
**INTERIM REPORT No. 2
27 October–16 November 2005**

Executive Summary

- The election campaign has been relatively modest thus far. Three of the five candidates have been meeting voters extensively throughout the country. Visually, the campaign is dominated by materials of the incumbent President, and other candidates have complained of lack of access for campaign material, especially on billboards.
- While premises for campaign meetings have been allocated by election commissions to all candidates, representatives of three candidates have complained of some restrictions placed on their ability to meet voters, such as allocation of small and distant venues for campaign meetings.
- The representatives of three candidates have expressed concern regarding interference in their campaign and intimidation of supporters, including detention and beatings. Representatives of two candidates have said that meetings have been disrupted in what appear to be orchestrated interventions. The OSCE/ODIHR EOM has observed such disruptions in the case of one candidate. On several occasions, campaign material has been seized or destroyed.
- The Central Election Commission (CEC) continues to hold open sessions and publish most of its decisions on the CEC Website. However, CEC ‘working meetings’ are not always announced and therefore cannot be observed.
- Most lower-level election commissions appear to operate in a professional manner, and preparations for election day are proceeding in an organized manner.
- Broadcast media have concentrated their coverage of the election campaign and the candidates in their news programs. OSCE/ODIHR EOM media monitoring shows that President Nursultan Nazarbayev has thus far received the largest amount of coverage, both in State-owned and private broadcast media. Most print media display a bias for or against certain candidates.
- Several newspapers have been fined, and some had their print run destroyed, for violating legal provisions aimed at protecting a candidate’s honour and dignity.
- Approximately 17,000 complaints have been filed with various state authorities and the election administration, the vast majority concerning the collection of support signatures. A number of election-related cases have been heard by courts, including an unsuccessful appeal by Senator Ualikhan Kaisarov against the CEC decision to not register him as a candidate.

I. Election Administration

The Central Election Commission (CEC) continues to hold frequent sessions which are open to media and observers, and makes most of its decisions available on its website. In addition, weekly meetings of the Working Group on Complaints, weekly press briefings and pre-scheduled and widely announced meetings of the CEC Chair with candidates and their proxies contribute, to some extent, to the CEC's openness and transparency. At the same time, the CEC holds "working meetings" which observers and mass media representatives are not always informed about and are therefore unable to attend.

On 11 October, the CEC issued a statement addressed to all participants in the election process, generally reminding them of their legal obligations. The CEC asked all candidates to sign this document, although the statement is not a legal document and there is no obligation to sign it. Mr. Abylkasymov, Mr. Yeleusizov and Mr. Nazarbayev signed it, while the other two, Mr. Baimenov and Mr. Tuyakbai, did not. The CEC has publicly stressed the fact that two candidates did not sign the statement, appearing to interpret this as an intention of these candidates not to adhere to the election rules. Such interpretations may be in violation of the election administration's obligation to be impartial.

Lower-level election commissions in general appear to operate in a professional and cooperative manner. However, the OSCE/ODIHR EOM has faced problems in observing the Regional Election Commission (REC) in Almaty oblast, which has rejected an EOM request to observe REC meetings and to provide some relevant election-related information.

Preparations for voting are generally proceeding smoothly and in an organized manner. The majority of election materials have been distributed to Precinct Election Commissions (PECs). The CEC continues to check the preparation of the 'Sailau' electronic voting (e-voting) system. While as a result of these checks, the number of polling stations in which e-voting will be used was reduced after some polling stations were found to have an unreliable electricity supply, the EOM still has concerns about electronic voting, particularly in relation to public confidence in the system. The EOM was informed by the Chairman of the CEC that observers would receive result protocols for paper and electronic voting and for the addition of both those numbers in line with the Election Law and CEC decisions.

OSCE/ODIHR EOM observers noted that campaign material of the incumbent President was posted at some District Election Commissions (DECs) and PECs. While this is not in violation of the Election Law (posting of campaign materials in election commission premises is only forbidden inside polling stations on election day), it is unclear whether other candidates are able to post their material in such locations under equal conditions, as stipulated in the Election Law.

Only a relatively small number of voters have used their right to apply to be included in the voters list of a place other than their place of official residence, despite the fact that this possibility was widely announced in the media. Voters who will be away from their place of residence may still apply for an Absentee Voter Certificate (AVC).

On 11 November, the CEC issued a decision which improves the handling of AVCs during these elections by introducing some measures and safeguards which increase the degree of

accountability with regards to AVCs, including limiting the number of these documents to 5 percent of registered voters per region. However, AVCs were already being printed before the CEC adopted this decision. The number of AVCs issued by various RECs ranged as high as 18 percent in Kostanai oblast. As they are not centrally produced, AVCs differ in design, size and type of paper used. Some RECs numbered the AVCs produced by them while others did not. Such inconsistencies could lead to confusion on election day, especially if PEC members are not aware of the type of AVCs issued in other oblasts.

Akimats and election commissions appear to have made efforts to improve the accuracy of voter lists, including door-to-door verification and voter education campaigns. However, such door-to-door checks were reportedly often carried out by or in the presence of police officers, which could discourage some eligible voters from applying for inclusion in voter lists, especially those who are not officially registered in their *de facto* place of residence.

A total of 8,607,484 ballots are being printed, corresponding to the number of registered voters (8,598,883), plus a reserve of 0.1 percent. Ballot papers are printed in the Banknote Factory of the National Bank of the Republic of Kazakhstan in Almaty. Printing is scheduled to be completed on 27 November. The OSCE/ODIHR EOM has been able to observe the printing of ballots.

There have been reports that some PECs include workers from the same institution or company. According to Art. 19.9 of the Election Law, election commissions “should not consist of workers from one and the same organization”. According to the CEC’s interpretation of the law, this requirement is satisfied as long as at least one of seven commission members works in a different organization from the remaining members. However, the independence of a commission could be questioned if a majority of commission members work at the same organization and are subordinate to one of the commission members at their regular place of work.

Within the reporting period, two international election observation organizations, the *European Network of Election Monitoring Organizations* (ENEMO) and *Elections and Democracy*, have been refused accreditation to observe this election on the grounds that they do not constitute international organizations as defined by national legislation. The *Elections and Democracy* group was accredited in the past under the same legislation.

II. The Campaign Environment

The presidential election campaign, officially underway since 25 October, has been relatively modest thus far. It has generally focused on candidates’ pro-governmental or pro-opposition credentials, with reference to programs being minimal.

Visually, the campaign has been dominated throughout the country by billboards, banners and posters of Nursultan Nazarbayev, the incumbent President. Representatives of three candidates have told the OSCE/ODIHR EOM that they lack access to physical advertising space, especially billboards. Candidates have generally been informed by private companies and local administrations that no space is available for their advertising, although this does not appear to have affected President Nazarbayev’s campaign. In an official reply to candidate complaints dated 9 November, the Central Election Commission (CEC) has recommended

that governors, election commissions, and private advertising companies expedite requests for billboard space. It is thus far uncertain whether this recommendation has had an effect.

Three of the candidates (Mr. Abylkasymov, Mr. Baimenov, and Mr. Tuyakbai) have been making an effort to cover most of the country in order to meet voters. Mr. Yeleusizov is carrying out a more targeted campaign, focusing on areas of ecological concern. Mr. Nazarbayev is officially not campaigning, although he has conducted official visits in the regions. A television debate between the candidates was scheduled for 17 November and four candidates confirmed their intention to take part. Mr. Nazarbayev declined to participate as he was scheduled to be on an official visit to Ukraine. No further candidate debates are foreseen.

Among the main concerns regarding campaigning expressed to the OSCE/ODIHR EOM have been the interference and intimidation carried out by representatives of the state authorities and security agencies against campaign workers from the campaigns of Mr. Tuyakbai and Mr. Baimenov (and to some extent, representatives of Mr. Abylkasymov). Of particular concern have been reports of the detention of opposition candidate activists in parts of the country while handing out campaign materials or attempting to contact voters. This has been observed by the OSCE/ODIHR EOM in Aktobe. Mr. Tuyakbai's campaign has also told the EOM of cases of police stopping and searching cars on various pretexts, confiscating campaign materials, and intimidating supporters. In addition, the EOM has been informed of cases where vehicles transporting campaign material were robbed or caught fire.

On 15 November, the EOM was informed by Mr. Tuyakbai's headquarters that his campaign chair in Aktau was stopped by unknown assailants at gunpoint outside the city, severely beaten and left in the steppe. Police have reported that arrests have been made and that an investigation is underway.

There have been a number of apparent attempts to disrupt or hamper meetings between candidates and voters. This has been most evident in the case of Mr. Tuyakbai, although Mr. Baimenov claims to have also been affected. Some cases have been documented of unknown persons attending the candidates' campaign meetings and creating disruptions. This has led to increased tension between pro-governmental and pro-opposition supporters, and both sides have told the EOM that violence may ensue as a result of such 'provocations'.

Premises for campaign meetings have been allocated by election commissions to all candidates. However, representatives of Mr. Tuyakbai, Mr. Baimenov, and Mr. Abylkasymov have also told the OSCE/ODIHR EOM of limitations placed on their ability to meet voters. In many cases, their requests for desired locations have reportedly been denied, and they have been relegated to more remote premises with inadequate space to accommodate supporters. According to Mr. Tuyakbai and Mr. Baimenov, unreasonable time constraints have also been placed on these meetings with voters.

As required by the Law on Peaceful Assembly, candidates are required to seek permission for 'open' meetings with voters ten days in advance of the event. Mr. Tuyakbai's campaign was allowed to hold an open air meeting with voters in Almaty on 14 November, the first permission granted to this candidate to hold open air meetings in Almaty during the course of the campaign. Previous requests had been denied. The venue approved was some distance from the city centre, and was not the one initially requested.

Another factor influencing the election campaign has been the seizure of newspapers (*Svoboda Slova*, *Zhuma Times*, *Epoha*) carrying opposition information. Through a letter from the prosecutor's office and a decision of the Almaty Regional Specialized Court, there has been an effective information ban placed on public discussions of the Giffen¹ case. The argumentation has been that any person is innocent until proven guilty and that such a discussion constitutes an "insult to the honour and dignity" of a presidential candidate (Art. 27.7, Election Law) and of the President directly (Art. 318, Criminal Code). This decision stands in contravention to the right to freedom of expression regarding information that is in the public domain.

On 12 November, Mr. Zamanbek Nurkadilov, a former minister and a member of the Political Council of the opposition movement For a Just Kazakhstan, was found shot dead in his house in Almaty with two bullet wounds to the chest and one to the head. The official investigation into his death is underway.

While none of the recommendations regarding the legislative framework made by OSCE/ODIHR in its Final Report on the 2004 Parliamentary Elections or in the 2004 OSCE/ODIHR Assessment of the Constitutional Law on Elections have been implemented to date, the CEC has proposed that the Majilis, the lower house of parliament, remove a recent amendment to the Election Law which prohibits election-related public meetings between the end of the campaign period and the announcement of election results.

III. The Media

In general, candidates have yet to use their free time and space in the media.² Paid advertising has thus far also not been a major vehicle for the candidates. As far as broadcast media are concerned, the largest portion of information about candidates is from news programs; however, there has been a lack of concrete information about candidates' platforms. Although the amount of free air-time for presidential candidates appears to be rather limited, the CEC has offered candidates the opportunity to participate in a televised debate scheduled to take place on 17 November. Although this debate is of particular importance since it could allow candidates to present their programs and exchange views, giving voters a chance to gain information on and an understanding of the individual candidates' platforms, the campaign of President Nazarbayev has announced that he will not participate.

The CEC's voter education campaign, which explains and promotes the electoral process, in particular e-voting, has been highly visible in the media. The CEC has also organized a media-monitoring exercise in order to observe the coverage of the elections in the media. In addition, the Ministry of Culture, Information and Sport is monitoring the state-owned media in order to ensure their compliance with the legal requirements for the campaign coverage. The Ministry has already published monitoring results and recommended that some state media, for instance the state news agency *Kazinform*, adjust their coverage and devote equal time and space to the coverage of all presidential candidates.

¹ A U.S. Federal indictment dated 2 April 2003 against Mr. James Giffen on alleged violations of the Foreign Corrupt Practices Act, in which links have been made between payments to high-ranking Kazakh officials and oil contracts.

² The Election Law grants each candidate 15 minutes of airtime on TV and 10 minutes on radio, as well as the right to publish two articles in print media, at the expense of the state.

Media monitoring conducted by the EOM shows that during the first three weeks of the official campaign period (25 October–14 November), President Nazarbayev received the biggest share of the time devoted to coverage of the five candidates in their news programs on all monitored TV channels. This was more apparent in the news coverage of private channels such as KTK (93 percent of all time given to coverage of the five candidates was dedicated to President Nazarbayev) and TV Channel 31 (69 percent). State-owned TV Kazakhstan–1 and partially State-owned TV Khabar distributed the time more evenly among the candidates, providing Mr. Nazarbayev with 51 and 36 percent, respectively. Mr. Nazarbayev was more frequently presented in his official capacity of President, rather than as a candidate. In all monitored broadcast media, the incumbent President was predominantly portrayed in a positive light.

While candidates' coverage in newscasts was overall positive or neutral in nature, the portrayal of Mr. Tuyakbai was sometimes negative, in particular on TV Khabar but partially also on TV Channel 31. These outlets presented Mr. Tuyakbai's campaign with a certain degree of distortion. Private KTK television, which gave overwhelming coverage to the incumbent, largely ignored the activities of other candidates in its newscasts. In its satirical programs, the broadcaster almost exclusively targeted opposition figures, including presidential candidates.

The monitored broadcast media, in particular those owned by the State, devoted significant amounts of positive coverage to the achievements of the President, the Government, and other state structures. Among the major themes was the juxtaposing of the stability of the country with critical coverage of developments in CIS countries which recently underwent political change.

President Nazarbayev and Mr. Tuyakbai have received the biggest amount of space in the monitored print media outlets.³ The majority of monitored print media demonstrated bias in favor of or against these two candidates. State-owned print media, as well as the private newspapers *Aikyn*, *Express K*, *Nachnem s Ponedelnika* or *Liter* showed bias in favor of the incumbent President, both in terms of space and the tone of coverage. On the other hand, the private newspapers *Zhuma Times* and *Svoboda Slova*, which sympathize with the opposition, dedicated most of their campaign coverage to Mr. Tuyakbai, who was portrayed overwhelmingly positively. Among the monitored print media outlets, the newspaper *Panorama* presented the most balanced coverage of the contestants.

Several newspapers have been fined, and in some instances their print run was destroyed, for violating Art. 100 of the Administrative Code, which prohibits the distribution of false information and actions defaming a candidate's honour and dignity. In the case of *Nachnem s Ponedelnika* the prosecutor has initiated legal proceedings against the newspaper following the complaint of one of the candidates, while in the cases of *Svoboda Slova* and *Zhuma Times*, these newspapers' print runs were confiscated by the police immediately after the cars transporting the newspapers' copies left the premises of the printing house. Such interventions raise concerns about infringement of the right of free dissemination of information.

³ The EOM is monitoring the following newspapers: *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*.

IV. Complaints and Appeals

A large number of complaints have been filed with various state authorities and election commissions. According to information received from the Office of the Prosecutor General, a total of approximately 17,000 complaints were filed with election commissions and State authorities between 7 September, when the elections were called, and 16 November.

The vast majority of these complaints pertain to the process of collection of support signatures. Many complaints reflect requests by voters to withdraw their signatures given in support of one or other candidate, usually claiming that they were not informed who they were signing for or were deceived about the nature of the petition they had signed. At least some of these complaints appear to have been made as a part of an organized effort.⁴

Other complaints include references to violations of campaign rules and violations by state authorities. Complaints include claims by some candidates of difficulties in conducting their campaign, distribution of campaign materials lacking required information, campaign materials damaging the honour and dignity of candidates, harassment of campaign staff by authorities and appeals against actions/inaction of various authorities.

As of 11 November, the CEC had received approximately 250 complaints and appeals. CEC officials provided responses to many of the complaints and appeals received, including in some cases recommendations to state authorities to rectify violations of the Election Law.⁵ The CEC as a collegial body did not take decisions or vote on any of the complaints received so far. The CEC Consultative-Advisory Working Group for Review of Appeals meets regularly and openly to hear reports regarding complaints to the CEC and other authorities.

A number of election-related complaints have been heard by the courts. As of 16 November, the Supreme Court had made decisions on four election-related cases, and another seven were not admitted for hearing due to missed deadlines. Some cases filed with courts apparently lacked evidence and/or were spurious in nature. The Supreme Court on 10 November upheld the decision of the CEC to refuse candidate registration to Senator Ualikhan Kaisarov. In its decision, the Supreme Court indicated that Mr. Kaisarov had failed to provide evidence that he had challenged in court the protocols of lower-level commissions, which were the basis on which the CEC made its decision and which Mr. Kaisarov claimed were different from the ones he received initially from ten RECs. Several cases filed in the Supreme Court by the campaign of Mr. Tuyakbai against the CEC and the Prosecutor General's Office are still pending.

Prosecutors also play a central role in handling complaints related to the election process. They receive complaints directly or from election commissions. Apart from reacting to complaints and appeals, prosecutors also actively conduct monitoring and inspections and address violations that they discover. According to the information from the Prosecutor's office, there have been four criminal cases associated with election-related complaints. Two of these relate to damage to campaign materials.

⁴ For example, the EOM received 29 complaints from voters in Almaty. All were sent in envelopes that appeared to be written by the same hand, and the majority of the complaints themselves appeared to have been written in the same handwriting, although the signatures differed.

⁵ For example, the recommendation to the Ministry of Foreign Affairs to remove from their website material found to be in violation of campaign provisions.

V. OSCE/ODIHR EOM Activities

The OSCE/ODIHR EOM continues to meet candidates, election commissions, government officials, media, civil society and others throughout Kazakhstan. The Head of Mission has held regular meetings with the Foreign Ministry, the CEC and the Presidential Administration to share views on a number of election issues and concerns and has also visited several regions. Two additional e-voting experts will join the EOM prior to election day. Preparations for the arrival of short-term observers, including anticipated delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the European Parliament, have commenced.

OSCE/ODIHR EOM national staff have been contacted by persons identifying themselves as belonging to State security services and other authorities. These persons make unsolicited offers to provide security to international observers or enquire about the activities of EOM members. Such practices are regrettable since the authorities had been informed about earlier occurrences of such practices and had indicated that they would be stopped. The CEC Chairman assured the EOM that he would ensure such practices would not occur again.