

The Central Election Commission of the Republic of Kazakhstan

COMMENT
of the Central Election Commission of the Republic of Kazakhstan
of 2 August 2011 to the Final Report of OSCE/ODIHR Election
Observation Mission at early presidential election in Kazakhstan,
conducted on 3 April 2011

Astana, 2011

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The Central Election Commission of the Republic of Kazakhstan expresses its gratefulness to the OSCE/ODIHR Election Observation Mission at early presidential election in Kazakhstan on 3 April 2011 that in the Final Report it has positively assessed the following aspects of early election of the President in Kazakhstan and has proposed the corresponding recommendations.

Extracts from the text of the Final Report of Election Observation Mission are highlighted in Italics; the full versions of abbreviated words are at the end of these Comments.

1. Efforts by the authorities to improve the election related legislation and incorporate some OSCE/ODIHR recommendations were positively assessed (section 1, page 1).

The Republic of Kazakhstan has implemented provisions of paragraphs 4, 5.3 and 6 of Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE of 29 June 1990 (hereinafter – Copenhagen Document) concerning harmonization of legislation of participating states with OSCE documents. This document and some other documents contain OSCE commitments of participating states, including the Republic of Kazakhstan, on electoral matters: implementation of provisions of these paragraphs of this Document and other documents means that Kazakhstan has implemented OSCE commitments.

2. The election was technically well-administered. Election commissions at all levels handled technical aspects of the election in a professional manner in the pre-election period. Their sessions were generally open to observers and the media. The CEC provided extensive training and produced instructive training materials (section 1, page 1). Election commissions at all levels, including the CEC, handled the technical aspects of the election in a professional manner. They held regular sessions which were generally open to the public, media and observers, and conducted a large-scale voter education campaign placing a strong emphasis on calls to vote. All formal CEC decisions were published without delay on the CEC website, in Kazakh and Russian (section 5, page 8).

The Republic of Kazakhstan has implemented provisions of paragraphs 6, 7.3 of Copenhagen Document that “the will of the people is the basis of the authority of all government”.

3. Election commissions at all levels operated in a timely manner, respecting legal deadlines. In the pre-election period, the OSCE/ODIHR EOM found that most lower-level commissions were well organized and co-operative. In general, TECs appeared knowledgeable and well-informed about the legislation (section 5, page 8).

The Republic of Kazakhstan has implemented provisions of paragraph 8 of Copenhagen Document on ensuring the transparency of the election process.

4. Political parties were entitled to nominate members of election commissions (section 1, page 1).

The Republic of Kazakhstan has implemented provisions of paragraphs 6, 7.6 и 7.7 of Copenhagen Document to provide the political parties with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.

5. *Efforts were made to improve the quality of the voter lists by conducting a large-scale door-to-door verification and ensuring public review (section 1, page 4); The CEC maintains the nationwide electronic voter register to identify duplicate records (section 6, page 9).*

The Republic of Kazakhstan has implemented provisions of paragraph 7.3 of Copenhagen Document with regards to guarantee universal and equal suffrage to adult citizens.

6. *Compared to the 2005 presidential election, the media provided more equality in covering candidates in the news programmes. (section 1, page 2). In line with their obligation, broadcast media provided by and large equal coverage of candidates in the news. OSCE/ODIHR EOM media monitoring results reveal that the state-owned broadcasters Kazakhstan TV and Khabar devoted 19 per cent and 13 per cent, respectively, to Mr. Nazarbayev, while Mr. Akhmetbekov received 29 and 26 per cent, Mr. Kasymov 25 per cent and 28 per cent, and Mr. Yelesizov 28 and 33 per cent (section 9-b, page 20).*

The Republic of Kazakhstan has implemented provisions of paragraphs 7.6, 7.7 and 7.8, 9.1 of Copenhagen Document with regards to implementation of citizens' right to freedoms of expression, to unimpeded access to media on a non-discriminatory basis.

7. *Women were well-represented within the election administration (section 1, page 2). Women are actively involved in political life. Women were well-represented in the election administration (section 10, page 15).*

The Republic of Kazakhstan has implemented provisions of paragraph 40 of Document of the Moscow Meeting of the Conference on the Human Dimension of the OSCE of 3 October 1991 on ensuring of gender equality.

8. *Interethnic relations are stable and minority issues featured positively in the election campaign, reflecting the commitment of the state to a multi-ethnic society. Minorities were well-represented in the election administration (section 1, page 2).*

The Republic of Kazakhstan has implemented provisions of paragraph 31 of Copenhagen Document, paragraph 2.15 of the Lund Recommendations on the Effective Participation of National Minorities in Public Life (Warsaw, June 1999) about implementation of national minorities' rights in political and electoral areas.

9. *Election day was calm and a turnout of almost 90 per cent was reported (section 1, page 5).*

The Republic of Kazakhstan has implemented provisions of paragraphs 6, 7.1 and 7.3 of Copenhagen Document on implementation of the principle of free and universal elections.

10. *Complaints against decisions and (in)actions of election commissions can be submitted within 10 days to a higher election commission and/or court. Other complaints on election law violations can be filed with election commissions, courts, and/or prosecutor's offices; however, election-related complaints against local administration and government bodies and officials must be filed in court (section 13, page 17).*

The Republic of Kazakhstan has implemented provisions of paragraphs 11.1 and 11.2 of Copenhagen Document on the effective remedies.

It should be noted that the observer delegation of the Parliamentary Assembly of the Council of Europe completed its generally positive Statement with the following conclusion: *"PACE has observed elections in Kazakhstan in the past and is pleased to state progress from one election to another in this country. The delegation is united in its view that despite certain imperfections that*

invariably mar all elections in any country, the outcome of this vote truly reflects the will of Kazakhstan's electorate”.

In addition, Mission of Commonwealth of Independent States, Mission of Shanghai Cooperation Organization, observers from Belgium, France, United Kingdom, Italy, Denmark, Netherlands, Turkey, Germany and other foreign states – in total hundreds of professional international observers as well as thousands of domestic observers and proxies of candidates to the President gave their positive assessment of the presidential election in Kazakhstan.

However, the Central Election Commission of the Republic of Kazakhstan does not always agree with the following critical observations of the OSCE/ODIHR Election Observation Mission at presidential election and presents its arguments.

1. *Needed reforms for holding genuine democratic elections still have to materialize as this election revealed shortcomings similar to those in previous elections (section 1, page 1).*

The CEC standpoint. The Mission does not specify any shortcomings of the previous elections, which have been observed at election of the President of 3 April 2011. In 2005 the OSCE/ODIHR Mission has given 30 recommendations. Of them, the CEC believes as implemented 20 recommendations. In 2007 the OSCE/ODIHR Mission has given 29 recommendations. Of them, the CEC believes as implemented 20 recommendations. In total of 59 OSCE/ODIHR recommendations 40 recommendations or 66 percent of the total number of recommendations were implemented. There are 19 OSCE/ODIHR recommendations, which cannot be implemented due to objective reasons:

- 1) 5 recommendations contradict or do not meet the requirements of the Copenhagen Document and other OSCE documents;
- 2) 3 recommendations are formulated unclearly, imprecisely;
- 3) 10 recommendations do not correspond to Kazakh election law and/or to the international electoral practices;
- 4) 1 recommendation is not within the competence of the CEC.

The CEC experts repeatedly and in details explained to the OSCE/ODIHR experts its position on each of these recommendations. Therefore, the OSCE critical observation is considered as unreasonable.

The critical observation is not accepted.

2. *The election was called shortly after the Constitution and the Election Law were hastily amended to allow for an early presidential election (section 1, page 1). The Constitution and legal framework were hastily adopted in February 2011, with the specific aim of allowing for an early presidential election. Changing the constitution based on current political interests undermines the integrity of the political process and the standing of the constitution as a country's fundamental law (section 4, page 5).*

The CEC standpoint. Amendments were not hasty and unreasonable. They restored the provision about early presidential election, which were excluded from the Constitution in 1998. Amendments are not based on current political interests. Institute of early election of the President of Republic has been provided by previously in force constitutions. During broad debate of issued of further democratization in 2002-2006, culminating in the introduction of changes and additions to the Constitution by the Law of 21 May 2007, this issue was raised and was subject to thorough analysis. Situation related to initiation in 2010 by citizens of Kazakhstan of a republican referendum, which then transformed to early presidential election, was another argument in favor of amendments to the fundamental law. The OSCE Chairman-in-Office Audronius Ažubalis and the High Representative for Foreign Affairs and Security Policy of the European Union Catherine Ashton welcomed the decision of the President of Kazakhstan not to conduct referendum on

extending his term of office and expressed support to the decision to appoint early presidential election. Therefore the statement of the OSCE/ODIHR EOM about hasty amendments to the Constitution and the Constitutional Act on Elections as well as undermining the integrity of political process and the standing of the country's constitution is not appropriate.

The critical observation is not accepted.

3. *The legal framework continues to include major inconsistencies with OSCE commitments and other international standards, including excessive restrictions on the right to be elected, freedom of assembly and freedom of expression (section 1, page 1).*

The CEC standpoint. The Mission's statement about "excessive restrictions on the right to be elected" is not supported by convincing arguments. Practically all detailed 133 articles of the Constitutional Act "On Elections in the Republic of Kazakhstan" of 28 September 1995 (hereinafter – Constitutional Act on Elections), provisions of 919 resolutions of CEC, norms of a number of other normative legal acts of Kazakhstan in the relevant aspects are aimed at increasing the provision and implementation of citizens' rights to be elected to public office.

There are not unnecessary restrictions in respect of freedom of assembly and freedom of expression. The requirement to obtain authorization to hold public rallies is a reasonable restriction, because the uncontrolled use of the right by some people may lead to violation of rights of other people. Such contradictions can and must be regulated by state authorities. Freedom of speech and freedom of assembly are guaranteed by the Constitution of the Republic of Kazakhstan of 30 August 1995 (articles 20 and 32), the Kazakh Law "On the procedure for organizing and holding peaceful assemblies, rallies, marches, pickets and demonstrations in the Republic of Kazakhstan" of 17 March 1995. However, they have some restrictions (in the interests of public safety and national security, public health and protection of rights and freedoms of others), which correspond to such international legal document as Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984). Restrictions in this law are based on paragraph 22 of Siracusa Principles: "The expression "public order" as used in the Covenant may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order". Respect for human rights is a part of "public order" and is reflected in paragraph 25 of the aforementioned Principles: "Public health may be invoked as a ground for limiting certain rights." Article 20 of the Constitution of the Republic of Kazakhstan of 30 August 1995 provides for "freedom of speech" and "forbids censorship". There are no excessive restrictions of the freedom of assembly and freedom of speech in the Kazakh legislation.

The critical observation is not accepted.

4. *The unequal application of the two-term limit is contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document (further in the footnote: Paragraph 7.5 of the 1990 OSCE Copenhagen Document provides that participating States will "respect the right of citizens to seek political or public office ... without discrimination". See also Article 25 of the ICCPR and Article 2(b) of the CIS Convention). In 2010, the first president was given the privileged legal status of Kazakhstan's 'Leader of the Nation' and provided with significant political powers for life (further in the footnote: See the Law on the First President – Leader of the Nation) (section 4, pages 4-5).*

The CEC standpoint. "The unequal application of the two-term limit" in respect of different presidential candidates does not contradict to paragraph 7.5 of Copenhagen Document, because it does not limit the rights of other candidates to the President by introducing to them of some other additional electoral qualifications or by introducing to the First President of some other additional benefits. On the contrary, it raises the bar for political competition, encouraging other candidates to demonstrate their intention and ability to achieve even greater results in the development of the country.

Meanwhile, this “advantage” for the First President is the only opportunity to nominate his candidature for another term of office, which he can use or he cannot use.

At the last two presidential elections (in 2005, 2011) forty candidates took part in election campaigns. However, none of them was a subject to any discrimination. Articles 2, 25 of International Covenant on Civil and Political Rights of 16 December 1966, Article 2 of the Convention on Standards of Democratic Elections, Voting Rights and Freedoms in the Member States of the Commonwealth of Independent States of 7 October 2002 specify the following indication of discrimination: in respect of “race, color, sex, language, religion, political or other opinion, national or social origin, property, birth”. No candidate, no political party has encountered this sort of discrimination at all elections in Kazakhstan, including presidential ones.

Based on its sovereign right, the Republic of Kazakhstan has given a special status to the First President – Leader of the Nation. And this is not something special. World experience, particularly in countries in a state of political transition, which recently gained its independence, shows that the exit from the multidimensional crisis is possible in the way of consolidation of the nation, united by a leader, who heads the state as a conductor of policy and executor of democratic reforms.

The First President has become for Kazakhstanis the model of contemporary leader, who successfully combines intellectual innovations and traditionalist authority. Historical experience shows that stability of political process in the complex era of transit can only be ensured by the authority led by a prominent leader analogous to “personal power” of President Charles de Gaulle during difficult years of post-war France. George Washington, who has spearheaded the difficult formation of the United States, was a leader of the North American nation as a commander-in-chief of the Confederation Army, President of the Constitutional Convention, the First President for almost 20 years (1776-1796): by a decision of the US Congress (Parliament) he was awarded with the title “Father of His Country”. And Kazakhstan now is at a stage of development and strengthening its 20 years of statehood, the leader in the whole CIS area thanks to the First President N. Nazarbayev, the founder of independent state of Kazakhstan, guarantor of the further accelerated development of the country, who by a decision of the Parliament of the Republic and according to his deserts was awarded with the honorable status of Leader of the nation with corresponding powers.

The critical observation is not accepted.

5. The CEC did adopt guidelines but no formal regulations on key aspects of the process, such as election-day procedures and the results tabulation (section 1, page 1). The Election Law contains ambiguities and gaps in its regulation of various aspects of the electoral process, and the CEC did not adopt a sufficient regulatory framework to supplement the legislation. This created legal uncertainty and an inconsistent application of the law throughout the electoral process (section 4, page 5).

The CEC standpoint. The Final Report of the OSCE EOM does not explain what ambiguities and gaps in respect of various aspects of electoral process are in question. We believe that the Constitutional Act on Elections does not contain such kind of ambiguities and gaps. Election-day procedures and the results tabulation are regulated in detail by the Constitutional Act on Elections. In this regard, we emphasize that Article 41 “Organization of voting” of the Constitutional Act on Elections contains 18 paragraphs, Article 42 “Conduct of voting” 11 paragraphs, Article 43 “Vote count” 39 paragraphs, Article 44 “Determination and publication of election results” 10 paragraphs.

It is unreasonable to demand that before each election the CEC would adopt the full range of regulations, related to the appropriate type of election. The CEC Resolutions are adopted systematically and permanently as problems arise. In this regard, it should be noted that for the

period from 1995 till 8 April 2011 the CEC has drafted and adopted 919 resolutions, including 194 regulations related to presidential elections.

In recent years the CEC has adopted a considerable number of the following by-laws (regulations), which can be considered as instructions on application of the Constitutional Act on Elections for low-level election commission and other election organizers on various electoral aspects during the last presidential election:

1. the CEC Resolution of 9 June 1999 “On consideration of citizens’ complaints and appeals on the violation of election law”;
2. the CEC Resolution of 2 October 1999 “On the rules for storage, transfer, archiving and destruction of documents related to the preparation for and conduct of elections of the President, deputies of the Parliament of the Republic of Kazakhstan”;
3. the CEC Resolution of 4 September 2004 “On samples of ballot-boxes”;
4. the CEC Resolution of 31 August 2005 “On the procedure for establishment of fluency in the state language by a candidate to President of the Republic of Kazakhstan”;
5. the CEC Resolution of 25 June 2007 “On the approval of information about candidates to the President, deputies of the Senate of Parliament, political parties nominated party lists, candidates to deputies of the Mazhilis of Parliament to be elected by Assembly of the People of Kazakhstan, maslikhats, members of other bodies of local self-government to be posted in the premise of polling station in the single format”;
6. the CEC Resolution of 8 April 2009 “On the approval of Rules on the procedure for issuance and account of absentee voter certificates”;
7. the CEC Resolution of 19 August 2010 “On the approval of Instruction on the state registration of election funds”.

The CEC has published Compendium of normative legal acts of the Republic of Kazakhstan and CEC resolutions for organizing and holding early election of the President of the Republic of Kazakhstan, appointed on 3 April 2011, which included the above mentioned resolutions. This Compendium was brought to the attention of all election commissions of the country and given to each accredited by the CEC observer of foreign states and international organizations in the state (Kazakh), Russian and English languages.

Along with the Constitutional Act on Elections the above mentioned and other resolutions were the precise legal guidance to low-level election commissions during conduct of early presidential election in 2011.

Over 15 years of its functioning the Constitutional Act on Elections has been amended 12 times, resulting in 780 changes and additions. The general trend for the development of Kazakh legislation is that now a legislator tries to provide a detailed regulation of social relations in the text of law practically leaving no room to by-laws.

Nevertheless, the CEC has no objection to compile and adopt the more detailed formal regulations on election-day procedures and the results tabulation.

The critical observation is accepted in part.

6. The absence of opposition candidates and of a vibrant political discourse resulted in a non-competitive environment... Opposition parties decided not to participate (in election)... The lack of real political competition in the election led to an absence of vibrant, critical electoral debate (section 1, page 1).

The CEC standpoint. Opposition parties, as they are called by OSCE/ODIHR Mission, did not nominate candidates to the President, because they have not had in their ranks really competitive leaders. In addition, to nominate or not to nominate candidates to the President is the right but not the duty of each political party. Parties are equal and to call some of them opposition parties is not correct. Participation of 4 candidates from 3 parties with different political platforms (People’s Democratic Party “Nur Otan”, Party of Patriots of Kazakhstan, Communist People’s Party

of Kazakhstan) indicated the presence of a competitive environment regardless of goals, which pursued one or the other party.

The critical observation is not accepted.

7. The Election Law does not establish a clearly defined complaints and appeals process with a single hierarchical structure of responsibility. There is no right to appeal court decisions on complaints against election commissions, government officials and authorities. Sometimes stakeholders lacked a clear understanding of the complaint process, with instances of complaints filed to improper authorities or courts. Moreover, relevant authorities did not always have a consistent and cohesive interpretation of various aspects of the complaint process. The adjudication of election disputes generally lacked consistency, transparency, due process and clarity of decision-making, which was also reflected in written decisions. This impaired the opportunity for effective legal redress and brought into question the impartiality of decision makers. The CEC did not decide on any complaint it received by voting in a plenary session as required by law, and courts improperly refused to consider some complaints (section 1, page 2).

The CEC standpoint. The Constitutional Act on Elections does not provide for the establishment of the procedure of submission of complaints and appeals. And the Constitutional Act on Elections must not provide for establishment of such procedures. These issues in Kazakh legislation are regulated by specialized Law of the Republic of Kazakhstan “On the procedure for consideration of appeals of physical persons and legal entities” of 12 January 2007 (18 articles), Civil Procedural Code of the Republic of Kazakhstan of 13 July 1999 (450 articles, including 40 articles which have a direct relation to procedures of submission and consideration of complaints and appeals actions of state bodies, including in the field of elections), Criminal Procedural Code of the Republic of Kazakhstan of 13 December 1997 (577 articles, of which 7 articles have a direct relation to the appeal of actions of the state bodies).

Procedure for the submission of complaints, which is established by the legislation of the Republic of Kazakhstan, does not differ from the generally accepted world practice. The OSCE/ODIHR EOM quite quickly and easily understood this procedure and correctly interpreted it in its report: “Complaints against decisions and (in)actions of election commissions can be submitted to a higher election commission and/or court. Other complaints on election law violations can be filed with election commissions, courts, and/or prosecutor’s offices”.

Actually, physical persons and legal entities have the right to decide at their own choice to which state body they would address a complaint. It could be an election commission, the prosecutor’s office or the court. This choice is made by them freely, at their own discretion. It should be noted that preliminary appeal to the election commission or to the prosecutor’s office is not a compulsory condition for appeal to the court. In this connection there is no need to present the free expression of will by election process stakeholders in protection of their rights as a lack of clear understanding of the complaint process on election disputes and its uniform interpretation.

The OSCE/ODIHR EOM incorrectly interprets the issue about impossibility to apply to the district court in respect of “two specific types of cases that go directly to the Supreme Court and are not subject to further appeal”. We must bear in mind that article 274 of the Code of Civil Procedure of the Republic of Kazakhstan does not stipulate for the appeal or cassation of only those court decisions, according to which the citizens’ petitions has been recognized as justified. In this case the Kazakh law-maker acted based on the fact that if a citizen’s petition on a particular aspect of election process is recognized as justified (for example, it was in favor of a citizen), it must be implemented immediately and without procedure to appeal to the Supreme Court of the Republic. Concerning the facts that “courts refusing to consider cases based on improper grounds”, we would like to receive from the OSCE/ODIHR EOM specific examples of these facts.

The critical observation is not accepted.

8. *The registration process lacked inclusiveness and was marked by the absence of clear rules for the verification of supporting signatures (section 1, page 1). The CEC did not issue any official regulations clarifying the grounds for invalidation of signatures collected in support of a candidate. The process of verification of these signatures lacked transparency. TEC verification protocols contained no reasoning for the invalidation of signatures (further in the footnote: In Almaty city, West Kazakhstan and Kostanai TECs, protocols regarding all four registered candidates. In Kostanai, West Kazakhstan and South Kazakhstan TECs, protocols regarding Mr. Duambekov. In West Kazakhstan, the TEC protocol regarding Mr. Sapargali), and candidates or their proxies were routinely not invited to attend the signature verification procedures (further in the footnote: 35 This was reported by the proxies of Mr. Akhmetbekov in North, South and West Kazakhstan regions, of Mr. Sapargali in West Kazakhstan region, and of Mr. Duambekov in Kostanai region. The TEC of Akmola region acknowledged that no proxies had been invited to observe the signature verification procedure. According to the CEC response to the Statement of Preliminary Findings and Conclusions, “the above mentioned candidates could have appealed the actions of the TECs of the mentioned regions at court.”) (section 7, page 10).*

The CEC standpoint. Procedure for verification of signatures of candidates to the President is regulated by clauses 7 and 8 of article 56 of the Constitutional Act on Elections. Signature verification is conducted within ten days by a territorial election commission with involvement of passport services officers and shall be and is formalized in the relevant protocol, which shall be sent to the CEC.

Candidates to the President Mr. M. Duambekov and Mr. S. Sapargali were able to appeal against actions of territorial election commissions in the court. As they did not appeal to the courts, it is difficult to believe that their statements are true, above all the heads of election commissions in the regions of the country insist that they worked transparently and strictly in accordance with the law on the matters of verification of signatures in support of candidates.

For example the letter Ref: 59 of 30 June 2011, signed by the Chairman of West-Kazakhstan oblast election commission Mr. V. Inochkin, affirms that meetings of the West-Kazakhstan oblast election commission during verification of signatures in support of candidates to the President were open and transparent and proxies of candidates were invited. However, none of them demonstrated the wish to attend directly the meeting of the oblast election commission, and they confined themselves to obtaining a protocol on the verification of collected signatures in support of a candidate. And the letter concludes that “there were no claims from their part on the results of signature verification”.

Chairperson of Kostanay oblast election commission Ms. A. Markova notifies in the letter Ref: 86 of 1 July 2011: “All proxies were informed about the time and place for the verification of collected signatures. However many of them did not wish to attend the meeting of commissions on signature verification. A proxy of the candidate to the President Mr. M. Duambekov Mr. A. Magazhanov was present in the commission during signature verification and did not express any critical observations during this procedure. Further, the letter concludes: “Absence of complaints and appeals from proxies concerning signature verification process demonstrates their confidence in the results of signature verification”.

According to official information of the Chairman of Akmola oblast election commission Mr. A. Shayakhmetov (letter Ref: 55 of 1 July 2011), Deputy Chairman of city election commission of Almaty city Ms. Zh. Asanova (letter Ref: 101 of 6 July 2011), candidates and their proxies did not express initiative to attend the signature verification process neither in written form nor verbally. Complaints on violations during the abovementioned procedure neither in written form nor verbally were not received.

The CEC is planning to work out in details the procedure for verification of signatures in support of a candidate to elective office taking into account recommendations of the OSCE/ODIHR EOM and bring the issue of its regulation to the legislative level.

The critical observation is accepted in part.

9. *The registration process lacked inclusiveness and was marked by the absence of clear criteria for evaluating the mandatory Kazakh language test (section 1, page 1). Article 41.2 of the Constitution establishes fluency in the Kazakh language as a candidacy requirement. However, the legal framework does not include objective and reasonable criteria for the evaluation of candidates' fluency in Kazakh, which undermines the transparency, fairness, and consistency in the registration process (section 4, page 6). The Kazakh language test, which consisted of an examination of prospective candidates' reading, writing and speaking ability, presented an obstacle for some nominees. Despite previous OSCE/ODIHR recommendations, no clear criteria were established for how the nominees' language proficiency should be evaluated in practice, including how many and what types of mistakes would be acceptable. It remains partly unclear how the CEC-appointed Linguistic Commission arrived at its conclusions (further in the footnote: For example, Mr. Kaisarov failed the test despite passing it in 2005 and being known for making speeches in Kazakh in the Senate. The Linguistic Commission established that he had made 28 mistakes. Upon Mr. Kaisarov's appeal, the Supreme Court upheld the CEC decision but only found 17 mistakes) (section 7, page 10).*

The CEC standpoint. The Resolution of the Constitutional Council of the Republic of Kazakhstan of 9 October 1998 No. 9/2 on the official interpretation of clause 2 of article 41 of the Constitution of the Republic of Kazakhstan defined that the provision "fluent in the state language" should be understood as: ability to read correctly, write, express thoughts easily and without any difficulty and speak the Kazakh language fluently. And this should be considered as criteria for the evaluation of presidential candidates' fluency in the state (Kazakh) language.

Objective criteria to conduct Kazakh language test were defined in the Resolution of the CEC of RK of 31 August 2005 No. 12/26 "On the procedure for the evaluation of fluency in the state language by candidates to the President of the Republic of Kazakhstan".

To evaluate the fluency in the state language it was required:

- 1) to write a written task of no more than two pages;
- 2) to read a printed text of no more than three pages;
- 3) to make a public statement on the specific topic of no more than fifteen minutes.

Mistakes made by candidates during the Kazakh language test were regularly brought to attention of candidates and mass media. One of written papers of 2 pages with dozens of grammatical mistakes was broadcasted on television.

Linguistic Commission was composed of the prominent linguists of the Republic. All members of Linguistic Commission are Doctors of Philology and well-known scholars in the field of Kazakh philology.

However, in response to OSCE/ODIHR the CEC could develop more detailed criteria for evaluation of fluency in the state (Kazakh) language.

The critical observation is accepted in part.

10. *According to the Election Law, political parties not represented in election commissions could appoint a non-voting representative to corresponding commissions for the election period; and a representative was entitled to the same access to all documentation and other resources as commission members. However, the CEC declined to register non-voting party representatives for the CEC itself, based on a legal opinion of the Prosecutor General's office (further in the footnote: In its session on 15 March, the CEC refused to register the representative of the OSDP to the CEC. The CEC had earlier referred the matter to the Prosecutor General's office, which provided its legal opinion that parties were not eligible to have representatives at the CEC level since the CEC was not appointed based on party nominations.). This limited the transparency of the CEC's activities and was in contravention of the principle reflected in Article 11.4 of the CIS Convention (section 5, page 8).*

The CEC standpoint. In its previous Comment to the OSCE/ODIHR EOM reports the CEC gave explanations to the EOM about correct interpretation of the law in relation to representation of ANSDP in the CEC. Broad and convincing interpretation in respect to representation of political

parties in the CEC was based on articles 44 and 57 of the Constitution (basic law) of the Republic of Kazakhstan.

Refusal to register a non-voting representative of the ANSDP for the CEC is not violation of the provisions of Article 11.4 of the Convention on standards for democratic elections, electoral rights and freedoms in the CIS member-states of 7 October 2002, because ANSDP did not have a registered candidate to the President. Article 11.4 of the Convention assigns to CIS member-states that ratified this Convention the obligation to acknowledge “the possibility of vesting the candidate, political party, which has put forward the list of candidates, with the right to appoint – *in accordance with the procedure stipulated by the law – to the electoral body, which has registered the candidate (list of candidates)*, as well as to lower electoral bodies in one member of the electoral body with a deliberative vote, representing the candidate who has appointed him or her, the political party”. In addition, it should be noted that Constitutional Act on Elections does not stipulate the possibility of appointing non-voting representatives of political parties for the CEC.

As we see the actions of the CEC do not violate the provisions of the CIS Convention of 2002. And yet it is not clear for us, why the OSCE/ODIHR EOM refers to the Conventions that are not relevant to the OSCE.

At the same time we don't see limitation of transparency of the CEC's activities because all CEC meetings were constantly attended by observers, representatives of media and international organizations, including OSCE/ODIHR.

Provisions of clause 6 of article 20 of the Constitutional Act on Elections were the guarantees for representation of political parties in election commissions. These legal provisions were practically implemented at the early presidential election: 1 909 people, including 107 representatives of the Democratic Party of Kazakhstan “AK ZHOL”, 107 members of the Communist Party of Kazakhstan, 12 members of the Democratic Party “AZAT”, 1 414 members of All-National Social Democratic Party (and dozens members of other parties), worked as non-voting members in the territorial and precinct election commissions around the country.

The critical observation is not accepted.

11. The majority of members on many election commissions were de facto affiliated with the ruling Nur Otan party, and the number of opposition-nominated commission members was low. This caused a lack of trust in the impartiality of the election administration (section 1, page 3). Some political parties, including OSDP and the Communist Party of Kazakhstan (CPK), raised concerns over the extremely low number of their representatives in election commissions (further in the footnote: According to data provided by the CEC, Ak Jol, the Communist Party and the OSDP were together represented by only 6 per cent of all election commission members. In 2009, Azat boycotted the nomination of election commissioners in all regions, while Ak Jol and the OSDP did not nominate their representatives in 13 regions, mainly to protest against what they perceived as unfair elections), while the majority of members of many commissions was de facto affiliated with Nur Otan (further in the footnote: OSCE/ODIHR EOM LTOs reported such cases in particular in Akmola, Almaty, East, West and South Kazakhstan, Karaganda, Kostanai, Kyzylorda, Pavlodar and Zhambyl regions. For example, in the Shakhtinsk town DEC in Karaganda region, the Kachirskiyi district DEC and PECs 456, 459, 460, 463, 464, 466, 468, 469, 470, 472, 476, 478, 483, 484, 583 and 599 in Pavlodar region, members were formally nominated by different political parties and associations but were all Nur Otan members). This resulted in a lack of trust in the impartiality of the election administration (section 5, page 7).

The CEC standpoint. There are sufficient guarantees for ensuring substantial and pluralistic representation in the election commissions. Guarantees for ensuring equal conditions for the conduct of election campaign are secured legislatively and are implemented in practice. These guarantees are stipulated in clause 2 of article 10 of the Constitutional Act on Elections.

Except the CEC, all 7 members of each election commission are elected by maslikhats upon proposals of political parties. Political party is eligible to nominate to the election commissions candidates, who are not members of this particular party.

Due to the fact that number of political parties is not constant, it is impossible to ensure representation of all political parties in election commissions according to existing procedure.

It should be noted that political parties are not always active in nominating their candidates everywhere. This is due to insufficient number of members and activists in a number of parties.

The CEC has presented to the OSCE/ODIHR EOM data about representation of political parties in the new composition of election commissions at all levels that have been formed in 2009. Once again we bring to the attention of the EOM data about candidates of political parties nominated and elected in the newly formed 13 286 territorial, district and precinct election commissions.

No.	Name of political party, nominated candidates to election commissions	Number of nominated candidates and its percentage to the total number of election commissions	Number of elected members of election commissions and its percentage to the total number of candidates nominated by political parties
1	People's Democratic Party "Nur Otan" (PDP "Nur Otan")	13,239 or 99.6 %	13,222 or 99.9 %
2	Kazakhstan Social Democratic Party "Aul" (KSDP "Aul")	12,576 or 94.7 %	12,437 or 98.9 %
3	Communist People's Party of Kazakhstan (CPPK)	11,971 or 90.1 %	11,789 or 98.5 %
4	Party of Patriots of Kazakhstan	11,914 or 89.7 %	11,811 or 99.1 %
5	Party "Rukhaniyat"	11,806 or 88.9 %	11,711 or 99.2 %
6	Democratic Party "Adilet"	9,699 or 73.0 %	9,609 or 99.1 %
7	Communist Party of Kazakhstan	4,118 or 31.0 %	3,864 or 93.8 %
8	Democratic Party "AK ZHOL"	1,590 or 12.0 %	1,541 or 96.9 %
9	All-National Social Democratic Party (ANSDP)	761 or 5.7%	603 or 79.2 %

As it is seen from the above table, in 2009 PDP "Nur Otan", KSDP "Aul", CPPK and Party of Patriots of Kazakhstan, which nominated their candidates to election commissions in all regions of the Republic, were most active among political parties. Of ten registered political parties DPK "AZAT" has not nominated its representatives to any election commission.

In compliance with the requirements of election law the priority during the formation of election commissions was given to the proposals of political parties.

In the composition the election commissions of the country are represented by 9 political parties. In addition, in the current 2011 year more than 150 members, who represent the party ANSDP, became members of election commissions in the city of Almaty.

As we could see, the principle of fair consideration of interests of each political party was observed. Parties ANSDP, "AK ZHOL", "AZAT" and Communist Party of Kazakhstan, which are called by the OSCE/ODIHR EOM as oppositional parties, did not demonstrate sufficient activity in the nomination of candidates to election commissions. For example, ANSDP have not nominated candidates to election commissions in 14 regions out of total 16, Communist Party of Kazakhstan have not nominated candidates in 2 regions and Party "AK ZHOL" in 13 regions.

Moreover, we must bear in mind, all this happened in 2009, when there was no a sign of election campaign and the issue of boycotting by any party of elections was not in the agenda. If there were no proposals of political parties to nominate their candidates to election commissions, maslikhats elected members of election commissions upon proposals of other public associations and the higher election commissions.

During formation of new composition of election commissions in 2009 political parties have not submitted any information about the facts of unreasonable refusal to include their representatives in the election commissions. As we can see, the formation of election commissions was carried out on the broad democratic basis.

To ensure better publicity in the electoral process in accordance with clause 6 of article 20 of the Constitutional Act on Elections the parties were provided with possibility to join election commissions with advisory vote. For example, at the last presidential election the party ANSDP and party “AZAT” delegated to the corresponding election commissions respectively 1 414 and 12 non-voting members.

In this regard, the statement of the authors of the Final Report of the OSCE/ODIHR EOM about “a lack of trust in the impartiality of the election administration” seems to be illogical. In the Western Europe election administration during elections is conducted primarily by the ministries of interior. As a rule political parties are not represented in election commissions. Nevertheless the question about “impartiality of the election administration” is not raised.

Information of the OSCE/ODIHR EOM that all members of a number of election commissions were members of PDP “Nur Otan” is not justified. Election commission of Shakhtinsk city of Karaganda oblast is composed of representatives of seven political parties: PDP “Nur Otan”, DPK “Adilit”, Party “Rukhaniyat”, CPPK, CPK, KSDP “Aul”, Party of Patriots of Kazakhstan. The letter of the Chairperson of Pavlodar oblast territorial election commission Mr. A. Sabyrkhanova Ref: 104 of 2 July 2011 notes that particularly in Kashyr district of oblast it was impossible to ensure representation of all political parties in the composition of election commission in compliance with existing procedure due to the insufficient number of members and activists of some political parties. And this is the fault of political parties but not the fault of election commissions. There were no barriers for inclusion of other parties in the composition of official members of election commissions. Moreover, the Constitutional Act on Elections provides all political parties around the country with possibility to delegate in the composition of election commission of non-voting members.

The critical observation is not accepted.

12. According to the Election Law, an election commission may not consist of people from the same organization (See Article 19.9 of the Election Law). The CEC interpreted this provision as only prohibiting all seven members being from the same organization, which might be at odds with the principle of independence of the electoral bodies (further in the footnote: Paragraph 3.1(b) of the Venice Commission’s Code of Good Practice in Electoral Matters states that “Where there is no longstanding tradition of administrative authorities’ independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level”, see [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf). Moreover, under Article 19.2(j) of the CIS Convention, “the States party to the Convention commit themselves ... to ensure establishment of independent, impartial electoral bodies...”). The OSCE/ODIHR EOM noted a number of cases where the majority of commission members were employed by the same organization (further in the footnote: Such practice was reported to be widespread in Astana and Almaty cities, and in Pavlodar, Akmola and Almaty regions) (section 5, pages 7-8).

The CEC standpoint. Clause 9 of Article 19 of the Constitutional Act on Elections says that “election commission shall not consist of employees from one and the same organization”. However the law does not say about the need to form election commission based on the principle of percentage of employees of different organizations. Participation of even one member of the commission, who is an employee of different organization, ensures implementation of the above mentioned provision of the law. Therefore the situation, when “the majority of commission members were employed by the same organization”, is not a violation of the law.

The critical observation is not accepted.

13. The incumbent declared his intention not to campaign personally, arguing that his 28 January Address to the Nation contained his electoral pledges; he delegated the task to Nur Otan instead. The president’s campaign was centered around stability, growth and welfare and presented the incumbent as the guarantor of interethnic accord. No apparent distinction was made between

the incumbent as a candidate and his position as president, and local authorities and dignitaries usually took part in campaign events (section 8, page 11).

The CEC standpoint. The first apparent distinction: the incumbent did not campaign personally with other candidates.

The second apparent distinction: the materials related to the incumbent as a candidate and published in the press, consisted of the publishers' imprint, while the materials related to the incumbent's activity did not contain such data.

The third apparent distinction: the materials related to the incumbent as a candidate were of advertising-propaganda nature both in content and form, while the materials related to the incumbent were of purely information nature.

It should be noted that Presidents of the USA, France and other foreign states, campaigning for the second time, do not suspend their incumbent official duties and continue acting as both incumbents and candidates campaigning personally, in parallel. In this regard, it is not clear for us why such question arose with regard to the President of the Republic of Kazakhstan.

The critical observation is not accepted.

14. In other instances, such as a protest meeting in Astana on 28 March, participants were intimidated and prevented from travelling (further in the footnote: Two activists were sentenced to several-day jail penalties in Aktobe (by the Martuk district court) and in Kostanai. Police detained an activist for several hours in Kokshetau, intimidated activists in Almaty city, Almaty region, Taraz and Aktobe, and visited some activists in Pavlodar and Kostanai to question them about planned trips. Vehicles and buses carrying activists were stopped in Taraz, Kostanai and Akmola region) (section 8, page 12).

The CEC standpoint. Ministry of Internal Affairs of the Republic of Kazakhstan in its letter Ref: 1-5-93/7001 of 13 July 2011 informed that departments of internal affairs of the cities of Astana and Almaty, of Akmola, Aktobe, Almaty, Zhambyl and Kostanay oblasts did not receive complaints and appeals about facts of violation of constitutional rights of citizens from the part of police servicemen in the form meeting activists, intimidation and prevention from traveling, stopping vehicles, which transported the activists during election campaign. The fact of sentencing to several-day jail penalties of two activists in Aktobe oblast (by the Martok district court) was not registered.

The critical observation is not accepted.

15. The restrictive media environment, criminalization of defamation and insult, as well as exorbitant damages awarded against media outlets in civil cases, induce self-censorship (section 1, page 2). Freedom of speech is guaranteed by the Constitution but effectively restricted by constitutional provisions protecting "honor and dignity", the continued criminalization of defamation and insult (further in the footnote: See Regular Report to the Permanent Council by the Representative on Freedom of the Media of 17 March 2011, available at <http://www.osce.org/fom/76158>), Furthermore, the Civil Code does not provide for a limit on damages awarded for defamation and insult or for a limitation period (further in the footnote: Article 187 of the Civil Code). The fact that defamation and insult can still result in imprisonment and an increasing number of civil lawsuits with exorbitant damages awarded against journalists and media outlets induce restraint and self-censorship (section 9-a, page 12).

The CEC standpoint. Defamation (disclosure of information, defaming the honor of a particular person or institution) and personal injury are classified as criminal offenses in many countries, including in the OSCE participating States, and entail various kinds of sanctions (from fines to imprisonment).

These mechanisms can not be considered as measures restricting freedom of speech or activity of editors and journalists critical of the authorities. For instance, within the campaign period, 29 articles with critical remarks against the incumbent were published in various mass media. However, none of the authors and editors was punished.

There is apparent distinction between criticism and insult of the president; therefore, while criticizing the incumbent in the mass media, the journalists do not expose themselves to self-censorship. Provisions of the Civil Code of the Republic of Kazakhstan of 27 December 1994 (General Part) and of 1 June 1999 (Special Part) could not and can not induce self-censorship even more just because none of 1,124 Articles of the Code stipulates the size of the fines or “exorbitant” fines, erroneously mentioned by the Mission in its Report.

By 2014 the Republic of Kazakhstan will undertake measures to decriminalize libel and insult. The Law of 18 January 2011 “On introduction of changes and additions to some legislative acts of the Republic of Kazakhstan on the further humanization of criminal legislation and on the strengthening guarantees of rule of law in the criminal process” introduced institute of administrative prejudice (prejudging) in respect to crimes, which don’t pose a serious danger to a society (including libel and insult). In other words, criminal liability will arise in case, if during one year the administrative penalty has been imposed for the same offence. This law has excluded the provision of the Criminal Code on the punishment as arrest up to six months for libel in media.

The Law of 25 March 2011 “On introduction of changes and additions to some legislative acts of the Republic of Kazakhstan of further improvement of civil legislation” amended clause 6 of article 143 of the Civil Code of the Republic of Kazakhstan, which excluded the possibility for the compensation of moral damage in fines for dissemination of information, discrediting the honor, dignity and business reputation of legal entities. This means for journalists and mass media that newspapers, magazines, television, radio, and internet resources are protected from unfounded assaults and heavy fines from legal entities. From now on, legal entities, in respect of which mass media has published information, that infringe their lawful rights or interests, are entitled to free publication of their response (disclaimer) in those mass media (clauses 3 and 4 of article 143 of the Civil Code of the Republic of Kazakhstan). This law was adopted during presence of the OSCE/ODIHR EOM in the Republic of Kazakhstan, and therefore, it would be worth to the Mission to closer look to this law before including such critical observation in the Final Report.

The critical observation is accepted in part.

16. Access to the websites of the newspaper Respublika and the TV station K+ from within Kazakhstan is regularly blocked (further in the footnote: According to the CEC response to the Statement of Preliminary Findings and Conclusions, the website of Respublika “can be easily and freely accessed through numerous website ‘mirrors’ on popular public networks and blog-platforms, which are open for public”) (section 9-8, page 15).

The CEC standpoint. Although the issues of web-sites and other media, and especially their limitation are not within the competence of the CEC, however, we answer that according to the legislation of the Republic of Kazakhstan closure of internet-resources in Kazakhstan is possible only on the basis of court decision. In this regard, it should be noted that no legal proceedings have been initiated in respect of internet-resource of the newspaper Respublika and the TV station K+.

Indeed resources of the above mentioned media can be easily and freely accessed through numerous website “mirrors” on popular social networks and blog-platforms, which are open for public. In addition, the “Respublika” newspaper is in free trade throughout the country and news programs of TV station K+ can be watched by any Internet user at the well-known site Youtube.

The critical observation is not accepted.

17. Outside the news analytical election-related programmes were virtually absent due to the fact that such coverage was considered paid political advertising. The right of the media to report freely on the campaign was reduced, so was the right of voters to receive fair, balanced and impartial information on the campaign from current affairs programmes outside the news. This hampered the ability of voters to make a fully informed choice (section 1, page 2).

The CEC interpreted the provisions in the Election Law on campaign coverage by the media, which in themselves do not regulate the matter in sufficient detail (further in the footnote: Article 27.7 only obliges media “to exercise unbiased interpretation of the election campaign of candidates [and] political parties”), by obliging state-owned and commercial broadcast and print media to provide equality in the coverage of candidates in news programmes. Campaign coverage outside the news was considered to be campaigning/political advertising that should be paid for by the candidates. OSCE/ODIHR EOM media monitoring results show that this interpretation of the law by the CEC stifled political debate on matters of public interest in the media, as it gave candidates control over the content and per se deprived journalists of their right to question and criticize them (section 9-a, page 18).

The CEC interpretation of the Election Law on campaign coverage by the media was not available in writing (further in the footnote: On 10 March, seven days into the campaign, the CEC’s interpretation of the legal provisions on campaign coverage was presented at a seminar at the Ministry of Information and Communication), which reduced transparency and left room for uncertainty. Consequently, analytical election-related programmes, including interviews and debates, which could have offered voters a wider range of views, were virtually absent (section 9-b, page 14).

The CEC standpoint. According to data of the Ministry of Information and Communication of the Republic of Kazakhstan (letter Ref: 11-01-11/5555 of 13 April 2011), the mass media published and conducted 49 analytical election-related programs. The candidates’ positions were covered by 5,325 materials, which largely were analytical in nature. Video-rolls prepared by the CEC about election campaign 1 533 times aired on TV.

All 4 candidates were provided with full right for campaigning with use of all mass media tools. This gave them the opportunity to broadly cover their election programs through 1,318 mass media materials. Debating materials and election-related interviews were broadly covered by the Kazakhstani newspapers, such as “Delovaya Nedelya”, “Respublika”, “Svoboda Slova”, “Vremya”, “Vzglyad”, “Dat”, “Panorama” etc. Lack of the “black PR” and other “dirty technologies” have become one of the achievements of the campaign. Thus, the mass media managed to provide the voters with a wide range of various views, so that they could make their choice thanks to full information available.

TV debates are usual in Kazakhstan’s electoral practice. However, the CEC has no objection to giving to the televised debates of an official status.

The critical observation is accepted in part.

18. Women are actively involved in political life, but few hold leadership positions. Out of 22 cabinet ministers of the government appointed after the election, only 3 are women, and there are no women among the regional-level akims. In the parliament, 17 out of 107 members of the Mazhilis and 2 of the 47 senators are women. There are no female party leaders, but women are well represented in regional branches of political parties, in particular among the opposition. Still, barriers to women’s participation in politics and public administration remain, in large part due to a lack of awareness of gender issues among men and women, as well as insufficient state action to promote women into positions of power (section 10, page 15).

The CEC standpoint. The percentage of women in the elected state offices corresponds to degree of their participation in elections as candidates. For example, at presidential election in 2005 of 18 initial nominees there were three women (16.7% of the total number of candidates). At the election of the President, conducted on 3 April 2011, of 22 nominees there were 4 women (18.2%). Among 38,583 top officials of election commissions of all levels in the country (chairmen, deputy chairmen and secretaries) the number of women is 22,684 persons or 58.8 percent of the total number.

Of 107 deputies to the Mazhilis of Parliament of the Republic of Kazakhstan there are 19 women or 17.8% of the total number of deputies. Representation of women in the Mazhilis of

Parliament of Kazakhstan is higher of the level of the USA (16.8%), Greece (17.3%), Ireland (15.1%), Israel (14.2%), Slovenia (14.4%), Russia (14%), Romania (11,4%), Japan (11,3%).

Of 3,335 maslikhat deputies the number of women is 567 or 17 % of the total number of maslikhat deputies. This percentage is generally equal to the average world indicator of the women's representation in elected state office.

In the Government of Kazakhstan of 19 ministers there are 3 women (16%), they lead the key state agencies such as the Ministry of Labor and Social Protection, Ministry of Health, Ministry on Economic Integration Affairs. In addition, there are 4 women, who are executive secretaries in the ministries (to be appointed to the position by the President of the country) and 4 women, who are vice-ministers.

The level of women's representation in the Government of Kazakhstan corresponds to the representation of women in the Cabinet of Ministers in Great Britain and Portugal (18.2%) and significantly higher than in Slovenia (13.3%), Bulgaria and Romania (12.5%), Slovakia (7.1%), Bosnia and Herzegovina, Greece (6.3%), Albania (6.7%), and Turkey (4.8%).

Posts of deputy akims of oblasts are occupied by 5 women and 3 women are akims of districts, and among deputies of akims of districts women constitute 17%. In total 46 thousand women are employed in the public administration, that constitutes 53% of the total number of civil servants in the country. Among 2146 judges of the independent judiciary of the Republic there are 958 women (44%).

The party, as it is known, is a public association, whose leaders could become individuals, who demonstrated their leadership qualities. The country has created all conditions for manifestation by all citizens, including women, of their subjective intentions in the area of party activity. The woman herself can establish a certain political party and become its leader, as it was done in due time by the Chairperson of Party "Rukhaniyat" Ms. A. Dzhaganova.

As we can see, the OSCE/ODIHR EOM's statement that "few women in Kazakhstan hold leadership positions" does not correspond to facts.

Kazakhstan undertakes measures to increase women's representation at leadership positions. Strict implementation of requirements of the Law of 8 December 2009 "On state guarantees for equal rights and equal opportunities of men and women" as well as realization of the state gender policy and Strategy of gender equality in the Republic of Kazakhstan in 2006-2016 will contribute to the extension of the number of women in the elective state bodies. For example, the Strategy of gender equality sets the task to ensure achievement by 2016 of 30-percent representation of women in the government at the level of decision-making in compliance with requirements of Beijing Platform for Action on Advancement of Women. Currently according to the order of the President of the country at the Congress of Women of Kazakhstan (5 March 2011) the Action plan on advancement of women at the decision-making level for the period till 2016 has been developed.

The critical observation is accepted in part.

19. *(National) Minorities are well-represented in the election administration, but less well in senior positions of higher level election commissions (section 11, page 16).*

The CEC standpoint. National minorities, who are citizens of Kazakhstan, have full right for passive and active voting, and for taking senior positions, both in local and state bodies, along with native citizens of the country. Senior positions in the election administration bodies are taken by persons belonging to Kazakh, Russian, German, Korea, Uzbek and other nationalities. The percentage is as follows: senior positions (chairperson, deputy chairperson, secretary) in all 16 TECs, Astana and Almaty election commissions are taken by Kazakhs – 68.7 per cent (63.1 per cent of the population is Kazakh); Russians - 25% (Russians account for 23.7 per cent of the population); Ukrainians – 4.1 per cent (Ukrainians account for 2.1 per cent of the population); Germans – 2.1 per cent (Germans represent 1.1 per cent of the population). The percentage of national minorities in the lower-level election commissions varies depending on the density of

relevant minorities living in relevant regions throughout the country. As we can see, the OSCE/ODIHR EOM statement on small representation of national minorities in senior positions of election commissions is not justified.

The critical observation is not accepted.

20. Overall, the adjudication of election disputes lacked transparency, consistency, due process, and well reasoned decision-making, thus impairing the opportunity for effective legal redress and bringing into question the impartiality of the election commissions, courts and prosecutors. Many opposition parties and some NGOs expressed a complete lack of trust in these authorities to act impartially and effectively in addressing election complaints (section 13, page 18).

The CEC standpoint. We consider this critical observation of EOM as subjective. All the appeals and complains received by the CEC and other state bodies were addressed in compliance with Kazakh legislation. And the legislation regulating this issue is rather extended and consists of a number of legal documents. For example, the process of addressing appeals and complaints by the CEC is regulated by the Law “On Administrative Procedures” of 27 November 2000 and by the Law “On the Procedure for Consideration of Appeals of Physical Persons and Legal Entities” of 12 January 2007.

The deadlines, within which the response must be given on the appeals, are stipulated by Article 49 of the Constitutional Act “On Elections in the Republic of Kazakhstan”. It’s important to remember that this deadline is shortened. If under the general procedure, appeals are subjected to be addressed within 15 days, then during the election period, this deadline is shortened to 5 days, and the appeals received five days prior to or on the day of election, are considered immediately.

In addition to the above mentioned legal documents, courts of the Republic of Kazakhstan are guided also by the Civil Code of 13 July 1999.

All the applicants to the CEC were notified on the results of addressing their appeals, within the deadlines stipulated by law. The citizens, who were not satisfied with the results of consideration of their appeals, were eligible to appeal in the court.

Representatives of the Supreme Court of the Republic of Kazakhstan assert that election-related legal cases were considered in open and transparent way; no remarks were obtained regarding violations of procedural requirements by courts. As to the decisions made, according to the law, applicants were entitled to appeal them in regional courts, but only one applicant from 23 addressed cases, used this right for appeal stipulated by law. As another proof of the transparency, the blog “2011 President Elections” has been posted at the Supreme Court’s website, where all election-related court acts were posted timely and were open for public access.

The critical observation is not accepted.

21. The CEC received 14 complaints, none of which were decided by voting in a plenary session, as required by law. The majority of complaints were dismissed. The manner in which complaints were decided was not transparent, though it appeared they were dealt with by the CEC deputy chairperson himself, with responses signed by the CEC Secretary. The Election Law requires all CEC decisions be posted electronically for public access, but as formal decisions on complaints were not made, the responses were not published (section 13, page 18).

The CEC standpoint: The Kazakh law does not stipulate the requirement obliging the CEC to collectively consider all the complaints filed. International documents and the law of the OSCE participating States does not impose such commitments on the election organizers. The OSCE international commitments have no such requirement either.

Within the election period, the CEC received 14 complaints in total. 8 of them required checking jointly with the law-enforcement bodies and lower-level commissions, in order to verify the facts mentioned in those complaints. In this case a collective consideration was not required.

Three complaints were filed due to wrong understanding of the election-related legislation by the applicants. In these cases, the law provisions were explained.

With regard to two complaints filed by the candidates M. Eleusizov and G. Kasymov, assistance was required in running the election campaign.

In another appeal, a citizen of the Republic of Kazakhstan complained that he had no identity card and therefore could not vote. This appeal was re-addressed to the prosecutor's office for taking relevant measures.

The candidate Zh. Akhmetbekov's headquarters complained on damage of his agitation printed materials. However, no concrete information was provided to allow checking the facts. The CEC sent reminder to all candidates' headquarters on the necessity to observe the law requirements.

The CEC will appreciate if OSCE/ODIHR EOM gives examples of the collective decisions that could have been made on the above mentioned complaints received by the CEC.

The critical observation is not accepted.

22. In practical terms, the president's constitutional power to submit a challenge to the Constitutional Council to dispute the election results gives him undue opportunity to virtually invalidate the elections, considering that he can veto any decision of the Council which can be overruled only by a two-thirds majority of the Council members (further in the footnote: See Article 73.4 of the Constitution). This is particularly problematic in presidential elections where the president is also a candidate, as it gives the incumbent a greater power than other candidates to challenge and veto the results (section 16, pages 24-25).

The CEC standpoint: According to clause 1 of article 72 of the Constitution of the Republic of Kazakhstan in case of dispute the Constitutional Council upon application of subjects (among whom there is the President of the Republic) shall check the correctness of the conduct of election of the President. The Constitutional Council may recognize election as not corresponding to the Constitution in the electoral districts (administrative-territorial units), where the facts of infringement of the Constitution have been revealed.

The current President N. Nazarbayev has used three times his constitutional right on the decisions of the Constitutional Council regarding laws and has not agreed with its arguments. Of them, the Constitutional Council has overcome two times the objections of the Head of State. This fact suggests that Constitutional Council will remain on the objectivity grounds, if the President as a candidate would challenge the results of vote at the presidential election.

The critical observation is not accepted.

23. On election day, they observed the opening and voting in over 1,780 out of a total of 9,725 polling stations. Counting was observed in 151 polling stations and the tabulation of results in 123 out of 207 DEC's (section 2, page 3). International observers assessed voting positively in 90 per cent of polling stations visited, but their assessment was negative in 10 per cent, a figure which indicates systemic and serious problems (section 14 a, page 21). International observers reported a number of serious irregularities, including series of seemingly identical signatures on the voter list (241 cases), strong indications of ballot box stuffing (42 cases), and cases of proxy voting (78 cases, often with one person voting for other family members). Group (family) voting was observed in 135 cases. Multiple voting was observed in 46 polling stations in several regions. Other violations observed during the voting process included ballot boxes that were not properly sealed (116 cases) and violations of the secrecy of the vote. In 89 polling stations visited, people who did not present any form of prescribed ID were still allowed to vote. In 138 polling stations, the required official information on the candidates was missing. In Almaty, the acting head of Kainar University issued an instruction, dated 24 March 2011, to organize students' voting and threatened to consider expulsion of students and to apply "severe punishment" against the deans for "failure of the election" (section 14-a, pages 21-22). Substitutions were also implemented in an inconsistent manner – while in most regions new

commission members were appointed by higher-level election commissions, in some regions such decisions were in addition approved by maslikhats or a corresponding higher-level commission (further in the footnote: OSCE/ODIHR EOM LTOs reported that in Astana city, the TEC effected the replacements of PEC members, although this was the task of DEC)s (section 5, page 7).

The CEC standpoint. The CEC twice with its letters of 7 April 2011 Ref: OCK-05/596-i and of 26 April 2011 Ref: OCK-665-i addressed the Head of OSCE/ODIHR EOM, Ambassador Daan Everts with request to provide specifying polling stations with indication of settlement, district, oblast, where the above mentioned violations of the election legislation took place. The CEC also asked to provide such information in the official Comment to the Statement of Preliminary Findings and Conclusions of the International Election Observation Mission at early presidential election, dated as on 4 April 2011. Despite repeated written and oral requests, this information has not been submitted to the CEC.

Authors of Final Report contradict themselves. They indicate on pages 5 and 28 that only 10 percent of 1,780 visited polling stations were rated negatively: i.e. 178 polling stations, while it was found that in the text of the Report there are 217 such polling stations. It would be desirable if the Mission would more precisely define its figures. But even if we could suppose that these violations were in fact then they would account for only 2.2 percent of 2,725 polling stations of the country, functioning during presidential election, and, of course, could not affect the overall process of the vote in the Republic.

But these and all other cited cases are challenged by election commissions of the country. Thus, the Final Report refers to numbers of polling stations that did not and do not exist: for example, there are no PECs 180 and 181 in Karaganda city, where allegedly organized voting was observed, and there is no PEC 679 in Almaty city. The heads of election commissions of all regions of the country in one voice say that observers of the OSCE/ODIHR EOM to the questions of members of precinct election commissions told verbally that they have no critical observations on the vote issues, however in their written reports they pointed out these polling stations, where allegedly irregularities took place.

For example, OSCE observers Suanne Buggy and Nebojša Regoje visited PEC 611 in Abay city of Karaganda oblast, and media representatives G. Dabakhinskas and D. Radzevichus were present at PEC 614 of the same city, but none of them have made any critical observation about so-called identical signatures on the voter list. However, the Final Report of the OSCE/ODIHR EOM contains negative assessment on this PECs. We do not understand this.

The critical observations on ballot box stuffing have not been confirmed, because ballot-boxes are transparent: such ballots would be immediately seen by many observers and could be resulted in recognition of voting results at this particular polling station as invalid. There were no appeals on such matters either in election bodies, or in courts (for example see letters of West-Kazakhstan oblast election commission of 30 June 2011 Ref: 59, Zhambyl oblast election commission of 4 June 2011 Ref: 37, South-Kazakhstan oblast election commission of 1 July 2011 Ref: 79, Aktobe oblast election commission of 4 July 2011 Ref: 57).

The letter of the chairman of Almaty oblast election commission Sh. Zhylkaydarov of 11 July 2011 Ref: OK-01/59 regarding the critical observation about presence of unauthorized persons in the polling stations clarifies that those people were akims of villages, who came to polling stations to vote as voters, and there was no any interference with the voting process from their part.

The official letters of leadership of election commissions in the regions of the country also deny the facts of proxy voting, group (family) voting, multiple voting, violations of the secrecy of the vote, allowing to vote by persons, who did not present any form of prescribed ID, missing of the required information on the candidates in polling stations (for example, letters Almaty city election commission of 8 July 2011 Ref: 87-GIK, Karaganda oblast election commission of 4 July 2011 Ref: 27, East-Kazakhstan oblast election commission of 8 July 2011 Ref: 83, Kyzylorda oblast election

commission of 1 July 2011 Ref: OCK-03/170, South-Kazakhstan oblast election commission of 1 July 2011 Ref: 79).

Explanation note of the rector of university Kainar Mr. E.S. Omarov, attached to the letter of Almaty city election commission of 4 July 2011 Ref: 101, regarding publication of instruction, dated 24 March 2011, to force university students to vote argues that the instruction was fabricated. “Instruction (posted at web-site of Respublika newspaper) has no legal force, as it was compiled illiterately, without outgoing data, not on the letterhead of Kainar university, and without the official stamp, it was compiled by an unknown person through application of scientific and technological means”. It is seen in the letter of Astana city election commission of 8 July 2011 Ref: 87-GIK that city election commission of the capital by its status is equal to oblast election commission and substitution of members of precinct election commissions in the city was carried out according to the decision city maslikhat, and appointment of commissions’ members instead of retired ones was done only by city election commission. Observers of OSCE/ODIHR EOM Max Oser and Lilia Tulea have been provided with all necessary documents and they have not expressed any critical observations on this matter. Nevertheless, the observation by some reason was raised.

The CEC is forced to inform about improper performance of their duties by some international observers of the OSCE/ODIHR EOM. Thus, the letter of the chairman of Aktobe oblast election commission Ms. G. Kunbayeva of 4 July 2011 Ref: 57 in respond to critical observation that Temirski DEC in Aktobe oblast did not provide international observers with any information about protocols being tabulated, argues that observers Jan René Hammer and James Arthur Morrison did not want to take part at the procedure of receiving the PECs’ protocols on vote results but expressed a wish to obtain a protocol on tabulation the vote results in Temir district on the next day. The copy of protocol, certified with signatures of the DEC’s chairman and secretary and the DEC’s seal was handed to international observers on 4 April 2011. This fact is puzzling, because observers are required to periodically send to the office of OSCE/ODIHR EOM their filled forms during the whole process of monitoring tabulation of results in the territorial election commissions (see: Section 10, page 83, Observation Report Form D1 page 114 of Election Observation Handbook, Sixth edition, OSCE/ODIHR, Warsaw, 2010).

The critical observation is not accepted.

24. International observers reported that in 52 DEC’s, some PEC’s were completing the results protocols at the DEC premises, and that in 31 DEC’s, PEC’s corrected the protocols without a formal DEC decision. Figures in PEC protocols did not always reconcile correctly in 54 DEC’s observed (section 15, page 24).

The CEC standpoint. This critical observation is not proven by specific information about particular territorial election commissions, where these irregularities were observed. Election commissions in all regions of the country believe that these critical observations are unjustified. According to letter of the General Prosecutor’s Office of 13 July 2011 Ref: 7-316667-11 the courts and other state bodies did not receive any complaint on corrections in the result protocols at the DEC premises.

The critical observation is not accepted.

Recommendations

(here the recommendations of the OSCE/ODIHR Mission are highlighted in Italics)

A. Priority recommendations

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

1. Amending the legal framework for elections to bring it in line with OSCE commitments and other international standards, to lift excessive restrictions on the right to be elected, freedom of assembly, and freedom of speech as well as to eliminate ambiguities and gaps.

The CEC standpoint. Electoral legislation of Kazakhstan in general is in line to international principles of electoral law, formulated in Copenhagen Document, and the work on its improvement is carried out constantly.

Taking into account the last election campaigns and proposals of all stakeholders based on their results the CEC has elaborated a draft law on changes and additions to the Constitutional Act on Elections, which was discussed with OSCE/ODIHR experts.

The CEC is open to discuss possible changes to the election legal framework with OSCE/ODIHR, other international organizations, competent state authorities, political parties, public associations and other stakeholders.

Recommendation is at the stage of implementation.

2. Guaranteeing inclusive composition, as well as impartial and independent performance, of election commissions at all levels. To this end, consideration could be given to

(a) revising the way the CEC is appointed,

The CEC standpoint. Analysis of international experience confirms that the method of forming the Central Election Commission of the Republic of Kazakhstan (by President and Parliament) is in line with best international practice and international democratic principles. The similar method of forming the top electoral body exists in Bulgaria, France, Republic of Korea, Latvia, Romania, Russian Federation and Chile.

In the world practice, the election administration bodies are formed on the basis of party or professional principles. Thus, according to the results of a study of 202 countries by international project ACE Electoral Knowledge Network, formation of election commissions based on party principle is applied only in 20 countries (9.9 percent of countries covered by a study), while 89 counties (44 percent) all election administration system is formed on the basis of professional principle. The mixed system of forming election administration bodies is used in 35 countries (17.3%).

In 54 countries, including majority of countries with developed democracies, these principles do not apply, as in these countries election administration is a competence of executive brunch: ministries of interior (Austria, Belgium, Denmark, Germany, Greece, Italy), ministries of justice (Finland, New Zealand), other national state bodies (Ireland, Luxemburg, Norway, Czech Republic, Sweden, Switzerland), local executive authorities (United Kingdom, the USA) – See: Electoral Management Design: The International IDEA Handbook. – Stockholm, 2006.

Commitments, accepted by the OSCE participating States, do not include requirements to form election administration bodies exclusively based on party principle. For example, it is noted in the OSCE/ODIHR publication “Existing Commitments for Democratic Elections in OSCE Participating States” - (Warsaw, 2003) that the administration of elections must be conducted autonomously, free from government or other interference, by officials or bodies operating transparently under the law. The impartiality of the election administration can be achieved through either a mainly professional or politically balanced composition. We believe that Kazakhstan fully complies with this commitment.

In this regard, we think that proposal to change the method of forming the Central Election Commission, which is established by the Constitution, is groundless.

This recommendation cannot be accepted.

(b) ensuring adequate representation of all political parties in election commissions at all levels,

The CEC standpoint. Such guarantees are established in the Republic of Kazakhstan. There are no any barriers to all political parties to have the maximum representation in election commissions. Analysis of election of members of election commissions by maslikhats in 2009 demonstrates that representation of political parties in election commissions corresponds to their activity during nomination of their candidates to election commissions. In addition, all political parties during preparation for and conduct of elections are eligible to nominate to election commissions their representatives with advisory vote as well as to send their proxies and observers to the meetings of election commissions.

Recommendation is implemented.

(c) removing the possibility for members of one party to act as election commissioners for another party,

The CEC standpoint. The Constitution of the Republic of Kazakhstan in clause 1 of article 19 guarantees to citizens the right to indicate or not to indicate their ethnic origin, party membership and religion. Therefore, even if we establish such standard, we will be unable to monitor its implementation.

Bearing in mind the fact that many political parties do not have enough activists in the regions of the country, we think that removing from the Constitutional Act on Elections the possibility for members of one party to act as election commissioners for another, could significantly hinder the formation of commissions. In addition, this recommendation is not based on commitments of the OSCE participating States.

This recommendation cannot be accepted.

(d) allowing political parties to nominate nonvoting members to the CEC,

The CEC standpoint. The established constitutional procedure of forming the CEC does not initially provide for the presence of representatives of political parties in the CEC composition.

This recommendation cannot be accepted.

(e) prohibiting interference of local authorities in the work of the election administration.

The CEC standpoint. This recommendation is implemented in the Constitutional Act on Elections (article 50), which provisions are strictly observed in practice. Interference in the work of the election administration entails criminal (article 146 of the Criminal Code) and administrative (article 101 of the Code of Administrative Offences) responsibility.

Recommendation is implemented.

3. Ensuring transparency and consistency of the candidate registration process by amending the legal framework to establish

(a) clear, minimum, objective and reasonable criteria for transparent evaluation of language fluency

The CEC standpoint. The procedure for evaluation of the state language fluency by candidates to the President is established by the CEC Resolution of 31 August 2005 No. 12/26. Nevertheless, the CEC will consider the proposal on fixing this procedure in the Constitutional Act on Elections.

Recommendation requires further study.

(b) as well as the deadline for submission and the procedures and criteria for verification of supporting signatures.

The CEC standpoint. The procedure for verification of signatures of candidates to the President is established in clauses 7 and 8 of Article 56 of the Constitutional Act on Elections. Nevertheless, the CEC is ready to consider an issue on the detailed regulation of the procedure for

verification of signatures for the support to candidates to elective office taking into account recommendations of the OSCE/ODIHR EOM and to put the resolution of this issue at legislative level.

Recommendation requires further study.

4 (a). In order to further the development of a pluralistic multi-party system, consideration could be given to setting a fixed time limit for party registration.

The CEC standpoint. Registration of political parties is regulated by article 10 of the Law of the Republic of Kazakhstan of 15 June 2002 “On political parties”. According to article 9 of the Law of the Republic of Kazakhstan of 17 April 1995 “On state registration of legal entities and registration of branches and representation offices” the state registration (re-registration) of political parties and registration (re-registration) of their branches and representation offices must be conducted not later than one month since the day of submission of the application with attachment of all necessary documents. Provisions of these laws are observed.

Recommendation is implemented.

4(b). Political parties should not face undue impediments to their legitimate activities, including the requirement of advance approval, rather than simple notification, of meetings and rallies.

The CEC standpoint. According to article 32 of the Constitution of the Republic of Kazakhstan citizens of the Republic of Kazakhstan have the right to assemble peacefully and without arms, to hold meetings, rallies and demonstrations, street processions and pickets. The use of this right can be restricted by law in the interests of state security, public order and protection of the health, rights and freedoms of other persons. Activities of political parties must not violate human rights and freedoms, guaranteed by the Constitution of the Republic of Kazakhstan.

The requirement to obtain authorization to hold public rallies is a reasonable restriction, because simple notification procedure for holding meetings, for example, by initiative of political parties may lead to stoppage of traffic at main streets, disturb the peace and proper treatment of patients in hospitals, lead to the disruption of educational activities in schools and violation of rights of other people.

The Law “On the procedure for organizing and holding peaceful assemblies, rallies, marches, pickets and demonstrations in the Republic of Kazakhstan” of 17 March 1995 guarantees freedom of assembly and at the same time it contains some restrictions (in the interests of public safety and national security, public health and protection of rights and freedoms of others), which correspond to such international legal document as Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights, Annex, UN Doc E/CN.4/1984/4 (1984). Paragraph 22 of Siracusa Principles defines the expression “public order” as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is a part of “public order” and it is seen in paragraph 25 of the above mentioned Principles: “Public health may be invoked as a ground for limiting certain rights.” These provisions are consistent with the provisions of the Constitution of the Republic of Kazakhstan of 30 August 1995.

This recommendation cannot be accepted.

5. Considering amending the Civil Code to introduce a limit on damages for defamation and providing a limitation period, and amending the Criminal Code to repeal provisions referring to defamation and insult.

The CEC standpoint. Republic of Kazakhstan undertakes measures to decriminalize libel and insult by 2014. The Law of 18 January 2011 “On introduction of changes and additions to some legislative acts of the Republic of Kazakhstan on the further humanization of criminal legislation

and on the strengthening guarantees of rule of law in the criminal process” introduced institute of administrative prejudice (prejudging) in respect to crimes, which do not pose a serious danger to a society (including libel and insult). The Law of 25 March 2011 “On introduction of changes and additions to some legislative acts of the Republic of Kazakhstan of further improvement of civil legislation” amended clause 6 of article 143 of the Civil Code of the Republic of Kazakhstan, which excluded the possibility for compensation of moral damage in fines for dissemination of information, discrediting the honor, dignity and business reputation of legal entities

In the case of transferring the responsibility for defamation from the criminal law in the sphere of civil legal relations, the general rules of civil legislation of Kazakhstan will be applied to the issues of compensations and limitation period for libel cases.

Recommendation is at the stage of implementation.

6(a). Amending the Election Law to ensure the right of the media to report on the campaign without undue interference and the right of voters to receive fair, impartial and balanced coverage, also outside the news broadcasts.

The CEC standpoint. The CEC supports this proposal of the OSCE/ODIHR. Amendments in clause 3 of article 28 of the Constitutional Act on Elections are proposed. They aimed to clarify the procedure of allocation of funds from the state budget for the conduct of pre-election campaign, conduct of political debates by candidates and political parties, and free publication of candidates’ election programs in media.

Recommendation is accepted in part.

6(b). Additionally, authorities could consider tasking an independent body with developing supplementary guidelines on campaign coverage by the media that comply with international good practice on freedom of expression.

The CEC standpoint. Article 20 of the Constitution of the Republic of Kazakhstan of 30 August 1995 secures “freedom of speech” and “prohibits censorship”, which provisions are implemented in the social practice. Freedom of speech applies in Kazakhstan also in the electoral sphere. However, the CEC is ready to discuss this recommendation with the parties concerned and, if necessary, to develop supplementary guidelines.

Recommendation requires further study.

7(a). Steps should be undertaken to prevent and prosecute cases of the undue influence and abuse of authority by authorities, as well as misuse of administrative resources in elections for partisan ends.

The CEC standpoint. Recommendation concerning responsibility of officials of the state bodies in case of exerting the undue pressure and abuse of authority in favor of any candidate is implemented in the Constitutional Act on Elections (see sub-clause 1 of clause 4 of article 27 and article 50). Failure to meet these requirements of the law stipulates criminal and administrative liability.

Recommendation is implemented.

7(b). To this end, measures could be taken to clearly separate election administration from government structures, including with regard to the premises where election commissions are located. Adoption of a binding Code of Conduct on the non-use of administrative resources by the electoral competitors, as well as training on ethical and professional standards, could be considered.

The CEC standpoint. The activities of election administration and governmental structures are clearly divided. In this regard, the critical observation of the ODIHR/OSCE EOM is not clear. In its turn, the CEC is ready to discuss the recommendations about premises where election

commissions can be located, the Code of Conduct for candidates, as well as training on ethical and professional standards.

Recommendation requires further study.

8. Executive authorities and other government structures at all levels should refrain from putting pressure on voters. Where such cases occur, the judiciary should deal with them in a timely manner and in line with the law. The law should explicitly prohibit law-enforcement and security personnel from questioning private citizens about their intention to vote.

The CEC standpoint. Recommendation has been implemented in the Constitutional Act on Elections. Legislation stipulates administrative and criminal liability to officials for putting pressure on voters, which provisions are strictly observed in practice: some officials in regions have been punished for violation of the norms of the election legislations.

Recommendation is implemented.

9. Amending the Election Law to provide for a clearly defined election dispute resolution process with a single hierarchical structure, expressly defined authorities and remedial powers, as well as fundamental due process guarantees, such as fair and public hearing, transparency of proceedings, an opportunity to appeal to court, and an effective remedy. Various provisions in other laws that pertain to the election dispute resolution should be incorporated into the Election Law to increase transparency and ease of reference.

The CEC standpoint. The procedure for resolution of election disputes with a single hierarchical structure of responsibility, expressly defined authorities and remedial powers are clearly regulated in the current legislation of the Republic of Kazakhstan. Decisions and actions (inaction) of the election commission shall be appealed to the higher election commission, and (or) to the court. When appeals are considered either by the election commission and the court at the same time, the election commission shall suspend proceedings until a court judgment shall come into effect (see clause 9 of article 20 of the Constitutional Act on Elections).

According to Chapter 3 of the Code of Civil Procedure, actions (or inaction) of the state body, election commission, officials, which violated electoral rights of citizens, can be appealed to the court of jurisdiction.

In addition, appeals are considered and resolved in accordance with requirements of the CEC Resolution of 9 July 1999 No. 13/206 “On consideration by election commissions of citizens’ complaints and appeals on the violation of election law”.

Transparency of legal procedures is clearly regulated by current legislation. According to article 19 of the Code of Civil Procedure trial of civil cases in all courts are open. Persons participating in the case are entitled to record in writing or by using audio from their seats in the court. Film and photography, video recording, direct radio and television translation in the trial is permitted based on the courts permission, taking into account the views of those involved in the process.

In this regard, we think that additional regulation of this issue in the Constitutional Act on Elections is unnecessary.

This recommendation cannot be accepted.

10. Ensuring that all election complaint adjudicators thoroughly and impartially investigate and adjudicate election complaints; that they issue legally and factually sound decisions in written form. Consideration should be given to publishing all decisions on complaints in a timely manner, and providing copies of all complaint-related documents and decisions to accredited observers and the public upon request.

The CEC standpoint. There is no need to make corrections in the legislation, because the procedure for consideration of complaints is regulated in details by specialized legislation – by codes of civil and criminal procedures.

Concerning publication of decisions on complaints, the Supreme Court of the Republic of Kazakhstan informed that during election campaign information about all decisions of the Republic's courts were posted at the web-site of the Supreme Court, thereby the broad public access to the courts' decisions was ensured. As for providing copies of all complaint-related documents and decisions to accredited observers and the public upon request, it should be noted that information in the complaints and other documents must not lead to infringement of the applicants' rights and to the disclosure of personal information.

Recommendation is implemented.

11. Amending the Election Law to provide for expedient publication of detailed PEC results protocols, as well as the aggregation tables and protocols of DEC, TECs and the CEC, on the CEC website and in the media, while guaranteeing that all parties and observers have full access to all stages of the tabulation and aggregation process without impediments.

The CEC standpoint. This recommendation is not supported because of inevitability of small technical errors. With regard to publication of election results by electoral districts we should inform that such information is published at elections of maslikhat deputies and deputies to the Senate of Parliament of the Republic of Kazakhstan (clauses 4 and 5 of article 44 of the Constitutional Act on Elections). Elections of the President and deputies of the Mazhilis of Parliament to be elected by party lists are conducted in a single national electoral district, which results are also published.

This recommendation cannot be accepted.

B. Other recommendations

Legal framework

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

The CEC standpoint. The special status of the nation's leader was given by the Republic of Kazakhstan to the First President, the founder of independent Kazakhstan, the guarantor of the further progressive development of the country. And this is not something special. The world's experience, particularly in the countries in a state of political transition, which recently gained their national independence, demonstrates that the way out of the crisis is possible in the way of consolidation of new nation, united by its leader. After all, historic experience demonstrates that stability of political process in the complicated era of transit can be ensured only by the authority, led by the all-national prominent leader.

In this regard "unequal application of the two-term limit" does not contradict to paragraph 7.5 of Copenhagen Document, because it does not limit the rights of other candidates to the President by introducing to them of some other additional electoral qualifications or by introducing to the First President of some other additional benefits.

This recommendation cannot be accepted.

Election administration

13. Ensuring that regulations, rather than non-binding guidelines, are adopted by the CEC to clarify provisions in the Election Law and other election-related legislation. Such regulations should include rules for the registration of candidate proxies and political party representatives;

official instructions for voting procedures (including those ensuring the secrecy of the vote) and uniform procedures for the sealing of ballot boxes; procedures pertaining to the vote count and ballot reconciliation at the PEC level; and tabulation procedures, including mechanism for checking protocols for mathematical consistency.

The CEC standpoint. Since 1995 till 8 April 2011 (date of inauguration of elected President) the CEC adopted 919 various resolutions, including 194 resolutions concerning elections of the President, which in details fix the rules for registration of proxies of candidates and political parties and prescribe all official procedures for voting, vote count and tabulation. Nevertheless, the CEC has no objection against development and adoption of official instructions for registration of candidate proxies and political party representatives, for voting and tabulation procedures.

Recommendation is implemented; however the CEC will continue the work on the issues of the above mentioned official instructions.

14(a). Conditions that ensure sufficient transparency for meaningful election observation should be created in polling stations and in DEC and TEC premises. Consideration could be given to explicitly guaranteeing that observers are allowed to closely follow all aspects of the process without undue restrictions on their ability to move around as polling station, distributing certified result protocols to individuals wishing to receive a copy.

The CEC standpoint. This recommendation is implemented in articles 20-1 and 20-2 of the Constitutional Act on Elections and strictly observed in practice by election commissions of all levels. We pay significant attention to the issue of ensuring unimpeded access of observers to all aspects of the election at training workshops for members of election commissions of all levels as well as in the information and guidance materials sent out to election commissions. Thus, sub-clause 5 of clause 2 of article 20-1 of the Constitutional Act on Elections provides observers of political parties, other public associations, non-profit organizations of the Republic of Kazakhstan with the right to observe the voting, procedures of vote count and tabulation of voting results at a polling station in the conditions enabling good observation of all above mentioned procedures.

Recommendation is implemented.

14(b). Consideration could be given to removing the legal requirement for domestic observers to make remarks based on “documented, true and verifiable facts”.

The CEC standpoint. This recommendation does not comply with the commitments of the OSCE participating States. The comment contradicts to the Code of Conduct for International Election Observers, adopted by the UN on 25 October 2005, which states that “Observers must base all conclusions on factual and verifiable evidence and not draw conclusions prematurely”. It should be noted that the Code of Conduct was indorsed (signed) by 23 professional electoral organizations of the planet, including OSCE. Moreover, this recommendation is contrary to the OSCE/ODIHR Handbook for Domestic Election Observers (Warsaw, 2004), where in section 10-a it is prescribed that “all conclusions (of domestic election observers) should be based on well-documented, factual, and verifiable evidence”.

This recommendation cannot be accepted.

Voter registration

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

The CEC standpoint. The procedure for compilation of voter registers, making corrections in them is sufficiently regulated at the legislative level (article 24 of the Constitutional Act on

Elections). However, there are difficulties in compilation of voter registers due to internal migration, imperfection in the procedures of citizens' registration.

During election campaign the many measures to improve voter registers have been taken jointly with local executive bodies. Voters had opportunity to check their names in the voter registers at the CEC web-portal as well as in various call-centers in all regions.

Nevertheless, the CEC is ready to discuss the question on the establishment of a centralized cross-checking mechanism so that voters who registered at polling stations, mentioned in clause 8 of article 24 of the Constitutional Act on Elections, are excluded from the voter lists of the polling stations of their residence.

Recommendation requires further study.

Adjudication of election disputes

16 (a). should be ensured that the CEC and lower-level commissions decide complaints in a collegial manner in plenary session to ensure transparency of the process.

The CEC standpoint. The Kazakhstani party has repeatedly noted about groundlessness of the recommendation that election commissions are taken official collegial decisions on all incoming complaints and appeals during conduct of the election campaign. This will lead to the disruption of the work of election bodies as well as to the disruption of election campaign.

Kazakhstan's election legislation as well as international treaties, to which the Republic of Kazakhstan is a party, does not include requirements about collegial decision of all complaints and appeals submitted to election commissions. The Copenhagen Document does not contain requirements on collegial decision of application and appeals, submitted to the state bodies, including election commissions, either.

This recommendation cannot be accepted.

16 (b) The CEC could consider developing comprehensive standard operating procedures for internal handling of complaints at all levels of the election administration.

The CEC standpoint. Standard operating procedures for internal handling of complaints at all levels of election administration are established by CEC Resolution of 9 July 1999 "On consideration by election commissions of citizens' complaints and appeals on violation of election law".

Recommendation is implemented.

17. To ensure a balance between timeliness and respect for electoral rights in the election dispute process, the Election Law could be amended to provide a three to five-day deadline for submission of all complaints and at least one instance of appeal against court decisions in all election disputes, with a three-day appeal submission deadline and a three to five-day deadline for appeal consideration.

The CEC standpoint. According to article 49 of the Election Law, article 273 of the Code of Civil Procedure application submitted during preparation and conduct of elections as well as one month prior to election day must be handled in five days, and those which were submitted five days prior to election day, on election day and announcement of election results shall be handled immediately. At the same time stakeholders of election process are provided with 10 days to appeal action (inaction) of election commission (clause 9 of article 20 of the Constitutional Act on Elections).

Recommendation is implemented.

18(a). The Election Law should be amended to expressly provide the right for election stakeholders to file complaints against election results at all levels, as well as specify jurisdiction over such complaints, and objective criteria for invalidation of election results.

The CEC standpoint. This recommendation was voiced by the OSCE/ODIHR earlier. The CEC provided detailed comments about the procedure to appeal the election results at all levels.

We believe that additional regulation of the whole procedure to appeal the election results in the Constitutional Act on Elections as unreasonable. It will be appropriate to discuss criteria for invalidation of election results at the level of experts.

Recommendation requires further study.

18(b). The law should ensure that the installation of the president not take place prior to exhaustion of the complaints and appeals process.

The CEC standpoint. Effective dates of the elected President in the position are established by the Constitution. The clause 3 of article 41 stipulates that "regular elections of the President of the Republic are held on the first Sunday of December" with "the oath is to be taken on the second Wednesday of January "(clause 2 of article 42). Thus, the Constitution provides adequate time to review complaints and appeals related to the election.

Clause 2 of Article 3 of the Constitutional Act "On the President of the Republic of Kazakhstan" defines that in case of election of the President at early election the oath is given within one month from the date of publication of the election results. In these cases, the date of the oath is determined by the Central Election Commission of the Republic. That is, the law provides for a sufficient period to complete the review of complaints and appeals by election.

Recommendation is implemented.

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

The CEC standpoint. According to constitutional authorities activities of public prosecutor offices are directed on prevention of any violations of the constitutional rights of citizens during election process as well as on implementation of the provisions of election legislation by all stakeholders of election process. In order to ensure publicity the General Prosecutor office conducted a work to inform the public of Kazakhstan on the state of lawfulness during election campaign.

The right to appeal to the public prosecutor office each election process stakeholder implements independently. This choice is made by them freely, requests are sent not only to prosecutor offices but also to other state bodies.

Thus, the supervision conducted by prosecutor offices in no way can be assessed as substitution of judiciary or election commissions. In addition, while consideration of appeals by prosecutor offices, the interpretation of the law is provided only in cases if the incorrect understanding of the law may lead to its incorrect application.

In transitional period limitation of the role of the prosecutors to make answerable for offences is impossible until the effective legal system would not be established.

According to the Constitutional Act on Elections during election campaign interior bodies are assigned with the tasks to ensure the public order and public security, and safety of election documents.

This recommendation cannot be accepted.

Media

20. Consideration could be given to transforming the state-owned broadcasters into a publicservice broadcaster and amending the media legal framework correspondingly, in order to

establish a publicly accountable independent broadcaster in Kazakhstan which would provide electoral competitors with equitable access, and unbiased and thorough coverage.

The CEC standpoint. This issue is not in the competence of the CEC. Nevertheless, we believe that the Constitutional Act on Elections sufficiently provides equal opportunities to candidates in terms of access to media and coverage of election programs on the air.

Recommendation requires further study.

Election day

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

The CEC standpoint. The Constitutional Act on Elections provides to territorial and district election commissions the opportunity to change the voting hours but obliges them to bring the decision about changed hours to the attention of voters. At the same time voting cannot start earlier at 6 am and finish later than at 10 pm. The reasons for changing voting hours are transparent and explainable. Polling stations, where the voting hours have been changed, were located in hard-to-reach settlements and institutions with restricted motion regime (hospitals, investigative wards, stationary medical institutions, representations of the Republic of Kazakhstan abroad). By making this recommendation, the OSCE/ODIHR does not specify which international commitment is not implemented by the Republic of Kazakhstan.

This recommendation cannot be accepted.

Примечание: During preparation of this Comment of the Central Election Commission of the Republic of Kazakhstan was assisted by: the Ministry of Interior, Ministry of Communication and Information, Ministry of Justice, General Prosecutor's Office, Supreme Court, low-level election commissions of the Republic of Kazakhstan.

List of abbreviations

- ANSDP – All-National Social-Democratic Party (of Kazakhstan)
- CEC – Central Election Commission of the Republic of Kazakhstan
- CIS Convention- Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States of 7 October 2002
- Copenhagen Document – Document of Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (OSCE) of 29 June 1990
- CPK – Communist Party of Kazakhstan
- CPPK – Communist People's Party of Kazakhstan
- DEC – district election commission
- DPK “Adilet” - Democratic party of Kazakhstan “Adilet”
- DPK “AK ZHOL” – Democratic party of Kazakhstan “AK ZHOL”
- DPK “AZAT” – Democratic party of Kazakhstan “AZAT”
- Election Law – Constitutional Act of the Republic of Kazakhstan of 28 September 1995 “On Elections in the Republic of Kazakhstan”
- EOM – Election Observation Mission
- KSDP “Aul” – Kazakhstan Social-Democratic Party “Aul”
- ODIHR/OSCE- Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe
- OSCE – Organization for Security and Cooperation in Europe
- PACE - Parliamentary Assembly of the Council of Europe
- PDP “Nur Otan” – People's Democratic Party “Nur Otan”

PEC – precinct election commission
TEC – territorial election commission

**Central Election Commission
Republic of Kazakhstan**

3 August 2011