

INTERNATIONAL ELECTION OBSERVATION

Republic of Kazakhstan — Early Presidential Election, 3 April 2011

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Astana, 4 April 2011 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Parliamentary Assembly (OSCE PA).

The assessment was made to determine whether the election complied with the OSCE commitments for democratic elections, as well as with legislation of the Republic of Kazakhstan. This statement of preliminary findings and conclusions is delivered prior to the completion of the process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process, in particular the tabulation of results and the handling of possible post-election day complaints and appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process. The OSCE PA will present its report on 11 April at its Bureau Meeting in Copenhagen.

PRELIMINARY CONCLUSIONS

The 3 April 2011 early presidential election in the Republic of Kazakhstan was held following a year of active international engagement of Kazakhstan as Chairman of the OSCE that culminated in the successful holding of the first Summit of Heads of State and Government in 11 years, which reaffirmed full adherence to OSCE commitments. Needed reforms for holding genuine democratic elections still have to materialize as this election revealed shortcomings similar to those in previous elections. The institutions represented in the international election observation stand ready to assist Kazakhstan to remedy identified deficiencies before the next parliamentary elections.

The election was called shortly after the Constitution and the Election Law were hastily amended. Opposition parties decided not to participate. While the election was technically well-administered, the absence of opposition candidates and of a vibrant political discourse resulted in a non-competitive environment. A limited field of candidates decided not to challenge the incumbent.

Despite efforts by the authorities to improve the election legislation and incorporate some OSCE/ODIHR recommendations, the legal framework has key shortcomings inconsistent with OSCE commitments, including restrictions on freedom of assembly and freedom of expression. The Election Law contains various ambiguities and gaps, which contributed to an inconsistent application of the law. The Central Election Commission (CEC) did adopt guidelines but no formal regulations on aspects of the process, such as election-day procedures and the results tabulation.

Election commissions at all levels, including the CEC, handled the technical aspects of the election in a professional manner. Their regular sessions were open to observers and the media. Political parties are entitled to nominate members of the election commissions, with the exception of the CEC. However, the majority of members on many election commissions were *de facto* affiliated with the ruling Nur Otan party, which caused lack of trust in the impartiality of the election administration. In order to address public concern, the CEC discontinued the use of electronic voting in this election. As in previous elections, the CEC provided extensive training and produced

instructive training materials.

Four candidates were registered out of an initial 22 nominees in a not fully transparent manner. The process was marked by a lack of clear rules for the verification of supporting signatures and of clear criteria for evaluating the mandatory Kazakh language test. While the campaign on behalf of the incumbent was highly visible, the activities of other candidates were far less prominent. Some political parties and civil society called for boycott. While in some instances they could hold meetings, on other occasions these were not authorized.

Efforts were made to improve the quality of the voter lists by conducting a large-scale door-to-door verification and ensuring public review.

Compared to the 2005 presidential election, the media provided more equality in covering candidates in the news programmes. Outside the news there were no analytical election-related programmes due to the fact that such coverage was considered paid political advertising, diminishing the ability of voters to make a fully informed choice. The incumbent received additional coverage in his official role. Overall, the media operate in a restrictive environment which induces self-censorship.

The adjudication of election disputes generally lacked transparency, due process and well-reasoned decision-making, thus impairing the opportunity for effective legal redress. Stakeholders lacked a clear understanding and relevant authorities did not have a consistent interpretation of the process. The CEC did not decide on any complaint it received by voting in a plenary session as required by law, and courts unjustifiably refused to consider some complaints. Opposition parties and a number of NGOs expressed a lack of trust in the authorities to address election complaints in an impartial and effective manner.

Women were well-represented among the rank-and-file of the election administration but continue to be under-represented in the higher echelons of political parties and government. Interethnic relations are stable and minority issues featured positively in the election campaign, reflecting the commitment of the state to a multi-ethnic society.

Many local authorities intervened in the election process in order to increase turnout. One public official was dismissed for violating the law.

Election day was generally calm and a turnout of 90 per cent was reported. International observers noted serious irregularities, including numerous instances of seemingly identical signatures on voter lists and cases of ballot box stuffing. The vote count and tabulation of results lacked transparency, and procedures were often not followed. International observers were sometimes restricted in their observation. The CEC did not publish detailed election results on election night.

The Kazakhstani authorities invited international observers in conformity with the OSCE commitments and without restrictions.

PRELIMINARY FINDINGS

Background

The early presidential election came in the aftermath of a citizens' initiative to hold a referendum which would have extended the term of incumbent President Nursultan Nazarbayev until 2020. The president rejected parliament's proposal to hold the referendum and proposed to hold an early presidential election. On 3 February, parliament amended the Constitution to allow the president to call an early election, and the next day President Nazarbayev called the election.

Ten political parties are currently registered in Kazakhstan, with the ruling Nur Otan party being the dominant force and holding all 98 elected seats in *Majilis* (the lower house of parliament). The opposition faces various constraints, such as denial of permission to hold peaceful rallies, detention of activists, and significant lack of access to the media. The Alga party has been seeking registration since 2005, and was twice refused. Its most recent application, filed in 2009, is still pending, with no legal deadline, as the Ministry of Justice has suspended the verification of supporting signatures. The All-National Social Democratic Party (OSDP) and Azat decided to merge in 2009 but have since then faced problems registering a merged party.

Election System and Legal Framework

The primary legal framework for elections includes the Constitution, the Constitutional Law on Elections (Election Law), and regulations of the Central Election Commission (CEC).¹ A person may not serve more than two consecutive terms, with the exception of the first president, who may serve an indefinite number of terms. In 2010, the incumbent was given the privileged legal status of Kazakhstan's 'Leader of the Nation'.

The February 2011 amendments to the Constitution and Election Law were adopted hastily, with the specific aim of allowing for an early presidential election. This constitutional change was based on short-term political considerations and adopted without comprehensive public debate.

The legal framework continues to include major inconsistencies with OSCE commitments such as restrictions on freedom of assembly, including the requirement to obtain approval for meetings; restrictions on freedom of expression; and lack of due process guarantees in the complaints and appeals framework to ensure effective legal redress.

Provisions that also make the legislative framework fall short of the international good practice include, for example, lack of clear objective criteria for evaluation of candidates' Kazakh language proficiency; lack of guarantees for inclusive pluralistic representation on election commissions at all levels; insufficient requirements for transparency in the tabulation process, e.g. with regard to the publication of polling station-level results protocols.

Election Administration

The election was administered by a four-tiered system of election commissions.² The CEC

¹ Other relevant laws include the Law on Political Parties, the Law on Peaceful Assemblies, the Civil Procedure Code, the Criminal Code, and the Administrative Offences Code.

² The election administration comprises the CEC, 16 Territorial Election Commissions (TECs), 207 District Election Commissions (DECs), and 9,725 Precinct Election Commissions (PECs). All commissions have seven members and are appointed for five years.

chairperson and two members are appointed by the president, while the Senate and the *Majilis* appoint two CEC members each. Lower level commissions are appointed by the respective *maslikhats* (local councils), based on proposals of political parties. Each candidate could register up to three proxies per precinct, while parties not represented in election commissions could appoint a non-voting member to each lower level commission for the election period. Since political parties are not represented in the CEC, the CEC also declined to register party and candidate representatives to the CEC.³

The CEC informed the OSCE/ODIHR EOM that about 90 per cent of commission members nominated by opposition parties had been appointed. Nonetheless, representation of opposition political parties in election commissions was low,⁴ while the majority of members of many commissions was *de facto* affiliated with Nur Otan.⁵ This caused a lack of trust in the impartiality of the election administration. In a number of instances commission members were not aware which political parties nominated them.

According to the Election Law, an election commission may not consist of people from the same organization. The CEC interpreted this provision as only prohibiting all seven members being from the same organization. The OSCE/ODIHR EOM noted a number of cases where the decision-making majority of commission members were employed by the same organization.⁶

Election commissions at all levels, including the CEC, handled the technical aspects of the election in a professional manner. They held regular sessions open to the public and media and conducted a large-scale voter education campaign, including calls to vote. The CEC did not issue official regulations and/or clarifications on voting, counting and tabulation procedures but did provide lower-level commissions with guidelines and trainings on those aspects of the process. TECs, DEC and PECs operated in a timely manner, respecting the deadlines.

Voter Registration

Local executive bodies (*akimats*) are responsible for the compilation of voter lists. A nationwide electronic voter register is maintained by the CEC, which uses it to identify duplicate records. The number of registered voters increased from 9,101,000 to 9,181,700 before election day. To ensure maximum enfranchisement, some 525 special polling stations were established. In these cases, the voter lists were finalized the day before election day, with no mechanism for temporarily excluding these voters from the voter lists at their place of residence.

Nomination and Registration of Candidates

Candidates could be nominated through self-nomination or by a public association, including a political party. The nomination was to be approved by the CEC if the nominee was a citizen of Kazakhstan by birth, at least 40 years old, fluent in the Kazakh language, and officially resident in

³ In its session on 15 March, the CEC refused to register the OSDP representative to the CEC, based on the position of the Prosecutor General's office that parties were not eligible to have representatives at the CEC since CEC members are not party-nominated. Such narrow interpretation of the law is of concern given the lack of guarantees for party representation in the election commissions.

⁴ According to data provided by the CEC, Ak Jol, Azat, the Communist Party and the OSDP were together represented by only six per cent of all election commission members.

⁵ OSCE/ODIHR EOM LTOs reported such cases, in particular in Akmola, Almaty, East and South Kazakhstan, Kostanai, Kyzylorda, Pavlodar and Zhambyl regions.

⁶ OSCE/ODIHR LTOs reported that such practice was widespread in Astana and Almaty cities, Pavlodar, Akmola and Almaty regions.

Kazakhstan for the last 15 years. Prospective candidates had 10 more days to submit at least 91,010 valid supporting signatures, pay an election deposit of around EUR 4,000, and present tax declarations for themselves and their spouses in order to be registered. Of the 22 initial nominees, the CEC registered 4 candidates.

The Kazakh language test presented an obstacle for some candidates. Despite previous OSCE/ODIHR recommendations, no clear criteria were established for evaluating the test and it remains partly unclear how the CEC-appointed Linguistic Commission arrived at its conclusions.⁷ Signature verification process lacked transparency. TEC verification protocols contained no reasoning for the invalidation of signatures,⁸ and candidates or their proxies were routinely not invited to attend the verification procedures.⁹

The Campaign Environment

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

The incumbent did not campaign personally and delegating the task to Nur Otan instead. No apparent distinction was made between the incumbent as a candidate and his position as president. The incumbent's campaign was highly visible. At several events where the OSCE/ODIHR LTOs were present, participants claimed that they were instructed to attend.¹⁰

The other candidates did not seek to challenge the incumbent; all of them supported the incumbent. Mr. Kasymov and Mr. Yeleusizov's campaigns were generally low-key due to shortages of funds and limited organizational capacities and barely visible outside Astana and Almaty. The CPPK relied on grass-root supporters and its network of branches to promote the party with a view to the next parliamentary elections. It engaged in public rallies, door-to-door canvassing and distribution of information materials.

The campaign environment was significantly affected by the absence of oppositional contenders considered to be in opposition to the incumbent. Parties such as Azat, Ak Jol and Ruhaniyat decided to not participate in the election. A number of political parties abstained due to the sudden announcement of the election that effectively shortened the time for candidate registration and campaigning. This resulted in an absence of vibrant and critical political debate.

The Communist Party of Kazakhstan (CPK) and Alga, together with civil society groups united in the *Narodovlastiye* (People's Power) bloc, questioned the legitimacy of the election and called for a boycott. Some of their public meetings took place without impediments. In other instances, such as

⁷ For example, Ualikhan Kaisarov, a self-nominated candidate and member of the Azat party, failed the test despite passing it in 2005 and being known for making speeches in Kazakh in the Senate. The Linguistic Commission established that he had made 28 mistakes. Upon Mr. Kaisarov's appeal, the Supreme Court upheld the CEC decision but only found 17 mistakes.

⁸ In Almaty city, West Kazakhstan and Kostanai TEC protocols regarding all four registered candidates. In Kostanai, West Kazakhstan and South Kazakhstan TEC protocols regarding Mr. Duambekov. In West Kazakhstan TEC protocol regarding Mr. Sapargali.

⁹ Reported by the proxies of Mr. Ahmetbekov in North, South and West Kazakhstan regions, of Mr. Sapargali in West Kazakhstan region, of Mr. Duambekov in Kostanai region. TEC of Akmola region acknowledged that no proxies were invited to observe the verification procedure.

¹⁰ In Almaty, Kostanai, Pavlodar, and East Kazakhstan regions.

the 28 March protest meeting in Astana participants were intimidated and prevented from traveling.¹¹ The boycott initiative was virtually not covered by media with nationwide outreach.

The Media

Freedom of speech is guaranteed by the Constitution but effectively restricted by constitutional provisions protecting “honor and dignity” of every person¹² and by the criminalization of defamation and insult. The fact that defamation of the president still can result in imprisonment, as well as exorbitant fines for defamation under provisions in the Civil Code, induce self-censorship. Furthermore, a genuinely independent broadcaster remains to be established as substantial state subsidies undermine the independence of both state and private media. Newspapers, reportedly more independent, in particular in the regions, face continued problems.¹³ The blockage of websites, e.g. of the independent newspaper *Respublika* and the TV channel *K+*, remains a concern.

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

However, the CEC guideline that any campaign coverage outside the news should be considered campaigning/political advertising and should be paid for from the candidates’ campaign funds deprived journalists of their right to question and criticize them. Consequently, media monitoring results revealed a significant lack of analytical election-related programmes, such as debates, interviews and discussions, which could have offered voters a wider range of views to make a fully informed choice. The CEC’s interpretation of the law stifled political debate on matters of public interest in the media.

Furthermore, the OSCE/ODIHR EOM noted that outside the news programs of the monitored broadcasters, the incumbent received more than 2 hours of exclusively positive additional coverage in his official capacity, in particular reporting on his visits to the regions. The CEC guideline that coverage of candidates in their institutional role should not be considered as campaign coverage and should not be paid for is problematic, as it unfairly amplifies the advantage of incumbency. More than half of the total of over 10 hours of paid political advertising time on the monitored TV stations was purchased by the incumbent’s campaign.

¹¹ Two activists were sentenced to several-day jail penalties in Aktobe (Martuk district court) and in Kostanai. Police detained an activist for several hours in Kokshetau, intimidated activists in Almaty City, Almaty region, Taraz and Aktobe, and visited some to question them about planned trips in Pavlodar and Kostanai. Vehicles and buses carrying activists were stopped in Taraz, Kostanai and Akmola region.

¹² In addition, Article 46 stipulates the “inviolability” of the honor and dignity of the president.

¹³ Recently, several independent newspapers faced unannounced tax inspections. The accounts of the *Uralskaya Nedelya* newspaper were seized and its property was confiscated in order to pay civil damages in a libel case against the newspaper. After the case was raised by international institutions, the plaintiff renounced the damages awarded against the newspaper. On 3 March, the same newspaper was fined KZT 20 million (approximately 100,000 EUR) in civil damages in a separate case. The judgement is currently under appeal.

¹⁴ These figures refer to candidates’ campaign coverage only, excluding coverage of their institutional duties.

Participation of Women

Equal participation of women and men, including in the electoral process is provided by law. Women are actively involved in political life but few hold leadership positions and there was no female candidate in this election. Women's issues featured in the campaign. Women are well-represented in the election administration, with 2 of 7 CEC members, 3 of 16 TEC chairpersons (and 30.4 per cent of all TEC members) and 44 of 207 DEC chairpersons (and 44.5 per cent of all DEC members) being female.

Participation of National Minorities

Kazakhstan is a multi-ethnic country, comprised of some 100 ethnic groups.¹⁵ According to the Constitution, the Russian language can be used on an equal footing with Kazakh in communications in state institutions and local self-government bodies. Minorities abstain from promoting group-specific demands but have opportunities to participate in politics through the mainstream parties. Minorities are represented in the election administration. According to information from the CEC, 73.1 per cent of all election commissioners are Kazakhs, while 16.7 per cent are ethnic Russians, 1 per cent is ethnic Uzbeks, and 0.7 per cent is Uyghurs. However, national minorities are less represented in senior positions of election commissions.

Complaints and Appeals

The Election Law does not establish a clearly defined complaints and appeals process with a single hierarchical structure of responsibility. There is a lack of understanding and no consistent interpretation of the election dispute process. Opposition parties and some NGOs expressed a lack of trust in the authorities to act impartially and effectively in addressing election complaints. The adjudication of election disputes generally lacked transparency, due process, and well-reasoned decisions, thus impairing the opportunity for effective legal redress.

Complaints against decisions and (in)actions of election commissions can be submitted to a higher election commission and/or court, and other complaints on violations of the election law can be filed with election commissions, courts, and/or prosecutor's offices. District courts are the first instance in all civil cases, except for two types of election-related cases which go directly to the Supreme Court with no right of appeal.¹⁶ The Civil Procedure Code denies the right to appeal decisions of district courts on election-related cases against election commissions, government officials and authorities.

The CEC received 12 complaints before election day and did not decide on any of them in a plenary session by voting, as required by law. The manner in which complaints were decided is unclear, although it appeared they were dealt with by the CEC deputy chairperson himself, with responses signed by the CEC Secretary. The law requires that all CEC decisions be posted electronically for public access, but as complaints were not decided by the CEC as a body, the written responses were not published.¹⁷ Weekly reports on the handling of complaints were made by the CEC deputy

¹⁵ According to the 2009 census, 63.1 per cent of the population is Kazakh. Russians, who are the largest minority, account for 23.7 per cent. The second largest minority are Uzbeks (2.9 per cent) concentrated in South Kazakhstan. Other groups include Ukrainians (2.1 per cent), Uyghurs (1.4 per cent), Tatars (1.3 per cent), and Germans (1.1 per cent). See http://www.eng.stat.kz/perepis_nasl/Pages/n1_12_11_10.aspx.

¹⁶ Complaints against CEC decisions on candidate registration or de-registration and refusal or failure by the CEC to declare the elected president are submitted directly to the Supreme Court.

¹⁷ The CEC considers election complaints to be "private matters"; thus, copies of complaints and CEC responses were not provided to the OSCE/ODIHR EOM by the CEC but could be viewed at the CEC premises.

chairperson in the presence of the media and observers.

The OSCE/ODIHR EOM is aware of 15 election-related complaints filed before election day to district and city courts, and of 5 filed to the Supreme Court; all were denied review or dismissed.¹⁸ In several cases filed in Almaty district courts challenging *maslikhat* decisions on PEC compositions, the courts refused to hear the cases, based on the application of an erroneous deadline.¹⁹ In another case, contrary to the Election Law, the Supreme Court refused to consider a complaint on the grounds that the CEC has sole prerogative to determine violations of the Election Law and de-register candidates, with no recourse to courts.²⁰

Domestic and International Observers

Domestic observers can be nominated by political parties and other public associations. They did not require formal accreditation but had to present a formal letter from their nominating organization and their ID to the election commission where they observed. In addition, candidates nominated 31,916 proxies, of which 28,902 represented Mr. Nazarbayev. The requirement for international observers to have prior election observation experience was removed from the law, in line with previous OSCE/ODIHR recommendations.

Sizable numbers of observers were deployed by public associations, including the Society of Young Professionals and the Republican Public Commission for Control of the Early Presidential Election. Some domestic observer organizations focused on observation of the turnout rather than on the entire elections process.

Election Day

Election day was generally calm and a turnout of 90 per cent was reported. The CEC did not publish detailed election results on election night.

Opening procedures were assessed positively in most polling stations visited, despite procedural shortcomings. International observers assessed voting positively in 91 per cent, but negatively in a considerable 9 per cent of polling stations visited, indicating systemic and serious problems. They reported a number of serious irregularities, including series of seemingly identical signatures on the voter list (219 cases) and strong indications of ballot box stuffing (28 cases). Other violations observed included ballot boxes that were not properly sealed (98 cases), group voting (128 cases), multiple voting (34 cases), and proxy voting (63 cases). In 80 polling stations visited, people who did not present any form of prescribed ID were still allowed to vote. In 73 polling stations visited, voters were turned away because their names were not on the voter list.

International observers reported that women accounted for 73 per cent of PEC members in polling stations visited on election day and that 44 per cent of these PECs were chaired by women. Party observers and candidate proxies, mostly representing the incumbent and Nur Otan, were present in 88 per cent of polling stations visited. International observers noted some cases where observers and proxies were pressured or intimidated. Unauthorized persons were identified in 132 polling

¹⁸ The Supreme Court gave the OSCE/ODIHR EOM with access to the court decisions but not to the complaints.

¹⁹ The courts cited the ten-day deadline in the Election Law for filing complaints against decisions or (in)actions of an election commission instead of the applicable three-month deadline in the Civil Procedure Code for filing complaints against decisions of local government bodies.

²⁰ The case alleged that the incumbent misused his official position for campaign purposes and called for his de-registration. The CEC had earlier rejected the complaint.

stations visited and were seen interfering in or directing the process in 14 instances. In 125 polling stations, international observers were restricted in their observation.

The vote count was assessed negatively in one out of six polling stations where it was observed. A significant number of PECs did not perform basic reconciliation procedures required by law. Twenty-seven ballot boxes contained stacks or clumps of ballots, suggesting that ballot box stuffing had taken place earlier. Transparency was often lacking. Seventeen international observer teams reported that they were restricted in their observation of the count. In three out of four counts observed, voters' choices were not announced aloud, as required by law. One in five PECs had problems completing the results protocol, which had frequently been pre-signed. In over one quarter of counts observed, the PEC did not post a copy of the results protocol for public familiarization, and not all observers received copies upon request as provided by law.

Tabulation at many DEC premises lacked transparency, with international observers being restricted in their observations. International observers reported 49 cases where PECs completed results protocols at the DEC premises and 29 where they corrected them without a formal DEC decision. Figures in PEC protocols did not reconcile correctly in one of five DEC premises observed.

*The English version is the only official document.
However, this statement is also available in Kazakh and Russian.*

MISSION INFORMATION & ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission opened in Astana on 1 March, with 15 experts in the capital and in Almaty, and with 28 long-term observers deployed throughout Kazakhstan. On election day, some 350 short-term observers were deployed, including a 79-member delegation from the OSCE PA. In total, there were observers from 43 OSCE participating States. Voting was observed in over 1,445 polling stations out of a total of 9,725. Counting was observed in 138 polling stations. The tabulation process was observed in 115 out of 207 DEC premises.

Mr. Tonino Picula (Croatia), Head of the OSCE PA Delegation, was appointed by the OSCE Chairperson-in-Office as Special Coordinator to lead the short-term OSCE observer mission. Ambassador Daan Everts (the Netherlands) is the Head of the OSCE/ODIHR Election Observation Mission.

The observers wish to thank the authorities of the Republic of Kazakhstan for the invitations to observe the election, the Central Election Commission for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The observers also wish to express appreciation to the OSCE Centre in Astana and embassies and international organizations accredited in Kazakhstan for their co-operation and support.

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