



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

PRESIDENTIAL ELECTION

4 December 2005

**OSCE/ODIHR Election Observation Mission
Final Report**



Warsaw
21 February 2006

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I. EXECUTIVE SUMMARY

In response to an invitation from the Ministry of Foreign Affairs of the Republic of Kazakhstan, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed the 4 December 2005 presidential election. The OSCE/ODIHR assessed the election in terms of its compliance with domestic legislation, the 1990 OSCE Copenhagen Document and other international standards for democratic elections.

The 4 December presidential election was the second multi-candidate election in the Republic of Kazakhstan since independence in 1991. A field of five candidates were registered through a process which was mostly inclusive and provided voters with an opportunity for choice. However, a number of significant shortcomings during the election campaign limited the possibility for a meaningful competition whereby all candidates could enjoy equal opportunities to convey their views to the electorate. Such shortcomings occurred despite the 9 September Presidential Decree on Realization of Election Rights of Citizens of the Republic of Kazakhstan instructing various State authorities to ensure free, fair and competitive elections.

Shortcomings included undue involvement of the authorities in the election campaign, undue restrictions on campaigning, cases of harassment of campaign staff and an atmosphere of intimidation. While venues for indoor campaign events were allocated to all candidates, requests for outdoor meetings were rarely approved by local executive authorities. Meetings of opposition candidates were on occasion disrupted. There was reported pressure on workers of some state and private companies, and on students, to vote for the incumbent. Statements by the Minister of Interior and National Security Council alleging the opposition was preparing for violent action further heightened tensions prior to election day.

State media largely met their legal obligation to provide candidates with free airtime or space. However, there was an overall bias in favour of the incumbent in all broadcast media monitored. Cases of confiscation of entire editions of opposition newspapers, and legal restrictions on the freedom of expression and dissemination of information, further reduced the possibility for voters to make a fully informed choice.

A first-ever debate among presidential candidates was broadcast on a television station with statewide coverage. However, the decision by the incumbent not to participate, although this was his right, significantly reduced the value of this event for the electorate.

¹ This report is available in Kazakh and Russian languages, but the English version remains the only official one. Since the original publication of this report, corrections have been made on pages 22 and 23.

The election process was administered according to an Election Law that was amended before and after the 2004 parliamentary elections. While some amendments represented significant progress, there remains a need for further improvement. The Election Law, and laws regulating freedom of assembly and expression, have not been amended to take into account OSCE/ODIHR recommendations made after the 2004 amendments. Although the Central Election Commission (CEC) does not agree with the validity of some of the previous recommendations, subsequent to the presidential election, CEC officials have indicated a willingness to discuss improvements to the legislative framework.

The CEC administered the election in a generally transparent manner during the pre-election period. The CEC met regularly in open sessions and adopted several decisions aimed at improving the electoral process. The OSCE/ODIHR EOM was provided with access to the election administration at all levels. The CEC also conducted a large-scale voter education campaign, with a focus on electronic voting (e-voting). However, an occasional lack of clarification of relevant legislation led to a degree of confusion.

Representation of opposition parties on election commissions at all levels remained low. In addition, cases were noted where the majority of commission members were employed by the same employer, which further lessened pluralism in these commissions. Most lower-level election commissions appeared to be adequately trained. However, election day problems, particularly during the count, indicate a need for improvement. Further effort is required to improve the quality of voter lists.

The CEC continued to introduce e-voting, first employed in the 2004 parliamentary election, in a gradual manner in an attempt to build public confidence. E-voting was offered as a choice in 15 per cent of polling stations, in addition to the possibility to vote by paper ballot. Less than 15 per cent of voters who had the option of e-voting chose to utilize this method, indicating an outstanding confidence issue. The system still lacks a manual audit capacity, thus eliminating any possibility for a recount in the case of election disputes. The system continued to use an optional voter-generated control number for verification purposes, which could potentially undermine the secrecy of the vote if the number is disclosed to a third party. The certification of the system remained non-transparent.

Voting was conducted in a generally calm atmosphere. Overall, observers assessed voting positively in 92 per cent of polling stations visited. However, there were observed instances of multiple, proxy, and group or family voting, violations of secrecy of the vote, ballot box stuffing, and failure to seal ballot boxes properly. There was evidence of pressure on students to vote in a number of places. In numerous polling stations, a significant number of voters were added to the voter list, often without proper documentation. In some cases, observers were not given full access to the process.

The election day process deteriorated during the vote count and tabulation. Counting was assessed negatively in 28 per cent of counts observed, with serious violations cited including tampering with result protocols. There was also a high instance of procedural violations, including result protocols not being filled in completely or being filled in pencil rather than ink. Protocols were not posted for public display in over one third of polling stations where the count was observed. Overall, the tabulation of results at the DEC level was assessed negatively in 22 per cent of DEC's observed, with transparency cited as a key problem.

The CEC took the positive step of publishing polling-station level results on its website, although only after several days and with limited information. However, when one candidate used the information in a post-election complaint, the Supreme Court ruled that the information did not have legal standing and admonished the CEC for posting the information.

Overall, 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. The authorities of Kazakhstan did not fully fulfill their obligations regarding the 1990 Copenhagen Document, in particular election-specific commitments 7.3, 7.4, 7.6, 7.8, and did not meet commitment 7.7. Related commitments that were not fully met were commitments 5.10 and 5.11 pertaining to the complaints and appeals process; and commitments 9.1 and 9.2, pertaining to freedom of expression and assembly.²

This report offers a number of recommendations for improving the conduct of elections in the Republic of Kazakhstan. The OSCE/ODIHR remains ready to further support the efforts of the authorities and civil society of Kazakhstan to conduct elections in line with OSCE Commitments.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation by the Ministry of Foreign Affairs of the Republic of Kazakhstan to observe the 4 December 2005 presidential election, the OSCE/ODIHR established an Election Observation Mission (EOM) on 17 October 2005. The mission was headed by Ambassador Audrey Glover and was composed of a 16-member core team based in Astana and Almaty and 30 long-term observers, who covered all 16 administrative regions. The OSCE/ODIHR EOM observed the election process in accordance with its standard methodology, as detailed in the OSCE/ODIHR Election Observation Handbook.³

Prior to deployment of the EOM, the OSCE/ODIHR undertook a Needs Assessment Mission and subsequently issued a report of its findings. During the course of its observation, the EOM issued two interim reports, and had the opportunity to discuss issues raised in the interim reports with the respective authorities.⁴

For election day, the OSCE/ODIHR EOM was joined by 411 short-term observers, including 45 representatives of the OSCE Parliamentary Assembly (OSCE PA), seven from the Parliamentary Assembly of the Council of Europe (PACE), and 16 from the European Parliament to form the International Election Observation Mission (IEOM). In total, there were observers from 43 OSCE participating States. The IEOM observed voting in around 1,900 of the 9,580 polling stations throughout Kazakhstan, and counting was observed in 192 polling stations. IEOM observers were also present in 137 District Election Commissions, out of a total of 204, to observe the tabulation of results.

The OSCE PA delegation was led by Mr. Bruce George, President Emeritus of the OSCE PA, who was appointed by the OSCE Chairman-in-Office as Special Co-ordinator of the OSCE short-term observation. Mr. Tadeusz Iwiński headed the PACE delegation. Mr. Struan

² OSCE Human Dimension Commitments, Volume 2, Page 67, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen 1990.

³ Election Observation Handbook, 5th Edition. 2005. Available at www.osce.org/odihr/item_11_14004.html

⁴ All documents referenced may be found at www.osce.org/odihr-elections/16471.html

Stevenson headed the delegation of the European Parliament.

The OSCE/ODIHR wishes to express its appreciation to the Ministry of Foreign Affairs and the Central Election Commission, as well as to other authorities, the OSCE Centre in Almaty, civil society organizations, international organizations and resident embassies of OSCE participating States, for their co-operation throughout the course of the mission.

III. BACKGROUND

The 4 December 2005 presidential election was the second multi-candidate election in the Republic of Kazakhstan since independence in 1991. For the 1999 presidential elections, the OSCE/ODIHR deployed a limited Election Assessment Mission, which found that “the election process fell far short” of meeting OSCE commitments. The IEOM for the 2004 Parliamentary Elections concluded that the elections “fell short of OSCE commitments and other international standards for democratic elections in many respects.”⁵

The President is elected in a two-round system. To be elected in the first round of voting, a candidate must receive more than half of all votes cast. If no candidate reaches the required majority, the two candidates receiving the most votes contest a second round within two months of the first round, in which the candidate who receives the higher number of votes is considered elected. Under the Constitution, no person can serve more than two consecutive terms as President.

During 2005, political stakeholders in Kazakhstan discussed whether, under the Constitution, presidential elections should be held in December 2005 or December 2006. The issue was referred to the Constitutional Council, which ruled that the election should take place in December 2005. Following that decision, the Majilis, the lower House of Parliament, on 7 September called presidential elections for 4 December 2005.

The election was contested by five candidates (in the order on the ballot): Mr. Yerassyl Abylkasymov (Communist People’s Party of Kazakhstan), Mr. Alikhan Baimenov (Ak Zhol Party), Mr. Mels Yeleussizov (independent), Mr. Nursultan Nazarbayev (Otan Party), and Mr. Zharmakhan Tuyakbai (‘For a Just Kazakhstan’ Movement).

IV. LEGISLATIVE FRAMEWORK

The legislative framework for the presidential election in the Republic of Kazakhstan includes the Constitution, the Constitutional Law on Elections in the Republic of Kazakhstan (the ‘Election Law’), and decisions, regulations and other acts of the Central Election Commission. Various aspects of the election process are also regulated by other legislation, including the Law on Political Parties; the Law on Mass Media; the Law on Peaceful Assemblies;⁶ the Law on Administrative Violations; and the Criminal Code. On 9 September 2005, the President signed a *Decree on Measures on Realization of Election Rights of Citizens of the Republic of Kazakhstan*, instructing various state authorities to ensure free, fair and competitive elections.

⁵ All documents referenced may be found at www.osce.org/odihr-elections/14471.html

⁶ Formally, the ‘Law on the Order of Organization and Conduct of Peaceful Assemblies, Meetings, Rallies, Pickets and Demonstrations.’

In advance of the 2004 parliamentary elections, the Election Law was amended following a Round Table process that included representatives of all political parties and civil society. The OSCE/ODIHR Assessment of the Election Law recognized that the April 2004 amendments made significant improvements in the areas of transparency, formation of more pluralistic election commissions and the creation of more equal conditions for campaigning.⁷

The Assessment also noted that a number of outstanding concerns remained to be addressed, and provided recommendations regarding issues such as limitations on the right to be elected, the need for sufficient guarantees for inclusive and pluralistic representation on election commissions, and limitations on the rights of candidates to engage in robust political discourse during the campaign (including provisions related to the honour and dignity of the President).

The Election Law was further amended in April 2005; however, some of these amendments did not meet OSCE commitments for democratic elections. Most notably, Article 44.6 introduced a provision that prohibited election-related public meetings from the end of the campaign until the official publication of results. This amendment violated the fundamental and universally recognized rights of freedom of association, expression and peaceful assembly. On 14 November, the CEC proposed that the Majilis rescind this amendment. Parliament did not act upon the proposal before election day.

In addition to the 2004 Assessment of the Election Law, the OSCE/ODIHR Final Report from the 2004 parliamentary elections also contained recommendations regarding improvement of the legislative framework. None of the recommendations regarding the legislative framework have been implemented to date. The CEC provided a response to the 2004 OSCE/ODIHR Final Report shortly before the 2005 presidential elections, indicating that the CEC does not agree with the validity of some of the previous recommendations.⁸ However, subsequent to the presidential election, CEC officials have indicated a willingness to discuss some improvements to the legislative framework.

The Law on Peaceful Assemblies, in combination with the Code on Administrative Violations, provides for undue power of local authorities in deciding whether or not to grant permission for a meeting, as well as deciding on its time and venue. Article 3 of the Law on Peaceful Assemblies provides for a minimum 10 day advance notice for filing an application for permission of an assembly, gathering or demonstration. This time period appears unreasonable, especially within a framework of a time-constrained election campaign.

Article 4 of the law provides local authorities with a wide range of reasons to offer a different place and time for conducting a meeting. The law is vague enough to allow differing interpretations of those reasons. Also, the law does not specify any criteria for local authorities in determining a different time and place for conducting a meeting in lieu of the place and time requested by organizers. The reasons allowing local authorities to prohibit a

⁷ OSCE/ODIHR Assessment of the Constitutional Law on Elections of the Republic of Kazakhstan, 24 August 2004.

⁸ Document of the CEC's International Relations Department, "Conclusion on recommendations in the report of the OSCE/ODIHR Election Observation Mission to the Majilis of the Parliament of the Republic of Kazakhstan on September 19 and October 3, 2004 and on the recommendations reflected in the Needs Assessment Report of the OSCE/ODIHR Mission of September 13-17, 2005 regarding the forthcoming presidential elections on December 4, 2005."

meeting listed under Article 7 of the law may also be potentially misinterpreted to disallow a legitimate gathering.

The application of provisions of this law to outdoor meetings of candidates with voters created unreasonable restrictions, which were at times caused by what appeared to be misuse of these provisions by local administration bodies.

The practical application of provisions of the Election Law, the Code on Administrative Violations, the Criminal Code and the Constitution on the protection of the honour and dignity of the President and of candidates created conditions for limiting political discourse during the election campaign. The wide interpretation of these provisions in effect significantly restricted freedom of expression as well as the right to disseminate information available in the public domain.

The Election Law sets a campaign fund ceiling for candidates of 27,000 times the minimum salary established by the law (approximately USD 1.4 million).⁹ The campaign can only be funded through the electoral fund of a candidate, through a bank account specifically opened for this purpose. Almost all candidates stated that the spending ceiling is insufficient for carrying out a full-fledged election campaign. While the Election Law requires candidates to submit financial reports to the election administration within five days of the announcement of the final results, there is no requirement that this information be made public.

Article 54.2 of the Election Law requires that a candidate for president must have “fluent command of the state language” as determined by the CEC. This provision does not state fair and objective standards for determining fluency in the state language so that a candidate will know how he or she will be measured. Although the CEC issued a decision in this regard, such criteria should be more appropriately established by law.

On 4 November, the Parliament of Kazakhstan ratified the International Covenant on Civil and Political Rights without reservations, and this was signed by the President on 22 November.

V. ELECTION ADMINISTRATION

The election was administered by a four-tiered system of election commissions headed by the CEC. The second level consists of 16 commissions: 14 Regional Election Commissions, and the City Election Commissions of Astana and Almaty (hereafter referred to collectively as RECs). The third level comprises 204 District Election Commissions (DECs) and the fourth level, 9,580 Precinct Election Commissions (PECs).

All election commissions consist of seven members appointed for five-year terms, although RECs, DECs and PECs are only active during election periods. CEC members are elected by the Majilis on the proposal of the President. In spring 2005, six of the seven CEC members were re-elected, and Mr. Onalsyn Zhumabekov, formerly the Minister of Justice, was elected CEC Chairman.

⁹ For self-nominated candidates, the amount is 20,000 times the minimum salary established by the law (approximately USD 1 million).

Representation of opposition parties on election commissions at all levels remained low. Lower-level commissions are elected by the corresponding Maslikhats (regional and local councils), based on proposals of political parties. Each political party in a Maslikhat has the right to propose one member of the corresponding election commission. According to the CEC, election commission members proposed by political parties currently account for more than 80 per cent of the membership of RECs, DEC and PECs.

The two main parties which supported the incumbent, Otan and Asar, have the highest representation at the PEC level, with 13.8 and 13 per cent, respectively. Among parties that identify themselves as opposition, the Ak Zhol is represented by 4.4 per cent of PEC members and the Communist Party of Kazakhstan, by 1.9 per cent. Election commission members nominated by the opposition Democratic Choice for Kazakhstan (DCK) lost their positions when this party was deregistered in early 2005 (see Campaign section below).

According to the CEC, the limited representation of opposition parties on election commissions reflected the low level of representation of these parties in the bodies appointing the commissions. However, the lack of a pluralistic party representation in election commissions underscores the need to improve the method of selecting election commission members.

The number of PEC members who are employees of state organizations and enterprises was approximately 55 per cent for the 2005 presidential election. Numerous PECs included several workers from the same institution or company. According to the Election Law, election commissions “should not consist of workers from one and the same organization”. The CEC interpreted this requirement as being satisfied as long as at least one commission member works in a different organization from the other members. However, the independence of a commission could be questioned where a majority of its members work at the same organization and are subordinate to another commission member at their regular place of work. The OSCE/ODIHR EOM observed a number of cases where the decision-making majority of commission members came from the same organization.¹⁰

At the same time, the membership of some commissions was incomplete, an issue which was raised by prosecutors’ offices and candidates alike. A number of PEC members were appointed late in the process by higher-level election commissions; however, this did not contribute to a better balance within these commissions.

The CEC administered the election in a generally transparent manner during the pre-election period, holding regular sessions, weekly press briefings and other events which provided for the transparency of its work. On 16 September, the CEC adopted a decision which outlined a number of steps to improve the transparency and functioning of the election administration. These steps included introducing the use of the e-voting system only on a gradual basis, conducting open sessions, publishing of CEC decisions, and publication of results by polling

¹⁰ In a number of instances, all PEC members except one worked in the school where the PEC was located, for example, in Esik DEC (Almaty oblast), PECs 231, 233, 334, and 864; in Kyzylorda oblast, PEC 207; in Aktobe oblast, PECs 1 and 6. In Atyrau oblast, PEC 70, the chairperson was the school director and all members were teachers from that school. Other instances occurred in Astana (PEC 5), Oskemen (PECs 498, 204, 1000), and Kostanai (PECs 5, 50, 66, 44, 30, 2, 136).

station on the CEC website.¹¹ These measures had been recommended by the OSCE/ODIHR following the 2004 parliamentary elections and were a welcome development.

Other CEC actions aimed at improving the election process included the issuing of the *Statement to All Subjects of the Election Campaign*,¹² and the holding of regular meetings with candidates and their representatives. Together, these steps constituted improvement over the practice of the CEC in previous elections.

However, there are some areas in which the work of the CEC could be further improved. The agenda of CEC sessions was not given to candidate representatives, observers or media representatives in advance. Some of the points in the 16 September decision were not fully implemented, such as ensuring the impartiality of the mass media during the campaign and ensuring the ability of domestic observers to fully realize their rights.¹³

A lack of clarification of relevant legislation on certain issues led to misunderstandings and a degree of confusion during the electoral process. Such problems were noted regarding signature collection for candidate registration; production and handling of Absentee Voter Certificates and the use of envelopes for voting. A decision to use envelopes for paper ballots was taken late in the process, but the CEC rescinded this decision on 28 November, in response to concerns raised by several candidates. A late CEC decision on the handling of Absentee Voter Certificates, adopted on 11 November, while attempting to address concerns regarding the potential for abuse of these documents, caused a degree of confusion among lower-level commissions, and did not provide for full accountability on this sensitive matter.

On 26 November, the CEC took two important decisions which clarified provisions in the Election Law regarding election-day procedures. One decision stated that in polling stations with electronic voting (e-voting), observers and candidate proxies are entitled to obtain copies of all three result protocols,¹⁴ while the other decision clarified which documents voters could use to identify themselves.

During the election period, the CEC organized trainings for lower-level election commissions, provided instructions and developed manuals for PEC members. Lower-level election commissions appeared to be adequately trained and prepared for their task; however, problems observed during voting and counting raise questions about the effectiveness of the training. The CEC conducted large-scale voter education and mobilization campaigns, informing voters about various stages of the electoral process and explaining election procedures, with a focus on e-voting.

RECs and other lower-level election commissions were generally cooperative with the OSCE/ODIHR EOM and provided observers with requested information. However, many RECs did not conduct regular sessions or did not inform observers about sessions in advance.

¹¹ Publication of results by polling station on the CEC website was not fully implemented, although it appears that this would require further amendment of the Election Law (see Announcement of Results section below).

¹² This document reminded candidates, election commissions, other authorities and media of important provisions of the election legislation and was widely cited during the campaign.

¹³ As described in the Election Day section below, domestic observers were sometimes restricted in their ability to observe polling and counting processes and were not always able to obtain result protocols.

¹⁴ In polling stations with e-voting, the following three result protocols were produced: one result protocol for voting by paper ballot, one result protocol for electronic voting, and an aggregate result protocol consolidating the figures from the other two protocols.

Consequently, the OSCE/ODIHR EOM was able to attend only a limited number of REC meetings.

There were efforts to improve the accuracy of the voter lists in the pre-election period. Voter lists were available for public inspection by the 18 November deadline, and the public prosecutors' offices played a positive role in updating the lists, finding a number of inaccuracies and requesting that election commissions correct errors. According to the CEC, after the verification stage the number of eligible voters increased by just over 100,000 to a total of 8,702,000 at the beginning of election day.

Despite many efforts by various institutions, the accuracy of voter lists needs further improvement, as shown by the approximately 100,000 voters who were added to the voter lists on election day. At some PECs, the lists were not stamped and signed by local executives as required. In a number of cases observed by the OSCE/ODIHR EOM throughout the country, voters who applied to be included in voter lists did not file the proper application documents, and PECs did not take formal decisions about their inclusion in the lists. This resulted in voters in some cases not being able to find themselves on the voter list on election day even though they had checked the lists in advance.

VI. ELECTRONIC VOTING

Electronic voting (e-voting) was first used in Kazakhstan during the 2004 parliamentary elections. In the 2005 presidential election, the 'Sailau' e-voting system was used in some 15 per cent of polling stations, a gradual increase over the 2004 parliamentary elections (10 per cent).¹⁵ The 1,451 polling stations with e-voting served approximately 32 per cent of voters. In a positive step, the CEC decided at an early stage that voters served by polling stations with e-voting would be able to choose between e-voting and paper ballot and that voters would be checked against the paper voter list before making this choice.¹⁶

The Sailau system has been modified since the last elections, and the new touch-screen voting terminals which replaced the bar code readers used in the 2004 elections appeared to be easier for voters to use. Also – as opposed to the 2004 elections – voting for none of the candidates (the equivalent of casting a blank ballot) was possible. However, the number of 'blank e-votes' cast was not recorded in the result protocols but had to be inferred, weakening possible audits which could be done at all levels. In addition, this created considerable confusion during the vote count, since PECs did not know how and where to record these 'blank' votes.

Despite a widespread information campaign that encouraged voters to use e-voting and the introduction of a set of protocols for transparent reporting of polling station results, several elements of the e-voting system still contribute to a continued lack of public confidence. The system still lacks adequate auditing controls which would improve both transparency and public confidence, including a paper trail which could be used in the case of election disputes.

An additional issue is that in order to make the association of a voter with a vote impossible, the system is designed in a way that actual votes are not stored individually. The side effect is that this makes it impossible to conduct a recount. The implementation of a paper trail, in

¹⁵ The OSCE/ODIHR EOM included three electronic voting experts.

¹⁶ Those voters opting to vote electronically were also checked against the electronic copy of the voter list, as part of the normal operation of the e-voting system.

which the paper record(s) is/are retained in the polling station in a secure container, would enable a recount.

As in 2004, the use of an optional four-digit control code generated by voters was a major concern. The purpose of this code is to make it possible for a voter to check if his or her vote was recorded correctly, by consulting a control protocol which lists all control codes next to the name of the candidate for whom the corresponding vote was recorded. While this feature is intended to build public confidence in the e-voting system, the control code, if provided to a third party, would show how a voter voted. This opens the potential for violation of the secrecy of the vote as well as intimidation. The use of a voter-verified paper trail as described above would eliminate the need for the control code.

The certification and testing process of the 'Sailau' system still lacks transparency. A private company assessed the system prior to both this election and the 2004 elections. The company indicated that the voting system and its major components were tested to standards which are a state secret. It is, therefore, not possible to assess the appropriateness of these standards. While many aspects of the system do permit auditing, it is not clear whether there is a routine audit process which would allow the identification of problems in a timely manner in order to improve the conduct of future elections. Neither the event logs nor redundant records from the precincts are apparently subject to routine audit. The CEC and its Information Technology Centre staff could not answer all technical questions about voting cards and voting terminals, which suggests that contractors providing these components have been operating with excessive autonomy and insufficient guidance from the CEC.

The two-hour interval modem connections from the polling station computers to the CEC for transferring turnout information enable potential attacks on the integrity of the voting system and serve no essential purpose.

Four of the five campaigns – all except that of President Nazarbayev – urged their supporters not to use e-voting and requested that the CEC abolish e-voting, although Mr. Abylkasymov did not sign the formal request to the CEC. The percentage of those voters having the opportunity to choose between e-voting and paper voting who chose to vote electronically was 13.6 per cent (395,287 of 2,891,924), or 4.5 per cent of all registered voters.

VII. CANDIDATE REGISTRATION

Following the 4 October deadline for candidate nomination, nominees had 20 days to provide the necessary documentation to be registered as candidates by the CEC. To be eligible to run for the Presidency, one must be a citizen of Kazakhstan not younger than 40 years old, with fluency in Kazakh language and official residency in Kazakhstan for at least 15 years.

The registration process was mostly inclusive and resulted in the registration of five candidates. Of the 18 initial nominees, four did not pass the mandatory Kazakh language test and one did not take the test, while two withdrew before the registration deadline. Six nominees were denied registration because they did not submit the required support signatures, tax certificates and/or proof that they had paid the election deposit.

The Election Law does not provide for a separate deadline for the submission of documents and support signatures prior to the deadline for candidate registration. This can be potentially

misleading for prospective candidates since the Election Law gives election commissions up to ten days to check the signatures. The CEC issued a statement suggesting that nominees submit their signatures no later than ten days before the registration deadline, but it did so only one day before the date it suggested for submission.

This lack of clarity appears to have been a factor in the CEC's decision not to register one nominee, Senator Ualikhan Kaisarov, as a candidate. The CEC argued that Senator Kaisarov submitted an insufficient number of valid support signatures. Senator Kaisarov appealed the decision to the Supreme Court, which upheld the CEC decision.

There were numerous complaints regarding the signature collection process, many from voters who requested that their signature in support of a candidate be withdrawn, while other complaints claimed that signatures had been falsified.

VIII. CAMPAIGN

A. OVERVIEW

The election campaign ran from 25 October to 2 December. While the field of five candidates provided voters with a choice, a number of significant shortcomings were noted during the campaign, running contrary to Paragraphs 5.4, 7.6, 7.7, and 9.1 of the 1990 OSCE Copenhagen Document. The involvement of the authorities in the election campaign limited the ability of candidates to freely express their political positions, thus leading to the lack of a level playing field for all contestants. This, in addition to an atmosphere of intimidation throughout the election period, meant that voters were not able to make a truly informed judgment regarding their choice of candidate.

Mr. Baimenov and Mr. Tuyakbai campaigned actively and visited most regions in the country. Mr. Abylkasymov and Mr. Yeleussizov also campaigned in the regions, but to a lesser extent. President Nazarbayev's stated strategy was not to campaign personally, although he visited some regions in his official capacity.¹⁷ In addition, various public events were organized by or participated in by the President's election team to promote his candidacy.¹⁸ Dariga Nazarbayeva - a parliamentary deputy, head of the Asar party and daughter of the President - and senior state officials campaigned on the President's behalf. Prior to the calling of the elections, President Nazarbayev had made extensive visits to the regions.

On the basis of a letter from the General Prosecutor's office and a decision of the Almaty Regional Specialized Court, an effective information ban was placed on public discussions of the case of Mr. James Giffen, currently pending in a U.S. Federal Court. Mr. Giffen was indicted on 2 April 2003 for alleged violations of the U.S. Foreign Corrupt Practices Act, in which links have been made between payments to high-ranking officials of Kazakhstan and oil contracts.

The rationale used was that any person is innocent until proven guilty (a principle misapplied from the right to a fair trial to impinge on the freedom of expression and the right to

¹⁷ In Shymkent (on 2 November), Kentau (4 November) and Almaty (7 November).

¹⁸ This included official events arranged to celebrate Republic Day on 25 October in Astana, Almaty and Aktobe.

communication) and that such a discussion constituted an “insult to the honour and dignity” of a presidential candidate (Article 27.7, Election Law) and of the President (Article 318, Criminal Code). These decisions presented an undue limitation on the right of citizens to freedom of expression regarding information that is in the public domain.

B. CAMPAIGN VISIBILITY

Visually, the election campaign was clearly dominated throughout the country by billboards, banners, and posters of President Nazarbayev. During the early stages of the campaign, he enjoyed a near monopoly of large and small billboard advertising.

Mr. Baimenov and Mr. Tuyakbai informed the OSCE/ODIHR EOM that they lacked access to advertising space, especially billboards, and that they had been informed by local administrations and private companies that no space was available, although this did not appear to have affected the President’s campaign. This difficulty was confirmed by EOM observers at the local level. Later in the process, these and other candidates managed to get access to some billboard space, mainly in Astana and Almaty. However, a considerable visual disparity remained throughout the campaign.

In addition, there was extensive state advertising in the form of billboards and banners portraying Mr. Nazarbayev in his official capacity as Head of State. This advertising remained posted throughout the campaign period. Election officials and local administrations (for example in Astana) maintained that ‘official’ advertising did not constitute campaigning and therefore allowed it to remain.

The use of negative, uncredited and often inflammatory campaign materials to discredit other candidates was a source of complaint from most campaign headquarters, including that of the President. Such items failed to comply with the legal requirements regarding campaign materials. The OSCE/ODIHR EOM received numerous reports from Mr. Nazarbayev’s campaign regarding infractions by his opponents.¹⁹ In some cases, courts imposed administrative penalties for such infractions. There were similar complaints from Mr. Nazarbayev’s opponents.

C. CAMPAIGN ENVIRONMENT

Local authorities appeared to have significant discretion over the organization of both outdoor and indoor meetings. As required by the Law on Peaceful Assemblies, candidates had to seek permission for outdoor meetings with voters ten days in advance of the event. Mr. Tuyakbai’s campaign, in particular, complained about this provision, noting that out of 51 requests made countrywide, only five meetings were approved and only one in the requested location. In all but one instance, the locations granted were at some distance from town centres.

Local administrations throughout the country granted certain designated indoor venues to all candidates to meet with voters. This positive step was, however, undermined by numerous incidences of disruption or interference in campaign events, mainly meetings of Mr. Tuyakbai and Mr. Baimenov. OSCE/ODIHR EOM observers noted that disruptions were on most

¹⁹ E.g., posters in non-allocated locations, posters being torn down, and advertising without the required print information

occasions caused by individuals, sometimes acting in an organized manner,²⁰ although representatives of Mr. Tuyakbai and Mr. Baimenov alleged instances of interference by local administrations. As election day approached, the frequency of such disruptive actions appeared to decrease. The other candidates did not appear to experience such harassment.

Mr. Tuyakbai and Mr. Baimenov also complained that allocated locations for indoor meetings were too small and too remotely located. In addition, the OSCE/ODIHR EOM observed in some cases that campaign meetings of these two candidates were being videotaped or audiotaped by members of local administration or security agencies.²¹

Of serious concern were detentions of campaign staff who were handing out campaign materials or attempting to contact voters. The OSCE/ODIHR EOM observed two such cases directly, while more instances were reported by campaign offices or law enforcement officials.²² In addition, a leader of the 'For a Just Kazakhstan' movement, Mr. Tolen Tokhtasynov, was detained on 11 October, the day before a scheduled meeting with the U.S. Secretary of State, thus preventing the meeting from taking place. He was arrested on an outstanding warrant based on his participation in an unsanctioned meeting prior to the start of the campaign.

In addition, the EOM received a number of reports that vehicles carrying campaign materials were stopped for security checks and searched; some cases were directly observed.²³ Such instances were interpreted by the candidates concerned as an effort by the state security forces to intimidate their staff and impede their campaigning. The CEC stated that in some cases, persons detained had been distributing campaign materials that did not comply with the law.²⁴

In addition, incidents were alleged where representatives from the campaigns of President Nazarbayev and Mr. Tuyakbai were beaten by unknown assailants. In the case of Mr. Tuyakbai's campaign, this was confirmed by the OSCE/ODIHR EOM in two instances, in Aktobe and Petropavl. In a third case involving the head of Mr. Tuyakbai's regional campaign office in Aktau, the Ministry of Interior told the EOM that two men had been apprehended and that the attack was not politically motivated, although the investigation had not yet been concluded. In the case of an assault on a campaign worker for President Nazarbayev in Turkistan, the EOM was not able to verify the information.

In two cities, Almaty and Aktobe, members of Mr. Tuyakbai's campaign staff discovered that their offices were under video surveillance, apparently by state security and law enforcement agencies. Evidence of such surveillance was observed by the OSCE/ODIHR EOM.

²⁰ Such cases were observed in Pavlodar oblast (Ekibastuz), Karaganda oblast (Saran and Maikouduk), North Kazakhstan oblast (Bishkul), and Kostanai.

²¹ Videotaping by the oblast Department of Internal Politics was observed in meetings of Mr. Baimenov and Mr. Tuyakbai in Karaganda oblast, and audiotaping of a meeting of Mr. Tuyakbai by the Ministry of Interior was observed in Aktau.

²² Two cases were directly observed in Aktobe. In addition, the EOM received reports of such instances from Aktobe (by campaign staff of Mr. Baimenov) and from Almaty, Kyzylorda, Aktobe and Taldykurgan (by staff of Mr. Tuyakbai).

²³ Two such cases were observed in Taraz and Karaganda, while other cases were alleged by campaign staff of Mr. Tuyakbai.

²⁴ For example, by distributing anonymous printed materials in violation of Article 28 of the Election Law, which requires that campaign materials contain information regarding the publisher, place of printing, date of issue, and other information.

Closer to election day, the OSCE/ODIHR EOM received reports that students at several universities were being pressured by rectors or professors to vote in the election and, occasionally, to vote for President Nazarbayev. This was confirmed by the EOM in three cases. There were threats of expulsion or removal of stipends if students did not comply. In addition, some teachers and workers in some large private companies in Semey and Ust-Kamen were threatened with job loss if they did not vote for the incumbent President. In some cases, teachers reported being obliged by their school directors to participate in Mr. Nazarbayev's campaign events.²⁵

The overall campaign environment was affected by three separate statements, made by the National Security Committee Chairperson and the Minister of Interior on 16, 17, and 25 November, who claimed that the state security structures had information that opposition groups were arming themselves in order to organize potential clashes or provocations and warned that any such incidents would be put down with force. Opposition candidates said that these statements were provocative and contributed to a climate of fear amongst the population. President Nazarbayev's campaign team explained these statements as a warning to others and noted that while official agencies undoubtedly had proof, they were under no requirement to make it public.

The restrictive nature of the Law on Political Parties also played a role in the election with the rejection of registration of the 'Real Ak Zhol' party and the effective delay in registration of the political party 'Alga!'.²⁶ In the case of the 'Real Ak Zhol', the application was not granted by the Ministry of Justice, which disqualified some members due to unspecified problems with their information. According to the law, a prospective political party must present 50,000 members, with no less than 700 from each region. The Ministry's decision left 'Real Ak Zhol' 138 members shy of the required number in Astana.

In the case of 'Alga!', although by law a decision on registration must be taken within 30 days, the process was suspended on the 30th day for an information check, effectively denying 'Alga!' the right to appeal this non-decision to a court. While such a suspension is foreseen by the law, no time limits are defined. Such difficulties resulted in the inability of opposition parties to register and campaign for their candidate, in contravention of Point 7.6 of the 1990 OSCE Copenhagen Document.

On 12 November of Mr. Zamanbek Nurkadilov, a former minister and member of the Political Council of the 'For a Just Kazakhstan' movement, was found shot dead in his house in Almaty with two bullet wounds to the chest and one to the head. The investigation concluded that his death was a suicide. The case occasioned considerable public discussion during the campaign period.

At the time of the election, Mr. Galymzhan Zhakianov, a prominent opposition figure and former leader of the DCK, was serving a sentence due to a conviction in August 2002 on charges of "abuse of office and exceeding official authority," which was widely viewed as politically motivated. Subsequent to the election, Mr. Zhakianov was released on parole.

²⁵ EOM observers were directly informed of such instances by affected participants in Almaty, Aktau, Karaganda, and Shymkent.

²⁶ Alga! is seen as the successor of the political party Democratic Choice of Kazakhstan (DCK), which was de-registered in January 2005 on the grounds of "undermining national security," after calling for street protests against the results of the 2004 parliamentary elections.

IX. MEDIA

A. BACKGROUND

There are 2,110 registered and operating media outlets in Kazakhstan, of which 184 are broadcast media and 11 are news agencies.²⁷ The main source of political information in Kazakhstan is television, ahead of newspapers and radio.²⁸ Most media outlets are privately owned, but only a few are seen as independent and as providing well-balanced and fair coverage of political developments.

Several interlocutors from the media and the NGO sector indicated that media freedom is limited by a strong concentration of media ownership, with owners controlling the editorial policy of their media outlets. Furthermore, legal provisions concerning the honour and dignity of the President, the violation of which may lead to up to three years imprisonment, reportedly contribute to an environment in which journalists exercise self-censorship and generally limit the freedom of expression.

Representatives of several print media sympathizing with the opposition informed the OSCE/ODIHR EOM about difficulties with the registration of new media outlets, problems with access to printing facilities and distribution networks, as well as the difficult position of opposition newspapers on the advertising market. The Ministry of Culture, Information and Sport, which registers newspapers, denied that there were difficulties with registration apart from technical considerations and stated that the other issues were outside the competence of the government, since printing houses and most distribution networks are privately owned. According to the ministry, pro-opposition newspapers were not obstructed in their activities, and their print runs significantly increased in the period preceding the election.

Despite the general consensus regarding the need to adopt new media legislation, the media still operate under the inadequate 1999 media law, which is expected to be soon amended or superseded. The 'Rules on Distribution of Domain Space of the Kazakhstan Segment of Internet', adopted by the government in April 2005, introduced restrictive measures into the process of Web domain registration.²⁹

B. THE LEGAL FRAMEWORK FOR THE MEDIA

The Constitution guarantees freedom of speech and prohibits censorship. Every person has the right to freely receive and disseminate information in any manner not prohibited by the law. The legal framework governing the candidates' campaign and their access to the media is provided by the Election Law and the 'Rules Regulating the Conduct of the Election Campaign through Mass Media and Informational Coverage of the Election of the President of the Republic of Kazakhstan', which were adopted by the CEC on 16 September and emphasize several campaign-related provisions of the Election Law.

By law, candidates have the right to conduct unimpeded pre-election campaigns for or against a candidate and have access to the media. Media should provide an unbiased interpretation of

²⁷ Statistics of the Ministry of Culture, Information and Sport, September 2005.

²⁸ Kazakhstan National Survey by IRI/USAID and Gallup, September 2005.

²⁹ Please see the OSCE Representative on Freedom of the Media documents "Analysis of the Draft Law of the Republic of Kazakhstan On the Mass Media," 27 September 2005, and "Kazakhstan's Regulations for the Allocation of Domain Space," 28 October 2005. www.osce.org/fom/

the election campaign and refrain from publicizing information discrediting the honour, dignity and business reputation of any candidate.

Every candidate is entitled, at the expense of the state, to one 15-minute presentation on TV, one ten-minute presentation on radio, and two articles in the print media. On 19 October, the CEC defined the list of the state media which provided this time and space, namely: TV Kazakhstan–1, Kazakh Radio and the newspapers *Kazakhstanskaya Pravda* and *Egemen Kazakstan*. The Election Law also gives contestants the right to participate in televised debates organized and structured by the CEC. The debate organized by the CEC was broadcast on Khabar, a television station in which the state has a majority stake.

Paid political advertisement in the media is permitted on a non-discriminatory basis; the media should provide contestants with conditions which do not favour individual candidates. While paid time and space was available to the candidates under equal conditions, Mr. Tuyakbai's campaign complained to the CEC that three TV channels (Khabar, KTK and First Channel Eurasia) had established restrictive requirements with regards to the minimum length of spots and the time at which they would be broadcast. The CEC rejected these complaints, arguing that the broadcasters' conditions were equal for all candidates, as provided by the Election Law. The Supreme Court upheld the decision of the CEC.

The Ministry of Culture, Information and Sport conducted monitoring of the state-owned media³⁰ in order to scrutinize their compliance with the legal requirements for the campaign coverage. Based on the results of this monitoring, the Ministry recommended to the Kazinform news agency and to Kazakh Radio, to equalize the coverage of the candidates. The CEC also organized a media monitoring exercise focused on the coverage of the elections in the media.

On 29 September, representatives of 22 major media outlets signed a charter 'For an Honest Election'. In this legally non-binding document, they committed themselves to fair and unbiased coverage of the election campaign, including equal opportunities to all candidates to express their views. While some media attempted to make their reporting more neutral, overall, media outlets failed to comply with the principles of the charter.

C. MEDIA MONITORING

Between 19 October and 2 December, the OSCE/ODIHR EOM conducted qualitative and quantitative monitoring of four national TV stations – state-owned Kazakhstan–1, Khabar (in which the state holds a majority of shares), and the two private televisions Channel 31 and KTK – as well as of 17 newspapers, including two which are state-owned.³¹ The EOM analyzed the quantity of the time/space allocated to candidates and election protagonists, as well as the tone of their coverage in the prime-time programs and print publications.³²

³⁰ Kazakhstan–1, Khabar, Kazakh Radio, *Kazakhstanskaya Pravda*, *Egemen Kazakstan* and the Kazinform news agency. Neither the amount of time given to contestants nor an assessments of the tone of the coverage were part of the ministry's monitoring, which only counted the occurrence of news items dedicated to each contestant.

³¹ *Aikyn*, *Delovaya Nedelya*, *Egemen Kazakstan*, *Express K*, *Karavan*, *Kazakhstanskaya Pravda*, *Liter*, *Megapolis*, *Nachnem s Ponedelnika*, *Novoe Pokolenie*, *Panorama*, *Soz*, *Svoboda Slova*, *Vremya*, *Zhas Alash*, *Zhas Kazak*, and *Zhuma Times*.

³² The complete monitoring results for broadcast media are available on the OSCE/ODIHR website at www.osce.org/documents/odihr/2005/12/17259_en.pdf

All monitored broadcast media dedicated the biggest part of their candidate-related news coverage to Mr. Nazarbayev. He was more frequently portrayed in his capacity of President than as a candidate, and predominantly in a positive light.

State-owned TV Kazakhstan-1 devoted 59 per cent of the time dedicated to coverage of the five contestants to Mr. Nazarbayev. Mr. Baimenov, Mr. Tuyakbai, Mr. Abylkasymov and Mr. Yeleussizov received 13, 12, 8 and 8 per cent respectively. The tone of the coverage of these four candidates was reasonably balanced, but none of them was given a possibility of direct speech, due to the broadcaster's editorial decision to avoid campaigning by candidates in its news programs. The incumbent was portrayed in an overwhelmingly positive light, and approximately one fifth of the time he received in the news programs consisted of direct speech.

Khabar dedicated 49 per cent of its news coverage of contestants to Mr. Nazarbayev; the remaining 51 per cent were distributed rather evenly among the other candidates. Khabar showed a clear bias in favour of the incumbent in its coverage of his activities, which were formally presented as the President's duties.³³ In the last week of the campaign, Khabar dedicated two thirds of its relevant coverage to the incumbent. The coverage of other candidates in Khabar newscasts was primarily positive or neutral, but the portrayal of Mr. Tuyakbai was negative.

Khabar also conducted a media campaign promoting the achievements, inter-ethnic accord, and prosperity of Kazakhstan, which was broadcast extensively on Khabar and other channels and which resembled in form and content the campaign of the incumbent. The fact that a broadcaster in which the state has a majority stake conducted such a campaign during the election period was of concern. The campaign continued after the elections, but its slogan was changed from 'Together Ahead to the Dream' to 'Nazarbayev – Our President'.³⁴

Private TV KTK demonstrated a clear quantitative and qualitative bias in favour of the incumbent and against other candidates. KTK dedicated 77 per cent of its relevant news coverage to Mr. Nazarbayev, whose portrayal was overwhelmingly positive. Other candidates were portrayed mostly in a negative light. Numerous satirical programs broadcast during the campaign period on KTK targeted opposition figures and candidates. The KTK commentary 'Everybody to the Elections', which was a regular part of the main news programs, specifically targeted Mr. Tuyakbai and Mr. Baimenov, who were portrayed overwhelmingly negatively in this section of the news.

Compared to other monitored TV channels, Channel 31 often aired a wider range of political views. For instance, it presented each of the five candidates and their campaigns in 15-minute programs, which the candidates did not have to pay for. Such programs were beneficial for voters given the general lack of information about candidates outside the formats provided by the law. However, Channel 31 also showed a biased coverage of the contestants, especially with regards to the time allocated to them. Thus, President Nazarbayev received 74 per cent of the time devoted to contestants in Channel 31's newscasts, while Mr. Tuyakbai received 12 per cent. While the tone of the coverage of the incumbent was positive or neutral, the portrayal of Mr. Tuyakbai was slightly negative.

³³ Visits to the regions, a meeting of the 'Assembly of Nations of Kazakhstan' in Astana, and openings of supermarkets and construction sites featured the incumbent's supporters and campaign materials.

³⁴ Spots under the original title also continued to be aired after election day.

Monitored broadcast media provided significant coverage of positive achievements of the government and other state structures. A major theme was the stability of Kazakhstan versus critical coverage of the developments in former CIS countries which recently underwent political changes. During the last week of the campaign, several channels, including Kazakhstan-1, Khabar and Channel 31, aired a one-hour documentary, "Coloured Diseases", which criticized recent political changes in Ukraine, Kyrgyzstan and Georgia.

CEC activities were given significant coverage, especially on the state media, and the CEC's voter education campaign was aired extensively. Some regional private TV channels, e.g. in Karaganda, Kyzylorda, and Semey organized special discussion programs with experts intended to increase voters' awareness of the election process.

The majority of the 17 monitored print media outlets demonstrated a bias for or against certain candidates. The state-owned newspapers *Kazakhstanskaya Pravda* and *Egemen Kazakstan* dedicated 72 and 52 per cent, respectively, of their entire coverage of the five contestants to the incumbent. His portrayal was overwhelmingly positive. Other candidates were portrayed in a neutral or positive light, except for Mr. Tuyakbai, whose portrayal was relatively negative.

Bias in favour of Mr. Nazarbayev and against Mr. Tuyakbai was also apparent in the private newspapers *Akyn*, *Expres K*, *Liter*, *Megapolis* and *Nachnem s Ponedelnika*. On the other hand, a negative portrayal of Mr. Nazarbayev and positive coverage of Mr. Tuyakbai was apparent in the private newspapers *Soz*, *Zhas Alash* and especially in *Svoboda Slova* and *Zhuma Times*. Private newspapers *Novoe Pokolenie* and *Panorama* provided most of the space dedicated to candidates to the incumbent, but their portrayal of the contestants was reasonably balanced.³⁵

All candidates were able to utilize their granted free time and space in the state broadcast and print media. However, these media on occasion made unwarranted attempts to alter the content of candidates' material. Representatives of the state-owned TV, radio and newspapers objected to the content of the campaign material submitted by Mr. Tuyakbai; however, they published it without modification. Mr. Abylkasymov was also advised to modify his material. Mr. Baimenov complained to the CEC that *Kazakhstanskaya Pravda* changed the title of his article without previous notification, from 'The Basis of All Problems – Tremendous Concentration of Power and Authority in the Hands of the President' to 'The Country Needs Accelerated Modernization'.

The amount of time and space granted to presidential candidates by the legislation appears rather limited, especially compared to the overall extent of the incumbent's media coverage.

Candidates were given a chance to participate in the candidates' debate aired on 17 November. This first ever presidential debate in Kazakhstan provided voters a chance to gain a better understanding of the choices they had on election day. However, the decision by the incumbent not to participate, although this was his right, significantly reduced the value of this event for the electorate. Only four contestants participated, as the incumbent went on an official visit to Ukraine. Thus, voters were denied the opportunity to directly compare the views of all candidates. While candidates could put questions to each other, they did not participate in deciding the format of the debate, which was established by the CEC.

³⁵ The newspapers *Delovaya Gazeta*, *Karavan*, *Vremya* and *Zhas Kazakh* provided very limited coverage of the candidates.

In the absence of regulations, media advertising prices for campaign spots were significantly higher than regular commercial advertising rates and the prices charged during the 2004 election campaign. Although some candidates complained to the EOM about the high prices, most of them used paid advertisements, mainly in national broadcast media and in particular in the last two weeks of the campaign.

D. FREEDOM OF THE MEDIA

The OSCE/ODIHR EOM directly observed and received reports on limitations of the freedoms of expression and of access to information. Such cases included three instances of seizures of editions of the newspapers *Svoboda Slova* and *Zhuma Times* in the period prior to election day, and one case involving *Zhuma Times* after election day.³⁶ In these cases, cars transporting newspaper copies were stopped by the police shortly after they left the printing house before they could be distributed. The grounds for seizure of the newspapers were that they contained materials infringing the honour and dignity of a candidate and president,

The manner in which the seizures took place strongly implied that the newspapers' content was known to the police in advance. The police stopped and searched the vehicles without presenting court orders. According to police, during the searches, newspapers containing articles which potentially violated the law were found by chance, and the prosecutor was then notified. The newspapers' representatives alleged that somebody from the printing house was reporting the content of the newspapers to police, who consequently waited in the front of the printing house for the cars transporting the newspapers. The police stated that in each case, they were present outside the printing house for other reasons.

In addition to the seizures, the newspapers *Svoboda Slova*, *Zhuma Times* and *Nachnem s Ponedelnika* were fined, and the print runs of individual issues of *Svoboda Slova* (19 October) and *Zhuma Times* (3 November) were destroyed, following court orders, for violating Article 100 of the Administrative Code, which prohibits the distribution of false information and actions damaging a candidate's honour and dignity.

Further limitations of the right to freely disseminate information were observed in the case of the detention of five journalists in Almaty on 19 October, in connection with their coverage of the confiscation of the newspaper *Svoboda Slova*. Shortly before the start of the campaign, the Internet site *Navigator*, which provided alternative information on political developments, was closed down due to alleged misuse of a registered name.

Between the visit of the OSCE/ODIHR Needs Assessment Mission to Kazakhstan in September 2005 and the deployment of the EOM, the printing house that had been printing many opposition oriented newspapers abruptly refused to continue doing so. Another printing house, owned by a close relative of the President, agreed to print the newspapers. After the election, this printing house also discontinued its publication of opposition oriented newspapers. These media have subsequently found other printing houses.

³⁶ *Svoboda Slova* was seized by police on 19 and 26 October. On 26 October, the copies of the newspaper were return back to the owners after some hours. *Zhuma Times* was seized on 3 November and 8 December

X. COMPLAINTS AND APPEALS

According to the Election Law, all complaints and appeals related to the election process may be submitted to election commissions and/or courts. Complaints and appeals may also be addressed to the prosecutors, who are responsible for overseeing the legality of the election process. Many of the complaints received by election commissions were also forwarded to the Prosecutor General's Office, either for verification of facts or for providing clarification of legislation.

Around 18,000 complaints were filed with election commissions and various state authorities in the period between announcing the election and election day. The majority of these complaints related to the signature collection process, and partially appeared to be an organized effort. Other complaints included claims by some candidates of difficulties in conducting their campaign, use of campaign materials lacking required information, campaign materials damaging the honour and dignity of candidates, damage of campaign materials, harassment of campaign staff by authorities and appeals against actions/inaction of various authorities.

In the same period, the CEC received around 400 complaints and appeals. In only a few cases did the CEC take decisions or vote on complaints it received. In many cases, CEC officials provided responses to the complaints and appeals received without a collegial decision by the CEC as a whole, including in some cases recommendations to state authorities to rectify violations of the law.³⁷ The practice of having CEC members issue responses to complaints without a decision by the full body does not appear to be in line with the principle of collegiality and transparency enshrined in the Election Law.

The CEC Consultative-Advisory Working Group for Review of Appeals³⁸ met regularly and openly to hear reports regarding complaints to the CEC and other authorities. This group provided an open forum for exchanging information regarding complaints in general and appeals, but did not have authority to decide complaints.

Lower-level election commissions also received and decided on complaints. However, the system of dealing with complaints at the PEC level is heavily dependent on the good will of PEC members. Although the Election Law explicitly provides for the right to submit complaints to PECs on election day and the right of observers and proxies to demand that acts about violations drawn up by them be attached to commission protocols, the law does not contain sufficient and effective guarantees that these rights are respected. In cases in which PEC chairpersons refused to receive acts about alleged violations and did not add them to commission protocols, it then became virtually impossible for domestic observers and candidate representatives to document their claims.

Prosecutors played a central role in handling election-related complaints. They received complaints, actively conducted monitoring and inspections, and addressed violations they discovered. According to information from the Prosecutor General's office, there were several criminal cases associated with election-related complaints, at least three of these related to

³⁷ For example, the recommendation to the Ministry of Foreign Affairs to remove from their website material found to be in violation of campaign provisions.

³⁸ The working group consisted of 22 persons representing various authorities, including the CEC, the Ministry of Culture, Information and Sport, the Ministry of Finance, and the Prosecutor General.

damaging election materials.³⁹ While the active role of the Public Prosecutors is welcome and fills a gap in the complaints and appeals process, their involvement provides a less transparent and independent method of dealing with complaints and appeals than would be the case with courts or election commissions.

Election-related cases were heard by courts of different levels. In at least one case, the court appeared to fail taking essential evidence or facts into consideration. For example, in a case involving a police officer caught video taping people and vehicles in front of one of Mr. Tuyakbai's Almaty offices, the District Court on 29 November decided against Mr. Tuyakbai's campaign's claim. The EOM's observations suggest that the court did not thoroughly consider some of the evidence presented.⁴⁰

The Supreme Court received at least 23 complaints related to the elections.⁴¹ Some complaints were not admitted due to missed deadlines or for other procedural reasons. The Supreme Court did not satisfy any of the claims it received, including the case filed by Senator Kaisarov against the CEC's decision on his non-registration.

The President's 9 September decree was challenged in the Supreme Court on 1 December by Mr. Tuyakbai, who claimed that the President does not have a right to issue instructions to the CEC, which was among the bodies mentioned in the decree. The Supreme Court did not admit the case on the grounds that actions of the President may not be subject of a court hearing.

XI. DOMESTIC AND INTERNATIONAL OBSERVERS

The Election Law provides an adequate framework for election observation by domestic non-partisan observers, and party and candidate representatives. A number of domestic election observation groups observed the presidential election. The two most visible domestic observation efforts were undertaken by the Republican Network of Independent Monitors, established in 1999, and the Public Committee for the Control of the Election, established in September 2005 under the leadership of Senator Kuanysht Sultanov. Both organizations fielded significant observers on election day. However, the methodology used by the Public Committee for the Control of the Election remained unclear.

Some domestic observation organizations, particularly the League of Voters, came under increased pressure at the close of the pre-election period. In particular, the group claimed to experience intimidation from regional authorities in many areas of the country, with co-ordinators being told by executive bodies to cease their activity or face repercussions. In some cases, the group's observers withdrew as a result of the pressure.

³⁹ As of 2 December, the Prosecutor's Office and other law enforcement authorities had initiated five criminal cases and 313 administrative cases related to the elections. As of the same date, the prosecutors had issued 697 acts of prosecutorial reaction, including explanations of laws, instructions to rectify violations of legality, instructions, protests and decisions to initiate administrative cases.

⁴⁰ On 19 November, staff of Mr. Tuyakbai's campaign discovered a police officer videotaping in front of one of their Almaty offices. The tape was marked "DVK 19.11.2005" (DVK is an abbreviation for 'Democratic Choice of Kazakhstan'). This case was taken to court with a claim against the relevant Department of Interior. Although the tape appeared to be a clear case of surveillance, the court agreed with the argument that the police officer was simply testing the equipment. It remained unclear as to why the tape was marked with a name of a movement supporting Mr. Tuyakbai. The court decided the case without questioning the police officer involved.

⁴¹ As of 3 February 2006, the Supreme Court website listed 25 election-related cases reviewed by the Court in November and December. Of these, 24 were filed by Mr. Tuyakbai, one by Senator Kaisarov.

The legislation of Kazakhstan provides for international observation of its elections. The authorities took the position that only representatives of foreign states, inter-governmental and inter-state organizations could be accredited as international observers. Consequently, the Ministry of Foreign Affairs denied accreditation to the European Network of Election Monitoring Organizations (ENEMO) and to Election & Democracy.⁴² Upon the request of the Prosecutor General's office, the CEC withdrew the accreditation it had previously granted to CIS-EMO. Despite its stated position, the CEC accredited some international groups which appeared not to meet these criteria.

XII. PARTICIPATION OF WOMEN

Women remain underrepresented in politics, including in parliament, where only 9 per cent of the deputies are women. Although three of the 18 initial nominees were women, none contested the presidential election. All three women nominees were disqualified for failure to pass the mandatory Kazakh language test.

Women are better represented in the election administration. Three out of seven CEC members were women, although only 22 per cent of REC members were women. In polling stations observed on election day, 57 per cent of PEC chairpersons were women.

XIII. NATIONAL MINORITIES

According to the 1999 National Census, the majority of the population in Kazakhstan is Kazakh (53.4 per cent), with Russians (30 per cent) as the second largest group. Other nationalities include Ukrainians (3.7 per cent), Uzbeks (2.5 per cent), Germans (2.4 per cent), Tatars (1.7 per cent), and Uighurs (1.4 per cent). Around 100 smaller ethnic groups make up the remaining 4.9 per cent of the population.

Issues of nationality or ethnicity did not play a discernable role in the campaign. National minorities appeared to be able to participate in the election process without difficulty, and members of minority groups were represented on election commissions at various levels. However, none of the original 18 presidential nominees came from a national minority.

The official state language is Kazakh, which is spoken by about 65 per cent of the population. Russian is designated in the Constitution as the "language of inter-ethnic communication" and is spoken by approximately 95 per cent of the population. Although election-related information was presented in Kazakh and Russian, no reports were received that this presented a hindrance to other groups. Both paper and electronic ballots were available in Kazakh and Russian languages.⁴³

⁴² Election & Democracy, an international association of NGOs from countries of the Commonwealth of Independent States, intended to conduct a domestic observation as well as an international observation effort in cooperation with partner NGOs from other countries. The international component was rejected by the authorities.

⁴³ Correction. The original sentence read as follows, "Paper ballots were only produced in Kazakh, while voters who used e-voting could choose between Kazakh and Russian."

XIV. ELECTION DAY

A. VOTING

Opening of polling stations took place without significant difficulties, although IEOM observers assessed the opening process negatively in seven per cent of polling stations. Procedural violations included failure to count and/or record the number of ballots received.

Voting was conducted in a generally calm atmosphere. Overall, IEOM observers assessed the conduct of voting positively in 92 per cent of around 1,800 polling stations visited,⁴⁴ and negatively in eight per cent, which represents a significant finding of systemic issues evident during the voting process.⁴⁵ In terms of understanding and application of voting procedures, the performance of most PEC staff was assessed positively or neutrally in 96 per cent of cases.

Unauthorized persons were present in 11 per cent of polling stations visited, sometimes interfering in the process or directing the work of PECs (4 per cent of visits).⁴⁶ IEOM observers noted cases of multiple voting and proxy voting in 3 and 2 per cent of polling station visited, respectively. Group or family voting was observed in 14 per cent of visits. Other serious irregularities observed included multiple identical signatures on voter lists (10 per cent, often for all members of one family) and violations of the secrecy of the vote (6 per cent).⁴⁷ Three cases of ballot box stuffing were observed directly, in Almaty City and South Kazakhstan region,⁴⁸ and there were five reports of indications of ballot box stuffing prior to the arrival of observers, such as stacks of ballots folded together in the ballot box.⁴⁹ In 12 per cent of polling stations visited, ballot boxes were not properly sealed, and observers reported that, generally, there was little uniformity with regards to sealing.

⁴⁴ The voting process was observed in 1,773 regular polling stations, 47 hospitals, 46 military polling stations and 10 detention centre stations.

⁴⁵ Negative assessments of the voting process came from all oblasts and cities. The highest incidences of these reports were from South Kazakhstan and Almaty oblasts (17 and 16 percent, respectively).

⁴⁶ Unauthorized persons were observed directing the work of PECs during the voting process in the following regions: Almaty City (PECs 4, 353, 364, 367, 376, 377, 396); Almaty region (PECs 134, 135, 357, 361, 382, 384, 525, 528, 598, 604, 723, 733, 733); Akmola (PECs 28, 44, 149, 509, 529, 670, 760, 789); North Kazakhstan (PEC 548); East Kazakhstan (PECs 53, 55, 205, 209, 482, 507, 1101, 1147); Karaganda (PECs 83, 277); Zhambyl (PECs 222, 234, 260, 458); South Kazakhstan (PECs 35, 94, 383, 446, 991); Kyzylorda (PECs 56, 208); Mangistau (PECs 3, 49); West Kazakhstan (PECs 366, 396, 408, 513, 516); Aktobe (PECs 30, 299); Kostanai (PECs 55, 462). Correction. The location of polling stations 670 and 760 has been properly identified as Akmola rather than Astana City.

⁴⁷ Cases of violations of secrecy of the vote were observed in the following regions: Almaty City (PECs 4, 54, 108, 215, 219, 276, 293, 310, 316, 353, 357, 367, 408, 431); Almaty region (PECs 53, 360, 361, 365, 382, 384, 525, 526, 723, 725, 727, 732, 733, 733, 756, 763, 833); Akmola (PECs 28, 40, 45, 47, 254, 660, 675, 679, 760, 789); Astana City (PECs 27, 35); North Kazakhstan (PECs 269, 410, 550, 640, 677, 717); Pavlodar (PECs 60, 300, 477, 494, 555); East Kazakhstan (PECs 54, 164, 215, 507, 522); Karaganda (PECs 41, 277, 299, 354); Zhambyl (PECs 28, 51, 101); South Kazakhstan (PECs 11, 18, 24, 35, 79, 88, 120, 136, 140, 141, 160, 350, 650, 897); Kyzylorda (PEC 231); Mangistau (PECs 3, 19, 49, 57); West Kazakhstan (PECs 516, 517); Atyrau (PECs 14, 24, 68); Aktobe (PECs 30, 32); Kostanai (PECs 65, 136, 268, 854). Correction. The location of polling stations 660, 675, 679, and 760 has been properly identified as Akmola rather than Astana City.

⁴⁸ Almaty City, PECs 36 and 396; South Kazakhstan, PEC 486.

⁴⁹ For example in Almaty City, PEC 7; Almaty region, PEC 138; Atyrau, PEC 222; South Kazakhstan, PEC 949; Zhambyl, PEC 240.

In a number of cities, university students appeared in large groups to vote, often in an organized fashion.⁵⁰ In Shymkent and Turkistan, there was evidence that students were pressured to vote, and in one polling station in South Kazakhstan region, persons whom the PEC chair described as local government officials recorded the names of all students who voted.⁵¹ Observers noted some cases where the voting process was filmed, often for extended periods.⁵² In a few cases, IEOM observers saw voters being instructed for whom to vote (1 per cent of polling stations visited).

Overcrowding inside polling stations was a problem, and in five per cent of polling stations visited it seriously hampered voting and therefore the transparency of the process.⁵³ Overcrowding was mostly due to the lack of proper access control by these PECs. In some polling stations with e-voting, overcrowding also appeared to be caused to a large extent by the limited number of voting booths available for voting by paper ballot.

There were no significant differences in the assessments that IEOM observers made for polling stations with e-voting and those in which only paper balloting was conducted. This indicated that e-voting was conducted relatively smoothly. Voters and PEC staff appeared to have equal understanding of e-voting and paper ballot processes.

In some cases, voters who voted electronically were not marked on the paper voter lists as required, thus removing an important safeguard against multiple voting. In 2 per cent of e-voting polling stations observed, voters were being instructed to use e-voting instead of the paper ballot. In Atyrau, all e-voting polling stations received paper ballots equivalent to only 70 per cent of the number of registered voters, rather than the required 100 per cent. A few isolated problems with the e-voting equipment were reported.

As noted above, approximately 100,000 voters were added to the voter lists on election day. In numerous polling stations, IEOM observers saw that voters were being added to the voter list just by signing applications, instead of producing proof of residence or an Absentee Voter Certificate, as required by law. In some cases, voters who had previously checked that their names were on the voter list found were missing on election day.

Procedures for mobile voting were not always followed, and secrecy of the vote in the mobile voting process was often lacking. In Mangistau region, mobile voting was organized for over 3,000 persons working on oil rigs or farms, or living in settlements no longer served by a polling station, without the required applications.

⁵⁰ This was observed in Almaty (where students voted by faculty), Kostanai, Karaganda, Pavlodar and Petropavl.

⁵¹ South Kazakhstan, PEC 83.

⁵² For example, in one PEC in Almaty City, a proxy for Mr. Tuyakbai constantly filmed voters signing the voter list. In Almaty oblast, Otan observers were observed filming inside voting booths.

⁵³ Voting process hampered by overcrowding was observed in the following regions: Almaty City (PECs 3, 4, 6, 22, 45, 49, 50, 74, 86, 143, 146, 185, 219, 220, 310, 411, 412, 449); Almaty oblast (PECs 135, 141, 240, 315, 318, 357, 360, 384, 594, 723, 725, 733, 733, 756); Akmola (PECs 16, 28, 44, 258); Astana City (PECs 11, 14, 27, 32, 42, 69, 82); North Kazakhstan (PEC 517); Pavlodar (PECs 87, 494, 505); East Kazakhstan (PECs 8, 54, 55, 135, 174, 990); Karaganda (PECs 103, 234, 277, 619); Zhambyl (PECs 234, 285, 294, 309); South Kazakhstan (PECs 94, 446, 650); Kyzylorda (PECs 56, 91, 188, 208, 231, 265, 269); Mangistau (PECs 11, 24, 26, 30, 32, 39, 49, 135, 141); West Kazakhstan (PECs 5, 78, 455, 503, 516, 722); Atyrau (PEC 68); Aktobe (PEC 105); Kostanai (PECs 16, 63, 854).

Some 42 per cent of polling stations did not provide sufficient access for disabled voters. In six per cent of polling stations, campaign material was present in the voting premises, and in 31 per cent of polling stations the required information on the candidates was missing.

In eight per cent of visits, IEOM observers were not given full access to the process, being told instead to sit in a reserved area which was often at a distance from the voting process. In isolated cases, IEOM observers were not allowed to enter polling stations or were prevented from talking to domestic observers, or PEC members refused to provide information.

Domestic non-partisan and/or candidate observers were present in 96 per cent of polling stations visited. Although these figures point to a wide representation of domestic observers in the election process, IEOM observers noted that some domestic observers appeared to have an insufficient understanding of the election process. In a few cases, domestic observers told IEOM observers that they were afraid and had been intimidated by the authorities. In other, more widespread cases, election commissions appeared to place undue limitations on domestic observers' right to observe the voting process, either seating them in certain 'designated' locations, thus preventing them from observing key aspects of the process, or failing to admit into consideration their complaints.

B. COUNTING

While the assessment of voting was overall positive despite the irregularities and procedural problems observed, the process deteriorated during the counting and tabulation processes. IEOM observers assessed the vote count as bad or very bad in 28 per cent of the 192 counts observed. Observers assessed PEC members' understanding of counting procedures, as well as the organization of the count, as 'bad' or 'very bad' in 29 per cent of counts observed.

IEOM observers noted serious violations in 23 per cent of counts observed,⁵⁴ including tampering with result protocols in 10 per cent. In several instances, the votes cast for Mr. Nazarbayev were determined by subtracting the votes received by other candidates and invalid ballots from the number of votes cast, instead of actually counting them. Police or other unauthorized persons were present during the count in 17 per cent of polling stations observed. In 5 per cent of polling stations observed, such unauthorized persons were directing the work of the PEC.⁵⁵

Observers also noted a wide range of procedural violations, including procedures prior to opening the ballot box,⁵⁶ voters' choices not being announced aloud as ballots were examined (63 per cent of polling stations observed), ballots not being shown to those present (53 per cent), result protocols not being completed (9 per cent) or filled in pencil rather than ink (8

⁵⁴ Serious violations during the counting process were observed in the following regions: Almaty City (PECs 30, 431); Almaty region (PECs 133, 384, 725, 825, 561); North Kazakhstan (PEC 640); Pavlodar (PEC 498); East Kazakhstan (PECs 14, 142, 531, 640); Karaganda (PEC 325); Zhambyl (PECs 120, 201); South Kazakhstan (PECs 246, 344, 380, 486); Kyzylorda (PECs 47, 49, 61, 92); Mangistau (PECs 19, 20); Atyrau (PECs 121, 195); Aktobe (PECs 59, 238, 513); Kostanai (PEC 560).

⁵⁵ Unauthorized persons were observed directing the work of PECs during the counting process in the following regions: Almaty region (PECs 133, 384, 598, 725); Akmola (PEC 760); North Kazakhstan (PEC 640); Atyrau (PEC 59); Aktobe (PEC 513).

⁵⁶ E.g., number of voters issued with ballots not counted and recorded prior to opening ballot box (21 per cent of polling stations observed); number of voters who voted with Absentee Voting Certificates not counted and recorded (29 per cent); ballot boxes not shown to be securely sealed before opening (11 per cent).

per cent). In 27 per cent of counts observed, PECs had problems filling in the protocols. In e-voting polling stations, the PI-card, which holds the election results, was not put away and sealed in 27 per cent of counts observed.

Protocols were not posted for public display in over one third of polling stations where the count was observed, which significantly decreased transparency. Domestic observers did not have a full view of the process in 14 per cent of counts observed, and in 7 per cent IEOM observers were restricted or obstructed in viewing the counting process.⁵⁷ In 7 per cent of counts observed, not all entitled persons (domestic) who requested copies of the protocols received them, and in 10 per cent of counts observed, IEOM observers were not able to receive copies of the protocols.

C. TABULATION OF RESULTS

The tabulation of results at the DEC level was assessed as bad or very bad in 22 per cent of 137 observations of DEC. The organization of the work was assessed negatively in 35 per cent, and the transparency of the process was assessed negatively in 44 per cent of DEC. Unauthorized persons were present in 25 per cent of DEC. Of the PECs where counting was observed, 10 per cent did not go directly to the DEC after finalizing the count. Many protocols needed to be corrected or rewritten due to errors, and at nine per cent of DEC, IEOM observers noted that at least one PEC was ordered to do a recount. In half of IEOM observations, neither domestic non-partisan nor candidate observers were present at the DEC. Candidate representatives were present in 44 per cent of DEC, and non-partisan observers in only 33 per cent of DEC. In 10 per cent of cases, IEOM observer teams were restricted or obstructed in their ability to view the tabulation process.⁵⁹

XV. ANNOUNCEMENT OF RESULTS

Final results were published in the mass media by the CEC on 7 December and included the aggregate results from all 9,580 polling stations in Kazakhstan and abroad. The official turnout was 76.78 per cent. On 7 December, the CEC issued a decree *On the Establishment and Publication of the Results of the Presidential Elections*, establishing the election of Mr. Nazarbayev as President.

Following Point 9 of its decision of 16 September, the CEC took the positive step of posting the elections results by PEC on its website.⁶⁰ However, the results were posted not on election night but with some days' delay, which reduced the time available for candidates to compare

⁵⁷ IEOM observers were restricted or obstructed in viewing the counting process in the following regions: Almaty City (PEC 28); North Kazakhstan (PEC 640); Pavlodar (PEC 459); Zhambyl (PECs 34, 410); South Kazakhstan (PECs 203, 486); Kyzylorda (PECs 49, 176, 289); Atyrau (PEC 195); Aktobe (PEC 238).

⁵⁸ Unauthorized persons were observed directing the work in DEC in Almaty City, Almaty region, and Akmola region.

⁵⁹ IEOM observer teams were restricted or obstructed in their ability to view the tabulation process in Astana City, Bostandyk DEC; Pavlodar, Ekibastuz DEC; Zhambyl, Taraz DEC; South Kazakhstan, DEC in Shymkent and Kentau; Kyzylorda, Kyzylorda Aral DEC; Mangistau, Aktau DEC; Atyrau, Makhambet and Inderborski DEC. Other instances occurred in East Kazakhstan, South Kazakhstan, and Zhambyl regions.

⁶⁰ www.election.kz

the results with PEC protocols for possible challenges in court. The results posted did not contain information on the number of registered voters as well as other important data (e.g., number of voters who were issued with ballots, number of voters who used mobile voting) were missing. This reduced the transparency of the information.

On 15 December 2005, after the departure of the OSCE/ODIHR EOM, Mr. Tuyakbai appealed to the Supreme Court, claiming that the results officially published by CEC did not reflect the choice of the people of Kazakhstan. Mr. Tuyakbai presented copies of 1012 PEC result protocols and claimed that there were differences between these protocols, the PEC results published on the CEC website and the official results published by the CEC. After a hearing on 23 December, the Supreme Court decided against Mr. Tuyakbai's appeal. The Supreme Court acknowledged that some discrepancies existed but indicated that the lower level commission protocols had not been challenged and that the Supreme Court was not the correct forum for adjudicating challenges to REC and PEC protocols. The Supreme Court's decision also stated that the publication on the CEC website of PEC results does not have legal significance and does not result in legal consequences.

The Supreme Court's decision also stated that the CEC had exceeded its authority by publishing polling station results on its website, and the Supreme Court issued a "private definition" to the CEC. Mr. Tuyakbai appealed this decision of the Supreme Court to the Collegium for Civil Cases of the Supreme Court on 7 January 2006, claiming that the Supreme Court did not thoroughly study the circumstances of the case and did not study polling station protocols from across the country. This appeal was not admitted.

XVI. RECOMMENDATIONS

The OSCE/ODIHR offers the following recommendations for consideration by the authorities of the Republic of Kazakhstan. These recommendations do not repeat all recommendations made in previous OSCE/ODIHR Final Reports or Assessments. A number of previous recommendations have not yet been implemented and remain valid.

A. LEGAL FRAMEWORK

1. The use of provisions protecting the honour and dignity of candidates and the President, as well as provisions of the Criminal Code and the Law on Confidential State Affairs concerning defamation, should be reconsidered in order to remove undue restrictions on the freedom of expression.
2. The Election Law should be amended to remove provisions which unduly limit the rights of freedom of association and of peaceful assembly, namely Article 44.6.
3. The Law on Peaceful Assemblies and other relevant legislation should be amended to ensure that local authorities do not have undue power to decide whether or not to grant permission for a meeting or to decide on the time and venue of meetings. The ten-day advance notice for holding outdoor meetings is excessive and should be reconsidered.
4. The Election Law should be amended to ensure a more transparent handling of complaints and appeals by election commissions. The CEC should thoroughly consider all written matters presented to it and provide a written decision in response. Decisions

should only be taken by the CEC as a collegial body. The same procedure should be applicable to all other levels of the electoral administration.

5. The Election Law should be amended to provide guarantees for effective resolution of complaints at PEC level on election day.
6. The Election Law should be amended to require the CEC to publish result protocols on its website by polling station on election night, as soon as they become available.
7. A clearer and more effective mechanism for filing complaints regarding election result protocols should be defined in the Election Law.
8. The Election Law should be amended to specifically state fair and objective standards for determining fluency in the State language.

B. ELECTION ADMINISTRATION

9. The principles for the formation of election commissions should guarantee inclusiveness of composition, impartiality of performance and independence from the executive branch of power.
10. The CEC should adopt regulations clarifying a number of provisions in the Election Law and other election related legislation. Such provisions include the deadline for submission of support signatures by nominees; procedures and criteria for verification of support signatures; production, handling and accountability of Absentee Voter Certificates; uniform procedures for sealing of ballot boxes; instructions for ballot reconciliation at the PEC level; and rules for inclusion of voters on the voter lists, both before election day and on election day
11. The CEC should issue written instructions for uniform procedures and guidelines for the layout of polling stations in order to ensure the secrecy of the vote, avoid overcrowding, and create adequate conditions for a meaningful observation.
12. Lower-level election commissions should hold regular, open meetings during the election period and ensure that decisions are reached in accordance with the principles of inclusiveness, transparency and the rule of law.
13. Training of lower-level election commissions should be enhanced and intensified, in particular with a focus on procedures for updating voter lists, counting procedures, and the compilation of result protocols.
14. The voter lists and the procedures for compiling them should be further reviewed. Clear timelines and bodies responsible should be established.

C. ELECTRONIC VOTING

15. The e-voting system and equipment should be tested by an independent body which performs tests based on publicly available technical standards and specifications. Any modifications of e-voting system components, in either hardware or software, should be

documented, and separately and integrally tested and certified based on publicly available technical standards and specifications.

16. A paper-trail should be instituted in the e-voting system in order to increase public confidence and allow for manual recounts in case of election disputes. The user-generated four-digit control code should be eliminated.
17. Abstentions (blank votes) should explicitly be counted in the result protocols, instead of being inferred. This strengthens the possible audits that can be done at all levels.
18. The voter interface should be modified in such a way that abstention is subject to the same voter-verification options as selection of a candidate - i.e., a confirmation function should be added.
19. The two-hour periodical connection from polling station computers to CEC during election day for transferring turnout figures should be cancelled, since it enables potential attacks on the integrity of the voting system and serves no essential purpose.

D. CAMPAIGN REGULATIONS

20. The legislator or the CEC should adopt provisions which give priority to candidate requests for public billboard and advertisement space during the official campaign period. Private companies should be required to provide advertising space on an equal basis to all candidates if provided to any candidate.
21. The number of locations where campaign material can be posted should be increased significantly in order to allow for more adequate campaigning by candidates.
22. Steps should be taken to ensure that state officials and other persons working in positions paid from the state budget do not abuse their positions in order to threaten or intimidate voters and/or campaign activists during an election period. Individuals committing such abuses should be held accountable for their actions.
23. Security services, local administrations and other state authorities should not engage in surveillance of candidate offices and/or activities.
24. Regulations regarding campaign funding should be reviewed in order to introduce a spending ceiling which would allow for adequate campaigning and to introduce transparency and oversight in campaign funding, including publication of campaign financial reports.
25. Political parties should be registered in a timely manner, and the law on political parties should be amended in order to allow a more reasonable registration policy.

E. MEDIA

26. Newspapers should not be subjected to seizure, especially during an election period.
27. Steps should be taken to expand the diversity of media ownership and to ensure that owners respect the editorial independence of their outlets.

28. The state broadcast and print media should provide all political groupings with unimpeded access to the media on a non-discriminatory basis, as well as with unbiased and fair coverage.
29. The media should be consistent in separating the activities of incumbent representatives of the administration from their activities as representatives of candidates or political parties running in an election. No privileged treatment should be given to public authorities by the media during election campaigns.
30. Candidates and parties, in addition to the CEC, should be involved in deciding on rules governing debates.

ANNEX 1.

Final Results

Candidate	Number of votes	Percentage
Yerassyl Abylkasymov	23,252	0.34
Alikhan Baimenov	108,730	1.61
Mels Yeleussizov	18,834	0.28
Nursultan Nazarbayev	6,147,517	91.15
Zharmakhan Tuyakbai	445,934	6.61

Source: Central Election Commission website: www.election.kz

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, and gender equality. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

Within the field of **tolerance** and **non-discrimination**, the ODIHR provides support to the participating States in implementing their OSCE commitments and in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).