

OSCE ELECTION OBSERVATION MISSION Kyrgyz Republic — Presidential Election, 23 July 2009

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Bishkek, 24 July 2009 – The OSCE Election Observation Mission (EOM) for the 23 July 2009 presidential election in the Kyrgyz Republic is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Parliamentary Assembly (OSCE PA).

The election is assessed for its compliance with OSCE commitments and other international standards for democratic elections, as well as with Kyrgyz legislation. This statement of preliminary findings and conclusions is delivered prior to the completion of the process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, including the tabulation and announcement 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. This statement will be reported to the Standing Committee of the OSCE PA at its next meeting.

The OSCE institutions represented in the EOM wish to thank the Kyrgyz authorities and other interlocutors for their co-operation. They stand ready to continue their support for the conduct of democratic elections in Kyrgyzstan.

PRELIMINARY CONCLUSIONS

Notwithstanding some positive elements, including distinct choices of presidential candidates and the continuing engagement of civil society, the 23 July presidential election failed to meet key OSCE commitments for democratic elections, including the commitment to maintain a clear separation between party and state. Election day was marred by many problems and irregularities, including evidence of ballot box stuffing, inaccuracies in the voter lists and some evidence of multiple voting. The process further deteriorated during the counting and tabulation.

While contestants were generally able to campaign openly around the country, the campaign was unengaging and low-key until the week before election day. The limited and unbalanced coverage of election contestants in the broadcast media, especially the bias displayed by the state media for the incumbent, did not provide voters with sufficient and diverse information from which to make an informed choice. This bias together with the misuse of administrative resources in support of the incumbent's campaign granted him an unfair advantage.

In contradiction with Paragraph 7.7 of the OSCE 1990 Copenhagen Document, the EOM noted instances of obstruction of opposition campaign events as well as pressure and intimidation of opposition supporters. Local administration staff and party activists of *Ak Jol* (the governing party) also went door-to-door collecting voters' personal data and persistently requesting voters to disclose their intention for whom to vote. The unfair advantage combined with pressure, obstruction and intimidation contributed to an atmosphere of distrust and undermined public confidence in holding genuinely democratic elections.

The Central Election Commission's (CEC) work sometimes lacked transparency: meetings were not publicly scheduled, not all CEC decisions were made public and protocols of various processes remained unobtainable to observers.

The election administration was dominated by the pro-presidential and governing party *Ak Jol*. This raised questions about its independence from state authorities and its impartiality. Notably, the formation of Precinct Election Commissions (PECs) was problematic. Political party nominees were often rejected for spurious procedural reasons not foreseen in the law; others resigned, claiming intimidation. The drawing of lots for seats allocated to political parties and nominees from state administration bodies led to results in some districts that were statistically improbable, with *Ak Jol* winning most draws.

The quality and accuracy of the voter lists remains of concern. The CEC interpretation of the Electoral Code to make voter lists available for individual scrutiny instead of the previous practice of their public display was not conducive to improving the quality of the voter lists.

Positive elements noted during the campaign process included:

- Civil society remained actively engaged in the electoral process and provided a key element of transparency and accountability.
- A Memorandum of Understanding was signed between the CEC and a coalition of NGOs committing both sides to respect of voters' rights, co-operation and support for ensuring adherence to legal provisions.
- Broadcast media complied with their obligation to provide free airtime to candidates, mostly during genuine 'prime-time', which was not the case in the past.
- The state TV proposed several live debates between candidates, however most candidates showed little interest in participating.
- Deadlines regarding the election administration and the courts were generally respected.
- The CEC was active in launching national 'get-out-the-vote' and voter education campaigns.
- In an effort to increase transparency, the CEC published information on campaign spending.

The following shortcomings were also noted:

- The statement of the CEC Chairperson not to implement a Constitutional Court ruling calls into question the rule of law.
- Amendments to the Electoral Code abolished the previous requirement of a court order to be added to the voter list on election day as well as the inking of voters, important safeguards against possible multiple voting.
- Legal provisions and election procedures were implemented inconsistently which undermined the efficacy of the legal framework.
- Aside from *Radio Azattyk*, broadcast media did not make any meaningful attempt to present diverse points of view in their reporting.
- The strong rhetoric inciting violence used by an opposition candidate closer to election day was of concern.

On election day, OSCE observers noted that the secrecy of the vote was not always ensured, and procedures were not followed in many cases. Ballot boxes were not properly sealed in a high number of cases observed. OSCE observers saw ballot box stuffing and also noted very high numbers of names on Additional Voter Lists, nationwide confirming the lack of accuracy of the voter lists. Open vote-buying was directly observed in three instances. A high number of unauthorized persons, often directing the work of the PECs, was seen throughout the day. The closing and counting process saw a further deterioration with OSCE observers evaluating more than half of the counts observed negatively. More than half of the RECs could not conduct tabulation due to the *GAS Shailoo* system not working properly. In a number of cases, OSCE observers were openly told to leave, or not allowed to see entry into the *GAS Shailoo* system, and thus could not properly evaluate the process.

PRELIMINARY FINDINGS

Background

The President of the Kyrgyz Republic is elected every five years in a nationwide election. A president can serve no more than two consecutive terms. The Constitutional Court ruled in March 2009 that as President Bakiev had been elected for a four year term under the 2003 Constitution, new elections were to be held no later than the last Sunday of October 2009. The *Jogorku Kenesh* (parliament) set the election date for 23 July 2009.

The 2005 presidential election was won by President Bakiev with 89 per cent of the popular vote, according to official results. Following the 2007 pre-term parliamentary elections, three parties have seats in the current parliament: *Ak Jol* (71 seats), Social Democratic Party of Kyrgyzstan (SDPK) (11), and the Party of Communists of Kyrgyzstan (8). The 2005 presidential election was assessed as having marked tangible progress towards meeting OSCE commitments; the 2007 pre-term parliamentary elections failed to meet a number of OSCE commitments and were considered a missed opportunity to further consolidate the election process.¹ In recent years, the political situation in Kyrgyzstan has been marked by frequent standoffs between the government and opposition parties, and has remained politically tense.

Legal Framework and Electoral System

The Constitution and the Electoral Code primarily govern the conduct of elections. The Electoral Code, though, requires improvement to be fully in line with OSCE commitments as well as to be consistent with other national legislation.

The most recent changes to the Electoral Code, made in January 2009, did not address earlier recommendations made by the OSCE/ODIHR. The amendments removed the provision for inking voters' fingers, an important safeguard against multiple voting, and changed voter registration requirements, enabling additions to the voter list without a court order on election day. These changes increase the opportunity for possible multiple voting, especially since there is no national system for cross-checking entries in the voter lists.

Other new legal provisions have introduced formal limitations to fundamental rights and freedoms, such as the freedom of peaceful assembly. While the Electoral Code permits public campaigning, the 2008 'Law on Assembly' requires that permission be granted by local authorities to hold outdoor meetings (outside of specially designated locations). The OSCE/ODIHR and the Venice Commission of the Council of Europe noted that the Law on Assembly "does not currently reproduce the international standards of permissible limitations of the right of assembly".²

On 29 April, the Constitutional Court declared Articles 45.11 and 46.7 of the Electoral Code as unconstitutional, limiting the right of legal redress through the judiciary.³ Based on the same reasoning, the Court eliminated the three-day deadline to appeal voting results (but not to appeal election results), as contained in Articles 54.4 (para 2) and 55.7 (para 1). Nevertheless, the CEC

¹ OSCE/ODIHR reports on the 2005 and 2007 elections as well as previous elections in the Kyrgyz Republic are available at: <http://www.osce.org/odihr-elections/14475.html>

² See the "Opinion on the Amendments to the Law of the Kyrgyz Republic on the Right of Citizens to Assemble Peaceably, without Weapons, to Freely Hold Rallies and Demonstrations", Opinion-Nr.: FOA – KYR/111/2008, 27 June 2008, available at: www.legislationline.org/download/action/download/id/824/file/test.pdf

³ These articles provide that complaints submitted after election day on voting results will only be accepted if this had been documented in the protocol of the Precinct Election Commission (PEC).

chairperson publicly noted that this decision will not be implemented since it is not reflected in the Electoral Code and that the ten-day deadline as prescribed by Article 257 of the Civil Procedure Code will be adhered to for appealing results.⁴

Presidential elections are conducted under a two-round majoritarian system. If no candidate receives an absolute majority of votes cast in the first round, the two candidates with the most votes take part in a second round, to be held no earlier than two weeks of the election results being determined. To be valid, at least 50 per cent of registered voters must participate in both rounds of the presidential election. A lower voter turnout would result in a repeat election. This could lead to a cycle of failed elections. In addition, this requirement increases the risk of potential electoral malfeasance in order to reach this threshold. The OSCE/ODIHR has recommended on a number of occasions that this 50 per cent turnout requirement be removed to avoid this scenario.

Election Administration

Presidential elections are administered by four levels of election administration, headed by the Central Election Commission (CEC). The CEC is a permanent body established for five years. All presidential candidates enjoy the right to appoint one member to the CEC with an advisory vote. Three, Mr. Temir Sariev, Mr. Almazbek Atambaev and Ms. Toktaiym Umetalieva, took up this opportunity, although the latter two appointed their representatives only in the last week before election day.

The election administration further comprises seven Oblast and the Bishkek and Osh City Commissions (OECs), 44 Rayon and 12 City Election Commissions (RECs), and 2,330 Precinct Election Commissions (PECs) (including 49 out-of-country). OECs are directly appointed by the CEC. RECs were appointed by the OECs within the legal deadlines. All but one of the 56 RECs appointed PEC members before the 22 June deadline.

The independence of the election administration from state authorities and its impartiality were called into question in light of its dominance by the pro-presidential and governing party *Ak Jol*. The CEC Chairperson is appointed by the President with the consent of the Parliament, where *Ak Jol* has the absolute majority. Six out of the 12 CEC members are appointed by the President, the other six are appointed by the Parliament. In addition, REC members were often employees of the local administration. This increased the perception of bias of the election administration.

The appointment of PECs proved problematic on a number of different levels and resulted in *Ak Jol* having most PEC members across the country. The law foresees that RECs appoint the PECs according to a one-third principle:⁵ no more than one-third each from state bodies and political parties; the remainder is appointed from 'groups of voters'.⁶ In cases of more nominations from the first two categories than available places, their PEC members are chosen by lottery. OSCE/ODIHR EOM observers noted specific cases in Issyk-Kul, Naryn, Tong, Kemin and Alai where PEC members stated that they had been directly appointed by the local administration, in contravention of the legal provisions. In RECs Talas and Naryn, the lottery results published in the official gazette did not correspond to the outcome observed by OSCE/ODIHR EOM observers during REC sessions.

⁴ According to Article 14.2 of the Law on the Constitutional Court, decisions of the court are legally binding for all state authorities, legal entities and citizens.

⁵ According to Article 11.5 of the Electoral Code, local administration and political party representatives should each not exceed one third of the membership of a particular REC or PEC. In case of more nominations than places, members are chosen by a drawing of lots.

⁶ According to CEC Regulation No. 27 from 24 March 2009, a group of voters must be constituted by at least 5 members from a respective constituency; there is no requirement for such groups to be formally registered.

Moreover, a number of political party nominees, predominantly from the United People's Movement (UPM), were disqualified for spurious procedural reasons, not contained in legal provisions, such as not providing passport copies, or not having their nomination papers stamped with local rather than national party stamps. OSCE/ODIHR EOM observers noted this, for example, in Kerben, Aksy and Uzgen rayons. Several UPM nominees resigned prior to the drawing of lots, citing intimidation. In some drawings of lots, the favourable results for *Ak Jol* were statistically improbable. Also, following their appointment, a number of PEC members resigned. The OSCE/ODIHR EOM received reports of resignations due to intimidation in Issyk-Kul, Tong, Kadamjay and Naryn. Some 150 PEC members resigned on the grounds of illness or family problems. To the knowledge of the OSCE/ODIHR EOM, no *Ak Jol* members withdrew after their appointment.

Lastly, the allocation of PEC members from 'groups of voters' remained unregulated and unclear. RECs chose nominees from this category without any specific criteria, after "thorough discussion".⁷ Numerous OSCE/ODIHR EOM interlocutors stated that both *Ak Jol* and opposition parties were using this vehicle to gain additional places on commissions.

The CEC administered the election overall within the legal deadlines but failed to ensure consistent application of legal provisions and election procedures by lower-level election commissions. There was no uniform application and implementation of legal provisions by RECs, even within their own districts.

The CEC's handling of Mr. Atambaev's campaign leaflet, for example, which they claimed infringed upon the honour and dignity of the President, was of concern. A sample of the leaflet in question had been previously submitted to the CEC, as required by the Electoral Code, but the CEC did not protest or issue a warning until the leaflet had been printed and distributed.

The CEC was pro-active in organizing a nationwide 'get-out-the vote' campaign ("Vote or You Lose!") and a voter information campaign on TV and radio. It also produced a lot of material for election commissions, candidate representatives, and international observers. The CEC signed a Memorandum of Understanding with 'Time of My Choice', an NGO coalition of most key civil society organizations involved in elections, which committed the CEC to respect voters' rights, ensure respect for the Electoral Code and other relevant legal provisions and to contribute to the efficiency of the complaints procedure. The NGO coalition in turn committed to promoting activities related to voting, to informing about irregularities and to co-operate with the election authorities at all levels to secure adherence to legal norms during the election.

RECs organized training of PEC chairpersons and secretaries. However, the substance and effectiveness of the trainings varied, resulting in PECs often having different interpretations on issues such as voter lists, early voting, and mobile voting.

CEC sessions were open to the media, candidate representatives and observers. CEC decisions were taken unanimously in all CEC sessions observed by the OSCE/ODIHR EOM. From 26 June, OSCE/ODIHR EOM observers were generally provided with draft decisions to be discussed at the respective CEC session.

This transparency was compromised by CEC working groups, created to prepare materials and background information, not functioning in an open manner and by the ad hoc nature of CEC sessions, with agendas not being made available in advance to election stakeholders. The CEC

⁷ CEC Decision No. 27 of 24 March 2009.

published the majority of its 2009 decisions on its official website, but declined the OSCE/ODIHR EOM's requests for the remaining decisions.

The work of lower-level election commissions also lacked transparency. They failed to notify their higher-level commission and candidate representatives, mass media and observers about the time and place of sessions, as required by law.⁸ Interested parties had to constantly contact commissions for the time and place of sessions.

Voter Registration

The quality and accuracy of the voter lists remained a concern; this was also noted by domestic observers. This is particularly important since voter lists are used to establish the turnout of an election as well as for the provision of election materials.

Although the CEC and OECs have access to the district and city *GAS Shailoo system*⁹ information, no regional or national cross-checking of the database was conducted or planned despite possibilities for such cross-checks. Data held for voters includes only first and last names, patronymic, date of birth and address. The unique personal identification number, which is on national ID cards, is not recorded, facilitating potential fraud. OSCE/ODIHR EOM spot checks confirmed that some data was missing or incorrect.

Voter lists were generally printed in a timely manner. During the 'familiarization' period from 27 June, voters could request changes or additions to the voter lists. During this 'familiarization' period, voter lists, as per CEC interpretation of the Electoral Code, were available only for individual scrutiny, but were not publicly displayed, as had been the case in the past. In Batken, Chui, and Naryn oblasts, PECs, sometimes in co-operation with local administrations, conducted door-to-door verification of voter lists.

According to the CEC, as of 16 July, there were 2,718,818 registered voters, plus some 140,000 voters registered abroad. The CEC was only able to provide the number of registered voters per REC and purported not to have a breakdown of the number of registered voters per polling station. Thus, the final number of voters remained unclear until the close of polls, due to the possibility of adding names to additional voter lists, including on election day.

Candidate Registration

Candidate registration provided for a distinct choice for voters among the six registered candidates. To register, candidates had to collect a minimum of 50,000 support signatures from voters (representing some 1.8 per cent of all registered voters), with a minimum of 3 per cent in every region and in the cities of Bishkek and Osh; to provide proof of an election deposit of 100,000 *som* (some EUR 1,600) and a command of the Kyrgyz language, which was tested by a special commission nominated by the CEC and approved by the parliament; these tests were broadcast live on television.

The CEC registered six candidates out of the 22 initially nominated by the legal deadline of 17 June, as listed on the ballot: Almazbek Atambaev, independent candidate, representing the United People's Movement (UPM) and Chairperson of the Social Democratic Party of Kyrgyzstan (SDPK); Kurmanbek Bakiev, the incumbent President, *Ak Jol* party; Nurlan Motuev, independent,

⁸ See Article 17.3 of the Electoral Code.

⁹ *GAS Shailoo* is an automated countrywide system that provides the raw data for voter lists and also tabulates election results.

aligned with the *Joomart* movement; Jenishbek Nazaraliev, independent; Temir Sariev, *Ak Shumkar* party; Toktaiym Umetalieva, independent. Out of the remaining 16, six withdrew from the registration process and ten were denied registration for different reasons; two failed the Kyrgyz language test, four submitted insufficient signatures by the 2 June deadline, one submitted insufficient valid signatures and three did not prove their election deposit.

Campaign Environment

The overall campaign environment remained listless, with little indication that there was a national presidential election campaign underway. All candidates campaigned throughout the country. President Bakiev was the most visible of the six candidates throughout the campaign. Billboards, including presidential billboards, and many posters were displayed throughout the country. The well-resourced party structure of *Ak Jol*, which has been active since October 2007, was instrumental in organizing a large-scale campaign for the incumbent. Other candidates had only few billboards but increased their visibility towards the end of the campaign.

A level playing field in the campaign was marred by the involvement of the local administration in the incumbent's campaign and the use of government resources by *Ak Jol* to promote its candidate, in contradiction of Paragraph 5.4 of the OSCE 1990 Copenhagen Document which calls for a separation between party and state. Offices of *Ak Jol* were often located in state institutions and direct links between local administration staff and *Ak Jol* were observed by the OSCE/ODIHR EOM. Posters for the incumbent and *Ak Jol* were often seen on local administration buildings, for example in Bishkek, Chui, Issyk-Kul and Naryn. OSCE/ODIHR EOM observers also reported support to rallies of the incumbent by local administrations including by providing transportation for rally participants, for example from Batken, Bishkek, Chui, Issyk-Kul, Naryn, Osh, Jalal-Abad and Talas.

In contradiction with Paragraph 7.7 of the OSCE 1990 Copenhagen Document, the EOM noted instances of obstruction, pressure and intimidation. OSCE/ODIHR EOM observers reported instances of obstruction at opposition party events as well as pressure on company owners and landlords not to display opposition billboards or rent office space to opposition parties. OSCE/ODIHR EOM observers also reported that voters, especially students and public sector employees, were coerced to attend rallies of the incumbent, for example in Osh and Jalal-Abad regions. In some instances such pressure included threats of job loss, for example in Issyk-Kul oblast. Local administration staff as well as *Ak Jol* activists went door-to-door collecting names, addresses, information on which ID documents voters intend to use on election day, and the number of their PEC. In some cases, they persistently requested voters to disclose their intention for whom to vote. In Bishkek, Issyk-Kul, Osh, Batken and Talas, lists were drawn up by local administration staff and *Ak Jol* supporters of those voters who indicated that they intend to vote for the incumbent.

Closer to election day, Mr. Atambaev's campaign became more aggressive and inflammatory. He called on supporters to arm themselves with axes and pitchforks to defend their electoral rights on election night at the RECs. OSCE/ODIHR EOM observers reported such strong rhetoric from Talas, Chuy, Naryn, Bishkek, and Issyk-Kul.

Campaign Finance

On 12 July, the CEC released information on candidates' campaign spending. These reporting measures on candidates' electoral spending increased the level of transparency with regard to campaign finance, although one candidate complained that the CEC had no right to disclose this data without a candidate's consent.

According to the information provided by the CEC, all candidates were within the spending limit as stipulated by law (50 million *som*).¹⁰ Mr. Atambaev accumulated 8,239,200 *som*; President Bakiev 38,327,700; Mr. Motuev 393,100; Mr. Nazaraliev 1,091,070; Mr. Sariev 621,000; and Ms. Umetalieva 675,000, most of which was spent in the campaign.

The Media

There are currently over 1,300 media outlets registered in Kyrgyzstan, although less than 400 outlets are active.¹¹ Despite this high number of media, there are concerns about the deterioration of the media situation and a decrease in media pluralism in recent years, further limiting the information available to the electorate. Other concerns relate particularly to recent violence against journalists. The OSCE Representative on Freedom of the Media has specifically asked the Kyrgyz authorities “to do everything in their power to halt the wave of violent attacks against journalists, which is threatening media pluralism ahead of the presidential elections”.¹²

The limited coverage of election-related events in the news and current affairs programmes of the broadcast media curtailed voters’ possibilities to make an informed choice. The decision at the end of June by three national TV stations to suspend news coverage due to the vacation period further limited the scope of information available to the electorate.

OSCE/ODIHR EOM media monitoring of the campaign period indicated that state TV and radio did not comply with their obligation to provide voters with balanced coverage of the campaign and equal opportunities for candidates as provided for in the Electoral Code.

The state broadcaster, National TV and Radio Broadcasting Company (NTRBC), and *EITR*, another state-funded TV channel with national coverage, showed bias by devoting the majority of their coverage to the incumbent, with 56 and 80 per cent respectively. Moreover, the tone of coverage was mostly positive. By comparison, Mr. Atambaev received significantly less coverage (14 and 8 per cent respectively), which was mostly negative in tone. The privately-owned TV Channel 5 adopted a similar approach, giving 69 per cent of mostly positive coverage to the incumbent and 13 per cent mostly negative coverage to Mr. Atambaev.

State radio also devoted the majority (80 per cent) of mostly positive coverage to the incumbent. By contrast, Radio *Azattyk* (the local branch of RFE/RL) provided more balanced coverage of candidates with 41 per cent of predominantly neutral coverage for Mr. Atambaev and 38 per cent of mostly neutral and negative coverage for President Bakiev.

All candidates utilized their allotted free airtime on NTRBC to provide information on their platforms.¹³ However, *EITR* did not fulfil this legal obligation, stating that candidates had not requested free time. Except for the incumbent, candidates did not make use of the possibility to purchase additional airtime during the campaign. Across all broadcast media monitored by OSCE/ODIHR EOM, the incumbent’s campaign had bought about 9 and a half hours of advertising time. Mr. Atambaev in comparison had purchased about 7 minutes, and Mr. Nazaraliev about 5 minutes.

¹⁰ The current exchange rate is approximately 1 EUR: 60 KGS.

¹¹ This is according to information provided by the Kyrgyz Ministry of Justice.

¹² See the OSCE Representative on Freedom of the Media’s Regular Report to the OSCE Permanent Council, 2 July 2009, at http://www.osce.org/documents/rfm/2009/04/38607_en.pdf.

¹³ The Electoral Code entitles registered candidates to receive free airtime on state-funded TV and radio.

In a welcome development, NTRBC organized six debates. However, candidates showed limited interest in these; of six debates scheduled on NTRBC, only one took place. While an additional debate initiated by the CEC and transmitted on state TV was a welcome opportunity for candidates to exchange views, President Bakiev and Mr. Atambaev chose not to take part, denying voters the opportunity to see these candidates exchange policy views in an interactive format.

Participation of Women

Following changes in the Electoral Code introducing quota requirements for parliamentary elections, women were awarded 23 of 90 mandates in the new parliament after the 2007 parliamentary elections. In the Constitutional Court, 3 of 9 members are women. Women are otherwise under-represented in decision-making posts. Of 23 members of government, only three are women. Women, however, tend to be very active in civil society and numerous NGOs are headed by women or have a largely female membership.

Ms. Toktaiym Umetalieva was the only female candidate to stand in the presidential election. She focused on increasing the role of women and emphasized the necessity for improving conditions to ensure full gender equality.

More than half of PEC members were women (10,731 out of 20,689). In more than half of the PECs observed on election day, the PEC was chaired by a woman.

Participation of National Minorities

All presidential candidates were Kyrgyz, which constitute some 70 per cent of the population.¹⁴ Most candidates called for inter-ethnic harmony as a prerequisite of the country's peaceful development. They underscored good-neighbourly relations and regional co-operation as having a positive impact on inter-ethnic relations in Kyrgyzstan.

Live addresses by the candidates, followed by questions and answers, were broadcast nationally in both Kyrgyz and Russian. They were also re-broadcast in Uzbek by a private TV channel in Osh (TV Osh). This contributed to raising awareness among the ethnic-Uzbek population on election-related issues and their further inclusion in the election process. Election materials, however, were only provided in Kyrgyz and Russian.¹⁵

Complaints and Appeals

Election-related complaints can be filed with election commissions, courts, the prosecutor or police. The Supreme Court is the last instance in adjudicating disputes. In the event that a complaint is filed to both a court and an election commission, the commission suspends its action until the court's final ruling.

The OSCE/ODIHR EOM received a large number of allegations during the course of the election, particularly concerning the appointment of PECs and limitations to campaigning. The fact that such complaints were rarely officially lodged with election commissions or courts may indicate a lack of trust towards the adjudicating bodies.

¹⁴ According to the National Statistics Committee of the Kyrgyz Republic (2008), the following national minorities live in the country: Uzbeks (15 per cent), Russians (9 per cent), Dungans (1 per cent), Uigurs (1 per cent) and other nationalities (5 per cent), www.stat.kg

¹⁵ General Comment No.25, paragraph 12 recommends that "information and materials about voting should be available in minority languages".

While lawsuits were reviewed in a timely manner and in accordance with procedures, a number of court decisions were incoherent and lacking sound legal ground. In other instances, courts dismissed cases, citing lack of jurisdiction; district courts in Batken, Bishkek and Nookan, for example, rejected several complaints submitted by Mr. Atambaev, SDPK and *Ata Meken* arguing that commission decisions must first be appealed to higher-level election commissions. The law however foresees both avenues, at the discretion of the complainant, except in cases of appealing PEC decisions, which can only be appealed to higher-level commissions.¹⁶ Most court decisions were appealed to the Supreme Court which upheld all decisions of lower-level courts.

Since the start of the election process, the CEC has received 65 complaints on decisions and actions of election commissions and on illegal campaigning. The CEC has handled these complaints inconsistently; only some have been considered in open sessions, others have been dealt with by the CEC Working Group on Supervising Compliance with Laws on Conducting Pre-Election Campaign or through letters from the CEC chairperson thus limiting complainants' recourse to legal redress.

Out of the complaints considered at open sessions, the CEC accommodated five complaints on illegal campaigning and one on formation of PECs in a timely manner. As a result, a warning was issued to Mr. Atambaev for offensive campaigning against the incumbent, while two complaints alleging derogatory campaigning against Mr. Atambaev were forwarded to the General Prosecutor's Office. The latter was also tasked by the CEC to remove a campaign billboard for President Bakiev and some other posters that did not meet legal requirements regarding print data.

Domestic and International Observers

Political parties and candidates planned observation of the election process, including results tabulation. In 91 per cent of polling stations visited by OSCE observers on election day, political party and candidate representatives were present.

Civil society was very active in election observation, thus increasing the transparency of the election process. The Union of Civic Organizations for Voters' Rights, 'Time of My Choice', was composed of a number of NGOs with a long-standing record in observation, such as 'Taza Shailoo', the 'Coalition for Democracy and Civil Society', 'Interbilim', and others. A new NGO, 'For Fair Elections' that was created in May 2009 also participated in election day observation.

On 22 July, the CEC asked the General Prosecutor's Office to instigate criminal proceedings against the NGO coalition 'Time of My Choice' for a final report on the election before election day.

Early Voting and Election Day

Certain categories of voters¹⁷ were entitled to vote early during the nine days prior to election day. RECs generally did not respect procedures. OSCE/ODIHR EOM observers noted that in some commissions, for example in Karakol and Sokoluk, no special voter lists were created, with improper set-up for voters to mark the ballots in secrecy. In REC Sverdlovsk, for example, ballots were not stamped before being issued to voters, thus making them invalid for counting, or envelopes with ballots were not sealed nor stamped and signed, for example in REC Pervomaiski.

¹⁶ See Article 54.6 of the Electoral Code.

¹⁷ According to Article 41 the Electoral Code: citizens of the Kyrgyz Republic leaving its territory on election day, employees of internal affairs bodies on duty on election day, military servicemen who are being on duty outside the location of their military unit, and election commission members with decisive votes.

In contradiction of Electoral Code provisions, health department and state enterprises staff voted in Bishkek and staff of the Fire Brigade in Talas. Group voting was observed in Oktyabr and Sokoluk and voting supervised by a superior in Issuk-Ata.

On election day, OSCE observers observed voting in over one third of polling stations and counting and tabulation in the majority of RECs. Election day proceeded with many problems and irregularities, including evidence of ballot box stuffing, problems with voter lists and some evidence of multiple voting. Preliminary results based on results from about half of the polling stations were available in the morning of 24 July on the CEC website. Preliminary results of individual polling stations were not published at central level as had been the case during the 2005 presidential election. According to preliminary official information, turnout was about 79 per cent.

OSCE observers assessed the opening process as bad or very bad in 22 per cent of cases. Several procedural errors were observed, including not opening early voting envelopes in the presence of other PEC members in 22 per cent of cases and protocols not being properly filled in more than half of the polling stations visited. Unauthorized people were seen in nearly half of polling stations visited. In a number of cases, OSCE observers were prevented from observing the opening procedures.

The voting process was assessed as bad or very bad in 11 per cent of cases. OSCE observers reported that voters did not always mark their ballot in secret (in 15 per cent of observations) and ID documents were not properly checked (8 per cent). OSCE observers noted many instances of ballot box stuffing. In 12 per cent of observations, OSCE observers noted identical signatures on the voter lists. In Osh region the numbers of signatures on the voter lists often did not correspond to the number of voters who had already voted. Multiple or proxy voting was observed in 7 per cent of polling stations. Procedures were often not followed; the Absentee Voter Certificate (AVC), for example was not always retained in 8 per cent of polling stations visited. Open vote-buying was directly observed in three instances. Police was observed handing out AVCs indiscriminately to voters in Bishkek city centre; AVCs can be used to vote anywhere in the country. OSCE observers saw very high numbers of names on the Additional Voter Lists nationwide. Again, unauthorized people were noted (23 per cent of cases), including directing the process in some cases. Candidate representatives for President Bakiev were present in 79 per cent of polling stations visited and for Mr. Atambaev in 69 per cent; domestic observers were present in 79 per cent. OSCE observers were obstructed in observing the voting process in 5 per cent of cases.

In Balykshi, supporters of Mr. Atambaev attempted to enter a polling station to protest against alleged fraud; the PEC Chairperson tried to prevent their attempts. In the ensuing skirmish with the police, tear gas was allegedly used. Two SDPK deputies were arrested, one of whom was later released. Mr. Atambaev held a press conference on the afternoon of election day citing mass violations and warning the CEC that certification of the results could lead to mass protests. During the course of the day, leaders of the NGO coalition 'Time of My Choice' were called by the prosecutor for questioning over the CEC's decision of the previous day.

The counting process saw a further deterioration, with OSCE observers evaluating it as bad or very bad in more than half of observations. Generally, the counting process finished very quickly but observers noted that procedures were not followed. In one third of observations, PECs had problems filling in the protocols, often filling them in with pencil which is prohibited by law. In some cases, the number of votes for the incumbent was established by subtracting the number of votes gained by other candidates from the total number of votes. In two cases, the PEC did not engage in a count; they simply packed up all materials and made up the figures. Unauthorized persons were noted in more than half of counts observed, directing the count in 10 per cent. Transparency was undermined

during the counting process, with OSCE observers prevented from observing in one fifth of counts observed and the poster-sized protocols not displayed in almost one third.

The tabulation process was assessed as bad or very bad in three quarters of cases observed. More than half of the RECs were not able to conduct tabulation due to the *GAS Shailoo* system not working. In a number of cases, OSCE observers were told to leave, or were not allowed to see entry into the *GAS Shailoo* system, thus preventing them from properly evaluating the process.¹⁸ In many cases where the *GAS Shailoo* system was not working, RECs instructed PECs to leave the voting materials, which the REC would enter later without them. In cases where protocols were entered, OSCE observers noted that PECs frequently corrected or changed protocols, including forging of signatures on protocols in some instances.

***The English version of this statement is the only official document.
Unofficial translations will be available in Kyrgyz and in Russian.***

MISSION INFORMATION AND ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission opened in Bishkek on 8 June with 11 experts in the capital and 24 long-term observers deployed throughout the Kyrgyz Republic. The OSCE Parliamentary Assembly (OSCE PA) conducted a pre-election visit on 9 to 10 June. On election day, some 277 short-term observers were deployed in an OSCE Election Observation Mission (EOM), including a 28-member delegation from the OSCE PA. In total, there were observers from 39 OSCE participating States and one Partner for Co-operation. The EOM observed voting in over one third (out of a total of 2,330) of polling stations, counting and tabulation in 49 out of 56 RECs.

Senator Consiglio Di Nino (Canada), Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observers. Ms. Radmila Sekerinska (Former Yugoslav Republic of Macedonia) is the Head of the OSCE/ODIHR Election Observation Mission.

The EOM wishes to thank the authorities of the Kyrgyz Republic for the invitations to observe the election, the Central Election Commission for its co-operation and for providing accreditation documents, the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The IEOM also wishes to express appreciation to the OSCE Centre in Bishkek and other international institutions for their co-operation and support.

For further information, please contact:

- Ms. Radmila Sekerinska, Head of the OSCE/ODIHR EOM, in Bishkek (+996-312-564-775);
- Mr. Jens Eschenbächer, OSCE/ODIHR Spokesperson (+48-603-683-122) or Ms. Nicola Schmidt, OSCE/ODIHR Election Adviser, in Warsaw (+48-22-520-0600);
- Mr. Andreas Baker, Presidential Adviser, OSCE PA (+45-60-10-80-30 or +45-33-37-80-40).

OSCE/ODIHR EOM Address:

OSCE/ODIHR EOM
Abaya 2/7V, 720055 Bishkek
Tel: + 996 312 564775
Fax: + 996 312 564795
E-mail: office@eom.kg

¹⁸ When contacted about these issues, the CEC informed the OSCE/ODIHR EOM that there were no problems with the *GAS Shailoo* system.