

OSCE Office for Democratic Institutions and Human Rights
Election Observation Mission to the Republic of
Kazakhstan
Presidential Election 2005
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Executive Summary

- Five candidates have been registered by the Central Election Commission (CEC) for the 4 December presidential elections. Out of an initial total of 18 nominees, four did not pass the mandatory Kazakh language test and one did not take the test. Two nominees withdrew, another six were rejected for failing to submit the required number of support signatures and other documentation. One of the nominees who was not registered announced plans to appeal the decision of the CEC. While three nominees were women, there are no women candidates.
- The official election campaign began on 25 October and has thus far been low-key. However, there were arrests and convictions of persons who organized or attended 'unauthorized meetings' before the start of the official campaign period.
- While some amendments to the Election Law adopted in 2004 represent considerable progress, several amendments to the election legislation adopted in 2005 do not meet OSCE commitments. These amendments, in conjunction with other legislation, could result in restrictions of fundamental rights of freedom of association, expression and peaceful assembly.
- The OSCE/ODIHR EOM has observed cases of or received credible reports about limitations of the freedom of expression, including the confiscation or attempted seizure of newspapers and detention of journalists.
- The CEC is proceeding with preparations for the election. It is meeting frequently and in public, and most of its decisions are published on the CEC website. The CEC has issued a decision which, if implemented, would address some of the previous OSCE/ODIHR recommendations regarding election administration. In several declarations the authorities have stressed their intention to ensure that the upcoming elections meet OSCE commitments and other international standards.
- While most election commission members at lower levels were nominated by political parties, there are few members who were nominated by opposition parties.

- Electronic voting will be used in approximately 15 percent of polling stations, which will serve some 32 percent of all registered voters. Voters in these precincts will be offered the choice between electronic voting and traditional voting by paper ballot.
- As of 10 October, the CEC had received a total of 106 appeals and requests for clarification of election legislation.
- The EOM established offices in Astana and Almaty on 17 October, and 28 long-term observers have been deployed to 14 locations throughout the country.

Introduction

Presidential elections will take place in the Republic of Kazakhstan on 4 December 2005. Following an invitation from the Ministry of Foreign Affairs, the OSCE/ODIHR established an Election Observation Mission (EOM) on 17 October. The EOM, headed by Ambassador Audrey Glover (United Kingdom), consists of a 13-member core team based in Astana and Almaty and 28 long-term observers based in 14 locations throughout the country. OSCE participating States have been requested to send 400 short-term observers to monitor election day procedures.

Legal Framework

The upcoming presidential election will be held under an electoral system which provides that a candidate must receive the votes of more than 50 percent of voters who participate in the election, in order to be elected in the first round of voting. If no candidate receives the required majority, the two candidates who receive the highest number of votes participate in a second round to be held within two months. In a second round, the candidate who receives the higher number of votes is elected.

The Constitutional Law on Elections in the Republic of Kazakhstan (Election Law) was amended several times, most recently in April 2005. Some of the amendments adopted in 2004 represented considerable progress.¹ The OSCE/ODIHR also noted that the Election Law requires further improvement to be in line with OSCE commitments for democratic elections, including removal of limitations on the right to be elected, sufficient guarantees for inclusive and pluralistic representation on election commissions, and removing limitations on the rights of candidates to engage in robust political discourse during the campaign (including provisions related to the honor and dignity of the President).

As mentioned in the OSCE/ODIHR Needs Assessment Mission report, several of the April 2005 amendments to the Election Law do not meet OSCE commitments for democratic elections.² Most notably, Article 44.6 introduced a provision that “[any] forms of expressing public, group and personal interests and protests that can have an impact on voters and election commissions are not allowed from the moment when the term for conducting the election campaign is over and until the official publication of the results of elections.” This

¹ OSCE/ODIHR Assessment of the Constitutional Law on Elections of the Republic of Kazakhstan, 24 August 2004.

² OSCE/ODIHR Needs Assessment Mission Report, Presidential Election in the Republic of Kazakhstan, 13 – 17 September 2005.

amendment violates the fundamental and universally recognized rights of freedom of association, expression and peaceful assembly.

The OSCE/ODIHR has also expressed concerns in previous reports about the “Law on the Order of Organizing and Conducting Peaceful Assemblies, Meetings, Rallies, Pickets and Demonstrations in the Republic of Kazakhstan.” In combination with the Code on Administrative Violations, it imposes limitations and provides for potential abuse in the application of its provisions which could restrict the right to peaceful assembly further.

Election Administration

The upcoming elections are administered by a four-tier election administration headed by the Central Election Commission (CEC). At the second level of the election administration are 14 Regional Election Commissions (RECs; one in each region or *oblast*) and 2 City Election Commissions (in Astana and Almaty). The third level consists of 167 District Election Commissions (DECs; one in each district or *raion*, two in the city of Astana, and six in the city of Almaty) and 37 Town Election Commissions. The commissions at the second and third level are referred to as Territorial Election Commissions (TECs) in the Election Law. Voting and counting will be conducted by 9,588 Precinct Election Commissions (PECs).

According to the Election Law, CEC members are appointed by the Majilis, the lower house of Parliament, upon the proposal of the President. RECs, DEC and PECs are elected by the correspondent *maslikhats* (local councils) on the basis of proposals from political parties. According to the CEC, commission members proposed by political parties currently account for 98 percent of all REC members, 90 and 93 percent, respectively, of DEC and Town Election Commission members, and 85 percent of PEC members. The remaining commission members were nominated by civil associations and upper-level election commissions.

The two main parties supporting the incumbent president, Otan and Asar, have the highest representation at the precinct level, with 14.2 and 13.3 percent respectively. The share of members proposed by other parties is considerably lower. Among parties that identify themselves as being in opposition to the current authorities, the Ak Zhol Party nominated 4.8 percent of PEC members and the Communist Party of Kazakhstan nominated 2.2 percent.³ This is mainly a result of these parties’ low level of representation in the bodies appointing the commissions. Some 52.6 percent of PEC members are employees of state enterprises, institutions and organizations.

On 8 September, the CEC adopted its election calendar containing major electoral deadlines. The CEC is holding frequent meetings, which are open to the media and observers, and most CEC decisions are available on its website, although sometimes with some delay. The CEC has stated its intention to ensure that the upcoming elections are in line with domestic legislation and meet OSCE commitments and other international standards, and has made several statements to that effect since the end of September.

On 16 September, the CEC held a session with RECs and the City Election Commissions and discussed previous OSCE/ODIHR recommendations. The CEC took a decision aimed at implementing some of the recommendations regarding election administration, including

³ Election commission members nominated of the Democratic Choice of Kazakhstan were removed when this party was dissolved in February 2005 by court order.

requiring that election commissions hold open meetings and publish decisions, permitting voters to choose between electronic and paper ballots at polling stations which will use electronic voting, using a single paper voter list at these polling stations, and publishing the preliminary results of the elections by polling station on the CEC website.

CEC members are involved in training election commissioners at the DEC and PEC level. In addition, the CEC is conducting voter education and mobilization campaigns in order to improve the quality of voter lists and to raise voter awareness about the upcoming election. Voter education spots and promotional clips on electronic voting are being widely broadcast in the state media.

Voter lists are currently being updated. In several regions, working groups have been created to carry out the updating of the lists. In some oblasts, this includes a door-to-door verification of voters' residences.

From 18 November, voters who will be unable to vote at the precinct where they are registered, have the right to obtain an Absentee Voter Certificate (AVC) by applying to the PEC of the precinct where they are registered. However, the Election Law and other relevant legislation do not regulate the printing and distribution of AVCs; this could result in RECs applying different standards and procedures. It is also unclear whether this process will be open to observers, candidate proxies and the media.

Electronic Voting

Electronic voting, which was first introduced in the 2004 parliamentary elections in some 10 percent of polling stations, will again be used in the upcoming presidential election. The CEC has decided that electronic voting will be available in some 1,465 polling stations (or 15 percent of all polling stations). These precincts will serve some 32 percent of all registered voters (up from 23 percent in 2004). Voters in these polling stations will be allowed to choose between electronic voting and voting by paper ballot.

The electronic voting system has been redesigned since the 2004 parliamentary elections. As a result, essential parts, especially concerning the voter interface, have been changed. In the upcoming elections, voters will be using a touch-screen terminal to cast their votes, rather than the bar code readers used in 2004. Voters who spoil their electronic ballot will be issued a new voting card (electronic ballot) upon request.

As noted in previous OSCE/ODIHR reports, the electronic voting system lacks a manual audit capacity and does not provide for a paper trail, which would be needed for potential recounts or accessible evidence for potential appeals against results.⁴ The system allows voters to generate a random control number which will appear in the protocol next to the name of the candidate for whom the votes have been counted. The OSCE/ODIHR EOM is aware that the control code is intended to enable the voter to check if his/her vote was correctly recorded. However, the control code also enables the voter to prove how he/she voted, which may open possibilities for election abuse and may be a source of pressure on the

⁴ See the OSCE/ODIHR Election Observation Mission Final Report on the Parliamentary Elections in the Republic of Kazakhstan, 19 September and 3 October 2004, www.osce.org/odihr-elections/14472.html as well as the OSCE/ODIHR Assessment of the Constitutional Law on Elections of the Republic of Kazakhstan, 24 August 2004, www.osce.org/odihr-elections/13442.html.

voter's free will. The electronic voting system has not been independently reviewed by domestic stakeholders since prior to the parliamentary elections.

According to information from the CEC, the equipment for electronic voting has already been delivered to all buildings where electronic voting will be used. The system is currently being tested by trained operators who will be in charge of running the system on election day.

The OSCE/ODIHR EOM will continue to gather and analyze information on various aspects of the electronic voting system, including public confidence in the system.

Candidate Registration

Following candidate nomination, which ended on 4 October, accepted nominees had 20 days to provide the necessary documentation to be registered as candidates. This documentation includes, *inter alia*, support signatures from no less than one percent of all registered voters (i.e. approximately 86,000 signatures), distributed equally among at least two thirds of the *oblasts* and the cities of Astana and Almaty, as well as a certificate from the tax authorities that the candidate and his or her spouse have submitted income and property declarations. Prospective candidates must also pay an election deposit which is only returned under certain conditions.

As of the 24 October deadline, five candidates have been registered to stand in the 4 December presidential election: President Nursultan Nazarbayev (Otan Party), Zharmakhan Tuyakbai (For a Just Kazakhstan Movement), Mels Yeleussizov (independent), Yerassyl Abylkasymov (Communist People's Party of Kazakhstan), and Alikhan Baimenov (Ak Zhol Party). Of the remaining 13 persons nominated within the legal deadline, four did not pass the mandatory Kazakh language test and one did not take the test, while two withdrew before the registration deadline. Six candidates were denied registration because they did not submit the required support signatures, tax certificates and proof that they provided the election deposit.

One of the six nominees who were not registered, Senator Ualikhan Kaisarov, said he intends to appeal the CEC decision to the Supreme Court. According to Mr. Kaisarov, although he submitted 87,400 signatures to the CEC (documented by him with protocols), the CEC considers only 60,852 of these signatures as valid and submitted within the deadline, as the REC in Karaganda had not finished the verification of signatures. Mr. Kaisarov appears to be the only nominee whose signatures were additionally verified by RECs. This would appear to be a case of unequal treatment for signature verification. Moreover, procedures for signature verification are unclear in the current election legislation. There is no provision for "additional verification". So far, the EOM has not received copies of the additional verification protocols from the CEC.

The CEC took the decision to deny registration to the six nominees who did not submit the required documents on the afternoon of 24 October, several hours before the legal deadline at midnight. It should be noted that the Election Law does not provide for a separate deadline for the submission of documents and support signatures. This appears to be potentially misleading for candidates, especially since the Election Law gives territorial commissions ten days to check the signatures submitted by the candidates. The CEC issued a statement suggesting that nominees submit their signatures no less than ten days before the deadline, but it did so only one day before the date it suggested for submission.

No women are standing as presidential candidates. While three women were initially nominated, all three failed the Kazakh language test and could therefore not seek registration.

There have been a number of mutual accusations between Mr. Nazarbayev's campaign and that of Mr. Tuyakbai. On the one side, there have been complaints that some signatures in support of Mr. Tuyakbai were taken without voters' consent, as they were allegedly not informed for whom they were signing. Mr. Tuyakbai's campaign has alleged that campaign staff has been threatened and harassed by the authorities during the collection of signatures. The OSCE/ODIHR EOM has not been able to verify either of these accusations.

The Pre-Campaign and Campaign Environment

The pre-campaign environment has been generally peaceful. However, there have been a few events, particularly in Almaty, which have affected the fundamental rights of citizens to freedom of assembly and freedom of speech.

On 8 October, prior to the official start of the election campaign, Senator Zauresh Battalova held what she termed to be a 'meeting with her constituents' on a main square of Almaty. The authorities considered the event, which was attended by approximately 150 – 200 people, to be an 'unsanctioned meeting'. A number of people were arrested during the meeting, and five were later tried by the Specialized Inter-District Court of Almaty under Article 373 of the Administrative Code for either 'organizing' or 'attending' this event and fined between 9,710 KZ tenge and 48,550 KZ tenge (equivalent to USD 75 and USD 365). These administrative convictions also mean that if the people involved (most of whom are high-ranking staff members in Mr. Tuyakbai's campaign team) are involved in any further 'unsanctioned meetings', they may face criminal charges.

On 19 October the authorities confiscated 50,000 copies of the opposition newspaper *Svoboda Slova*. A remaining portion of the print-run was taken by the paper's editor to the headquarters of the "For a Just Kazakhstan" (FJK) movement. During the afternoon, police surrounded the FJK office and attempted to confiscate the remaining copies. When Mr. Tuyakbai left the office compound, his car was stopped by police and searched.

The official election campaign began on 25 October and will end on 2 December. Some registered candidates started their campaign activities on 25 October. Thus far, the activities have involved laying flowers at monuments during the Republic Day celebrations on 25 October and preliminary presentations of some candidates' platforms in Almaty. Mr. Tuyakbai's proxy in Astana has complained to the CEC that Mr. Nazarbayev's campaign posters have been posted in unauthorized places, and this complaint has been accepted.

The Media

According to statistics provided by the Ministry of Culture, Information and Sport in September 2005, there are 2,110 operating media outlets in Kazakhstan. Although most media outlets are privately owned, several analysts and interlocutors believe there is a general lack of pluralism in media reporting. This is mainly due to the structure of the media market, as well as legal provisions concerning the defamation of the President, the violation of which may lead to severe punishment of up to three years imprisonment if the statements

are published in the media. Despite the general consensus regarding the need to adopt a new media law, the media still operate under media legislation adopted in 1999.

The legal framework governing the media campaign of the candidates is provided by the Election Law and by CEC rules on the conduct of the campaign, adopted on 16 September.⁵ Under the provisions of these documents, candidates and their proxies 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 the election campaign of candidates and must refrain from publicizing information discrediting the honor, dignity and business reputation of any candidate.

Throughout the official campaign period candidates are entitled to 15 minutes of free airtime on state TV and ten minutes on state radio, as well as to two articles in the state-owned print media, *Kazakhstanskaya Pravda* and *Egemen Kazakstan*. The media which the candidates may use for this purpose were selected by the CEC on 19 October. Candidates may also place paid political advertisements in the media, which are obliged to offer conditions on a non-discriminatory basis. On 29 September, representatives of 22 media outlets signed a charter “For an Honest Election” and committed themselves to provide fair and unbiased coverage of the election campaign and equal opportunities to all candidates to express their views.

Since its establishment, the OSCE/ODIHR EOM has directly observed or received credible reports on limitations of the freedom of expression and limitations on access to information. Such cases included the seizure of around 50,000 copies of the newspaper *Svoboda Slova* (see above), the detention of several journalists on the same day for several hours, reported attempts to seize the weekly *Zhuma Times*, as well as the blocking of Internet sites providing alternative information about political developments. The EOM will continue to follow the situation in order to establish whether voters are able to receive sufficient and unbiased information which will allow them to make an informed choice on election day.

On 19 October, the OSCE/ODIHR EOM began conducting qualitative and quantitative media monitoring. The EOM is monitoring four TV stations: *Kazakhstan*, *Khabar*, *Channel 31* and *KTK*, as well as 15 state-owned and private daily and weekly newspapers. The monitoring activities focus on prime-time programs and daily publications, and the EOM will be assessing and producing statistics on the quantity of the time/space allocated to candidates and election protagonists, as well as assessing the tone of their coverage.

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 the election commissions are also forwarded to the Prosecutor General’s Office, either for verification of the facts or for providing clarification of legislation.

⁵ Rules on Conducting Pre-Election Campaign on Election of the President of the Republic of Kazakhstan through Mass Media and Information Provisions.

The CEC chairman has created a consultative-advisory working group to review appeals related to the upcoming elections.⁶ The OSCE/ODIHR EOM observed a session of the working group on 21 October, at which the CEC reported that it had received 106 appeals between 8 September and 10 October. These included complaints about alleged violations during signature collection, violations by state authorities and violations of campaign rules, as well as requests for clarification of legislation.

According to the CEC, the complaints regarding the process of collecting signatures included requests by voters to recall their signatures for one or other candidate. The CEC Secretary said that such requests were sent for verification to TECs, and if confirmed resulted in invalidation of the signatures in question. The Election Law does not appear to provide a legal basis for the withdrawal of support signatures upon a voter's request. The EOM has received allegations of pressure by local administration bodies and law enforcement agencies on voters who signed in support of some candidates, as well as on persons collecting support signatures.

OSCE/ODIHR EOM Activities

The OSCE/ODIHR EOM opened offices in Astana and Almaty on 17 October. The Head of the Election Observation Mission held a press conference in Almaty on 18 October to introduce the EOM. The Head of EOM has held initial meetings and established regular contacts with the Foreign Ministry and the Central Election Commission. The EOM has conducted initial meetings with several presidential candidates or their representatives, with political parties, civil society, election commissions, and with other interlocutors. The EOM has held its first briefing for diplomatic missions of OSCE participating States.

⁶ The working group consists of 22 people representing various authorities, including the CEC, the Ministry of Culture, Information and Sport, the Ministry of Finance, and the Office of the Prosecutor General.