	2
	209	816	1159	343	27	3	-24	383	86	-297	159	23	-136	26	83	57	13	16	3	30	5	-25	1454	1375	-79
	210	599	601	2	4	1	-3	42	43	1	3	8	5	46	46	0	3	9	6	3	3	0	700	711	11
	211	1002	1003	1	0	2	2	52	52	0	3	16	13	54	55	1	2	12	10	1	4	3	1114	1144	30
	212	1103	1171	68	16	3	-13	38	88	50	50	18	-32	18	90	72	31	18	-13	15	6	-9	1271	1394	123
	213	626	630	4	8	0	-8	65	65	0	59	12	-47	0	68	68	22	9	-13	4	2	-2	784	786	2

		Nur Otan			PPK			Ak-Jol			OSDP			CPPK			Auyl			Adilet					
TEC Name	PEC No.	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	Total valid votes according to PEC	Total valid votes according to TEC	Difference in reported total valid votes
	218	434	806	372	10	2	-8	122	70	-52	59	12	-47	14	71	57	28	12	-16	34	3	-31	701	976	275
	1014	595	674	79	8	2	-6	56	52	-4	68	11	-57	11	48	37	10	9	-1	0	3	3	748	799	51
Turkestan City																									
	220	723	723	0	19	11	-8	156	176	20	56	17	-39	23	398	375	13	13	0	34	7	-27	1024	1345	321
	221	1626	1226	-400	21	14	-7	85	105	20	92	16	-76	3	74	71	0	0	0	9	1	-8	1836	1436	-400
	225	753	740	-13	8	5	-3	36	56	20	23	23	0	14	14	0	6	6	0	5	1	-4	845	845	0
	227	1175	1145	-30	5	3	-2	64	84	20	116	18	-98	2	106	104	3	3	0	5	11	6	1370	1370	0
	229	730	730	0	11	0	-11	79	79	0	191	19	-172	27	434	407	10	10	0	38	14	-24	1086	1286	200
	230	1917	1216	-701	6	3	-3	87	107	20	93	13	-80	56	56	0	5	5	0	10	4	-6	2174	1404	-770
	231	1224	1224	0	8	5	-3	80	120	40	146	12	-134	10	112	102	9	9	0	11	6	-5	1488	1488	0
	236	1886	1353	-533	27	19	-8	166	185	19	167	11	-156	141	141	0	15	15	0	32	11	-21	2434	1735	-699
	239	1617	1611	-6	7	5	-2	30	50	20	20	8	-12	4	4	0	7	7	0	5	5	0	1690	1690	0
	240	981	981	0	1	1	0	8	28	20	6	6	0	2	472	470	4	4	0	2	2	0	1004	1494	490
	241	1617	1487	-130	6	3	-3	200	220	20	130	13	-117	11	111	100	8	8	0	28	14	-14	2000	1856	-144
	246	1952	1640	-312	14	7	-7	81	101	20	154	9	-145	33	233	200	19	19	0	45	9	-36	2298	2018	-280
	257	694	725	31	3	1	-2	59	79	20	8	8	0	67	67	0	3	3	0	2	2	0	836	885	49

		Nur Otan			PPK			Ak-Jol			OSDP			CPPK			Auyl			Adilet						
TEC Name	PEC No.	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	Total valid votes according to PEC	Total valid votes according to TEC	Difference in reported total valid votes	
	262	1154	526	-628	0	0	0	7	25	18	258	16	-242	0	652	652	0	0	0	0	0	0	1419	1219	-200	
	263	332	332	0	0	0	0	0	50	50	158	56	-102	0	52	52	0	0	0	0	0	0	490	490	0	
	264	186	186	0	0	0	0	21	40	19	113	62	-51	20	66	46	0	0	0	14	4	-10	354	358	4	
	265	582	582	0	1	1	0	3	23	20	92	23	-69	4	53	49	3	3	0	2	2	0	687	687	0	
	268	1459	1155	-304	7	5	-2	32	52	20	27	13	-14	64	164	100	10	10	0	4	4	0	1603	1403	-200	
	273	1202	1102	-100	8	4	-4	152	152	0	20	20	0	80	184	104	11	11	0	7	7	0	1480	1480	0	
	991	1772	1596	-176	17	9	-8	131	131	0	140	25	-115	12	12	0	34	34	0	20	1	-19	2126	1808	-318	
	1020	710	710	0	12	2	-10	70	70	0	181	23	-158	40	180	140	0	0	0	13	41	28	1026	1026	0	
	1022	1418	1418	0	26	16	-10	142	233	91	193	22	-171	35	83	48	16	16	0	77	14	-63	1907	1802	-105	
	1023	777	757	-20	5	5	0	30	50	20	47	47	0	10	10	0	8	8	0	6	6	0	883	883	0	
	1024	1130	1130	0	21	9	-12	203	203	0	408	26	-382	48	470	422	3	3	0	43	15	-28	1856	1856	0	
Maktaaralskiy																										
	390	1034	1094	60	24	8	-16	49	61	12	46	12	-34	31	57	26	14	4	-10	50	8	-42	1248	1244	-4	
	380	1160	1222	62	18	8	-10	78	128	50	172	7	-165	31	246	215	22	7	-15	65	5	-60	1546	1623	77	
Arys City																										
	162	1301	1381	80	1	1	0	118	143	25	145	8	-137	109	129	20	2	2	0	1	1	0	1677	1665	-12	

		Nur Otan			PPK			Ak-Jol			OSDP			CPPK			Auyl			Adilet					
TEC Name	PEC No.	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	PEC results according to protocol	TEC Results as per results summary	Difference in reported results	Total valid votes according to PEC	Total valid votes according to TEC	Difference in reported total valid votes
	164	423	439	16	9	9	0	57	127	70	75	5	-70	23	63	40	16	4	-12	48	4	-44	651	651	0
	165	775	771	-4	0	0	0	20	127	107	112	5	-107	10	10	0	0	0	0	0	0	0	917	913	-4
	167	1934	1934	0	0	0	0	160	302	142	162	12	-150	148	156	8	0	0	0	0	0	0	2404	2404	0
Kazygurtskiy																									
	332	619	800	181		0	0		0	0	165	0	-165	0	0	0	106	15	-91	0	0	0	890	815	-75
	343	1118	1167	49	15	15	0	100	100	0	250	5	-245	10	220	210	10	3	-7	10	3	-7	1513	1513	0
	349	1144	1144	0	7	7	0	8	8	0	77	6	-71	6	90	84	9	3	-6	9	2	-7	1260	1260	0
	370	984	1262	278	14	14	0	80	190	110	299	9	-290	18	118	100	74	4	-70	80	30	-50	1549	1627	78

Comparison of the TEC Protocols and REC Summary Tables:

		Nur Otan			PPK			Ak-Jol			OSDP			CPPK			Auyl			Adilet								
Region	TEC	TEC results according to protocol	REC Results as per results summary	Difference in reported results	TEC results according to protocol	REC Results as per results summary	Difference in reported results	TEC results according to protocol	REC Results as per results summary	Difference in reported results	TEC results according to protocol	REC Results as per results summary	Difference in reported results	TEC results according to protocol	REC Results as per results summary	Difference in reported results	TEC results according to protocol	REC Results as per results summary	Difference in reported results	TEC results according to protocol	REC Results as per results summary	Difference in reported results	Total valid votes according to TEC	Total valid votes according to REC	Difference in reported results			
Akmola Region																												
	Kokshetau	35591	35592	1	739	739	0	5830	5830	0	3550	3550	0	5837	5837	0	475	474	-1	224	224	0	49246	49246	0			
Almaty Region																												
	Kerbulak	21011	21011	0	0	120	120	1525	1525	0	152	32	-120	1378	1378	0	492	492	0	45	45	0	24603	24603	0			
	Tekeli	10033	10033	0	119	204	85	1153	1153	0	134	13	-121	1037	985	-52	83	75	-8	138	173	35	12697	12636	-61			
Astana City																												
	Saryarka	78489	78489	0	576	576	0	6984	6984	0	2118	2118	0	6894	6894	0	580	580	0	485	485	0	96126	96126	0			
Karaganda Region																												
	Buhar-Zhyraus	30413	30413	0	5	0	-5	1614	1614	0	17	17	0	1793	1793	0	66	74	8	3	0	-3	49246	49246	0			

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 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).