

**INTERIM REPORT No. 1
1–14 March 2011**

21 March 2011

I. EXECUTIVE SUMMARY

- The president of the Republic of Kazakhstan on 4 February 2011 announced an early presidential election for 3 April. This followed a citizens' initiative for a referendum which would have extended president's term in office until 2020.
- Four candidates will contest the election, out of 22 initial nominees. A number of opposition parties and leaders decided not to participate and/or called for a boycott, claiming the absence of conditions for a meaningful election and a short time for campaigning as the key reasons.
- The application of the mandatory Kazakh-language test lacked clear criteria, and the verification of supporting signatures was not done in a transparent way.
- The Election Law was most recently amended in 2009 and February 2011. A number of recommendations previously offered by the OSCE/ODIHR remain unaddressed, and the legal framework continues to have several substantive shortcomings.
- The election is administered by the Central Election Commission (CEC), 16 Territorial Election Commissions (TECs), 207 District and Town Election Commissions (DECs) and some 9,725 Precinct Election Commissions (PECs). The CEC is active in making preparations for this election and training lower-level commissions. Concerns have been raised about representation of political parties in election commissions, as well as about the fact that in a number of instances the majority of commission members come from the same organization.
- The number of registered voters is around 9.1 million. Voters are able to check their records in the voter list, including by e-mail.
- The official campaign began on 3 March. Apart from the campaign on behalf of the incumbent, who is not campaigning himself, campaign activities are thus far low-key. With one exception involving an assault, pro-boycott gatherings – where authorized – passed without incident.
- The media operate in a restrictive environment, due to legal provisions which contribute to self-censorship. The Election Law provides candidates with direct media access through state-funded and paid airtime and print space but does not adequately regulate coverage of the campaign by media, in particular in news and information programs.
- The few complaints filed with the CEC and the courts were rejected or refused consideration. Adjudication of complaints has so far lacked transparency. The working group appointed by the CEC to review complaints dismissed three of them without a decision by the CEC as required by law.

- The OSCE/ODIHR EOM opened in Astana on 1 March, with a 16-member core team and 28 long-term observers who are deployed to 14 locations throughout the country.

II. INTRODUCTION

The president of the Republic of Kazakhstan, Nursultan Nazarbayev, on 4 February 2011 signed a decree for an early presidential election to take place on 3 April. Following an invitation from the Ministry of Foreign Affairs of the Republic of Kazakhstan, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 1 March. The OSCE/ODIHR EOM, led by Ambassador Daan Everts, consists of a 16-member core team based in Astana and Almaty, and 28 long-term observers who were deployed on 5 March to 14 locations around the country. The OSCE/ODIHR EOM is drawn from 27 OSCE participating States. Participating States have been requested to second 400 short-term observers to observe voting, counting, and tabulation of results.

III. BACKGROUND

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

The last presidential election, held on 4 December 2005, was won by the incumbent with 91.15 per cent of the vote and a voter turnout of 76.78 per cent. The OSCE/ODIHR in its final report on this election concluded that "despite some improvement in the administration of this election in the pre-election period, the election did not meet a number of OSCE commitments and other international standards for democratic elections."

IV. THE LEGAL FRAMEWORK AND ELECTION SYSTEM

The legal framework for elections includes the Constitution, the Constitutional Law on Elections (Election Law), and decisions and regulations of the CEC. Other relevant laws include, *inter alia*, the Law on Political Parties, Criminal Code, Administrative Offences Code, Civil Procedure Code, and Law on Peaceful Assemblies. The Constitution guarantees fundamental civil and political rights necessary for the conduct of democratic elections.

The Constitution and Election Law were amended in February 2011 to allow the president to call an early presidential election, in a very short timeframe and without comprehensive public debate. The election will be held only two months after the amendments were adopted.¹ Other recent

¹ It is international good practice that the fundamental elements of the electoral law should not be open to amendment less than one year before an election.

amendments to the Election Law, adopted in February 2009, were mostly minor in as far as they concern presidential elections.

A number of previous OSCE/ODIHR recommendations for improving the legal framework remain unaddressed. Significant shortcomings include: undue restrictions on candidate eligibility; lack of objective criteria for determining candidates' Kazakh language proficiency; lack of guarantees for inclusive and pluralistic representation on election commissions; insufficient guarantees for equal campaign conditions; excessive restrictions on freedom of assembly; undue limitations on freedom of speech, including criminalization of defamation and insult; and lack of clarity and due process guarantees in the resolution of election disputes.

The president is elected in a two-round majoritarian contest, for a five-year term. If no candidate receives more than 50 per cent of votes cast in the first round, a second round is held within two months. A person may not serve more than two consecutive terms, with the exception of the first president, who may serve an indefinite number of terms.

V. THE ELECTION ADMINISTRATION

The election is administered by a four-tiered system of election commissions comprising the CEC, 16 TECs,² 207 DEC, and 9,725 PECs. All election commissions have seven members and are appointed for five years; TECs, DEC and PECs are only active during election periods. The CEC chairperson and two members are appointed by the president, while the Senate and the *Majilis* (the lower house of parliament) appoint two CEC members each. TEC, DEC and PEC members are appointed by the respective *maslikhats* (local councils), based on proposals of political parties. If parties do not submit proposals within the legal deadlines, the *maslikhat* appoints people nominated by public associations or higher-level election commissions. Some parties raised concerns with the OSCE/ODIHR EOM over their low representation in election commissions. Each candidate, as well as parties not represented in election commissions, may delegate a non-voting member to a corresponding commission for the election period.

By law, an election commission may not consist of people from the same organization. The CEC interprets this provision as only prohibiting all seven members being from the same organization. The OSCE/ODIHR EOM noted a number of cases where the decision-making majority of commission members come from the same organization.

The CEC is active in electoral preparations, holds regular sessions which are open to the public and attended by media and observers, provides weekly press briefings, and maintains an informative website. The CEC has carried out training of lower-level commissions and provided instructions and manuals for TEC, DEC and PEC members. The CEC is also conducting a large-scale voter education campaign.

VI. VOTER REGISTRATION

Local executive bodies (*akimats*) are responsible for the compilation and accuracy of voter lists, based on data provided by the bodies in charge of the population register. *Akimats* submit data about registered voters to the respective TEC twice a year, by 1 January and 1 July, electronically and in hardcopy. Around 9,101,000 eligible voters were registered as of 1 January 2011. A nationwide electronic voter register is maintained by the CEC, which uses it to identify duplicate records. Information about duplicates and other errors is sent to the *akimats*, which use them to

² One for each of the 14 regions (*oblasts*), one for the capital Astana, and one for Almaty city.

verify and correct the data. Additional efforts are being undertaken to enhance the accuracy of the voter lists; at the initiative of the CEC, voters are able to check their records by email. Voters who will be away from their domicile on election day can apply for an absentee voting certificate.

VII. CANDIDATE NOMINATION AND REGISTRATION

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

By the legal deadline of 2 March, the CEC registered four candidates. Of the 22 initial nominees, 5 failed the Kazakh language test and 4 did not take it, while 5 more withdrew before the registration deadline. Four nominees were denied registration by the CEC on 2 March because they did not submit enough valid supporting signatures, present tax declarations, and/or pay the deposit.

Previous OSCE/ODIHR recommendations to clarify legal provisions on candidate registration remain unaddressed. Furthermore, unclear mechanisms for registering proxies effectively shortened the timeframe for signature collection. For example, some TECs required nominees to submit notarized applications to register their proxies, while others accepted ordinary written applications.

A lack of clear rules for signature verification led to uneven practice. TEC verification protocols contained no reasoning for the invalidation of signatures, and candidates or their proxies were routinely not invited to attend the verification procedures. The OSCE/ODIHR EOM was informed by one nominee that one TEC rejected signature sheets due to technical mistakes found.³

The Kazakh language test presented an obstacle for some candidates. Despite previous OSCE/ODIHR recommendations, no clear criteria were established for the test and it remains partly unclear how the CEC-appointed Linguistic Commission arrived at its conclusions.⁴

VIII. CONTESTANTS AND CAMPAIGN ENVIRONMENT

Four candidates will contest the upcoming presidential election: Nursultan Nazarbayev, the incumbent and the leader of the ruling Nur Otan party, Gani Kasymov, senator and the leader of the Party of Patriots of Kazakhstan, Jambyl Akhmetbekov of the Communist People's Party of Kazakhstan, and Mels Yeleusizov, chairperson of the Ecological Union 'Tabigat' of Kazakhstan.

Several opposition parties and leaders announced that they would not participate in the election, claiming that conditions for a meaningful election were not in place and that the sudden announcement of the election and the short timeframe created unfair campaign conditions. Such parties as Azat, Ak Jol and Ruhaniyat decided to not participate in the election but stopped short of calling for a boycott. The Communist Party and the un-registered Alga party, together with civil society groups united in the *Narodovlastiye* (People's Power) bloc, are questioning the legitimacy

³ The Eastern Kazakhstan TEC did not accept signature sheets in favor of Musagali Duambekov because the names of some voters were not complete or had been corrected, or some data had been written with different ink.

⁴ For example, Ualikhan Kaisarov, a self-nominated candidate and member of the Azat party, failed the test despite passing it in 2005 and being known for making speeches in Kazakh in the Senate.

of the election and call for a boycott. They are using the Internet and, in particular, social networks as a tool to get their message across and are launching protest meetings.

The incumbent declared his intention not to campaign personally, arguing that his 28 January Address to the Nation contains his electoral pledges; he delegated the task to Nur Otan instead. Thus far, only the campaign for the incumbent is highly visible. Efforts are being made to call on citizens to vote, with billboards displaying portraits of the president and performances of pop singers underway. The campaigns of the other candidates are less visible, although they have started holding events and some billboards and posters are in evidence.

On 11 March, participants of a pro-boycott gathering in Pavlodar were assaulted on two instances by unknown people. The police are investigating the incident. On 13 March, Alga and the Communist Party held pro-boycott meetings authorized by the local authorities: some 80 people gathered in Shymkent, 60 in Oskemen, 50 in Pavlodar and over 400 in Almaty, without incidents. Local authorities did not allow pro-boycott gatherings in Taldykorgan and Karagandy.

To finance their campaign, all candidates can use their own funds and donations of citizens and organizations, up to a combined total of around EUR 1.6 million. Candidates nominated by parties or other public associations can in addition receive up to EUR 560,000 from the nominating organization; this puts self-nominated candidates at a disadvantage. All candidates also receive campaign funds (about EUR 31,500) from the state budget.

IX. THE MEDIA

The Constitution prohibits censorship and guarantees freedom of speech and the right to freely receive and disseminate information by any means not prohibited by law. However, defamation and insult are still criminal offences, punishable with harsh penalties. The Criminal Code gives special protection to the president and public officials. In addition, the Civil Code foresees exceptionally high fines for defamation. These provisions have been used frequently against journalists and editors critical of the authorities and contribute to self-censorship. Furthermore, Kazakhstan is among the few OSCE participating States without an information law in place. The Internet is serving increasingly as a source of alternative information, although some sites are often not accessible from within Kazakhstan and the Internet is bound by the same laws as broadcast and print media.⁵

Article 28 of the Election Law guarantees candidates the right to campaign in the media under equal access conditions. The law does not limit the amount of paid advertising candidates can purchase, which is only constrained by the general campaign funding limits. Every candidate is granted funds from the state budget to purchase print space and airtime on TV and radio. Apart from direct access programs, campaign coverage by the media, in particular in news and information programs, is not adequately regulated by the Election Law. Article 27.7 only obliges media to provide “unbiased” coverage of the election campaign of candidates and political parties.

According to the CEC and the Ministry of Information and Communication, state-owned and commercial media outlets are obliged to cover the candidates in the news for the same length of time and with the same tone. Campaign coverage outside news programs should be considered campaigning or political advertising and should be paid for from the candidates’ campaign funds.

⁵ In July 2009 Kazakhstan adopted a law on Internet regulation that equates forums, blogs, chats and other internet resources with traditional media.

Coverage of candidates in their institutional role should not be considered as campaigning or political advertising.⁶

The CEC appointed a ‘Public Council on Review of Media-Related Disputes’ to oversee the implementation of media-related campaign provisions. As of 14 March, this body had not recorded any violations or received any complaints. In the absence of an independent regulatory body, the Ministry of Information and Communication started its own media monitoring on 3 March.

In order to assess the conduct and coverage of the campaign in the media, the OSCE/ODIHR EOM on 3 March started the quantitative and qualitative monitoring of six television stations and six newspapers, in both the Kazakh and Russian languages.⁷

X. COMPLAINTS AND APPEALS

The Election Law does not establish a clearly defined complaints and appeals process with a single hierarchical structure of responsibility. Complaints against decisions and (in)actions of election commissions can be submitted to either a higher election commission or a district court (with appeal to higher courts), or to both,⁸ except in two specific instances.⁹ Any other complaints alleging violations of the election law can be filed with election commissions, district courts, or the prosecutor’s office.¹⁰ The CEC considers election complaints to be “private matters”; thus, copies of complaints and CEC responses or decisions were not provided to the OSCE/ODIHR EOM by the CEC.¹¹ The Supreme Court provided access to the court decisions but not to the complaints.

On 1 March, the CEC established a working group comprising a CEC member and staff, as well as representatives of various law-enforcement bodies. Under the regulation, the working group is to provide recommendations to the CEC based on “the most commonly received complaints” but does not have the authority to decide on individual complaints. However, according to the CEC deputy chairperson, who chairs the group, in practice the group will reject the cases it considers unfounded and refer to the CEC only those complaints where it deems that violations have occurred.

As of 14 March, the working group of the CEC dealt with three complaints; they were all dismissed without a decision by the CEC as a body, as required by law, and not transparently. In these cases comprehensive and sound factual-legal reasoning was not provided to complainants.

Cases were filed with seven district courts in Almaty by an NGO alleging illegal composition of 18 PECs that were elected and then modified by the Almaty city *maslikhat*. The courts refused to consider the cases, with at least five of them citing an apparently incorrect deadline for filing complaints against the respective *maslikhat* decisions.¹²

⁶ These guidelines on campaign coverage, presented at a 10 March ‘seminar’ at the Ministry of Information and Communication, are not available in writing.

⁷ The monitored TV stations are Kazakh TV, Khabar TV, KTK, Channel 7, Astana TV and Channel 31. In addition, the OSCE/ODIHR EOM monitors the following newspapers: *Vremya*, *Kazakhstanskaya Pravda*, *Panorama*, *Svoboda Slova*, *Zhas Alash* and *Respublika*.

⁸ When an appeal is submitted to both a higher election commission and a court, the election commission must suspend proceedings until a court judgment is issued.

⁹ Complaints regarding CEC decisions on candidate registration or de-registration and refusal or failure by the CEC to declare the elected president the winner are submitted directly to the Supreme Court.

¹⁰ Public prosecutors are responsible for overseeing the legality of the election process.

¹¹ The OSCE/ODIHR EOM was able to review the decisions of the CEC working group at the CEC premises.

¹² The courts cited the ten-day deadline in the Election Law for filing complaints against decisions or actions (inaction) of an election commission instead of the applicable three-month deadline in the Civil Procedure Code for filing complaints against decisions of local government bodies.

Four election-related cases were filed with the Supreme Court; three were refused consideration and one was dismissed. In the latter case, the plaintiff challenged the CEC decision rejecting his candidacy based on a lack of Kazakh language fluency. The CEC refused to provide the nominee with the specifics of the test result, affecting his right to appeal. As there are no clear legal standards for judging the language proficiency of candidates, the court had no clear legal reference for determining the validity of the CEC decision.¹³ Further, the court held that the CEC's linguistic commission had not acted improperly when it imposed additional testing on the plaintiff over and above the testing procedures established in the 2005 CEC regulation on procedures to determine a candidate's Kazakh language proficiency.¹⁴

In one case, the Supreme Court refused to consider the complaint on the ground that the CEC has sole prerogative to determine violations of the election law and de-register candidates, with no recourse to courts.¹⁵ However, Art. 49 para. 1. of the Election Law states that "courts...shall be obliged to accept applications of the...citizens concerning the issues of conducting the voting including the issues on infringements of the election legislation that have been received during the preparation and conduct of elections." In another case, which challenged, within the legal deadline, the CEC's refusal to register a candidate, the Supreme Court dismissed the complaint on procedural grounds.¹⁶

XI. PARTICIPATION OF WOMEN AND NATIONAL MINORITIES

The Constitution and Election Law provide the basis for equal participation of women and men in the electoral process. There is no female candidate in this election, although of the 22 prospective candidates, four were women. Women are represented in the election administration with 2 of the 7 CEC members, 3 of 16 TEC chairpersons and 44 of 207 DEC chairpersons being female.

According to the 2009 Census¹⁷ 63.1 per cent of the population is Kazakh. Russians, who are the largest minority, account for 23.7 per cent of the population. Other minorities include Uzbeks (2.9 per cent), Ukrainians (2.1 per cent), Uyghur (1.4 per cent), Tatars (1.3 per cent), Germans (1.1 per cent), Koreans, Belarusians and Poles. According to the Constitution, the Russian language can be officially used on equal grounds with the Kazakh language in state institutions and local self-administrative bodies.

XII. DOMESTIC OBSERVERS

Domestic observers may be nominated by political parties, other public associations, and non-profit associations. Domestic observers do not need to be formally accredited but have to present a formal letter from their nominating organization and their ID to the election commission where they observe. In addition, candidates may nominate proxies, who have the same rights and responsibilities as observers but are required to pass through a more formalized accreditation

¹³ The court-appointed expert found significantly fewer test mistakes (17) than the CEC's linguistic commission (28). The court decision noted that requirements for proficiency in the Kazakh language have "now increased, as shown in legal acts adopted in recent years", without reference to any specific legal acts.

¹⁴ Following the decision, the court sent a letter to the CEC, dated 19 February 2011, recommending that the CEC amend the decree to make clear that additional testing is permissible.

¹⁵ The case alleged that the incumbent misused his official position for campaign purposes and called for his de-registration. The CEC had earlier rejected the complaint.

¹⁶ According to the Court's decision, the complainant submitted a copy of the appeal and not the original document.

¹⁷ See The Agency of Statistics of the Republic of Kazakhstan:
http://www.eng.stat.kz/perepis_nasl/Pages/n1_12_11_10.aspx.

procedure. Several political parties and domestic NGOs have stated their intention to observe the election, and some have made calls for observer recruitment.

XIII. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM formally opened in Astana with a press conference on 1 March. The Head of Mission has so far met the CEC Chairperson, the State Secretary and Minister of Foreign Affairs, the Deputy Foreign Minister, the Chairpersons of the Supreme Court and the Constitutional Council, three of the four presidential candidates, leaders of political parties, ambassadors of OSCE participating States, the head of the OSCE Centre in Astana, and representatives of other international organizations. The OSCE/ODIHR EOM has also established regular contacts with the CEC, governmental institutions involved in the election process, political parties, civil society, and the media. A first briefing for representatives of the diplomatic community was held on 11 March.

The OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE) will deploy observer delegations for election-day observation. The OSCE Chairperson-in-Office has appointed Mr. Tonino Picula as Special Co-ordinator to lead the OSCE short-term observer mission for this election.