

INTERIM REPORT No. 2
15–21 March 2011

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I. EXECUTIVE SUMMARY

- The Central Election Commission (CEC) continues its active preparations for the upcoming election and holds frequent sessions, which are open for observers and the media. All CEC decisions are being published without delay on the CEC website, in Kazakh and Russian.
- The CEC clarified the status of political party representatives in lower-level election commissions but declined to register party and candidate representatives for the CEC itself, based on a legal opinion of the Prosecutor General's office.
- Training of lower-level election commissions is ongoing. The CEC has issued guidelines on voting, counting and tabulation procedures, but the corresponding official regulations and/or clarifications are still lacking.
- OSCE/ODIHR EOM long-term observers (LTOs) reported that in all the regions, many election commissioners who are not available on election day are being replaced. The substitution process lacks clarity and is implemented inconsistently. OSCE/ODIHR EOM LTOs also reported from around the country that many election commissions have a *de facto* majority of members affiliated with the ruling Nur Otan party.
- Campaign activities are dominated by Nur Otan, which is running the incumbent's campaign on his behalf. No apparent distinction is made between the incumbent as a candidate and his position as the president. The incumbent's campaign posters and billboards are visible in large numbers in all major settlements, displayed on public and private buildings. By contrast, the other candidates' campaigns are barely visible, due to lack of funds and limited organizational capabilities.
- Opposition parties and affiliated civil-society groups continue to either actively call for boycott of the election or abstain from the electoral process. They see voter turnout as the only uncertain outcome in this election.
- Preliminary media monitoring results show that the monitored broadcasters by and large provide equality in campaign coverage of candidates in the news programs. However, the OSCE/ODIHR EOM noted a considerable amount of additional coverage which the incumbent receives in his official capacity, as well as advertisements promoting the achievements of the 20 years of Kazakhstan's independence. The CEC guidelines on media coverage of the campaign outside the news programs *de facto* prevent media from providing voters with election-related information which would enable them to make a fully informed choice. Outlets providing independent and critical viewpoints, including newspapers and Internet sites, face continued problems.
- Election stakeholders in general lack sufficient understanding of the complaints and appeals process, and relevant authorities do not have a consistent understanding of the process.

Opposition parties and civil society organizations generally express a lack of trust in the capacity of authorities to independently and impartially address election-related complaints.

- The CEC received six complaints during the reporting period, none of which were considered by the CEC as a body. Responses to complaints were not published on the CEC website since the CEC did not decide on them in plenary session, thus reducing the transparency of the complaints process.

II. THE ELECTION ADMINISTRATION

During the reporting period, the CEC carried on its active preparations for the upcoming election. It continued to hold frequent sessions, which were always open for observers and the media. All formal CEC decisions are being published without delay on the CEC website, in Kazakh and Russian. The state printing house finished printing 9,191,977 ballot papers, equivalent to the total number of registered voters, plus a reserve of 1 per cent.

The CEC has decided not to use the state computer system *Sailau* ('Elections') at all in this election and has indicated to the OSCE/ODIHR EOM that, unlike in 2005 and 2007, polling station-level results or protocols will not be published on the CEC website. This could diminish the transparency of a crucial part of the election process.

The CEC has issued guidelines on voting, counting and tabulation procedures to lower-level election commissions, but the corresponding official regulations and/or clarifications are still lacking.¹ Territorial Election Commissions (TECs) continue the training of District Election Commissions (DECs) and Precinct Election Commissions (PECs), including newly appointed members. The CEC continues its highly visible voter education campaign, encouraging people to vote.

The CEC clarified the status of political party representatives in lower-level election commissions, ensuring them the same access to all documents and other resources as to full commission members. However, the CEC declined to register party and candidate representatives for the CEC itself, based on a legal opinion of the Prosecutor General's office.²

OSCE/ODIHR EOM LTOs reported that in all the regions, many election commissioners are being replaced, usually following their declarations that they are not available on election day (mainly due to family reasons). The substitution process lacks clarity and transparency with regard to the bodies in charge of appointing substitute commission members, the nomination rules for such members, and their term as commissioners. Substitutions are also implemented in an inconsistent manner – while in most regions new commission members are appointed by higher-level election commissions, in some regions such decisions are also approved by local councils (*maslikhats*) or a corresponding higher-level commission.³ Some political parties, including Azat and the Communist Party of Kazakhstan, have raised concerns over the extremely low number of representatives they

¹ The Russian-language version of the guidelines for PECs omitted mentioning a provision that observers and proxies are entitled to receive copies of results protocols (although it was included in the Kazakh-language version). The CEC explained that this resulted from a technical error and assured that all commissions will be duly informed about this provision in the law.

² In its session on 15 March, the CEC refused to register the representative of the All-National Social-Democratic Party to the CEC. The CEC had earlier referred the matter to the Prosecutor General's office, which provided its legal opinion that parties were not eligible to have representatives at the CEC level.

³ OSCE/ODIHR EOM LTOs reported that in Astana city, the TEC effected the replacements of PEC members, although this is the task of DECs.

have in election commissions⁴ and the very high number of commissioners affiliated with the ruling Nur Otan party,⁵ which causes lack of trust in the impartiality of the election administration. The CEC informed the OSCE/ODIHR EOM that about 90 per cent of commission members nominated by opposition parties had been appointed.

After a large-scale door-to-door verification, local executive authorities transferred the voter lists to the PECs who will display them in polling stations for public scrutiny until 2 April. A voter who can prove residence in the precinct can request the corresponding PEC to include him/her in the list or to make corrections up to and on election day.

The Election Law provides that voters in a rest home, a hospital or other medical center, in remote and out-of-reach places, in pre-trial detention centers, and in representative offices and agencies of Kazakhstan in foreign states, can vote at specially established polling stations.⁶ In these cases, the voter lists are finalized the day before election day, with no mechanism in place to temporarily exclude these voters from the voter lists at their place of residence.

Voters who will be away from their registered place of residence on election day can apply for an Absentee Voting Certificate (AVC), which allows them to vote in any polling station outside the city, town or village where they are registered. The CEC issued a clarification on the production, handling and accountability of AVCs, the production of which was not centralized.

III. THE CAMPAIGN ENVIRONMENT

The overall electoral situation is characterized by the lack of participation of opposition parties, which results in an uncompetitive environment. The presidential contest unfolds between the incumbent president and three other candidates, who, by their own admission, want the incumbent to win but through their own participation aim to promote specific causes. Opposition parties and affiliated civil-society groups continue to either actively call for boycott of the election or abstain from the electoral process.

One of the parties (Ak Jol) indicated to the OSCE/ODIHR EOM that it prefers to save energy and funds for the next parliamentary elections rather than contesting this election. Numerous opposition parties and civil society organizations indicated that, given the all but certain outcome of the election, turnout would be the most interesting indicator for them. They intend to deploy observers to watch this particular aspect of the election.

Nur Otan, which is running President Nazarbayev's campaign on his behalf, is holding well-attended rallies in the country's regions. The president's campaign is centered around the themes of stability, growth and welfare and presents the incumbent as the guarantor of interethnic accord. No apparent distinction is made between the incumbent as a candidate and his current position as the president. The information presented to the audience during campaign events typically does not solicit discussion or debate. Local authorities and dignitaries are usually involved in these events. The incumbent's campaign posters and billboards are visible in large numbers in all major settlements, displayed on public and private buildings. During the reporting period, the president toured South Kazakhstan *oblast* (region) and Aktobe, meeting citizens in his official capacity.

⁴ According to the CEC, Azat, Ak Jol, the Communist Party and the All-National Social-Democratic Party are together represented by only six per cent of all election commission members throughout the country.

⁵ OSCE/ODIHR EOM LTOs reported about the predominance of Nur Otan-affiliated members in election commissions in Akmola, West, East and South-Kazakhstan, Almaty, Oskemen, Pavlodar, and Zhambyl regions.

⁶ Votes cast in the 35 polling stations which have been established abroad will be tabulated by the DEC of Esyl district in Astana city, where the Ministry of Foreign Affairs is located.

The campaigns of other candidates are barely visible outside Almaty and Astana, which can be explained by the shortage of funds and limited organizational capacities.⁷ Mr. Jambyl Akhmetbekov visited Akmola region and held rallies in Taraz and Aktobe, and his Communist People's Party of Kazakhstan (CPPK) also conducts door-to-door canvassing. CPPK campaign posters are displayed in the regions and several proxies received funds from the party's headquarters. The CPPK stated that its goal is not to win the election, but to raise awareness of the party. Mr. Mels Yeleusizov conducts a low-key campaign in the regions, with visits to rural areas of Jambyl and South Kazakhstan *oblasts* and a rally in Pavlodar on 19 March, conducted by a proxy who is actually a member of Nur Otan.⁸ Mr. Gani Kasymov and Mr. Mels Yeleusizov complained to the CEC that they encountered problems with placing billboards in Almaty and Astana. The candidates seek to substitute campaign events with Internet campaigning, but online activity appears to be low.

Official news agencies reported group resignations of members of the un-registered Alga party in two locations on the grounds of disagreement with the party's call for a boycott of the election.⁹ Alga denied that such group resignations occurred and interpreted the adverse publicity against the party as a sign of pressure on the boycott campaign.¹⁰

The Republican Public Commission for Control of the Early Presidential Election, a public initiative of scholars and intellectuals, encouraged the candidates and their proxies to conduct a more active campaign to increase turnout. It also recommended that the CEC includes representatives of opposition parties in election commissions and reviews the Election Law to rectify the problems experienced by the candidates during nomination and registration, in particular the way the CEC-appointed Linguistic Commission administered the mandatory Kazakh language test. The Commission pointed out the possibility that regional authorities may use administrative resources to secure a high turnout.

IV. THE MEDIA

The CEC interpretation of the Election Law regarding media coverage of the campaign, which supplements provisions in the Election Law, is not available in writing; this reduces transparency and leaves room for uncertainty. Such interpretation stipulates that coverage, outside news, is considered campaigning/political advertising and should be paid for from the candidates' campaign funds. As this gives candidates complete editorial control over such content, the journalists are deprived of their right to challenge the candidates. As observed by OSCE/ODIHR EOM media monitoring,¹¹ this guideline appears to have effectively prevented the media from reporting critically on or questioning individual candidates and their platforms. As a result, there is a significant lack of election-related content in current affairs programs, such as discussion programs,

⁷ In West Kazakhstan, for example, the Party of Patriots of Gani Kasymov received no funds from the party headquarters. The proxy printed copies of the program at his own expense, as the campaign office did not receive any campaign material. In Pavlodar, the Party of Patriots also received no funds from the headquarters, and the proxy will travel to Almaty to bring campaign materials to the region.

⁸ As stated by the proxy to OSCE/ODIHR LTOs.

⁹ According to the reports, 50 members left the unregistered Alga party in Veselovka village (East Kazakhstan *oblast*) on 15 March, and 40 members did the same on 17 March in Karmakcha district (Kyzylorda *oblast*), where they held an *Alga against Alga* press conference.

¹⁰ Alga confirmed that only two members left in East Kazakhstan and that the one person in Kyzylorda who publicly renounced party membership left the party over a year ago. The party headquarters did not receive resignation letters to leave the party *en masse*.

¹¹ OSCE/ODIHR EOM media monitoring for the period of 3–20 March.

interviews and debates, which would offer voters a diverse range of views. Arguably, the CEC guidelines are stifling political debate on matters of public interest in the media.¹²

The monitored broadcasters have thus far by and large provided equal coverage of candidates' campaigns in the news programs, as prescribed by the CEC guidelines. According to OSCE/ODIHR EOM preliminary media monitoring results, Kazakhstan TV and Khabar devoted 28 and 16 per cent, respectively, to President Nazarbayev, while Mr. Jambyl Akhmetbekov received 21 and 28 per cent, Mr. Gani Kasymov 25 and 28 per cent, and Mr. Mels Yeleusizov 27 and 32 per cent respectively. Channel 7, Channel 31 and KTK devoted less coverage to the incumbent (15, 7 and 4 per cent, respectively), while Astana TV devoted 44 per cent of its news coverage of candidates to Mr. Nazarbayev. These figures refer to candidates' campaign coverage only, excluding coverage of their official duties. However, the coverage devoted to their political parties showed a slightly different picture.¹³

Thus far in the campaign period, the OSCE/ODIHR EOM noted that outside the news programs of the broadcasters monitored, the incumbent received a total of 84 minutes of additional coverage in his official capacity, in particular reporting on his official visits to the regions.¹⁴ The CEC guideline that coverage of candidates in their institutional role should not be considered as campaign coverage and should not be paid for is problematic, as it unfairly amplifies the advantage of incumbency. In addition, the monitored TV stations aired several formats of advertisements promoting the achievements of the 20 years of Kazakhstan's independence and presenting the state's program until 2020, effectively promoting the incumbent.¹⁵

None of the candidates has used state-funded airtime yet. More than half of the total paid political advertising time on the monitored TV stations was purchased by the incumbent's campaign.

Media that could serve as outlets for alternative and opposition views face continued problems. The OSCE Representative on Freedom of the Media expressed "concern about several negative developments in media freedom in Kazakhstan, including tax inspections of five independent newspapers."¹⁶ *Respublika*, considered to be the main independent newspaper, has been forced to distribute stapled photocopies of the newspaper since printing houses declined to provide services to the newspaper.¹⁷ In addition, it was reported that in one region all copies of *Respublika* are bought up by local authorities before they can be offered for sale. A number of websites critical of authorities, including that of *Respublika*, are currently not accessible from within Kazakhstan.

¹² On 19 March, the CEC-appointed Public Council on Review of Media-Related Disputes, which advises the CEC on media-related issues, considered the publication of all four candidates' election manifestos by *Ukrainski novini* a violation, arguing that every media outlet has to indicate who paid for such content and is obliged to have the written permission of the respective candidate. The editor-in-chief argued that it is the duty of journalists to inform the public and that no preference was given to any candidate. The case was forwarded to the Prosecutor General's Office for review.

¹³ State-owned Kazakhstan TV and Khabar dedicated 54 per cent and 30 per cent of news coverage, respectively, to Nur Otan, while the CPPK received 46 per cent on Kazakhstan TV and 38 per cent on Khabar. The only coverage that Mr. Gani Kasymov's Party of Patriots of Kazakhstan received was 32 per cent on Khabar. The Ecological Union 'Tabigat' of Mr. Mels Yeleusizov did not receive any coverage on the monitored TV stations.

¹⁴ This type of coverage, which was particularly evident on Khabar, showed similar footage as paid political spots of the incumbent and was exclusively positive in tone.

¹⁵ A total of over one hour of such advertising was aired on the monitored TV channels, according to OSCE/ODIHR EOM media monitoring.

¹⁶ See OSCE Representative on Freedom of the Media, Regular Report to the Permanent Council, 16 December 2010. <http://www.osce.org/fom/74947>.

¹⁷ Since 2009, printing houses in Almaty have refused to print *Respublika*. The only printing house which agreed to print the newspaper faced unannounced tax inspections and the seizure of *Respublika* copies by the financial police and the Committee of State Security in 2009.

V. COMPLAINTS AND APPEALS

Election stakeholders in general lack sufficient understanding of the complaints and appeals process, particularly with regard to the jurisdiction of designated bodies, and relevant authorities do not have a cohesive and coherent interpretation of the law in this respect. Legal ambiguities in the election-dispute process, substantive changes to the process adopted in 2009, as well as lack of dissemination of information and coordination among relevant bodies may have contributed to this uncertainty. The law does not provide clear procedures for complaints against election results at any level, and the role of the Supreme Court as a first or last instance court in disputes over final results is apparently not clear to all stakeholders.¹⁸ The law also lacks clear and objective grounds for invalidation of results at any level.

The Prosecutor General's office has so far played an active role in the electoral process, receiving requests for clarifications of the Election Law. These matters would more transparently be dealt with by the election administration and by the courts.

During the reporting period, the CEC received six complaints; it continues to handle them in an informal non-collegial manner in contradiction to the law,¹⁹ and without the participation of the interested parties. The CEC Complaints Working Group in practice operates merely as a complaint reporting mechanism, i.e. group members are informed by the CEC deputy chairperson of complaints received and responses provided. The manner in which complaints are decided is not transparent, although it would appear they are dealt with by the CEC deputy chairperson himself. The CEC as a body has thus far not considered any individual complaint or exercised its mandate as a quasi-judicial body. Notably, the 1999 CEC Regulation on Procedures for Consideration of Citizens' Petitions does not provide a detailed standard procedure for handling of complaints and is not posted on the website of the CEC.

Recent complaints to the CEC allege, for example, interference of local executive bodies in the work of PECs and hindrances to campaign activities. An appeal by the All-National Social-Democratic Party against a CEC decision rejecting its complaint on irregularities in the formation and activities of 10 PECs was filed in court, alleging a one-sided investigation by the CEC on the matter.²⁰ The law requires that all CEC decisions are posted electronically for public access, but as complaints are not considered by the CEC as a body, the responses are not published, thus reducing the transparency of the complaint process. The OSCE/ODIHR EOM is aware of a total of five complaints filed at the TEC level, alleging various campaign-related violations, with one confirmed case where a TEC decided on complaints in a non-collegial manner.²¹

Two complaints were filed by two opposition parties with district courts in Akmola region - one regarding voter list irregularities was dismissed and the other alleging violations in formation of PECs and TECs was put on hold due to filing irregularities with complainants given several days to correct the mistakes.

¹⁸ A Supreme Court judge informed the OSCE/ODIHR EOM that the Supreme Court is the only instance in all disputes on final election results, while other interlocutors understand that cases involving such disputes must be filed in district-level courts.

¹⁹ Article 20.1 of the Election Law requires election commissions to work "on the basis of the principles of collegiate style".

²⁰ The CEC's response outlined its factual findings without reference to the witness testimonies or other evidence which led to the conclusions. The appeal was apparently misfiled by the complainant to the Astana Inter-District Economic Court, where it is still pending.

²¹ OSCE/ODIHR EOM LTOs attended a meeting of the TEC in Kostanai, at which the TEC chairperson decided on two complaints, without a vote of the TEC.

Numerous opposition parties and civil society organizations expressed to the OSCE/ODIHR EOM a lack of trust in the capacity of election administration, courts, and law-enforcement bodies to independently and impartially address election-related complaints. Filing official complaints is an apparent means to publicly air election grievances. At the same time, it can be said that complainants lack the skills necessary to prepare effective election-related complaints that provide clear and comprehensive factual-legal argument and evidentiary proof.

VI. OSCE/ODIHR EOM ACTIVITIES

During the reporting period, the OSCE/ODIHR EOM continued its regular activities, meeting state officials, party representatives, candidates, the election administration, court officials, representatives of the media and civil society, and diplomatic missions. LTOs deployed throughout the country continue to observe electoral preparations and the campaign in the regions and are preparing for the deployment of short-term observers, including observers from the OSCE and the Council of Europe parliamentary assemblies.