

Office for Democratic Institutions and Human Rights

REPUBLIC OF TAJIKISTAN

PARLIAMENTARY ELECTIONS February 2010

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

9-11 November 2009



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REPUBLIC OF TAJIKISTAN PARLIAMENTARY ELECTIONS February 2010

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the authorities of the Republic of Tajikistan to observe the 2010 parliamentary elections and in line with its methodology, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) to Tajikistan from 9 to 11 November 2009.

The OSCE/ODIHR NAM comprised Dr. Beata Martin-Rozumilowicz, deputy head of the OSCE/ODIHR election department, Mr. Mats Lindberg and Mr. Igor Dolgih, OSCE/ODIHR election advisers. Ms. Anna Chernova, Programme Officer from the International Secretariat of the OSCE Parliamentary Assembly, also took part in the OSCE/ODIHR NAM, the purpose of which was to assess the pre-election environment and to advise on a possible OSCE/ODIHR election observation activity. Although the election date has not been announced, the President must set it 75 days prior to the expiry of the current parliament's mandate. Elections are expected at the end of February 2010.

The OSCE/ODIHR NAM held meetings in Dushanbe with representatives of the Ministry of Foreign Affairs (MFA), the Central Commission for Elections and Referenda (CCER), six of the eight registered parliamentary parties, the State Television and Radio Company, civil society, and representatives of the international community (see annex for a full list of meetings). The OSCE/ODIHR is grateful to the MFA and the OSCE Office in Dushanbe for their co-operation and assistance during the mission.

II. EXECUTIVE SUMMARY

The Supreme Assembly of the Republic of Tajikistan (*Majlisi Oli*) has two chambers. The Assembly of Representatives (*Majlisi Namoyandagon*) is the lower chamber with 63 members elected for a five-year term, 22 of whom are elected from political party lists with a proportional system, while 41 members are elected from single-mandate constituencies. Though elections to the *Majlisi Namoyandagon* have not yet been called, they are expected to be held at the end of February 2010, on the same day as regional and local elections.

The February 2010 elections will be administered by the Central Commission of Elections and Referenda (CCER), 41 District Electoral Commissions (DECs), and some 3,500 Precinct Election Commissions (PECs). Formal membership of political parties on PECs was raised as an issue, which would enable them to have an oversight over the administration of elections. Issues regarding the compilation of voter lists by PECs were also raised as a concern by certain interlocutors.

It appears that few, if any, of the recommendations issued by OSCE/ODIHR in the final reports of its previous Election Observation Missions (EOMs) have been addressed. A set of amendments presented to parliament in February 2009, which may have improved the electoral legislation, stalled in committee without having been voted upon.

An open political discussion takes place among the political elite, and there appears to be a real competition between some of the political parties that represent a plurality of views. Most parties expect to be able to meet with the electorate without hindrances. By contrast, they considered the free airtime granted on State TV as insufficient in duration. Based on past experience they did not expect much coverage in other media either. The parties also raised concerns about access to the entire election day process, citing problems that they have experienced in the past. These include an insufficient ability to observe the counting and tabulation, and lack of protocol copies in order to document complaints.

Overall, the media environment in Tajikistan is largely controlled by the authorities. The State continues to monopolize most distribution, printing and broadcasting transmission facilities. According to several interlocutors, various legal and administrative means are used to suppress critical journalism and result in self-censorship. At the same time, in positive developments, a code of professional conduct for Tajik media was adopted by media representatives in May 2009. In October 2009, a first Tajik media council was elected.

While observers from political parties, candidates and international organizations are foreseen by the law, the legislation does not provide for domestic non-partisan election observation as required by paragraph 8 of the OSCE 1990 Copenhagen Document.

Most interlocutors felt it constructive and useful for the OSCE/ODIHR to observe the parliamentary elections. In response to the invitation of the Minister of Foreign Affairs of the Republic of Tajikistan issued subsequent to the conduct of the OSCE/ODIHR NAM¹ and in view of the findings outlined in this report, the OSCE/ODIHR NAM recommends the deployment of a standard Election Observation Mission (EOM) to the Republic of Tajikistan to assess the parliamentary elections, expected at the end of February 2010. The OSCE/ODIHR EOM will assess these elections for their compliance with OSCE commitments, other international standards, and domestic legislation. It will observe the local and regional elections only to the extent that they will impact upon the conduct of the parliamentary elections.

In addition to a core team of analysts, the OSCE/ODIHR will request OSCE participating States to second 20 long-term observers to be deployed throughout Tajikistan about a week after the arrival of the core team of analysts to observe the conduct of the elections in the regions. In addition, OSCE participating States will be requested to second 150 short-term observers to observe election day proceedings. The OSCE/ODIHR EOM should commence in the first part of January, depending on the exact election date.

Address by H.E Minister of Foreign Affairs of the Republic of Tajikistan, Mr. Hamrokhon Zarifi, at the 17th OSCE Ministerial Council Meeting in Athens, Greece, 1 December 2009, available at www.osce.org/documents/cio/2009/12/41684_en.pdf.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The Assembly of Representatives (*Majlisi Namoyandagon*) is the lower chamber with 63 members elected for a five-year term, 22 of whom are elected from political party lists under a proportional system with a five per cent threshold, while 41 members are elected from as many constituencies in two-round majoritarian elections. A 50 per cent turnout is required for elections to be valid.

Although the 2010 parliamentary elections have yet to be officially called, it is generally understood that as the current *Majlisi Namoyandagon* was elected on 27 February 2005, the last Sunday before the expiration of its five-year mandate would be 21 February 2010. Regional and local elections will be held on the same day as the parliamentary elections.

Following the end of the 1992-97 civil war, Tajikistan has held two parliamentary elections. The OSCE/ODIHR deployed EOMs to Tajikistan for the 2000 and 2005 parliamentary elections, as well as the 2006 presidential election. The 2000 parliamentary elections were the first multi-party elections held in Tajikistan.

The 2005 EOM concluded that "the 2005 parliamentary elections in Tajikistan failed to meet many of the key OSCE commitments for democratic elections contained in the 1990 Copenhagen Document, and they were also not conducted fully in accordance with domestic law". In its final reports, the OSCE/ODIHR has offered numerous concrete recommendations on how to improve the electoral framework. None of the key recommendations have been addressed. An MFA representative, however, told the NAM that OSCE/ODIHR recommendations are taken very seriously by the Tajik authorities.

Tajikistan has a multi-party system, with eight political parties officially registered to contest elections.³ Some are either openly pro-presidential or explicitly support the government's policies; others are openly critical of the authorities and offer a different choice in terms of policy orientation and goals.

On the side of the opposition, there is the Islamic Revival Party of Tajikistan (IRPT), the Social Democratic Party (SDP), and the Democratic Party of Tajikistan. The IRPT currently holds only one seat in parliament.⁴ The Communist Party of Tajikistan (CPT) has four. CPT has traditionally supported the ruling People's Democratic Party of Tajikistan (PDPT), headed by the President. Recently, it has become increasingly critical

Available at www.osce.org/documents/odihr/2005/05/14852_en.pdf. Reports for all other EOMs to Tajikistan can be found at www.osce.org/odihr-elections/14653.html.

Agrarian Party of Tajikistan, led by Amir Karokulov; Communist Party of Tajikistan, led by Shodi Shabdolov; Democratic Party of Tajikistan, led by Masud Sobirov; Islamic Revival Party of Tajikistan, led by Muhhidin Kabiri; Party of Economic Reform of Tajikistan, led by Olimjon Boboev; People's Democratic Party of Tajikistan, led by President Emomali Rahmon; Social-Democratic Party of Tajikistan, led by Rahmatillo Zoiov; Socialist Party of Tajikistan, led by Abduhalim Gafforov.

After IRPT's second MP resigned from parliament in early 2009, the CCER refused to appoint the next candidate from the IRPT list to parliament or to hold new elections, arguing that it was the last year of the parliament's mandate. This refusal was contested by the IRPT but upheld by the Supreme Court.

of the PDPT. The PDPT holds a near monopoly not only of political appointments, but of state posts at national, regional and local levels. The Socialist Party characterizes itself as constructive opposition, while the Agrarian Party promotes the interests of the large but not very developed agricultural sector.

The political situation in the country is such that while a relatively open discussion takes place among the political elite, there is a certain concern amongst interlocutors about this information reaching voters at the local levels. This is due to both weak organizational development of many of the political parties and to the lack of attention and coverage of such information by the media.

Most parties informed the OSCE/ODIHR NAM that they do not anticipate serious problems in their ability to meet with the electorate to impart their views.

B. LEGAL FRAMEWORK

The 10 December 1999 "Constitutional Law of the Republic of Tajikistan on Elections to the *Majlisi Oli* of the Republic of Tajikistan" (election law) was last amended on 16 June 2004. It is the main piece of legislation regulating the conduct of parliamentary elections. Other relevant laws are the Law on Political Parties, the Law on Mass Media, the Law on Public Demonstrations, the Code on Civil Procedures, and the Law on Citizens' Complaints to Government Bodies.

The OSCE/ODIHR EOM in 2005 concluded that the election law "included significant improvements over previous legislation. Although a number of provisions remain problematic, the law could have provided the basis for the conduct of democratic elections if implemented effectively and impartially. Unfortunately, many potential benefits of the new amendments were not realized due to inadequate or arbitrary implementation".

In the 2005 final report, the OSCE/ODIHR made a series of recommendations with regard to improving the legal framework. It appears that few, if any, of these recommendations have been followed. Interlocutors, however, noted that certain amendments have been made to the Administrative Code, which now penalize family voting and not posting protocols publicly after the vote count. In addition, the report noted that certain lacunae in the legal framework could potentially be regulated through more detailed CCER instructions. When asked about this, the CCER stated that the election law is sufficiently clear and that the problem is rather with the understanding of the law by stakeholders. Nevertheless, the possibility exists that certain elements may still be addressed through CCER instructions before the elections.

International efforts were undertaken to introduce amendments to the election law in the summer of 2008. Working group meetings were organized in co-operation with the CCER, including all registered political parties and representatives from the presidential administration and civil society. These resulted in draft amendments that proposed election commissions composed of representatives of political parties, the codification of domestic election observation, and the lowering of the candidate registration fee. These were formally passed to parliament by the CPT in February 2009, but they stalled in commission and were never given a formal reading.

C. ELECTION ADMINISTRATION

The upcoming parliamentary elections will be administered by the CCER, 41 District Electoral Commissions (DECs), and some 3,500 Precinct Election Commissions (PECs). The CCER, composed of 15 members, is appointed by the parliament upon proposal of the President. There is a concern among stakeholders that this means an effective dominance of the authorities in the CCER.⁵ The CCER ensures the proper implementation of the election law, forms DECs and single mandate constituencies, determines the ballot format, registers candidate lists, and deals with appeals regarding DECs and PECs decisions.

DECs are formed no later than two months prior to election day, consisting of no more than nine members. They are appointed by the CCER, upon proposal from local authorities, and considering suggestions from political parties. The DECs form PECs and polling stations, register candidates in single mandate constituencies, organize meetings between candidates and voters, and deal with appeals regarding PECs.

The process of PEC selection, however, is not regulated by the election law. There is a general concern from political parties that they are not adequately represented on these lower-level commissions, although they are entitled to nominate party observers. They therefore advocate the introduction of formal membership of political parties on PECs. The latter are to be formed 45 days prior to the elections and have 5 to 19 members. PECs compile voter lists, which was another element of concern among political parties. They also decide on complaints about election day procedures.

Although extensive training programmes were carried out for the election administration by international organizations in past elections, no such plans are envisaged this time. The CCER commented negatively to the OSCE/ODIHR NAM about this, stating that it did not have adequate resources to train all commissions. Nevertheless, considering that the election law has not been changed, many of the former training materials are still relevant.

Voters are entitled to vote early if they will be away on election day. This takes place during the course of the 15 days that voter lists are open for public scrutiny. Voters cast tendered ballots, which are retained by the PEC until election day. Relatively few voters have availed themselves of this possibility in the past.

One issue that was raised as a concern by stakeholders was the provision for voting abroad. Some opposition parties suggested to the OSCE/ODIHR NAM that the number of votes cast abroad are inflated and used for manipulating the results. They pointed to relatively few migrant workers holding official residency status in their host countries.

D. CANDIDATE NOMINATION AND VOTER REGISTRATION

Candidate registration starts 45 days prior to election day and concludes 20 days beforehand. To stand for office, candidates must be included in a party list for the 22 proportional seats. To stand as an independent candidate in the 41 single mandate

Although two members are from other parties, political parties consider their role as minimal.

constituencies, 500 signatures must be collected and a registration fee paid. Political parties do not need to collect signatures for their single mandate constituency candidates.

Past OSCE/ODIHR reports recommended lowering the fee, and this was also raised as a concern during the OSCE/ODIHR NAM. The current deposit stands at approximately 1,100 EUR,⁶ a considerable amount for many people. Representatives from the presidential administration stated that people who could not collect such an amount should probably not become deputies. If a party fails to pass the 5 per cent threshold, it loses its electoral deposit. In the single mandate constituencies, only those elected get their deposits back.

In the UN Human Rights Committee's concluding observations on the report submitted in 2005 by Tajikistan on the fulfilment of the latter's obligations under the International Covenant on Civil and Political Rights, the Committee expressed its concern about the possibility provided by the election law to refuse to register as candidates for election individuals against whom criminal proceedings are pending, notwithstanding the fact that their guilt has not been established.⁷

Voter registration is compiled by PECs at the local level, in conjunction with local authorities. Although voter lists are open for scrutiny for 15 days before an election, door-to-door checks are the main vehicle for corrections. The CCER was, thus, confident that residents would advise registration teams on who had moved abroad. Opposition parties, on the other hand, raised concerns that the names of the more than one million migrants, in their estimation, would remain on the voter lists and that this might lead to misuse. Voters not on the lists on election day can be added upon proof of identity.

E. THE ELECTION CAMPAIGN AND FINANCING

According to the law, the election campaign starts once the candidate registration is over and ends 24 hours before election day. The CCER is charged with creating equal campaign conditions for all candidates. The DECs, supported by the local authorities, organize meetings between candidates and voters. The CCER informed the OSCE/ODIHR NAM that candidates may also arrange campaign meetings with the electorate themselves.

While candidates and parties can meet with voters individually, any formal campaign events require the prior approval of the authorities. Most parties informed the OSCE/ODIHR NAM that they do not anticipate serious problems in their ability to campaign. Some parties complained of difficulties in their ability to campaign during the difficult winter months. The SDP publicly proposed a postponement of the elections, partially on this basis. The authorities have shown no intention to consider this proposal.

There is no state subvention provided to political parties. For the campaign, the CCER provides some 470 EUR⁹ for each candidate, which appears relatively low in relation to the candidate registration fee. Private contributions are allowed, within certain limits set

⁶ 7000 Tajikistani Somoni.

⁷ CCPR/CO/84/TJK available at

www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.84.TJK.En?OpenDocument.

⁸ Article 12, par. 6 of the election law.

⁹ 3000 Tajikistani Somoni.

by the law. Having opened accounts reviewed by the CCER, parties and candidates are required to report to the CCER on their campaign spending after the elections.

F. THE MEDIA

The legal framework for media includes the constitution, the election law, the 'Law on Press and other Mass Media', as well as the CCER instructions. The constitution provides for freedom of expression and information and prohibits state censorship.¹⁰

The media environment in Tajikistan is largely dominated by the state authorities, who control most distribution, printing and broadcasting transmission facilities in the country. All newspapers with a circulation of over 100 copies must be registered, and broadcast media must obtain licenses from two separate agencies. OSCE/ODIHR NAM interlocutors indicated that various legal and administrative means, such as revocation of or delay in issuing licenses, closure of printing houses, targeted tax inspections and denial of the use of state-owned printing facilities, are used to curtail critical journalism and result in self-censorship.

The UN Human Rights Committee has expressed concern about persistent reports that journalists have been harassed by Tajik State officials in the exercise of their profession and that newspapers have been seized. It has also put into question provision in the Criminal Code of broadly worded crimes such as "injuring the honour and dignity of the President" and "attempt against the constitutional order", which may lend themselves to manipulation and limitation of freedom of speech. ¹²

Only state-owned TV enjoys nationwide coverage, while some 20 private TV stations cover local areas, predominantly in urban centres. Likewise, state-owned radio has a nationwide coverage that broadcasts news programmes. However, power outages in rural areas often limit the extent to which the population can receive news from the broadcast media.

The print media environment in Tajikistan consists of some 400 newspapers, with a vast majority being published only once or twice a week. The most influential newspaper in the country is *Asia Plus*, which has a circulation of some 10,000. The main state paper, *Jumhuriyat*, produces some 2,000 copies three times a week. Newspaper circulation is generally quite low, and distribution is limited mainly to Dushanbe and larger urban areas.

By law, each candidate in the single mandate constituencies has the right to 15 minutes free airtime on state TV and radio for the entire campaign period. Each party running has the right to 30 minutes of free airtime for campaigning. According to the head of State TV and Radio Company, contestants can split their airtime into shorter slots, but some political party interlocutors maintained that this has not been possible in practice. Political parties stated that while they do not anticipate problems in their access to free airtime, they argued that this limited time does not allow them to conduct a meaningful

The State Committee on TV and Radio and the Ministry of Transport and Communications.

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Article 30 of the constitution.

op.cit. CCPR/CO/84/TJK.

campaign in the state media and based on past experience they did not expect much coverage in other media.

The CCER, together with the State Committee on TV and Radio, supervises and directs the state broadcaster on the allocation of free time. Regarding news coverage, the head of State TV and Radio Company confirmed to the OSCE/ODIHR NAM his understanding that if one candidate receives certain coverage, others should receive roughly equal time.

Some interlocutors positively noted the introduction of a code of ethical professional conduct for Tajik media in 2009. Furthermore, they expressed hopes for an increased role by the Tajik Media Council, the country's first media self-regulation body, which was formed in October 2009.

G. COMPLAINTS AND APPEALS

According to the election law, complaints on election-related issues can be filed with either a court or election commission by political parties, candidates, proxies, voters or observers. All decisions of lower-level election commissions can be appealed to a higher-level election commission. CCER decisions can be appealed to the Supreme Court. Furthermore, the law allows citizens to appeal their inclusion / exclusion from voter lists and on any incorrect information in them. Decisions of electoral commissions on voter list complaints may be appealed to a court, and the court's decision is final. ¹⁴

Political party representatives at polling stations are not entitled to receive copies of protocols. This makes it very difficult for them to successfully launch a legal challenge on any alleged irregularities in the vote tabulation, since they cannot use the protocols as proof of voting results at the PEC level. Indeed, many parties voiced an open scepticism of fair redress through legal channels.

According to OSCE/ODIHR NAM interlocutors, in previous elections, very few complaints received binding, official decisions from the CCER. Most were answered by letter. As a result, complainants were denied the right to seek redress through courts; in particular, the Supreme Court ruled that it could only review official CCER decisions, not complaints responded to by letter. The effect was that almost all complainants to the CCER were denied the possibility of a subsequent judicial appeal. Transparent, timely and effective means of redress for violations were therefore lacking.

H. ELECTION OBSERVATION

The election law stipulates that political parties and self-nominated candidates have the right to field election observers. Nonetheless, political parties raised concerns about their access to the entire election day process, citing problems that they have experienced in the past, including an insufficient ability to observe the counting and tabulation. Some parties remarked that they have received assurances from the election administration that they will be allowed access to the count.

¹³ Article 20 of the election law.

¹⁴ Article 25 of the election law.

¹⁵ Article 8 of the election law.

International observers are also foreseen by the law. However, observers are not entitled to receive copies of voting protocols. In contravention of paragraph 8 of the OSCE 1990 Copenhagen Document, the election legislation does not foresee domestic non-partisan election observation. Representative of the presidential administration argued that allowing such observers would result in an overcrowding in polling stations, considering that there are some 7,000 non-governmental organizations registered in Tajikistan.

One party openly stated to the OSCE/ODIHR NAM that the role of any EOM would be meaningless, as the authorities have developed an 'immunity' to its recommendations. Most political parties as well as the diplomatic community representatives met by the NAM, however, felt it necessary and constructive for the OSCE/ODIHR to deploy a standard EOM. This was notwithstanding the fact that the majority of previous OSCE/ODIHR recommendations have not been addressed.

IV. CONCLUSIONS AND RECOMMENDATION

It appears that few, if any, of the recommendations issued by OSCE/ODIHR in the final reports of its previous EOMs to Tajikistan have been followed. Nonetheless, an open political discussion can be conducted, and there appears to be a real competition between some of the political parties. Parties expect that they will be able to meet voters without hindrances and to use free airtime on state TV despite its very limited duration. By contrast political parties raised concerns about access to the entire election day process, citing problems that they have experienced in the past. These include an insufficient ability to observe the counting and tabulation, and lack of protocol copies in order to document complaints.

Most interlocutors felt it constructive and useful for the OSCE/ODIHR to observe the parliamentary elections. With this in mind and considering other findings outlined in this report, the OSCE/ODIHR NAM recommends the deployment of a standard Election Observation Mission (EOM) to the Republic of Tajikistan to assess the parliamentary elections, expected at the end of February 2010. The OSCE/ODIHR EOM will assess these elections for their compliance with OSCE commitments, other international standards, and domestic legislation. It will observe the local and regional elections only to the extent that they will impact the conduct of the parliamentary elections.

In addition to a core team of analysts, the OSCE/ODIHR will request OSCE participating States to second 20 long-term observers to be deployed throughout Tajikistan approximately one week after the arrival of the core team of analysts in order to observe the conduct of the elections in the regions. In addition, OSCE participating States will be requested to second 150 short-term observers to observe election day proceedings. The OSCE/ODIHR EOM should commence in the first part of January, depending on the exact election date.

ANNEX: LIST OF MEETINGS

State and Election Authorities

Presidential Administration

Mr. Yusuf Salimov, Head of the Department of Constitutional Guaranties of Citizens' Rights of the Presidential Administration

Ministry of Foreign Affairs

Mr. Idibek Kalandarov, Head of OSCE Section, Department of International Organizations

Central Commission for Elections and Referenda

Mr. Mirzoali Boltuev, Chairperson

Mr. Muhibullo Dodojonov, Head of Administration

State National Television and Radio Company

Mr. Asadullo Rakhmonov, Chairperson of the State TV and Radio Company

Political Parties¹⁶

Mr. Rahmatillo Zoirov, Social-Democratic Party of Tajikistan

Mr. Masud Sobirov, Chairperson of the Democratic Party of Tajikistan

Mr. Davlatali Davlatzoda, First Deputy Chairperson of the People's Democratic Party of Tajikistan

Mr. Muhiddin Kabiri, Chairperson of the Islamic Revival Party of Tajikistan

Mr. Abduhalim Gafforov, Chairperson of the Socialist Party of Tajikistan

Mr. Amir Karokulov, Chairperson of the Agrarian Party of Tajikistan

Media

Mr. Nuriddin Karshiboev, Director of the National Association of Independent Media in Tajikistan (NANSMIT)

Mr. Umed Babakhanov, General Director of Asia Plus Group (newspaper and radio)

Mr. Rustamjon Joniev, Director of independent Radio Imruz

Mr. Zinatullo Ismoiloy, Director of Independent TV channel SMT in Dushanbe

Mr. Muso Asozoda, Chairperson of the Tajik Association of Independent Electronic Mass Mass Media (TajANESMI)

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Civil Society

Mr. Abdugani Mamadazimov, Chairperson of the Association of Political Scientists of Tajikistan

Ms Nodira Afzali, Student of the Russian-Tajik Slavonic University

International Community

- H.E. Ivar Vikki, Ambassador, Head of the OSCE Office in Dushanbe
- H.E. Henry Zipper de Fabiani, Ambassador of France to Tajikistan
- H.E. Trevor Moore, Ambassador of the United Kingdom to Tajikistan
- Mr. Marc Fumagali, Deputy Head of the Delegation of EU Commission to Tajikistan
- Ms. Farangis Azizova, Senior Project Adviser of the International Foundation for Electoral Systems (IFES) in Tajikistan

Representatives of Embassies of the OSCE participating States accredited to Tajikistan