

**INTERIM REPORT No. 2**  
**22 December 2011 – 4 January 2012**

**6 January 2012**

**I. EXECUTIVE SUMMARY**

- The campaign for the 15 January early parliamentary elections is underway. Winter weather conditions, festivities to mark 20 years of national independence as well as New Year's celebrations have limited the time and public attention devoted to the campaign. Thus far, the campaign has been muted and has been overshadowed from the outset by the outbreak of violence in the city of Zhanaozen.
- To date, the OSCE/ODIHR EOM has received no reports of major impediments to parties' campaigns. *Nur Otan's* campaign has been, by far, the most visible. The campaigns of three other parties are also evident, but to a lesser extent, while those of the remaining three are much less pronounced.
- The CEC continued its electoral preparations, meeting the legal deadlines. The CEC sessions continue to be open to observers and the media. In a few instances, however, the CEC took decisions before the respective session and before a vote by CEC members. This reduced the public nature of sessions and the collegiality of decision-making to a procedural formality, decreasing transparency and openness.
- A number of political parties have been unable to compete in these elections because the Ministry of Justice refused to register them or suspended their registration. On 28 December, the CEC deregistered *Rukhaniyat* party, which will thus not be able to further contest the elections. The manner in which the deregistration took place raises concerns about whether due process has been fully observed.
- Preliminary results from the OSCE/ODIHR EOM's media monitoring show that a significant amount of time has been allocated to coverage, especially on state-owned television stations, of Kazakhstan's achievements in the 20 years since independence; this has *de facto* provided the ruling *Nur Otan* party with an informational advantage. Apart from election campaign coverage within newscasts, the EOM's media monitoring shows a lack of election-related current affairs programs, including interviews and debates, on the monitored broadcasts.
- Complaints regarding electoral issues were addressed mainly to the CEC and the Prosecutor General's office. To date, there were very few complaints or appeals to courts; all were dismissed on jurisdictional grounds. Few of the election-related complaints received by the CEC were reviewed in open sessions. Many responses by the CEC and prosecutors' offices to complaints from political parties and civil society were mere re-statements of legal provisions, without any legal reasoning provided.

## II. ELECTION ADMINISTRATION

The CEC continued its electoral preparations, meeting legal deadlines. The total number of Precinct Election Commissions (PECs) increased to 9,764.<sup>1</sup> The CEC has been generally co-operative towards the OSCE/ODIHR EOM and forthcoming with information. Its sessions continue to be open to observers and the media. In a few instances, however, the CEC took decisions before the respective session and before a vote by CEC members.<sup>2</sup> This undermined the public nature of sessions and the collegiality of decision-making, which the law requires, to a procedural formality, thus decreasing transparency and openness.<sup>3</sup>

Since the appointment of election commission members in 2009, there have been numerous resignations, including after the announcement of 15 January early elections to the parliament.<sup>4</sup> While local councils (*maslikhats*) are responsible for filling the vacant positions that arise, higher-level election commissions are empowered to temporarily appoint members during electoral periods.<sup>5</sup> The replacement process, however, is not implemented consistently, nor is it fully transparent.<sup>6</sup> Although a portion of election commission members are to be nominated by political parties, a number of those met with by OSCE/ODIHR EOM observers were apparently not aware of which political party had nominated them.

Political parties can also appoint non-voting representatives for the period of elections in cases where they do not have full members on election commissions. These representatives are entitled to the same access to all commission documents, but may not vote in sessions, sign protocols or issue ballots. The CEC, however, reaffirmed its previous position that this provision does not apply to the CEC, itself, but only to lower-level election commissions.<sup>7</sup> As reported by the CEC, 1,830 non-voting representatives from four political parties that had submitted nominations by the 15 December deadline were appointed to various commissions below the CEC level.<sup>8</sup>

The CEC finished printing 9,398,154 ballots.<sup>9</sup> This took place at the national printing house, which the OSCE/ODIHR EOM was able to observe. The CEC issued subsequent instructions to PECs on how to cross out the titles of political parties that withdraw or are deregistered after this printing.<sup>10</sup>

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<sup>1</sup> Four polling stations were added to TEC Ordabaski, due to an increase in the number of registered voters.

<sup>2</sup> Press releases on CEC decisions were distributed prior to sessions held on 28 and 30 December.

<sup>3</sup> The Election Law stipulates that election commissions “shall act on the basis of the principles of collegiate style, publicity and transparency” (Article 20, Paragraph 1) and that the “decisions shall be adopted through an open vote” (Article 20, Paragraph 5).

<sup>4</sup> OSCE/ODIHR long-term observers (LTOs) report reasons such as health and family issues, and change of residence.

<sup>5</sup> Breakdown of 954 election commission members appointments by Almaty City *maslikhat* on 21 December by political party (appointed/nominated): *Ak Zhol* 211/295, *Auyl* 115/128, *Adilet* 119/141, the All National Social Democratic Party (OSDP) 30/159, CPPK 112/137, Party of Patriots 140/1590, *Nur Otan* 129/136, and *Rukhanniyat* 98/137.

<sup>6</sup> From those processes observed by the OSCE/ODIHR EOM, commission members either appoint replacements themselves, are appointed by the higher-level election commissions, or by the local councils.

<sup>7</sup> Original CEC clarification on 15 March 2011, and reaffirmed in writing to OSCE/ODIHR EOM on 30 December.

<sup>8</sup> OSDP – 1,453; *Ak Jol* – 224; CPPK – 94; and *Adilet* – 59. See CEC press release dated 30 December 2011. The CEC had extended its initial deadline for parties to submit nominations from 22 November to 15 December following complaints about the limited period in which parties were entitled to nominate non-voting representatives to election commissions (see below, Complaints and Appeals).

<sup>9</sup> This figure is based on the total number of voters, plus a one per cent reserve. As of 20 December, the CEC reported 9,305,106 registered voters. The CEC can also authorize the printing of additional ballots upon review of updated voter numbers.

As formal training instructions have not been issued by the CEC, lower-level commissions were responsible to determine the format, content and dates of training events. OSCE/ODIHR EOM observers noted that training techniques varied between regions; they included mock elections, tests for members, or reading extracts from the Election Law.

Local executive bodies (*akimats*) worked closely with election commissions on aspects of electoral preparations, as prescribed by law. Elements include preparation of voter lists and formation of electoral districts. In some cases, OSCE/ODIHR EOM observers reported that local authorities were also involved in the training of commission members and in voter education activities.

As prescribed by law, *akimats* had forwarded voter lists to PECs for public display and review that commenced on 30 December. Voters can verify their data and polling location by e-mail or via the government's web-portal, as well as by visiting the respective PEC or calling the hotlines established for that purpose. Door-to-door verification is also being used to confirm voters' data. A voter not included in the voter list, who can prove residence in that precinct, is to be added to the corresponding voter list up to and including on election day. In special polling stations, voter lists are finalized the day before the election.<sup>11</sup> According to the CEC, electronic voting will not be used in these elections due to issues of public confidence and the need to update the system.<sup>12</sup>

In line with legal requirements, the CEC intends to publish national election results on its website, disaggregated at the regional level (by Regional Election Commission, REC) but not at the polling station level.<sup>13</sup> According to the CEC, the law does not require results protocols for individual polling stations and aggregation tables at the TEC level to be published.

### III. POLITICAL AND CAMPAIGN ENVIRONMENT

Winter weather conditions, festivities to mark 20 years of national independence as well as New Year's celebrations have limited the time and public attention devoted to the campaign. Thus far, the campaign has been muted and has been overshadowed from the outset by the outbreak of violence in the city of Zhanaozen.

A number of political parties have been unable to compete in these elections on the basis of having their registration refused or suspended by the Ministry of Justice.<sup>14</sup> Since the activities of the

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<sup>10</sup> CEC Decision 78/146 instructs PEC members to cross out the party name and to sign next to the change. It does not indicate whether this process should take place before or on election day.

<sup>11</sup> Special polling stations are established at rest homes, hospitals and other health centers, in remote places, in pre-trial detention centers, in diplomatic representations abroad, in military units and on ships sailing on election day. Thus far, the CEC has established 561 special polling stations, including 269 in medical/health facilities, 141 in military units, 48 in detention centers and 56 for out-of-country voting in 46 countries.

<sup>12</sup> Electronic voting was last used during the 2007 parliamentary elections.

<sup>13</sup> There are 16 RECs, one in each of the 14 oblasts and in the cities of Astana and Almaty.

<sup>14</sup> The registration of *Alga* has been refused since 2005 on the basis of 'technical' problems with the application documents. *Alga* last applied for registration in 2009, but its application was rejected on the basis of inaccuracies in the list of members. Two other parties, *Khalykh Rukh* and *Ata Meken*, have been previously denied registration on the basis of similar problems with their members lists. The merger of the OSDP and the Democratic Party *Azat* has been rejected by the Ministry of Justice due to technical issues with the dissolution of the latter.

Communist Party were suspended for six months by a court decision on 4 October 2011, this party has also not been permitted to participate in these elections.<sup>15</sup>

To date, the OSCE/ODIHR EOM has received no reports of major impediments to parties' campaigns. *Nur Otan's* campaign material began to appear on the opening day of the campaign and is, by far, the most visible. Campaign materials of the Communist People's Party of Kazakhstan (CPPK), the Democratic Party of Kazakhstan *Ak Jol* and the Democratic Party *Adilet* are also evident, but to a much lesser extent. The campaigns of the remaining parties are much less active and visible. The campaign is mainly conducted through the use of billboards, banners, posters, and leaflets with New Year wishes, as well as through the media and small-scale meetings with voters. *Nur Otan's* party posters bear some similarity to the official banners commemorating Kazakhstan's 20th Anniversary of Independence and to official information posters about the upcoming elections.

Programmatically, the campaign has centered on themes of social and economic development, growth and welfare in light of an anticipated economic crisis, development of the political system, as well as the issues of regional economic integration. *Nur Otan* presents the President and the ruling party as guarantors of stability, prosperity, and inter-ethnic accord. No apparent distinction is made between the President, as a leader of *Nur Otan*, and his position as head of state.

The events of 16 December in Zhanaozen and in the following days in Shetpe and Aktau,<sup>16</sup> as well as the subsequently imposed state of emergency in Zhanaozen, have dominated the electoral campaign at the national level. *Nur Otan* publicly stated that it has decided to adjust its electoral programme to draw more attention to social issues. The All National Social Democratic Party (OSDP) took the decision to cancel its campaign in Mangistau region and has urged the CEC and the national authorities to postpone the elections.

On 28 December, *Rukhaniyat* party was deregistered by the CEC and will, thus, not be able to further contest the elections. The deregistration followed charges brought by the Prosecutor General's office regarding legal deficiencies in the nomination of the party list.<sup>17</sup> The OSCE/ODIHR EOM is not aware of any other parties having been subjected to probes into their candidate list nomination processes. The *Rukhaniyat* leadership has stated that they believe the party's criticism of law enforcement agencies' handling of the situation in Zhanaozen resulted in the party's deregistration.<sup>18</sup> The manner in which the deregistration took place raises concerns whether due process has been fully observed.<sup>19</sup>

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<sup>15</sup> The suspension of the party was due to the participation of the party leader in the activities of an unregistered political association, the *Khalykh Maidany* (National Front). Charges on violation of the legislation on public associations were brought by the Prosecutor General's office under Article 374 Paragraph 2 of the Code of Administrative Offences. The 4 October 2011 decision of the district court on suspension of the activities of the party was upheld by the appellate court in Almaty on 24 October.

<sup>16</sup> As a response to the tragic events in Zhanaozen, demonstrators gathered in Shetpe and Aktau, Mangistau region, as well as in Almaty, on the evening of 17 December. Violence broke out in Shetpe, resulting in one person dead and 10 injured hospitalized, as reported by the Prosecutor General's office in a press release.

<sup>17</sup> The charges brought by the Prosecutor General's office were based on the lack of a quorum in the Republican Committee of the Party necessary for calling the Extraordinary Convention for nomination of the party list, as well as on failure on the part of the regional chapters of the party to hold sessions for nominating delegates to the Extraordinary Convention. While *Rukhaniyat's* party leader acknowledged that some technical mistakes may have been made, he argued that the short timeframe made such procedures difficult to implement. The OSCE/ODIHR EOM is not aware of any other parties having been subjected to probes into their candidate list nomination processes.

<sup>18</sup> *Rukhaniyat* press release of 27 December.

<sup>19</sup> The Prosecutor General's office submitted its conclusions on *Rukhaniyat's* alleged violations to the CEC on 27 December 2011. The CEC decided to deregister the party's list the next day, following a brief hearing in an open session. *Rukhaniyat* was not given the opportunity to present its position. The CEC press release regarding the decision was prepared and distributed before the session started.

A state of emergency in Zhanaozen was introduced by a presidential decree on 17 December and was scheduled to be lifted on 5 January. A separate presidential decree on 4 January extended this state of emergency until 31 January. During the state of emergency, rallies, protests, and strikes are prohibited, and freedom of movement within and in and out of Zhanaozen is restricted. Thus, the election campaign in the city is limited to the national mass media.

#### IV. MEDIA

The Election Law stipulates unbiased coverage of political parties' campaigns by mass media.<sup>20</sup> The CEC has interpreted this provision as obliging state-owned and commercial electronic and print media outlets to provide an equal amount of coverage of contestants in all formats. However, neither the CEC's interpretation nor further guidance for journalists on the practical implementation of this requirement is available to the public. On 30 December, at its first public meeting, the Public Council for Consideration of Information Disputes presented media monitoring results for the period from 16 to 28 December.<sup>21</sup> The Council concluded that state-owned media outlets followed their legal obligation to provide for equality in coverage. However, although official monitoring results demonstrated that monitored commercial television stations provided unequal coverage in favor of *Nur Otan*, the CEC refrained from explicitly considering this a violation of the law<sup>22</sup> and instead issued a recommendation to commercial TV stations.<sup>23</sup>

For the first time, a code of ethics on the coverage of the election campaign was signed on 5 December by representatives of 40 media outlets, at the initiative of the "Club of Editors-in-Chief". Among other elements, the Code includes an obligation to follow the law, to provide for objective, impartial and fair campaign coverage of all parties contesting the election and to clearly distinguish between institutional and campaign coverage of public officials.

Preliminary OSCE/ODIHR EOM media monitoring results reveal a significant amount of coverage, in particular on the state-owned TV stations, devoted to the achievements during the 20 years of Kazakhstan's independence. This *de facto* gives the ruling *Nur Otan* party an informational advantage.<sup>24</sup>

Further, provisions in the Election Law prohibit the professional reputation of candidates from being discredited and this might undermine media's ability to provide a critical public debate. Accordingly, apart from election campaign coverage within newscasts, the EOM's media monitoring noted a lack

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<sup>20</sup> See Article 27 Paragraph 7 of the Election Law. Notably, the Law on Mass Media (Article 1 Paragraph 2) includes electronic and print media outlets, as well as the Internet resources, into the definition of mass media.

<sup>21</sup> In the absence of an independent supervisory body for electronic media, a "quantitative and qualitative" media monitoring of 53 print media outlets, 13 TV stations and 5 radio stations is conducted by the monitoring unit of the Ministry of Information and Communication. The monitoring unit reports on a daily basis to the CEC on the compliance of mass media with the law.

<sup>22</sup> The Code on Administrative Offences (Article 105) provides for a fine in case of violations of campaign provisions as prescribed by the law. Furthermore, Article 13 Paragraph 3 of the Law on Mass Media provides for a suspension of mass media activities by a court decision for breaches of election campaign provisions.

<sup>23</sup> The CEC explained that it is problematic to oblige commercial broadcasters, and in particular the ones owned by political parties, to provide equality in coverage.

<sup>24</sup> Preliminary OSCE/ODIHR media monitoring results from 16 December to 3 January show that the state-owned broadcasters, *Kazakhstan TV* and *Khabar*, devoted more than seven hours of broadcast, mainly in the format of advertisements, to praising the achievements in 20 years since independence. On *Kazakhstan TV*, a series of 20 programs was broadcast on weekdays, each in 30 minutes length, devoted to every year of independence, ending on 28 December.

of election-related current affairs programs, including interviews and debates, on the monitored broadcasters.<sup>25</sup>

During the monitored period, three out of seven parties contesting the election purchased airtime for paid political advertising.<sup>26</sup> Political parties' representatives informally complained to the Council about the fact that prices for prime-time airtime were twice more costly during the campaign period. To date, they are the only source of broadcast information, aside from newscast coverage of events.

On 28 December, the Senate passed a new Law "On television and radio broadcasting", circumventing further debate with representatives of the media and civil society and within the *Majilis*. The OSCE Representative on Freedom of the Media (RFoM) raised concerns that the law "could violate the right of citizens to freely receive and impart information by increasing government control of electronic media" and called on the President to veto the law.<sup>27</sup> In an open letter, national and regional media outlets and civil society representatives also called on the President not to sign the new broadcasting law.

## V. COMPLAINTS AND APPEALS

In the course of the OSCE/ODIHR EOM, observers have noted an inconsistent understanding and application of legal provisions by electoral stakeholders in the adjudication of electoral disputes. This appears to be due to a lack of regulation, and gaps and discrepancies in the legislation, including the absence of procedures regarding a number of electoral issues. Many responses by the CEC and prosecutors' offices to complaints from political parties and civil society were mere re-statements of legal provisions, without any legal reasoning provided. In addition, a number of interlocutors expressed a lack of trust in the independence and impartiality of the election administration, courts and prosecutors' offices.

Complaints on electoral issues were mainly addressed to the CEC and the Prosecutor General's office, or simultaneously to both. To date, there were very few complaints and appeals to courts and all were dismissed as not in the jurisdiction of the courts addressed. As of 29 December, the CEC had received 13 complaints on violation of campaign regulations, exclusion of candidates from party lists and appointment of non-voting members to the election commissions. Of these, the CEC as body has only reviewed two complaints in an open session; these were filed by regional branches of OSDP. Both complaints concerned the short timeline for nomination of non-voting representatives to the election commissions. The CEC satisfied the complaints and granted additional time to all political parties to nominate their non-voting representatives.<sup>28</sup>

In cases where further investigation was necessary, the CEC referred complaints to the prosecutors' offices or, in some instances, to lower-level election commissions or other relevant bodies to determine facts. All other complaints were reviewed by the legal staff of the CEC in absentia of the interested sides and were addressed in the form of letters. According to the CEC Deputy Chairperson, CEC members decide whether a complaint is to be considered in a plenary session,

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<sup>25</sup> Several journalists with monitored TV stations informed that regular current affairs programs were even cancelled during the campaign in order not to violate the equality requirement.

<sup>26</sup> To date, three political parties: *Ak Zhol*, CPPK and *Nur Otan* purchased airtime for paid political advertising on the monitored TV stations. However, on two of the commercial TV stations (31st channel and KTK) airtime was only purchased by *Nur Otan*. The total amount of airtime purchased by parties to date is 2 hours and 17 minutes (47 per cent purchased by *Nur Otan*, while *Ak Zhol* and CPPK purchased 20 per cent and 33 per cent, respectively).

<sup>27</sup> See press release of the OSCE RFoM at <http://www.osce.org/fom/86713>.

<sup>28</sup> The initial deadline of 22 November was prolonged to 15 December.

taking into consideration the scale of the issue and whether it is systematic. This practice hinders the principle of CEC collegiality that is provided for in the Election Law and affects due process.

On 29 November, the CEC received a complaint from OSDP, alleging that the prime minister in a speech used his state position to campaign for *Nur Otan*. The CEC rejected this complaint on the grounds that the provision in the law on criminal liability for abuse of official duties in favour of a certain candidate or a political party<sup>29</sup> is applicable only to candidates. In a similar instance,<sup>30</sup> the CEC did refer a complaint from the OSDP, which alleged that the adviser to the President in an interview with the newspapers *Liter* and *Vechernyaya Astana* campaigned in favour of *Nur Otan* and against oppositional parties to the Prosecutor General's office. The Prosecutor General's office reacted and issued warnings to both newspapers and to the presidential adviser.

Generally, the time for resolution of complaints submitted to the CEC and prosecutors' offices exceeded prescribed legal timeframes for review of electoral disputes.<sup>31</sup> State bodies and the CEC interpreted the legal timeframe to start anew each time an election commission or other state body received the complaint for the first time, not taking the date of its initial submission as the reference point.

As of 30 December, a total of nine complaints on violation of electoral legislation have been filed directly to the Prosecutor General's office. Regional prosecutors' offices received 14 complaints relating to the *Majilis* elections, mainly related to violation of campaign rules. So far, the Prosecutor General's office predominantly issued warnings for electoral violations. In a number of cases related to illegal campaigning in mass media, the Prosecutor General's office, on its own initiative, issued warnings to the mass media representatives and the agitators. The Prosecutor General's office also issues clarification of the electoral legislation.

## VI. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the OSCE/ODIHR EOM continued its regular activities. Mission members met with senior state officials, representatives of political parties, representatives of the judiciary, election administration, media and civil society. The Head of Mission visited the Mangistau region to assess the current situation with regard the electoral process and in terms of the potential deployment of LTOs and short-term observers (STOs) to the region. LTOs continue to observe electoral preparations and the campaign in the regions, and are preparing for the deployment of STOs.

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<sup>29</sup> Article 50 Paragraph 1 Point 5 of the Election Law.

<sup>30</sup> OSDP based its complaints on different provisions of the Election Law. In the first case, OSDP referred to violation of the Article 50 Paragraph 1 Point 5 on criminal liability for abuse of official position, and in the second case – the Article 50 Paragraph 2 Point 3 on administrative liability for early campaigning. However, in both cases the law contains general provisions without specification of its applicability only to candidates.

<sup>31</sup> The timeframe for adjudicating general complaints related to the violation of electoral legislation is five days, and for complaints against decisions, (in)action of election commissions is three days from receipt of the complaint.