



Office for Democratic Institutions and Human Rights

ANALYSIS AND RECOMMENDATIONS CONCERNING THE ELECTION CODE OF THE KYRGYZ REPUBLIC

Warsaw, 26 May 2000

INTRODUCTION

The following is the analysis of the Election Code of the Kyrgyz Republic as adopted on 29 April 2000. The analysis summarises some of the major areas of concern and contains a number of recommendations for amendments and clarifications to improve the election legislation, in line with international standards and, in particular, the OSCE commitments contained in the 1990 Copenhagen Document on the Human Dimension. The analysis is also based on the ODIHR observation of the 20 February and 12 March 2000 Parliamentary elections, which highlighted some of the Election Code shortcomings and whose findings are contained in the ODIHR Final Report, issued on 10 April 2000.

While changes to the electoral legislation prior to the Parliamentary elections provided the potential for increased competition and party representation, and an increased role for civil society in the political process, further improvements to the legislation are recommended. In addition, it must be stressed that the conduct of elections in line with OSCE commitments is conditional not only on the improvement of the election legislation, but also on the proper implementation and interpretation of this legislation.

The ODIHR supports an inclusive, timely and open review of the election legislation as part of the process to restore confidence in the electorate and political parties following the last parliamentary elections. This analysis is submitted to the Kyrgyz authorities, political parties and representatives of the civil society as a contribution to the debate on the review of the Election Code, but it cannot be considered as a substitute for an open dialogue between the authorities and the opposition.

The ODIHR analysis includes an executive summary listing the main recommendations proposed by the ODIHR. Further detail is provided in the comments prepared by two international experts, Messrs. Mark Stevens and Brynjulf Risnes, in co-ordination with the ODIHR Election Section.

The analysis is based on the Russian official version of the 1999 Election Code as well as an unofficial English translation. The ODIHR stands ready to provide further assistance to Kyrgyz authorities in this area.

EXECUTIVE SUMMARY

The following is a summary of ODIHR concerns and recommendations regarding the Election Code of the Kyrgyz Republic.

1. COMPOSITION AND CONDUCT OF ELECTION COMMISSIONS

- The composition of the election administration at all levels should be reviewed in order to ensure a pluralist representation.
- The current procedure for determining the composition of the Central Election Commission (CEC) does not provide for any degree of real pluralism. A new formula ensuring a full-fledged, multi-party election commission should therefore be adopted. In general, a number of alternative mechanisms would be equally valid, however a political consensus should be sought on the appropriate approach for the Kyrgyz Republic, in order to ensure a more representative and credible membership involving the electoral contestants. Options would include giving political party representatives full CEC member status or reconfiguring the current quotas afforded to the Parliament. For the Presidential Election, the Presidential Administration quota could be reconsidered.
- In the same vein, the Chairman of the CEC should enjoy wider political consensus. The direct appointment of the Chairman by the President raises questions regarding the independence and neutrality of the position, particularly during a Presidential Election. It is therefore recommended that an alternative method for selecting the Chairman be adopted.
- In the interest of consistency, given that the composition of the other commissions is addressed in the Code, it might be worth including an article on the composition of the CEC in the Code itself.
- At present the Code does not provide for actual pluralism in the membership of Territorial Election Commissions (TECs) and Precinct Election Commissions (PECs). Broader representation on the lower level election commissions therefore should be ensured, with the right of nomination by political parties and candidates formalised.
- Under the current provisions the CEC is obliged to establish TECs for the Parliamentary Elections within 10 days of the announcement of the election date. This 10-day period is too short and should therefore be extended.
- The responsibilities of the various levels of election administration with regard to the conduct of the parliamentary and presidential elections should be clarified.

2. REGISTRATION AND STATUS OF CANDIDATES AND PARTIES

- The registration and status of candidates and parties should be reviewed in order to prevent candidates and parties from being de-registered on unreasonable technical grounds and ensure that any sanctions imposed on them are directly proportional to violations committed.

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- Article 92 determines which parties are able to participate in the election and raises two criteria – (i) their period of registration (one year prior to the call for the election), and (ii) the wording of their charter (it must include a stated intention to participate in the election). Given the subsequent passing of a new Law on Political Parties, this article has now been superseded and should be deleted. In place of Article 92, Article 24 could be expanded to include a sub-article stating that political parties recognised and registered under the Law on Political Parties have the right to participate in the election. Such parties could be obliged to state that intention in writing to the CEC within a certain number of days after the call for elections.
 - Article 72.3 requires that *'Nomination of candidates for single mandate constituencies from political parties, election blocs shall be carried out at a congress'*. It is unusual for an electoral law to determine the mechanism by which political parties select their candidates. It would therefore be pertinent to reconsider Article 72.3 and not legislate the manner in which a party selects its candidates.
 - Article 24.2 states that *'Political parties, election blocs shall have the right to nominate as candidates persons who are not a member of a political party'*. This article requires clarification as it is not clear whether it is trying to state that in addition to nominating their own members as candidates, parties can also nominate persons who are not members of *their* political party, or whether they are free to nominate persons who are not members of *a* political party. Normal electoral practice would lead one to assume that it is the former, as parties are usually free to nominate any person they see fit, so long as they meet the other legal requirements.
 - According to Article 27.1, all candidates are required to submit a declaration of income for the year preceding the year of election and submit all information on their and their families' property. It is recommended that the list of documents to be submitted, along with other requirements for registration of candidates should be regulated in a detailed and exhaustive manner. Article 73.4 affords the CEC ten days and TECs five days to review the relevant nomination papers. Furthermore, given the importance, complexity and extent of the financial declarations, consideration should be given to extending the review periods, particularly in the light of the number of candidates standing in elections in the Kyrgyz Republic.
 - According to Article 63, the fee for registering as a presidential candidate is set at 1,000 times the minimum wage. As it is of crucial importance that the possibility to stand as a candidate does not depend on the financial ability of a candidate, this would appear to be too high. Consideration should therefore be given to setting this figure at a lower level.
 - Furthermore, Article 63 requires the deposit to be returned to candidates who receive a minimum of 10% of the votes in an election. While such a requirement safeguards against frivolous candidates, a figure of 10% seems too high. Consideration should therefore be given to reducing this figure.
 - Article 62.1 requires a presidential candidate to collect 50,000 signatures. If, for example, there are five such candidates, this would total 250,000 signatures. This amounts to some 10% of the eligible electorate, which is a very high figure. A requirement of 20,000 would therefore seem more reasonable.

- Article 73.4 states that, *'The CEC within 10 days from the day of receipt of the documents shall review the compliance of candidates lists nomination procedure ... and shall register the list of candidates or issue a motivated decision on a refusal to register'*. Article 73.5 also states, *'Registration of candidates (lists of candidates) shall end 25 calendar days prior to the day of elections'*. It would seem reasonable that once the review has been completed, then, except in the event of a serious violation of the law, a candidate's registration status should be confirmed at this point.
- Further, Article 55.9 states that *'Courts and bodies of the office of the prosecutor shall arrange their work.....in the way that provides timely consideration of the appeals.'* Given the need to ensure a timely resolution of any appeals over registration, this article could be more explicit.
- It is of crucial importance to the election process that once registration is approved, the question of candidates' registration or possible de-registration is not raised again, unless as a result of very serious circumstances. Therefore, in order to avoid speculation and abuse connected to possible de-registration, Articles 28 and 56 should be amended to ensure that the possibility to recall a candidate's registration is very narrow, allowing for a review of a candidate's registration only in cases of serious breaches of the law.
- Article 28.6 states that *'A registered candidate cannot have criminal proceedings instituted against them, be arrested or have imposed administrative sanctions against them through court procedure without the permission of the Prosecutor (according to the level of the elections)'*. In order to provide candidates with a reasonable level of protection, the Code should specify the cases when criminal and other proceedings can be brought against them without leaving it to the sole discretion of the Prosecutor.

3. ELECTION CAMPAIGN

- Article 31.1 of the current law allows pre-election campaigning to start from the day of a candidate's (list of candidates) registration. Since the law should grant an equal right to campaign to all candidates regardless of the time of their registration, Article 31 should be amended to provide a fixed point for the start of the campaign.
- Article 34.2 states that a request by a candidate for the provision of premises for a meeting with voters should be *'considered by state authorities and local government bodies on the same day when an application is received'*. The Code should indicate that in the event of a refusal, a written explanation must be provided to the candidate/party at the time the decision is announced.

4. MEDIA

- Article 31.3 of the Code imposes a ban on *'results of opinion polls, prognoses of election results, other inquiries'* from the moment of registration of candidates (list of candidates). While it is not unusual for election legislation to contain restrictions on the publication of opinion polls prior to an election, such a period of prohibition on opinion polls is excessive. A more reasonable period should therefore be introduced. Furthermore the words

'prognoses of election results, other inquiries' should be deleted from the law as this wording is ambiguous and could be interpreted as imposing restrictions on normal media coverage of an election.

- Article 32 outlines the procedures for campaigning on TV and radio, including the provision for free and paid airtime. In line with common practice, it would be pertinent to add a paragraph to Article 32, stating that all election broadcasts must be clearly identifiable as 'paid' or 'free' airtime.
- Article 51.10 states that *'...Legal entities, their subsidiaries, representation offices shall be prohibited [from providing] works, services, sale of goods, directly or indirectly related to elections, either free of charge or for unreasonably low prices'*. This article should be clarified to make it clear that it does not include normal media coverage of an election, such as inviting candidates to talk shows or debates.

5. VOTING AND COUNTING PROCEDURES

- The practice of adding voters to lists shortly before an election should be addressed. Voters requesting to be added to a list due to their move to a new place of residence should be required to produce a certificate of de-registration from their previous place of residence. The PECs and Local Authorities responsible for the compilation and verification of the lists should be required to authenticate this procedure.
- Article 39 of the Code does not define who can observe the printing of ballot papers and who can be present when the ballot papers are delivered from the printing house. Both the printing and delivery processes should be open to the same level of transparency as other parts of the election process. Accordingly, the law should be amended to explicitly allow the printing process and the handing over of ballot papers to be open to candidates and party representatives, and observers.
- Under Article 40.5, voters at polling stations with less than 500 registered voters are not required to provide documented proof of identification. This should be amended to require all voters in all polling stations to be required to produce identification at the time of voting.
- The form of identification permissible, which thus far has been vaguely legislated, should be clarified in the relevant part of the text and in the instructions issued by the CEC to the TECs and PECs.
- Article 20.2 states that Precincts (polling stations) should be established for *'not more than 3,000 voters'* each. This figure is high and places an administrative burden on the PEC. Consideration should therefore be given, wherever possible, to reducing the number of voters allocated to a precinct to a more manageable number, such as 1,000.
- Article 17 lists the persons authorised to be present in a polling station on the day of the election. The Code should specify that local officials and other non-authorised persons should not be present in the polling stations during the voting and counting processes. Likewise, the presence of non-authorised persons at the Territorial Election Commissions (TEC) premises should be explicitly prohibited.

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- Article 53.3 of the Code places the responsibility of supporting election commissions on issues related to law and order on the organs of internal affairs. In this respect, it should be made clear in the Code that the Chairman of the PEC is responsible for maintaining order in the polling station. In the case of disorder, it should be stated that the Chairman may seek assistance from security forces, who should leave the polling station premises immediately after order has been restored.
 - According to Article 42, voters who are unable to visit a polling station have the right to vote using a mobile ballot box, which is brought to their residence. The Code should be amended to allow for voting by mobile ballot boxes only in cases where it is physically impossible for the voter to visit a polling station. In addition, the request to vote by mobile box, should be made in writing prior to election day.
 - While Article 17.8 outlines some of the rights of observers and the CEC also issues guidelines for international observers, the Code does not explicitly state that observers have a right to attend the work of the TECs. It is therefore recommended that the Code explicitly recognise the right of all observers to observe the work and documents of TECs.
 - Copies of the PEC result protocols should be given to all PEC members and all observers as well as representatives of candidates, if requested. It should be required that protocols are completed in ink by all members of the PEC in front of proxies and observers and one copy should be posted for public inspection immediately after being signed. The required number of completed protocols should be forwarded to the superior election commission. If the PEC has spare blank protocols after distribution to the aforementioned persons and bodies, the remainder should be invalidated at the PEC premises. The signing of blank protocols should be explicitly prohibited. The Code should also explicitly prohibit the interference of non-authorised persons in the process of tabulating election results.
 - Time limits for the various stages of the counting and tabulation processes should be introduced, with the right of observers to be present at all stages emphasised in the Code.
 - During the recent parliamentary elections it was noted that PECs were inconsistent in their determination of the validity of ballot papers. It is therefore recommended that the wording of Article 44.12 include the phrase *'In instances where the intention of the voter is clear, and so long as all other legal requirements have been met, the ballot should be counted as valid'*.
 - The articles in the Code on repeat voting (Article 66.3 for Presidential Elections and Article 76.3 for Parliamentary Elections) need to be made clearer and brought into line with good electoral practice. In cases where two candidates go into a second round of voting and one of the two withdraws, it is not acceptable that the other candidate is thereby elected without the need for voting to take place. It is therefore recommended either that the third placed candidate is promoted to compete in the run off or that a prohibition is placed on a run-off candidate's right to withdraw.

6. COMPLAINTS AND APPEALS

- The system of complaints and appeals is relatively complicated as complaints can be appealed at several levels both within the election administration (where no deadlines exist) and the court system (where clear time deadlines for the consideration of appeals apply). A regulation of the procedure for hearing complaints should be introduced, including a regulation on the admission of evidence. A system of time limits for the election commissions' handling of complaints should also be introduced. Furthermore, in order to ease the burden on the commissions and provide for a faster settling of complaints, consideration should be given to streamline the appeal system.

COMMENTS PROVIDED BY MARK STEVENS

1. COMPOSITION AND CONDUCT OF ELECTION COMMISSIONS

1.1 Composition of the Central Election Commission (CEC)

- 1.1.1 The Code defines the authorities of the CEC (Article 10) but does not address the procedures for the establishment of the commission. In the interests of consistency, given that the composition of the other commissions is addressed in the Code, it might be worth including an article on the composition of the CEC in the code itself.
- 1.1.2 The current procedure for determining the composition of the CEC (Article 3 of the Law on the CEC of 21 March 1997) does not provide for any degree of real pluralism among the 12-members. The current law states that the President of the Republic, the Legislative Assembly (LA) and the People's Representative Assembly (PRA) each appoint 1/3 of the members, i.e. four members each. Given the political orientation of the two chambers of the parliament, this does not ensure a diversity in the political orientation of the members. In fact, there is a high likelihood for a strong pro-presidential orientation among the commission, particularly given that the President also appoints the Chairman of the CEC without any need for referral or approval from any other body.
- 1.1.3 Such a formula has implications for the perception of the CEC as a partial body even if it is in fact impartial, particularly vis-à-vis its administration of the forthcoming Presidential Elections. At present, registered political parties for the national list elections have the right to appoint a consultative member, but that member has no voting rights during deliberations (Article 11.8). Presumably the same right would be afforded Presidential candidates, given that this is also a national election. However, this is not stated in the law, and in the event of no change to the current mechanism for forming the CEC, this should be a minimum right.
- 1.1.4 A new formula ensuring a more representative body should be considered. Such a formula might consider giving political party representatives full CEC member status or reconfiguring the current quotas afforded to the parliament. For the Presidential Election, the Presidential Administration quota could be reconsidered. A number of

alternative mechanisms would be equally valid, but a political consensus should be sought on the appropriate approach for the Kyrgyz Republic, and the chosen formula needs to ensure a wider, more representative and credible membership involving the electoral contestants.

- 1.1.5 In the same vein, the Chairman of the CEC needs to enjoy wider political consensus. The direct appointment of the Chairman by the President raises questions regarding the independence and neutrality of the position, particularly during a Presidential Election. Therefore the Chairman might be proposed through an alternative method, such as by the parliament with a super majority or some other suitable consensual endorsement.

1.2 Formation of Territorial Election Commissions (TEC) and Precinct Election Commissions (PEC)

- 1.2.1 Under the current provisions the CEC is obliged to establish TECs for the Parliamentary Elections within 10 days from appointing the elections (Article 11.2). Article 11.7 allows political parties, public associations and voters' meetings to make "suggestions" for nominations to local Kenesh. However, based on the experience of the recent Parliamentary Elections, this 10-day period is too short, as it does not allow adequate time for an initiative. However, there is a need to reconsider the whole procedure for forming election commissions.
- 1.2.2 At present the Code does not allow for real pluralism in the representation on the TECs. Under the existing wording of Article 11.7, whereby, political parties, public associations and voters' meetings can make "suggestions" to local Kenesh, it is not clear what obligation there is upon the relevant authorities to take regard of these suggestions. Broader representation on election commissions needs to be ensured, with the right for nomination by political parties, candidates formalised.
- 1.2.3 The national base of most political parties is fairly weak, but given that the Kyrgyz Republic only has 45 electoral constituencies, parties could be offered formal representation on each TEC rather than mere consultative status. Independent candidates could also be offered formal representation in the constituency in which they are standing, but it needs to be ensured that TECs do not become too large, thus formal membership needs to remain limited in number.
- 1.2.4 A constituency-wide quota might be considered for Precinct Election Commission (PEC) representation, which is currently also regulated by Article 11.7. Political parties and independent candidates could nominate x number of representatives per constituency, which would mean that whilst they were not represented in every PEC they enjoyed a fair representation across the constituency. This would ensure a pluralistic representation across a constituency whilst avoiding commissions which are too large.

1.3 Responsibility for Parliamentary Elections

- 1.3.1 Article 71 of the Code states that the preparation and conduct of the parliamentary elections shall be carried out by, "the Central Election Commission, Oblast and Bishkek

City Election Commissions, Territorial Commission and Precinct Election Commissions”. However, based on the practice of the recent parliamentary elections it is not clear that this is accurate, as Oblast and Bishkek City Election Commissions were not part of the electoral administration. This article should therefore be clarified, to determine actual responsibility for the conduct of the elections.

2. REGISTRATION AND STATUS OF CANDIDATES

2.1 Nomination of Candidates for Party Lists

2.1.1 Article 24.2 states that. “Political parties, election blocs shall have the right to nominate as candidates persons who are not a member of a political party”. It is not clear whether this article is trying to state that in addition to nominating their own members as candidates, parties can also nominate persons who are not members of *their* political party, or whether they are free to nominate persons who are not members of *a* political party. Normal electoral practice would lead one to assume that it is the former, as parties are usually free to nominate any person they see fit, so long as they meet the other legal requirements, and leave it up to the voters to judge the selection. It was apparent during the recent parliamentary election that the Russian version of the Code was equally ambiguous. This article requires clarification.

2.2 Procedure for Party Selection of Candidates

2.2.1 Article 72.3 requires that, “Nomination of candidates for single mandate constituencies from political parties, election blocs shall be carried out at a congress”. In many electoral systems, parties are free to determine their own mechanism for selecting their own candidates, it is not obvious that an election commission should enjoy the right to refuse a candidate or list of candidates by virtue of the manner in which a party determines its choices.

2.2.2 During the parliamentary elections, the CEC decided to de-register a whole electoral bloc because the congress at which its list of candidates was selected was deemed to be invalid by a court. As stated above, it could be pertinent to re-consider Article 72.3 and not legislate for the manner in which a party selects its candidates. If such a stipulation remains in the Code, it should be ensured that failure to fully comply with the provision results in the need for a party / bloc to hold a new congress and choose a new set of candidates, rather than resulting in the complete de-registration of the party.

2.3 Registration of Parties

2.3.1 Article 92 determines which parties are able to participate in the election, and raises two criteria: 1) their period of registration (one year prior to the call for the election) and 2) the wording of their charter (it must include a stated intention to participate in the election). This article created a number of problems during the parliamentary elections, and the final interpretation of it by the Ministry of Justice and CEC resulted in a number of prominent parties being refused registration. Given the subsequent passing of a new Law on Political Parties this article has now been superseded and could be deleted.

2.3.2 In place of Article 92, Article 24 could be expanded to include a sub-article, stating that political parties recognised and registered under the Law on Political Parties have the right to participate in the election. Such parties could be obliged to state that intention in writing to the CEC within x number of days after the call for elections.

2.4 Financial Declarations

2.4.1 According to Article 27.1.7, all candidates “must fill out and submit declaration of income for the year preceding the year of appointment of election and also submit all information pertaining to immovable property, motor vehicles and stocks that are registered to him (sic) and to members of his or her family”. Article 73.4 affords the CEC 10-days and TECs 5 days to review the relevant nomination papers. Given the importance, complexity and extent of the financial declarations, it might be pertinent to consider whether these review periods are adequate, particularly in light of the number of candidates standing in elections in the Kyrgyz Republic.

2.5 Confirmation of a Candidate’s Registration

2.5.1 Article 73.4 states that, “The CEC within 10 days from the day of receipt of the documents shall review the compliance of candidates lists nomination procedure ... and shall register the list of candidates or issue a motivated decision on a refusal to register”.

2.5.2 Article 73.5 also states, “Registration of candidates (lists of candidates) shall end 25 calendar days prior to the day of elections”. It would seem reasonable that once the review has been completed, then, except in the event of a serious abrogation of the law, a candidate’s registration status should be confirmed at this point. It is highly advisable to avoid the retrospective review of a candidate’s registration except in extreme circumstances.

2.5.3 Further, Article 55.9 states that, “Courts and bodies of the office of the prosecutor shall arrange their work ... in the way that provides timely consideration of the appeals.” Given the need to ensure a timely resolution of any appeals over registration, this article could be made more explicit, possibly adding the wording, “... timely consideration of the appeals *to preclude interfering unduly with a candidate’s campaign or the preparatory work of an election commission*”. Such an addition further implicitly stresses the need to avoid retrospective consideration of a candidate’s registration status.

2.6 Annulment of a Candidate’s Registration

2.6.1 Article 56.1 provides for the cancellation of the registration of a candidate in case of:

- violation of the procedure for nomination or registration of candidates;
- violation of the procedure for holding of pre-election campaigning and financing of elections;
- a candidate’s use of their official or business position for the purpose of their campaign;
- the bribing of voters by a candidate.

The main weakness of this article is that largely administrative misdemeanours, such as a shortcoming in a candidate's nomination papers, are classified with the same gravity as extremely serious violations, such as the bribing of voters. Violations need to be graded, utilising punishments such as public censure or fines, to avoid minor incidents potentially leading to the de-registration of a candidate, which, in line with other articles of the Code, should only be contemplated as a last resort and under the most serious of circumstances.

2.7 Status of Candidates

2.7.1 Article 28.6 states that, "A registered candidate can not be have criminal proceedings instituted against them, be arrested or have imposed administrative sanctions against them through court procedure without the permission of the prosecutor (according to the level of elections)". This right was mis-used by the prosecutor during the parliamentary elections, and for that reason there is a need to provide candidates a reasonable level of protection.

2.7.2 Article 28.6 might be expanded to include wording to the effect that, "*Proceedings against a registered candidate should only be instigated so long as there is a clear public need or in cases where the individual concerned is caught in a criminal act*".

3. SPECIFIC PROVISIONS FOR PRESIDENTIAL ELECTION

3.1 Collection of Signatures for Presidential Candidates

3.1.1 Article 62.1 requires a presidential candidate to collect 50,000 signatures. If, for example, there are five such candidates, this would total 250,000 signatures, which represents some 10% of the eligible electorate., which is very high. A requirement of 20,000 would seem more reasonable.

4. ELECTION CAMPAIGN AND MEDIA

4.1 Start of Election Campaign

4.1.1 Article 31.1 states that, "Pre-election campaigning shall start from the day of a candidate's (list of candidates) registration ...". Given the staggered process of registration, with election commissions confirming registration over a period of days or even weeks, the result is that some candidates have a longer campaign period than others. It would be better to have a fixed point for the start of the campaign. This could possibly be:

- from the day of announcement of the election date, or
- from the date of the official end of candidate registration (which, according to Article 63.4 is 35 days prior to the day of the election), or
- after the end of the appeals process on registration (which, according to Article 63.5 is 30 days prior to the day of the election).

4.1.2 Another date or point could be fixed, but the principle should be to provide equal and reasonable conditions for all candidates.

4.2 Use of Public Buildings for Campaigning

4.2.1 Article 34.2 states that a request by a candidate for the provision of premises for a meeting with voters should be “considered by state authorities and local government bodies on the same day when an application is received”. During the parliamentary elections permission was sometimes denied. It would therefore be prudent to add a sentence to this article, stating that in the event of a refusal, a written explanation must be provided to the candidate / party at the time the decision is announced.

4.3 Prohibition on Opinion Polls

4.3.1 Article 31.3 states, “It shall be prohibited to publish in mass media the results of public opinion polls, prognoses of election results, other investigations in connection with elections, from the moment of registration of candidates (list of candidates)”. This wording raises two problems:

- Such a period of prohibition on opinion polls is excessive. A more reasonable period would be 7 days or 14 days.
- The inclusion of a prohibition on other “diagnoses” and “investigations” is ambiguous and could constitute a restriction on normal media coverage of an election. In view of this it would be better to delete such references, leading to a reworded article: *“It shall be prohibited to publish in mass media the results of public opinion polls within (7 or 14 days) of the day of the election.”*

4.4 Free and Paid Airtime

4.4.1 Article 32 outlines the procedures for Campaigning on TV and Radio, including the provision for free and paid airtime. During the parliamentary elections it was unclear during TV broadcasts, which advertisements were paid and which were free. In line with common practice it would be pertinent to add a paragraph to Article 32, stating that all election broadcasts must be clearly identifiable as “paid” or “free” airtime.

4.5 Provision of Free Services to Candidates

4.5.1 Article 51.10 states that, “... Legal entities, their subsidiaries, representation offices shall be prohibited [from providing] works, services, sale of goods, directly or indirectly related to elections either free of charge or for unreasonably low prices”. It should be clarified that this article does not include normal media coverage an election, such as inviting candidates on to talk shows or debates. During the parliamentary elections there was some confusion regarding this element of the campaign, which might have resulted in a restriction of normal media activity.

5. VOTING AND COUNTING PROCEDURES

5.1 Voter Lists

- 5.1.1 The practice of adding voters to lists shortly before an election needs to be addressed. Voters requiring to be added to a list due to their move to a new place of residence must be required to produce a certificate of de-registration from their previous place of residence. The PECs and Local Authorities responsible for the compilation and verification of the lists should be required to authenticate this procedure.

5.2 Requirement for Voter Identification

- 5.2.1 Under Article 40.5, voters at polling stations with less than 500 registered voters are not required to provide documented proof of identification. This should be amended to require all voters in all polling stations to be required to produce identification at the time of voting.
- 5.2.2 Further, the form of identification permissible, which thus far has been fairly vaguely legislated for, should be clarified. At present, Article 8.1 defines the documents identifying a voter as: “his/her passport or document replacing it ... officer’s certificate, military certificate of an officer serving for a fixed time, sailor’s passport, a certificate issued by internal affairs bodies ..., pension certificate, driver’s license”. This list should be clearly codified in the relevant part of the text and the instructions issued by the CEC to the TECs and PECs must be in line with such a codified list. At the recent parliamentary elections it was noted that election commissions were not familiar with the procedures for acceptable documentation and the implementation of this procedure was inconsistent.

5.3 Number of Voters Per Polling Station

- 5.3.1 Article 20.2 states that Precincts (polling stations) should be established for “not more than 3,000 voters” each. This figure is high and places an administrative burden on the PECs, which during the recent parliamentary elections they were not always able to meet. In places where the required resources are available, it should be considered to decrease the number of voters allocated to a precinct to a more manageable number, such as between 1,000 and 1,500.

5.4 Persons Authorised to be Present in a Polling Station on Election Day

- 5.4.1 Articles 17.2 & 17.4 list the persons authorised to be present in a polling station on the day of the election as: “Members of superior election commissions, candidates and their trusted persons, authorised representatives, mass media representatives” and “observers, foreign (international) observers”. Given the severe problem during the parliamentary elections with members of local authorities being present and indeed overseeing the process in polling stations it might be worth stating explicitly that local officials without direct polling station responsibility should not be present.

5.5 Rights of Observers

5.5.1 Article 17.8 outlines some of the rights of observers. The CEC also issues guidelines for international observers. However, the Code does not explicitly state that observers have a right to attend the work of the TECs. During the recent parliamentary elections it was noted that in many instances national NGO observers were refused permission to enter TECs. International observers also experienced problems gaining entry in a couple of instances. Therefore it might be helpful to the process if the Code could explicitly recognise this right.

5.6 Completion of Precinct Protocols

5.6.1 Article 43.1 should be expanded to include the text: *“Only one protocol should be completed by a Precinct Commission. It must be completed in ink and signed by all the members present at the time of completion. Precinct Commission members must not pre-sign a second protocol.”*

5.6.2 Given the proliferation of extra signed protocols during the parliamentary elections there is a clear need to address this problem, which opens the process to wide abuse. However, recognising the concern of PECs that the protocol will be refused by the TEC if the numbers do not add up accurately, which would require the reconvening of the PEC in the early morning hours, the instructions to TECs regarding the inputting of protocol data might also be re-considered.

5.7 Admissibility of Ballots

5.7.1 The wording of Article 44.12 should be made more explicit to include the phrase: *In instances where the intention of the voter is clear, and so long as all other legal requirements have been met, the ballot should be counted as valid.* During the recent parliamentary elections it was noted that PECs were inconsistent on the application of this procedure. Therefore the Code needs to be as explicit as possible and it must be ensured that all training and instructions are in line with this emphasis.

6. DETERMINING RESULTS

6.1 Repeat Voting

6.1.1 The articles in the Code on repeat voting (Article 66.3 for Presidential Elections and Article 76.3 for the Parliamentary Elections) need to be made clearer and in line with better electoral practice. In cases where two candidates go into a second round of voting and one of those two candidates withdraws, it is not acceptable that the other candidate is thereby elected without the need for voting to take place.

6.1.2 Options available include:

- The promotion of the third-placed candidate to compete in the run-off.
- A prohibition on a run-off candidate's right to withdraw

7. APPEALS

7.1 Consideration of Appeals by Election Commissions

- 7.1.1 Article 54 does not give a time deadline for the consideration of appeals by an election commission. Article 55 outlines clear time deadlines for the consideration of appeals by the various levels of courts, but no corresponding limits are mentioned in Article 54 for election commissions.
- 7.1.2 In line with the suggested emphasis of Article 55.9 (see 3.5.3), whereby the legal appeals process should be conducted with brevity to avoid interfering with a candidate's campaign or the preparatory work of an election commission, it could be considered to decrease the number of instances for appeals.

COMMENTS PROVIDED BY BRYNJULF RISNES

The following comments are based on the official Russian language version of the Election Code of the Kyrgyz Republic passed by the Legislative Assembly of the Parliament (Zhogorku Kenesh) on 29 April 1999.

1. FORMATION OF ELECTION COMMISSIONS

The Final Report produced by ODIHR following the parliamentary elections raises serious concerns about the independence of election commissions at all levels. The report concludes that very few representatives from political parties, candidates and NGOs were members of election commissions, with the vast majority of commission members being state employees. The composition of the election commissions, from the CEC to PECs, made them vulnerable to pressure by state officials.

The low degree of independence of election commissions points to several shortcomings in the Election Code that should be addressed in due time prior to upcoming elections:

The only provision in the law pointing to the right of representation by various political forces in election commissions is article 11.7, stating that '*the formation of election commissions shall be carried out [by the superior election commission] upon nomination of local Kenshes on the basis of suggestions by political parties, public associations, voters' meetings.*' This provision is, however, vaguely formulated, and failed to facilitate a substantial representation from different political forces in the parliamentary elections. The article does not define how the process of suggesting candidates to commissions should be carried out, nor does it impose an obligation on the Kenshes to nominate candidates representing different political organisations. Thus, the effectiveness of the provision is dependent on the Kenshes' willingness to include different political forces when suggesting candidates to election commissions.

In order to secure a pluralistic composition of election commissions article 11,7 should be amended as to give political organisations a direct and undisputed right to have their candidates included in the election commissions. There must be a specific quota of representatives appointed upon suggestion by political organisations, large enough to secure representation from a wide spectre of political forces, including the political opposition.

The composition of the CEC is of crucial importance to the independence of the election administration. Not only is it the superior commission with the right to instruct the work of lower commissions, but the CEC also exercises direct influence over the composition lower commissions by the fact that commission are appointed by the superior election commission.

Thus, in order to secure the independence and integrity of election commissions at all levels and encourage public trust in the electoral process, the appointment procedure of the CEC should be amended to guarantee the appointment of representatives from different political forces. Furthermore, the repealing of the President's right to appoint the Chairman of the CEC would further strengthen the independence of the CEC. Instead, the CEC could elect its Chairman through secret ballot.

Fundamental changes in the procedure for appointing of the CEC will only be possible through amendments in the Constitution. However, the Election Code should be amended in order to secure the appointment of members representing different political forces to the CEC. In the longer term, the regulation on the composition of the CEC should be defined exclusively by the Election Code, according to principles described above.

Article 11.2-5 in the Code imposes a very strict time limit for the composition of mid level election commissions by the Oblast election commission (OEC); 10 days after the announcement of the elections. These provisions should be amended in order to allow sufficient time for the OECs to review suggestions from political organisations and secure a balanced composition of the inferior commissions.

Note:

Regarding appointment of election commissions: the provisions dealing with the appointment of regular members with a right to vote should be a priority. Article 11,8, dealing with the right of political organisations to appoint members with a consultative vote, should only be discussed in case the suggested amendments in the law are not made.

2. REGISTRATION OF CANDIDATES

A. Requirements for registration

In an amendment to article 27.1, the Code requires candidates to submit *'a declaration of income for the year preceding the year of appointment of the election and also submit all information pertaining to immovable property, motor vehicles and stocks that are registered to the candidate and to members of his/her family.'* The Final Report implies that the new provision caused some problems in terms of assessing exactly what documentation that should be submitted.

In order to secure public confidence in the election process it is of paramount importance that the registration process is transparent and predictable. The list of documents to be submitted, along with other requirements for registration of candidates should be regulated in a detailed and exhaustive manner in order for candidates to get detailed information on the requirements for registration.

B. Registration fee

It is of crucial importance that the possibility to stand as a candidate does not depend on the candidates' financial potential. The fee for registering as a candidate should therefore not be too high. The amount that has to be deposited in order to stand as a presidential candidate (1,000 times the minimum wage according to article 63) may be regarded as too high.

Furthermore, article 63 requires the deposit to be returned to candidates who receives a minimum of 10 percent of the votes in the elections. The provision must be seen as a safeguard against frivolous candidates exploiting the system. However, the 10 percent limit seems to be too high for this purpose, and could potentially contribute to discourage candidates from participating in the elections. A reduction of the 10 percent barrier should be considered.

C. De-registration of candidates

The election administration is given a solid basis for assessing whether a candidate fulfils the criteria for participating in elections through the procedures for registration of candidates. It is important for the election process that the election authorities make use of the period allowed for scrutiny of the candidates and their submitted documentation in order to make a well founded and final decision on registration.

Articles 28 and 56 in the Code seem to imply that any violation of a regulation included in the Code can constitute a reason for de-registering a candidate. According to the Final Report these regulations led to frequent resurfacing of the question of registration throughout the pre-election period.

It is of crucial importance to the election process that once registration is approved, the question of registration or possible de-registration is not again raised. Subsequently, in order to avoid speculations and abuse connected to possible de-registration, the possibility to recall a candidate's registration should be very narrow, allowing for a review of a candidate's registration only in cases of serious breaches of the law. Articles 28 and 56 should be amended accordingly.

A strict limitation of the possibility to de-register candidates would also contribute to make other provisions in the law, such as article 35, requiring candidates to submit copies of campaign material, more effective. A candidate is likely to be less reluctant to inform about his activities during the campaign period as long as his/her obligations are not directly connected to a threat of de-registration.

3. CAMPAIGN PERIOD

The Final Report indicates that candidates who registered early had an advantage over other candidates as campaigning can start from the moment of registration, according to article 31.

The law should grant equal right to campaign for all candidates regardless of the time of their registration. Thus, article 31 should be amended to allow for campaigning to start when the registration period expires. This will still allow sufficient time for campaigning. In this case the campaign period for the presidential elections would be 35 days (article 63) and for the parliamentary elections 25 days (article 73).

4. MEDIA COVERAGE

Article 31.3 of the Code imposes a ban on ‘*results of opinion polls, prognoses of elections results, other inquiries, in connection with the elections*’ during the campaign period. It is not unusual for election legislation to contain restrictions on the publication of opinion polls shortly prior to the elections, in order to avoid false or unreliable opinion polls in the days prior to the elections. However, the article is formulated in a very broad way and could be interpreted as imposing restrictions on publishing more general election coverage, not only opinion polls. In order to avoid possible misunderstandings regarding the right of the media to freely cover the election campaign, the phrases ‘*prognoses of election results, other inquiries*’ should be deleted from the text of the law.

Furthermore, the ban on opinion polls seems unnecessary long. For the presidential election the period in which publication of polls are prohibited would be 35 days. A shorter period should be sufficient.

5. VOTERS’ LISTS

According to the Final Report, inaccuracies in the voters’ lists constituted a problem in the parliamentary elections and led to a large amount of voters being included in the additional lists.

Updating of voters’ lists, based on the actual place of residence of voters, represents an important safeguard against possible manipulation and fraud on election day. Control and review of the lists should therefore be a top priority for housing authorities and election administrators in the pre-election period. PECs should seek to verify information supplied by local authorities and delete voters who are no longer permanent residents of the constituency from the voters’ list, and thereby avoid extensive use of additional lists on polling day.

6. PRINTING OF BALLOT PAPER

The Final Report notes that admission to the printing house was only granted to international observers and that representatives of candidates reported not to have been notified of the possibility to observe the printing process. The Code (article 39) does not define who can observe the printing process and who can be present when the ballot papers are delivered from the printing house.

To avoid speculations regarding the printing of ballot paper, the process should be open to the same level of transparency as other parts of the election process. Accordingly, the law should be amended to explicitly allow the printing process and the handing over of ballot papers to be open to candidates and party representatives and observers.

7. VOTING

Efforts to create independent election commissions are made in order to avoid any allegations of influence over the election process from other parties. It is therefore important that only members of election commissions exercise influence over the administration of elections.

Although the obligation to refrain from interference in the election process may seem to be obvious, the Election Code should include procedural regulations to this respect.

Furthermore, the Code (article 53.3) places the responsibility of supporting election commissions on issues related to law and order to the organs of internal affairs. In this respect, it should be made clear in the Code that the Chairman of the PEC is responsible for maintaining the order in the polling station, including regulating the number of voters allowed into the premises at the same time. In case of disorder, the Chairman may seek assistance from the security forces, who should leave the premises of the polling station immediately after restoring order.

8. MOBILE BALLOT BOXES

According to article 42 of the Code voters who are unable to visit the polling station for reasons of health *or any other reason*, have the right to have ballot paper and a ballot box brought to their residence. There is no requirement that a request for a mobile box be made in writing prior to polling day; an oral statement up till six hours before the polls close is sufficient.

It is important that mobile ballot boxes are used only in cases when it is the only possibility for the voter to cast his/her ballot. The procedures for voting in regular polling stations have a considerably higher degree of control and transparency and should be followed in all normal instances. It is therefore desirable to limit the right to vote by mobile ballot boxes to voters who are otherwise unable to vote at all. For those who are temporary unable to vote on polling day there are other options open, i.e. advance voting. Thus, the Election Code should be amended as to allow for voting by mobile ballot boxes only in cases when it is physically impossible for the voter to visit the polling station.

9. VOTING WITHOUT ID IN SMALL PLACES

According to article 40.5 voters on places with less than 500 inhabitants can vote without ID when at least two members of the PEC can confirm the voter's identity. As voting with an official ID is preferable in any situation, not at least because of the possibility for subsequent control of the voters' lists, ID voting should be encouraged also in small places.

10. COUNTING AND TALLYING OF RESULTS

The Final Report noted several procedural weaknesses in the counting process. Amongst those were the fact that protocols were signed in ink but completed in pencil and that a second protocol was often signed before being filled in.

Although articles 43 through 46 in principle contain satisfying regulations for the process of counting and tallying of results, the law should be amended to explicitly prohibit completing the protocols with anything but ink, as well as signing blank protocols. In addition, the CEC should follow up with a methodology for the different steps of the counting process.

A strictly defined division between election administration and state authorities is vital also during the process of tallying the results. This principle is already reflected in several provisions of the law, amongst them article 45.1 which states that the signed copy of the protocol ‘*shall be filed **directly** with the superior election commission.*’ The Code may be amended to underline even more precisely the principle that only commission members should be involved in the total process of tallying election results.

The location of election commission inside governmental institution buildings seems to be explained as a logistical issue connected with the supplying of sufficient office space and computer links. However, as the co-location of election commissions and governmental structures may cause suspicions of abuse, efforts should be made to locate all election commissions in other buildings. This also applies to the CEC which is currently situated in the building of the presidential administration.

In order to increase the predictability of the counting and tallying process consideration should be given to introducing time limits for the different steps of the counting and tallying process in the law, as well as emphasising the right of observers to be present at all stages of the tallying process.

11. COMPLAINTS AND APPEAL PROCEDURES

The election law contains a dual system for complaints and appeals in connection with the election process. *Firstly*, article 54 outlines a system for complaints within the hierarchy of electoral commissions. Complaints should be presented to the nearest superior election commission. *Secondly*, article 55 allows for complaints to be introduced in the courts.

Amendments to the provisions in the law regulating the handling of complaints and appeals by election commission could improve the situation: A regulation of the procedure for hearing complaints should be introduced, including the regulation on admission of evidence. A system of time limits for the election commissions’ handling of complaints should also be introduced.

The number of complaints filed during the parliamentary elections put considerable pressure on the work of election commissions. In order to ease the burden on the commissions and provide for a faster settling of complaints it should be considered to reduce the number of levels through which a complaint can be appealed.