



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

EARLY PRESIDENTIAL ELECTION

9 June 2019

ODIHR Election Observation Mission
Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the authorities of Kazakhstan and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established an Election Observation Mission (EOM) on 8 May 2019 to observe the 9 June early presidential election. The ODIHR EOM assessed compliance of the election process with OSCE commitments and other international obligations and standards for democratic elections and with domestic legislation. On election day, an International Election Observation Mission (IEOM) was formed as a common endeavour of the ODIHR EOM and a delegation of the OSCE Parliamentary Assembly. The ODIHR EOM remained in the country until 19 June to follow post-election day developments.

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 10 June concluded that the election “offered an important moment for potential political reforms, but it was tarnished by clear violations of fundamental freedoms as well as pressure on critical voices. While there were seven candidates, including for the first time a woman, considerable restrictions on the right to stand, and limits to peaceful assembly and expression inhibited genuine political pluralism. Despite the short time available, preparations for the election were efficiently organized and election day proceedings were orderly. However, significant irregularities were observed on election day, including cases of ballot box stuffing, and a disregard of counting procedures meant that an honest count could not be guaranteed, as required by OSCE commitments. There were widespread detentions of peaceful protesters on election day in major cities.”

This was the first election since the resignation of Nursultan Nazarbayev, Kazakhstan’s president since 1991, who retained the title of First President, remained the leader of the ruling *Nur Otan* political party and continued as the life-long chairperson of the Security Council. While the number of candidates appeared to offer political variety, few provided clear platforms and openly critical campaigns. The election took place within a political environment dominated by the ruling *Nur Otan* party and with confined space for civil society and opposition views. This consolidation of political power challenges the development of genuine political pluralism, as committed to in the 1990 OSCE Copenhagen Document.

The Election Law provides a technical basis for the conduct of elections, but does not contain adequate safeguards to guarantee integrity of the process, especially election day procedures, counting and tabulation. The constitutionally guaranteed freedoms of assembly, expression, association, access to information, and the right to take part in political life, are considerably restricted by law. Despite recent legal amendments, most previous ODIHR priority recommendations remain unaddressed. Serious shortcomings in the law and its implementation hamper the conduct of the electoral process, underscoring a need to bring the legal framework in line with OSCE commitments and other international standards.

Electoral preparations were efficiently administered by the election commissions, within deadlines. The Central Election Commission (CEC) held regular public sessions and published information in a timely manner. In practice, there was an over-representation of the ruling party in a considerable

¹ The English version of this report is the only official document. Unofficial translations are available in Kazakh and Russian.

number of lower-level commissions, raising concerns about appointment mechanisms and, consequently, their impartiality. The CEC delivered an extensive voter education programme. Many Precinct Election Commissions (PECs) conducted door-to-door visits to inform voters about election day, but some also enquired and recorded whether voters would turn out to vote, which was perceived by some voters as a form of pressure.

Almost 12 million voters were registered. Following recent legal changes, voter lists are compiled based on the state civil register, an improvement from the previous practice of using multiple sources. Voter lists were available for public scrutiny. Voters who could prove their residence within the precinct but were not registered, could be added to the list on election day, opening the possibility for double registration. Some voters registered in special polling stations remained registered at their permanent addresses as well. Voters could also apply for an Absentee Voting Certificate (AVC), which allowed them to vote in any polling station outside their registered locality. Concerns about the use of AVCs remain, as no justification is required when requesting an AVC and there is no post-election audit of AVCs. Citizens declared incompetent by a court and all prisoners serving prison sentences were disenfranchised, at odds with international standards.

The legal framework for candidate eligibility is highly restrictive, limiting the possibility to stand for a broad range of otherwise eligible citizens. The 2017 constitutional and legal amendments abolished self-nomination and introduced further eligibility requirements, significantly reducing the candidate pool. Amongst others, requirements concerning education, residency, and experience in the civil service or elected government office, are at odds with OSCE commitments and other international standards. Of the nine eligible nominees, one withdrew and one failed the language test. There were no precise criteria for language skills evaluation. All seven remaining nominees managed to collect the required 118,140 signatures of support, within three days, and were registered.

The campaign was low-key and generated limited public interest. Although active in the campaign offices, women did not occupy leadership positions and candidates did not address gender issues. While no candidate reported difficulties with requesting a campaign venue, the requirement to receive permission to hold a public event ten days in advance, rather than to provide notification, is contrary to international standards. There were multiple cases in which police conducted questioning and detentions to break-up or to prevent peaceful gatherings, often followed by fines or arrests of the organizers. The incumbent enjoyed the active support of the First President. In a number of instances, public sector employees and students informed the ODIHR EOM that they had been instructed by public officials to attend campaign events and vote for the incumbent. Such activities blurred the line between party and state and raised concerns about voters' ability to cast their vote freely, as provided by OSCE commitments.

Freedom of expression and the right of access to information are guaranteed in the Constitution but are unduly restricted by the law. Contrary to previous ODIHR recommendations, defamation and insult remain criminal offenses. Legally prescribed sanctions, blocking of specific websites, and limited access to social networks on a daily basis, led to self-censorship and limited online political discourse. While media respected the formal allocation of airtime for candidates during the campaign, the extensive coverage of the incumbent in his official capacity and support for his election by the First President did not provide a level playing field for all candidates. All of these factors limited voters' ability to make an informed choice.

The Election Law provides for public and private funding of the campaign. However, procedures to apply for and use public funding are excessively complex. The final reports on state funding were not made public, reducing accountability. Positively, the CEC published reports on candidates' financial contributions and expenditures prior to election day. However, the lack of a breakdown of these donations and costs reduced the overall transparency.

The law provides sufficient opportunity for electoral stakeholders to file election-related complaints with the election commissions or courts. However, in several cases, TECs relinquished jurisdiction on complaints in favour of the courts, who in turn decided these were under the competence of the TECs, eventually leaving complaints unexamined. The CEC did not publish decisions on disputes, affecting transparency and the right to legal redress. The right to appeal the final results is limited to the president, speakers of the parliament, prime minister, or at least one-fifth of the members of parliament. The judges at all levels are nominated or appointed, and dismissed, by the president, making them dependent on the executive, contrary to the principle of separation of powers.

The Election Law provides for both citizen and international observers. While international observers are accredited by the CEC, there is no formal accreditation procedure for citizen observers. Despite the limited space for civil society, several organizations deployed observers, but a considerable number of ODIHR EOM interlocutors raised concerns about the political affiliation or independence of some citizen observers. Throughout election day, numerous PECs and TECs did not provide observers with sufficient conditions for meaningful observation.

Election day was efficiently organized, but significant irregularities were observed across the country, including cases of ballot box stuffing, group voting and series of identical signatures on voter lists. The counting of votes was negatively assessed in more than half of observations, including cases of deliberate falsification, raising serious questions about whether ballots were counted and reported honestly, as required by paragraph 7.4 of the 1990 OSCE Copenhagen Document. Overall, tabulation of results lacked transparency in a number of cases, with a number of anomalies observed including the inconsistent aggregation of invalid ballots in many TECs.

During election day a number of peaceful protests disputing the electoral process were forcefully broken-up by police and led to widespread detentions in major cities. After the election, arrests were followed by expedited court trials at the detention centres, closed to the public and observers, and without examination of evidence or, in many instances, a possibility for legal defence. No polling station-level results were invalidated due to violations and the CEC adopted the final results protocol on 10 June and declared Mr. Tokayev the winner before the expiration of deadlines for complaints.

This report offers a number of recommendations to support efforts to bring elections in Kazakhstan closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to the review of the existing legal framework, the composition of election commissions, the integrity of the voter register, candidacy requirements, the campaign environment, including respect for fundamental freedoms of assembly and expression, media coverage, dispute resolution and the announcement of results. ODIHR stands ready to assist the authorities to improve the electoral process and to address the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the authorities of Kazakhstan to observe the 9 June 2019 early presidential election and based on the recommendation of the Needs Assessment Mission conducted from 16 to 18 April, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) established an Election Observation Mission (EOM) on 8 May. The ODIHR EOM, led by Ambassador Urszula Gacek, consisted of a 13-member core team based in Nur-Sultan and 22 long-term observers, who were deployed on 14 May in 11 locations throughout the country.

On election day, an International Election Observation Mission (IEOM) was formed as a common endeavor of the ODIHR EOM and a delegation of the OSCE Parliamentary Assembly (OSCE PA). Mr. George Tsereteli, President of the OSCE PA, was appointed by the OSCE Chairperson-in-Office

as Special Co-ordinator and leader of the OSCE short-term observer mission. Ms. Margareta Kiener Nellen headed the OSCE PA delegation. Each of the institutions involved in this IEOM has endorsed the 2005 Declaration of Principles for International Election Observation.² In total, 339 observers from 40 countries were deployed, including 290 long-term and short-term observers deployed by ODIHR, and a 49-member delegation from the OSCE PA. Opening procedures were observed in 133 and voting in 1,352 polling stations across the country. Counting was observed in 131 polling stations, and the tabulation in 95 Territorial Election Commissions. The EOM remained in Kazakhstan until 19 June to follow post-election developments.

The ODIHR EOM assessed compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, as well as national legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference in Nur-Sultan on 10 June 2019.³

The ODIHR EOM wishes to thank the authorities of the Republic of Kazakhstan for the invitation to observe the election, as well as the Central Election Commission and the Ministry of Foreign Affairs for their co-operation and assistance. It also expresses its appreciation to representatives of other national and local state institutions, candidates, political parties, civil society, media, the international community, and other interlocutors for their co-operation and for sharing their views.

III. BACKGROUND AND POLITICAL CONTEXT

On 19 March, Nursultan Nazarbayev, Kazakhstan's president since 1991, resigned from office. In line with the Constitution, Kassym-Jomart Tokayev, Speaker of the Senate, assumed the role of president.⁴ Mr. Nazarbayev retained the title of First President, remained the leader of the ruling *Nur Otan* political party and continued to serve as the life-long chairperson of the Security Council.⁵ On 9 April, Mr. Tokayev called for an early presidential election to be held on 9 June, and stressed that the election would be free, transparent and fair.⁶ This was the sixth consecutive direct national election that took place early.

Kazakhstan is a presidential republic, with the president exercising wide powers, including the right to dissolve the parliament, to initiate and veto legislation, and to appoint the ministers of foreign affairs, interior and defence, as well as the chairperson and two members of the CEC.⁷ This election took place within a political environment dominated by the ruling *Nur Otan* party, which, following the 2016 early parliamentary elections, held 84 of the 98 directly-elected seats in the lower chamber of the parliament (*Majilis*). An additional nine seats are indirectly elected by the Assembly of the People of

² See the 2005 [Declaration of Principles for International Election Observation](#).

³ See [all previous ODIHR election related reports on Kazakhstan](#).

⁴ The Constitution provides that in case of resignation, the Senate Speaker assumes the role of president until the end of term. The term of the former president Mr. Nazarbayev would have regularly ended in 2020. Dariga Nazarbayeva, the daughter of Mr. Nazarbayev, was appointed as the new Senate Speaker.

⁵ The Security Council includes a number of high government officials; it develops foreign, defence and national security policies, supervises their implementation by state agencies, assesses legal acts, and advises the president. The First President is legally granted significant powers for life, including the right to propose initiatives to the government and other officials and to co-ordinate state policies.

⁶ See [the 9 April address of the incumbent president to the nation](#).

⁷ Although a 2017 constitutional reform initiated by former President Nazarbayev aimed to strengthen the role of the parliament and improve the system of checks and balances, significant powers remained with the executive.

Kazakhstan, an advisory body appointed by the president.⁸ Women held some 27 per cent of seats in the *Majilis* and 2 of 18 ministerial posts.⁹

Following the announcement of the election, several peaceful protests occurred in major cities, calling for the release of political prisoners and a boycott of the election. Authorities declared these assemblies illegal, as permissions to organize these gatherings had not been sought, resulting in dozens of people being arrested.¹⁰ In recent years, some opposition parties have either been banned or marginalized, through restrictive legislation or criminal prosecution.¹¹ There are seven registered political parties, but the ability of new political parties to register is significantly restricted by membership requirements mandated in the Law on Political Parties.¹² Several international organizations have raised concerns about the ability to participate in political life.¹³ Restrictions on freedom of assembly ahead of this election and the continued consolidation of political power around one party challenges the development of genuine political pluralism, as committed to in the 1990 OSCE Copenhagen Document.¹⁴

To promote political pluralism ahead of elections and facilitate registration of political parties, membership requirements for registration of political parties should be revised in the Law on Political Parties.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The president is directly elected for a five-year term by an absolute majority from a single nationwide constituency. If no candidate receives more than 50 per cent of the votes cast, a second round between the two candidates with the highest number of votes is held within two months on a date set by the

⁸ Two other parties are represented in the parliament: *Ak-Zhol* and the Communist People's Party of Kazakhstan (CPPK), with seven seats each.

⁹ See also the 2014 UN CEDAW [Concluding observations on the combined third and fourth periodic reports of Kazakhstan](#), paragraphs 14-15.

¹⁰ On 21 April, two civil activists were sentenced to 15 days of administrative arrest for displaying a banner during a marathon in Almaty which read "You cannot run away from the truth" with hashtags #ForFairElections and #IHaveAChoice. On 29 April, an individual was detained for five days for hanging a banner in Almaty which quoted the constitutional provision stating that "the only source of the state power is the people". On 1 May, on Kazakhstan Solidarity Day, and on 9 May, on Victory Day, protests took place in Nur-Sultan, Almaty, Aktobe, Shymkent and Oral. On 6 May, an individual was detained and questioned for holding a blank sign in a public square in Oral.

¹¹ On 31 May 2019, the initiators of a prospective political party "Our Rights" challenged in a court that they had been prevented by the authorities to hold a founding congress in March 2019. In March 2018, a court declared the political movement Democratic Choice of Kazakhstan (DCK) as an extremist organization and banned it. In 2015, the Almaty Economic Court ordered the suspension of the Communist Party of Kazakhstan's activities based on a claim that its membership list included inaccuracies. In 2012, following the imprisonment of the leader of the unregistered political party *Alga!*, a court recognized the party as extremist and prohibited its activity.

¹² To register, a party must organize a party congress with 1,000 participants from two-thirds of the regions of the country present. Furthermore, a party shall have 40,000 documented members representing all fourteen regions and the three cities of Nur-Sultan, Almaty and Shymkent. The last party registered, *Birlık*, was the result of two previously registered parties merging in 2013. No other new party has been registered since 2006.

¹³ The UN Human Rights Committee (CCPR) in its [Concluding observations on the second periodic report of Kazakhstan](#) (9 August 2016), paragraph 54a, called on Kazakhstan to "...Refrain from criminalizing public associations, including political parties, for their legitimate activities under criminal law provisions that are broadly defined and not compliant with the principle of legal certainty... [and to] clarify the broad grounds for the suspension or dissolution of political parties...".

¹⁴ In paragraph 3 of the 1990 OSCE Copenhagen Document participating States "recognize the importance of pluralism with regard to political organizations". See also paragraph 76 of the [2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation \(CDL-AD\(2010\)024\)](#).

CEC.¹⁵ In the second round, the candidate who receives the higher number of votes is elected. The right to announce early presidential elections is granted by the constitution exclusively to the president, which, in cases when the incumbent president is running for the post, could give the incumbent an undue advantage over other candidates.

Kazakhstan is a party to major international and regional instruments related to the holding of democratic elections.¹⁶ The legal framework for presidential elections includes the Constitution and the Constitutional Law on Elections (Election Law).¹⁷ The CEC issues regulations to provide further details on legal provisions. Constitutional amendments in 2017 abolished self-nomination of candidates, imposed additional requirements for presidential candidates and allowed for further restrictions on candidacy to be imposed by law. This was followed, in 2017 and 2018, by the introduction of new restrictions on candidate eligibility criteria in the Election Law, as well as changes in voter registration processes and election administration structure (see *Election Administration, Voter Registration and Candidate Registration*).

Despite the recent amendments, most previous ODIHR priority recommendations remain unaddressed, including those related to fundamental rights and freedoms, candidate rights and registration, and media environment. The constitutional guarantees of fundamental freedoms of assembly, expression, association, access to information, and the right to take part in political life, are restricted by provisions in the Criminal Code, especially those related to public assemblies, defamation, incitement to social, national and religious discord, and spreading false information, as well as other administrative restrictions.¹⁸ Additionally, the space in which civil society operates is severely confined, including through restrictions on foreign funding and arbitrary application of the laws pertaining to extremism that entails not only criminal sanctions but also automatic limitations on a wide scope of civil rights without a specific judicial decision.¹⁹ These serious faults in the legal framework and its implementation hamper the conduct of the electoral process, underscoring a need to bring the legal framework in line with OSCE commitments and other international obligations and standards.²⁰

Restrictions in the legislation related to constitutionally guaranteed fundamental rights and freedoms

¹⁵ Before the election, the CEC informed the ODIHR EOM that it would set the date for the second round, if needed, only after the results of the 9 June election day.

¹⁶ Including the 1966 International Covenant on Civil and Political Rights ([ICCPR](#)), 1979 Convention for the Elimination of All Forms of Discrimination against Women ([CEDAW](#)), 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 2003 Convention against Corruption, 2006 Convention on the Rights of Persons with Disabilities ([CRPD](#)), and the 2002 Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States ([CIS Convention](#)). Kazakhstan is also a member of the Council of Europe's Commission for Democracy through Law (Venice Commission).

¹⁷ Other relevant laws include the Constitutional Law on the President, the Constitutional Law on the First President – Elbasy, the Law on Civil Service, the Law on Public Associations, the Law on the Procedure for Organizing and Conducting Peaceful Assemblies, Meetings, Processions, Pickets and Rallies (Law on Peaceful Assemblies), the Criminal Code, the Administrative Offences Code, and the Civil Procedures Code.

¹⁸ See also, the 2016 UN CCPR [Concluding observations on the second periodic report of Kazakhstan](#), paragraphs 51-55, and, 2014 UN CCPR [Toregozhina v. Kazakhstan](#), paragraphs 7-9.

¹⁹ The law contains a broad definition of extremism, which was also subject of criticism by the 2016 UN CCPR [Concluding observations on the second periodic report of Kazakhstan](#), paragraphs 13-14. Limitations may include opening bank accounts and on most financial operations, and a ban on access to a wide scope of public and private services. Moreover, such charges can be used as a ground for termination of citizenship under the Constitution.

²⁰ Paragraph 4 of the [1990 OSCE Copenhagen Document](#) commits participating States to “ensure that their laws, regulations, practices and policies conform with their obligations under international law and are brought into harmony with the provisions of the Declaration on Principles and other [O]SCE commitments.” Paragraph 12 of the 1996 UN CCPR General Comment No 25 to Article 25 of the ICCPR, states that “[f]reedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote”.

should be lifted. Excessively wide formulations of such restrictions in the law should be avoided to ensure legal certainty and prevent arbitrary implementation of the law. Any limitation of rights should be the result of a judicial process and proportional to the aim it seeks.

The Election Law provides a technical basis for the conduct of elections, but does not contain adequate safeguards to guarantee the integrity of election day procedures, especially the vote count and tabulation of results. For this election, the CEC adopted a calendar that stipulated expedited terms of electoral activities for the first round of the election and issued a number of resolutions, including on voting of persons with disabilities, media-related issues, and verification of supporting signatures. However, the CEC regulations did not adequately address issues insufficiently elaborated in the law, including on voter and candidate registration, campaign finance and election day procedures, leading to inconsistent implementation of procedures by election commissions. Overall, the legal framework remains ambiguous and inconsistent, undermining legal certainty and reducing public confidence in the electoral process.²¹

In an open consultation with all relevant stakeholders, a comprehensive review of the legal framework for elections should be undertaken to address identified gaps and inconsistencies. CEC regulations should adequately supplement the legal framework to ensure consistency in procedures implemented by lower-level commissions.

V. ELECTION ADMINISTRATION

The election administration is permanent and three-tiered, consisting of the CEC, 232 Territorial Election Commissions (TECs), and 9,968 Precinct Election Commissions (PECs)²². Women are well-represented at all levels of the election administration, including three of seven CEC members and some 67 per cent of all lower-level commissioners. On election day, women were observed to be well-represented in PECs, serving as chairpersons in 63 per cent of polling stations.

The CEC and TECs are formed for five years and consist of seven members. The CEC chairperson and two members are appointed by the president, and the Senate and *Majilis* each appoint two members.²³ Following the 2018 amendments to the Election Law, PECs should have from 5 to 11 members depending on the number of voters they serve.²⁴ In a welcome step and in an effort to reduce a potential risk that some PEC members find themselves subordinated to others due to their hierarchical position outside elections, no more than half of PEC and TEC members should be employees of the same institution.

In January 2019, a new composition of lower-level commissions was appointed by local councils (*Maslikhats*), based on nominations from registered political parties, with a maximum of one representative per commission. Parties not represented on commissions could appoint non-voting representatives for the election period; however, this was not practiced. In case of insufficient proposals, applications from public associations were considered and, when still insufficient, from

²¹ Ambiguities, inconsistencies and omissions remain in respect of election campaigning and campaign finance, post-electoral dispute resolution, nomination of election commissioners, voter registration, absentee voting, and lack of requirement to publish preliminary and final disaggregated results of the election.

²² In TECs, only the chairperson and secretary are employed full-time. PECs only work around election period.

²³ The current CEC members were appointed between 13 September 2016 and 5 September 2018.

²⁴ Five members with up to 1,000 voters; seven between 1,001 and 2,000 voters; nine between 2,001 and 2,500 voters; and eleven between 2,501 and 3,000 voters. Previously, membership of all commissions was set to seven members.

superior commissions.²⁵ However, by law, *Maslikhats* are not bound by proposals from the nominating bodies and political parties and associations may nominate commissioners who are not their members, which in practice led to political imbalance in the composition of some TECs and PECs. According to CEC data, five of the seven registered parties formally had equitable representation.²⁶ However, in a considerable number of commissions visited by the ODIHR EOM, there was, in practice, more than one member affiliated with *Nur Otan*.²⁷ Additionally, in 53 of 232 TECs that provided data, 89 per cent of chairpersons were nominated by *Nur Otan*, with a similar pattern observed in PEC leadership. Additionally, some commissioners that the ODIHR EOM met with did not know who nominated them or their party affiliation.

Overall, the nomination process was not inclusive and lacked transparency. A number of civil society representatives, including citizen observers and human rights activists, expressed a lack of confidence in the independence and impartiality of the election administration. The over-representation of one party in the election administration raises concerns about mechanisms for appointment of commissions and, consequently, their impartiality, challenging international standards.²⁸

To enhance the independence and impartiality of the election administration, the Election Law should be amended to guarantee an inclusive and broad representation of political parties in election commissions at all levels. The principle that one political party has one member in a commission should be adhered to, and the distribution of leadership positions in the PECs and TECs should be reconsidered.

Electoral preparations were administered efficiently and in compliance with legal deadlines. The CEC held regular sessions which were open and attended by observers, media and party representatives, and most CEC resolutions were published on its website in a timely manner. Resolutions were adopted unanimously, usually with little or no discussion. The CEC conducted preparatory meetings on pertinent issues, which were not open to the public. While most commissions, including the CEC, were open and forthcoming with information for the ODIHR EOM, information was not always provided to the media when questions were asked that did not directly pertain to the specific session agenda.

The CEC exhibited a welcoming attitude towards international observers. However, the transparency of the process was limited by a lack of legal obligation for the CEC's to publish important election data, such as the breakdown of political party representation at TECs and PECs, number of voters per polling station, election results per polling station, number of residence certificates issued, number of voters added to the voter lists on election day, and number of recounts conducted at PEC or TEC levels.

²⁵ According to the CEC, 68.7 per cent of members were nominated by different parties, 29.9 per cent by public associations, and 1.4 per cent by higher-level commissions. Some 40 per cent are new members.

²⁶ *Nur Otan* nominated 21.3 per cent, CPPK, 20.3 per cent, *Auyl*, 20 per cent, *Ak Zhol*, 19.4 per cent, *Birlik* 18.9 per cent. *Azat* did not nominate members at all, while the Nationwide Social Democratic Party only nominated members in 5 TECs and 68 PECs (0.2 per cent), which were all elected.

²⁷ For example, according to official information, in [Arshalinsky](#), [Beskaragaiskaya](#) and [Zerendinskaya](#) TECs, all members are affiliated with *Nur Otan*. The ODIHR EOM observed that in 4 of 9 Kyzylorda TECs more than half of the members are affiliated with *Nur Otan*. In Mangystau TEC, 6 out of 7 members are affiliated with *Nur Otan*. In at least one Shymkent TEC, 3 members are affiliated with *Nur Otan*. On numerous other occasions, multiple members of a given commission would identify themselves to the ODIHR EOM as being *Nur Otan* members.

²⁸ Paragraph 20 of the 1996 UN CCPR General Comment 25 to the ICCPR requires that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant”.

To increase transparency and accountability, the CEC should be tasked to publish online, and in an accessible format, the summary and breakdown of all relevant election information.

Lower-level election commissions undertook their work efficiently; however, sessions were often held on an *ad hoc* basis without informing stakeholders in advance, which lessened transparency. While the Election Law obliges TECs to publish their decisions, the ODIHR EOM observed that in many cases they were not published.²⁹ A nationwide training programme for new commissioners on election day procedures was undertaken, which was comprehensive and informative, albeit with limited practical sessions which contributed to an inconsistent implementation of procedures by PECs during the counting of votes and compilation of results protocols (see *Election Day*).

The CEC maintained a comprehensive website and developed an extensive voter education programme, with TV spots and educational videos, mainly related to voting procedures and first-time voters, which was regularly aired by various broadcasters in the Kazakh and Russian languages. Stencils and candidate information in Braille were available to assist visually impaired voters. Voters could check their registration details and polling station locations over the Internet.

Many PECs informed ODIHR EOM observers that they conducted door-to-door visits to inform voters about election day, with some also inquiring and recording whether voters would vote, which was perceived by some voters as a form of pressure.³⁰

VI. VOTER REGISTRATION

All citizens over 18 years of age have the right to vote, except those declared incompetent by a court decision and those serving prison sentences, irrespective of the gravity of the crime. This blanket restriction on the voting rights of prisoners and persons with mental disabilities is at odds with OSCE commitments and international obligations.³¹

The blanket withdrawal of voting rights of citizens serving prison sentences should be revised to ensure proportionality between the limitation imposed and the severity of the offense committed. The norms disenfranchising persons with disabilities shall be abolished to ensure universal suffrage.

Voter registration is passive and voters are included in voter lists based on their place of residence. Following recent changes to the law, the local executive bodies (*Akimats*) compile voter lists based on data from the state civil register, marking an improvement in the way the voter lists are compiled.³² *Akimats* submit voter lists to respective TECs twice a year. Although the law establishes that the TECs should cross-check the lists with data from the CEC, which maintains a separate unified electronic

²⁹ In 24 TECs, the ODIHR EOM was informed that decisions and meeting minutes are available only upon request.

³⁰ In Karagandy, Pavlodar and Petropavl. Paragraph 19 of the 1996 UN CCPR General Comment No. 25 to the ICCPR states that "...Persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind".

³¹ Paragraph 24 of the 1990 OSCE Copenhagen Document provides that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law". Paragraph 14 of the 1996 UN CCPR General Comment No. 25 to Article 25 of the ICCPR states that grounds for deprivation of voting rights should be "objective and reasonable". See also Articles 1, 12 and 29 of the [2006 UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#). Paragraph 9.4 of the [2013 CRPD Committee's Communication No. 4/2011](#) provides that "an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability."

³² Prior to the 2018 amendments to the Election Law, *Akimats* compiled lists based on data provided directly by various institutions and from information collected through door-to-door visits.

voter register, in practice this verification is done by the CEC.³³ In case any discrepancies or duplications are found, they are forwarded to *Akimats* for their consideration.³⁴

In line with the law, extracts of the voter list were forwarded by the *Akimats* to the respective PECs on 20 May and made available at polling stations for public scrutiny from 25 May through election day, but usually only upon request. Minimal corrections were transmitted to the TECs, but, according to the CEC, these will not be reflected in the state civil register as there is no legally prescribed mechanism that would permit such amendments. On 20 May, the CEC reported that there were 11,947,995 voters registered.³⁵

The voter registration system could be further improved through the use of a permanent, electronic voter register managed and maintained by one institution. Detailed and uniform procedures for compiling and updating the register should be in place and be consistently applied.

Voters who wish to vote away from their place of permanent residence could request a temporary change of registration up to 30 days prior to election day, or apply for an Absentee Voting Certificate (AVC), which allowed them to vote in any polling station outside their registered locality.³⁶ As a new feature, in order to oversee the issuance of AVCs, the CEC received through the TECs a breakdown of the number of AVCs issued for each PEC. The quantity of AVC forms for every PEC was equal to one per cent of the number of voters registered. Concerns about the use of AVCs remain, as no justification is required when requesting an AVC and there is no post-election audit of AVCs.

From 4 to 8 June, some categories of voters could be registered to vote in special polling stations, but the CEC stated that such voters would also remain registered in the voter list of their permanent residence, due to lack of a specific legal provision and time to implement such changes. Voters, who could prove their residence within the precinct but who were not registered, could be included on the supplementary voter lists on election day, until the polls closed. Voter registration on election day is not in line with international good practice as it could result in multiple registrations.³⁷ Overall, enhanced cross-checks of voter registration data and better electronic integration with the state civil register have improved the accuracy of voter lists, partially addressing a prior ODIHR recommendation. However, concerns remain about the potential for multiple voting due to double registration and a possible misuse of AVCs.

To safeguard the integrity of the voter register, election day registration should not be permitted at polling stations. To prevent multiple voting, voters registered in special polling stations should be excluded from the voter lists of the polling stations of their residence, and issuance of Absentee Voting Certificates should be conditional and subject to a post-election audit.

VII. CANDIDATE REGISTRATION

Candidates can be nominated by political parties or other registered public associations. The 2017 constitutional amendments removed the possibility for candidates to be self-nominated, contrary to

³³ The data that the CEC received from the TECs and the data maintained by the CEC is based on the same source (state civil register).

³⁴ By law, the *Akimats* are responsible for formation and accuracy of the voter list.

³⁵ Following the election, on 10 June, the CEC announced the final figure of 11,960,364 registered voters, with the difference due to changes made to the voter list in the pre-election period and through election day.

³⁶ AVCs could be requested from 24 May to 8 June. At the time of issuance of the AVC, its serial number is added to the voter list entry of the voter requesting the AVC. According to the CEC, by 8 June, 35,951 AVCs were issued and 22,502 voters used them on election day.

³⁷ Section 1.2.iv of the 2002 Venice Commission's Code of Good Practice in Electoral Matters recommends that "polling stations should not be permitted to register voters on election day itself".

OSCE commitments and the CIS Convention.³⁸ In addition to having the right to vote, prospective candidates must be citizens by birth, at least 40 years old, fluent in the Kazakh language, have a higher education, and official residence in the country for the last fifteen years.³⁹ The law disenfranchises persons serving criminal sentences (including probation), those with an unexpunged criminal record, and those with a prior conviction for a crime or administrative offence involving corruption. The 2017 amendments to the Electoral Law further introduced additional requirements that candidates have five years of experience in civil service or elected governmental office, and pass a medical test.

The extensive and restrictive nature of these legal requirements unreasonably limits the possibility to stand as a candidate for a broad range of otherwise eligible citizens. In particular, the limitations based on residency, current or previous employment, education, language, and the blanket restriction on criminal conviction are contrary to OSCE commitments and other international obligations and standards.⁴⁰

Consideration should be given to removing the residency, language and professional experience requirements for candidate eligibility and ensuring that any restrictions on the right to stand for those with criminal convictions are proportionate to the severity of the offence.

Independent candidates should be allowed to stand for presidential elections.

Nine candidates were nominated, four from political parties and five from associations.⁴¹ The verification period for prospective candidates by the CEC started on 28 April and included an examination of candidates' fluency in the Kazakh language by 30 April.⁴² In line with a 2005 CEC resolution, the language test consisted of writing an essay, reading with appropriate diction, and public speaking for 15 minutes. However, precise criteria for evaluating the tests were not established, limiting candidates' ability to prepare for the test and leaving the potential for inconsistent evaluations.⁴³ One prospective candidate did not pass the test and one was withdrawn by the nominating association.⁴⁴

³⁸ Paragraph 7.5 of the 1990 OSCE Copenhagen Document commits participating States to "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination". Article 10.3 of the 2002 CIS Convention states that "candidates may be put forward by voters of a relevant electoral district and/or by way of self-nomination for election".

³⁹ Upon an application of Mr. Tokayev, who served as Director-General of the UN Office in Geneva from 2011 until 2013, the Constitutional Council interpreted that a residence abroad for the purposes of diplomatic service does not entail termination of official residence in Kazakhstan.

⁴⁰ Article 25 in conjunction with Article 2 of the ICCPR requires that the right to be elected shall be ensured free from any discrimination. Paragraph 15 of the 1996 UN CCPR General Comment No. 25 to the ICCPR states that "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". Paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document guarantee equal and universal suffrage, and require that any restrictions be proportionate to the aim of the law. Article 2 of the 2002 CIS Convention states that "the citizen's right to elect and to be elected to the bodies of state power ... does not depend on and is exercised without any limitations of a discriminatory nature in terms of sex, language, religion or denomination, political or other convictions, national or social origin, membership of a national minority or ethnic group, property status or other circumstances".

⁴¹ The CEC rejected 13 'self-nominations' for non-compliance with legal requirements.

⁴² By law, the incumbent president is exempt from the language test. Notwithstanding, candidate Tokayev undertook it.

⁴³ Paragraph 7.6 of the 1990 OSCE Copenhagen Document commits participating States to provide "political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities".

⁴⁴ The candidate that failed the language test, Mr Zhumatay Aliyev, filed a complaint to the Supreme Court on 6 May, which was dismissed. The Linguistic Commission informed the ODIHR EOM that the rejected candidate made 19 mistakes in a 13-line essay and failed the other two parts.

The remaining seven nominees had two days (between 1 and 3 May) to collect signatures from at least one per cent of registered voters (118,140 for this election), equally representing at least two-thirds of all regions and the cities of Nur-Sultan, Almaty and Shymkent. The TECs then had five days to check the authenticity of signatures and submit results to the CEC.⁴⁵ In a 2019 resolution, the CEC recommended grounds for invalidating signatures.⁴⁶ However, the TECs may also invalidate signatures on any other grounds they consider legally justified, which may lead to variable interpretation, contrary to good electoral practice.⁴⁷ Registration was conditional to the payment of a deposit of some EUR 5,000 and the submission of individual and spouse tax declarations.⁴⁸

Although the requirement to collect the signatures of one per cent falls within the limit under international good practice, it is restricted by the requirement of the territorial representation, which allows only large organisations with developed regional representation to comply with the procedure within short deadlines. Moreover, the concurring requirements of signature collection and money deposit could obstruct candidates from standing for office.

The legal framework should be amended to establish clear, objective and reasonable criteria for candidate registration, including the regulation on verification of supporting signatures and, if retained, the evaluation of language fluency. Consideration could be given to opt for a single guarantee condition.

Seven nominees were registered by the CEC as candidates, one of whom was a woman, for the first time in a presidential election in Kazakhstan. By law, the candidates were listed on the ballot in alphabetical order.⁴⁹

VIII. ELECTION CAMPAIGN

The campaign started once candidate registration was finalized on 11 May, and ended at midnight on 7 June when the silence period began. While the fact that there were seven candidates coming from different parties and associations appeared to offer political variety, few provided clear platforms and openly critical campaigns. Although active in the campaign offices of most candidates, women did not occupy leadership positions and no candidate offered concrete campaign manifestos that addressed gender issues.⁵⁰

Political parties should facilitate women's political advancement at all levels of decision-making and integrate gender issues into their platforms.

⁴⁵ According to the CEC, the signature lists were destroyed by the TECs after completion of the registration process and the CEC received only the summary protocols of signatures verification.

⁴⁶ Including through checking if the signing was performed by one person on behalf of several voters, or if the voter signed more than once for one candidate.

⁴⁷ Section I.1.3.iii of the 2002 Venice Commission's Code of Good Conduct in Electoral Matters recommends that "checking of signatures must be governed by clear rules".

⁴⁸ The deposit is 2,125,000 Kazakhstan Tenge (KZT), based on 50-times minimum wage; approximately EUR 1 = KZT 426. The deposit is returned to those who obtain at least five per cent of votes.

⁴⁹ Zhambyl Akhmetbekov, CPPK, Daniya Yespayeva, *Ak Zhol*, Amirzhan Kossanov, Public Association *Ult Tagdyry* – National Patriotic Movement, Toleutai Rakhimbekov, *Auyl* – People's Democratic Patriotic Party, Amangeldy Taspikhov, Republican Association of Trade Unions "Federation of Trade Unions of the Republic of Kazakhstan", Kassym-Jomart Tokyaev, *Nur Otan*, and Sadi-Bek Tugel, *Uly Dala Kyrandary* – Republican Movement.

⁵⁰ See 2014 CEDAW [Concluding observations on the combined third and fourth periodic reports of Kazakhstan, paragraphs 22-23](#). The OSCE Ministerial Council in its Decision No. 7/09 from 2 December 2009 "Encourage(s) all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balanced representation in elected public offices at all levels of decision-making".

The campaign was low-key and largely limited to posters and billboards, generating limited public interest. Although most candidates stated that they would use the internet as a campaign tool, few maintained a meaningful online presence. Candidates could hold public meetings or events only after requesting permission from the appropriate local authorities ten days prior to the planned event, which is not in line with OSCE commitments and international standards.⁵¹ Several interlocutors informed the ODIHR EOM that they did not request permission to organize political events due to the restrictive process and the likelihood of it being denied. On multiple occasions the police conducted questioning and temporary detentions as a means to prevent possible gatherings. Organizers and participants of events for which the permission was not granted, including individuals who called for public gatherings or a boycott of the election were subject to fines and arrests.⁵² The end of the campaign was further marred by several cases of detention.⁵³ Collectively, these restrictions unduly limited freedom of assembly and political expression before and during the campaign.

The Law on Peaceful Assemblies should be amended to require a simple notification procedure for holding a public gathering, instead of the current authorization requirement.

According to the CEC, in the first 12 days of the campaign, 7,453 campaign events took place throughout the country. However, the ODIHR EOM was made aware of a total of 55 events, and observed 22 of them. Despite the ODIHR EOM's requests to all candidates, most did not make their campaign schedules available on the grounds that they were internal documents.⁵⁴ Candidates informed the ODIHR EOM that they were satisfied with allocated venues for indoor events and chose not to organize outdoor events.

Mr. Tokayev extensively toured the country in his capacity as president, receiving significant media coverage. During the campaign, Mr. Nazarbayev, in his capacity as First President, intensified his public appearances and called on voters to support Mr. Tokayev.⁵⁵ In a number of instances, public sector employees and students informed the ODIHR EOM that they had been instructed by public

⁵¹ A request must specify the goal of the meeting, format, place, start and end time, approximate number of participants, and the names of the organizers. The [2015 report](#) of the UN Special Rapporteur on the rights of assembly and association states that "the right to peaceful assembly must not be subject to prior permission from the authorities, but at best by a notification procedure whose rationale is to ensure police protection to demonstrators and bystanders". Paragraph 12 of the 1996 UN CCPR General Comment No. 25 to the ICCPR states "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected". See also paragraph 9.2 of the 1990 OSCE Copenhagen Document. Paragraph 26 of the [1999 OSCE Istanbul Summit Declaration](#) stipulates that the participating States: "[...] pledge to ensure fair competition among candidates as well as parties, including through their access to the media and respect for the right of assembly". See also 2010 [Joint ODIHR/Venice Commission Guidelines on Freedom of Peaceful Assembly](#), paragraph 6.

⁵² For example, on 25 May, a citizen calling for boycott of the election on social media, was sentenced to two days of administrative arrest. Between 9 May and 4 June, three individuals were fined approximately EUR 90 for posts related to opinion polls on their social network pages.

⁵³ On 7 and 8 June, more than a dozen individuals were detained around the country, with one credible report of police violence. The officials informed the ODIHR EOM that some cases related to investigations to identify affiliates of DCK. Three persons were subjected to 72 hours of pre-trial detention and consequently sentenced to several months of arrests, and six were sentenced to 3 to 15 days of administrative arrests.

⁵⁴ The ODIHR EOM was provided with campaign schedules of Mr. Akhmetbekov and Mr. Taspikhov. Mr. Tokayev's campaign headquarters informed the ODIHR EOM that campaign schedules are internal documents and could be shared only if a non-disclosure agreement is signed.

⁵⁵ On some of the posters Mr. Tokayev featured together with Mr. Nazarbayev, emphasizing continuity of social, economic, foreign policies. According to the official [website](#) of the president, Mr. Nazarbayev had four public appearances within a month before his resignation; from the start of the campaign period until 7 June Mr. Nazarbayev, in his capacity as First President, made 21 appearances receiving heads of states, government officials, granting awards and attending high level events.

officials to attend campaign events and vote for the incumbent.⁵⁶ Such activities blurred the line between party and state and raised concerns about voters' ability to cast their vote freely, contrary to OSCE commitments and regional obligations.⁵⁷

The authorities should develop safeguards to ensure a clear separation between state and party and ensure that election campaigning is conducted in an atmosphere free from intimidation and fear of retribution. The authorities and political parties should refrain from coercing public-sector employees, students and others to attend campaign events.

IX. CAMPAIGN FINANCE

The Election Law provides for public and private funding. Candidates could cover some campaign expenses from the state budget, as determined by the CEC, with funds allocated indirectly through transfers to the accounts opened by the Nur-Sultan *Akimat* and administered by Nur-Sultan TEC.⁵⁸ Candidates must apply and provide supporting documentation to receive the funding. The procedures to apply for and use public funding are complex, lengthy and not sufficiently regulated in the law, which led to requests for clarifications from the candidates.⁵⁹ The reports on public funding were to be drafted and submitted by the Nur-Sultan TEC to the state audit agency, within regular accounting deadlines, which are not aligned with electoral process, not made public, and therefore are not duly reflected in the overall campaign finance review.

Private funds can consist of the candidates' own funds, contributions from parties or associations that nominated them, and donations from individuals and legal entities.⁶⁰ Contributions from state-funded organisations, charities, religious communities, and foreign, in-kind and anonymous sources are prohibited. Candidates must open dedicated accounts in the bank chosen by the CEC within a day of their registration. There was no unified date for all candidates to start fundraising. The bank was obliged to report to the CEC weekly on all contributions and expenditures.⁶¹

As required by law, the CEC published data on campaign funds. However, no disaggregated information was provided on who donated funds or for what purposes expenditures were made, thus

⁵⁶ Credible cases were reported to the ODIHR EOM in Aktau, Aktobe, Almaty, Atyrau, Kostanay, Kyzylorda, Nur-Sultan, Pavlodar, Petropavl and Semey.

⁵⁷ Paragraph 5.4 of the 1990 OSCE Copenhagen Document states that there should be "a clear separation between the State and political parties; in particular, political parties will not be merged with the State". Article 19.2g of the CIS Convention commits states to "... assure that the law and governmental policy provide for separation between the party and state". Paragraph 7.7 of the OSCE Copenhagen Documents commits states to "ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution." See also paragraph 19 of the 1996 UN CCPR General Comment No. 25 to the ICCPR.

⁵⁸ Each candidate was entitled to approx. EUR 12,350 for TV and EUR 470 for radio appearances; EUR 1,900 for print media; EUR 470 for public events; EUR 940 for printed materials and EUR 1,110 for transportation.

⁵⁹ Candidates should apply for funding by submitting the contracts with the service providers and invoices. The commission has 10 days to transfer the payments. Requests for clarifications were submitted by five candidates.

⁶⁰ Cumulative funds of candidates and nominating bodies are limited to approximately EUR 1.2 million and donations are limited to approximately EUR 1.5 million. Candidates' expenditure is limited to the amount of private and public funds established by law (approximately EUR 2.72 million).

⁶¹ The CEC informed the ODIHR EOM that it does not conduct additional control of expenditures from private funds during the campaign period.

reducing transparency and accountability.⁶² According to the CEC, all seven candidates submitted final campaign finance reports within the legal deadlines, although three candidates were asked to resubmit due to errors, although such requests are not regulated in the law or rules.⁶³ There is no regulation on the reports verification by the CEC and cross-checking of the candidates' reports with the data from the bank and audit authorities. The reports were filed after the inauguration of the winner and were not published on the CEC website, which deprived the reporting procedure of its effectiveness.⁶⁴

The law should include clear reporting and auditing procedures for campaign finance, including from public funds. Submission and publication of candidates' interim finance reports before election day should be required in order to provide for accountability. To enhance transparency, the law should mandate that detailed financial reports are submitted and published in a timely fashion.

Sanctions for breaches of campaign finance rules are defined in the Administrative Offences Code, which establishes fines of up to approximately EUR 294 and, additionally, in the Election Law, which provides for deregistration of candidates for any violation, and the invalidation of election results if violations are disclosed after the vote. There is a lack of established criteria for selection of the applicable law when determining the sanction, including diversified measures in the Election Law, which may lead to arbitrary decisions or disproportionate sanctions, at odds with international standards.⁶⁵

To ensure legal certainty, the criteria for application of campaign finance sanctions, as stipulated under different laws, should be clarified, as well as the authority to apply such sanctions.

X. MEDIA

A. MEDIA ENVIRONMENT AND LEGAL FRAMEWORK

According to the Ministry of Information and Social Development, there are over 3,000 registered media outlets. While there is no public broadcaster, a number of broadcasting and print media are fully or partly state-funded. Despite a large number of outlets, most ODIHR EOM interlocutors

⁶² Article 7.3 of the 2003 UN Convention Against Corruption requests states to “tak[e] appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office”. The [2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation \(CDL-AD\(2010\)024\)](#) states that “Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable”, while “political finance disclosure is the main policy instrument for achieving... transparency”. Paragraph 206 defines that “transparency in reporting, which is an accepted good practice, requires the timely publication of financial reports. The fulfillment of this requirement necessitates that reports contain enough details in order to be useful and understandable for the general public.”

⁶³ Ms Yespayeva, Mr Rakhmedzhanov, and Mr Akhmetbekov had to resubmit reports. According to the CEC, Mr. Tokayev raised approximately EUR 2.7 million and spent EUR 2.66 million; Ms Yespayeva raised EUR 833,400 and spent EUR 782,100; Mr Tugel raised EUR 285,000 and spent EUR 255,000; Mr Rakhembekov collected and spent precisely the same amount of EUR 605,550; Mr Taspihov raised EUR 970,600 and spent EUR 924,400; Mr. Akhmetbekov and Mr. Kossanov financed their campaigns from personal funds (respective contributions of EUR 1,133.500 million and EUR 261,511), while their spendings amounted to EUR 1,133 million and EUR 261,496.

⁶⁴ The [2010 OSCE/ODIHR and Venice Commission Guidelines on Political Party Regulation \(CDL-AD\(2010\)024\)](#) requires that “[t]he law should define the format of reports so that parties provide standard reports that disclose all categories of the required information and so that reports of parties can be compared. In an effort to support transparency, it is good practice that such financial reports are made timely and publicly available on the internet”. Article 12.5 of the 2002 CIS Convention requires that the electoral bodies shall publish the information on the use of campaign funds.

⁶⁵ Section II.2.63 of the [2002 Venice Commission's Code of Good Conduct in Electoral Matters](#) provides that “Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy.”

claimed that national and regional authorities influence media through the distribution of public contracts, which, in a limited advertising market, can effectively undermine their independence.⁶⁶ According to many ODIHR EOM interlocutors, state-funded media have easier access to information from official sources compared to other media, but do not critically assess official information. In several cases, the state-funded media chose not to cover specific political events outside of the campaign that generated public interest.⁶⁷ In contrast, on several occasions, the ODIHR EOM received credible information that some independent journalists were prevented from reporting on protests and demonstrations or were detained.⁶⁸

Media outlets should be free to establish their own editorial policies. State authorities should refrain from any interference in the activities of media and journalists, between and during election periods. In order to establish a publicly accountable independent broadcaster, consideration could be given to transforming the state-owned broadcasters into a public service broadcaster.

The Ministry of Information and Social Development, as well as the Prosecutor General and the National Security Committee, are entitled to block websites and halt media outlet operations, without judicial oversight. Additionally, a government decision empowers the National Security Committee, Prosecutor General, Ministry of Interior Affairs and Ministry of Defense to halt or have prioritized access to communications in case of state of emergency, but also in a case of perceived threat, including of “social character”.⁶⁹ On 9 May, a number of online media outlets, as well as Facebook, Instagram and YouTube, were not accessible.⁷⁰ The ODIHR EOM observed that access to the social networks and messaging applications and services was limited or throttled in the evenings from several minutes up to 17 hours, on a daily basis, including on election day. Broad anti-extremist legislation and a restrictive regulatory framework, including powers of various bodies to block websites without a prior court ruling, challenge freedom of the media and induce self-censorship.⁷¹

Restrictions on access to websites and other internet-based resources should be subject of judicial oversight. The judicial review of any proposed restrictions should be public, including the decisions and the full list of blocked websites.

Freedom of expression and the right of access to information are guaranteed in the Constitution, but the legal framework for media contains a number of restrictive provisions. Contrary to previous ODIHR recommendations and calls from the OSCE Representative on Freedom of the Media (RFoM), defamation and insult remain criminal offences. Incitements to social, national and religious

⁶⁶ See, for example, paragraph I.3 of the 2007 Council of Europe’s Committee of Ministers Recommendation [CM/Rec\(2007\)15](#) to member states on measures concerning media coverage of election campaigns.

⁶⁷ The state-funded TV channels and online news websites did not report on events such as the 21 April and 1 May demonstrations and detention of some activists and journalists. The protests of a group “Mothers of many children”, who were demanding the resolution of housing issues, and protests that took place on the election day and the day after were covered only from the point of view of the authorities.

⁶⁸ See, for example, the 9 June [statement](#) by the OSCE Representative on Freedom of the Media (RFoM).

⁶⁹ [Government decision 679](#) of 25 October 2018.

⁷⁰ See the [statement by the](#) OSCE Representative on Freedom of the Media (RFoM) of 10 May. According to some interlocutors, Nur-Sultan and Almaty regions had no Internet access. According to the [statement](#) by the Minister of Information and Social Development from 14 May, interruptions were due to technical issues related to the operation of Internet service providers. Paragraph 3a of the 2011 [Joint Declaration on Freedom of Expression and the Internet, made by the UN](#) Special Rapporteur on Freedom of Opinion and Expression, the OSCE RFoM and Organization of American States’s Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights’ Special Rapporteur on Freedom of Expression and Access to Information, states that “Mandatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.”

⁷¹ See also paragraphs 21-25 of the 2011 UN CCPR General Comment No. 34 to the Article 19 of the ICCPR.

discord, as well as spreading false information are punishable with substantial fines or sentences of up to 20 years of imprisonment.⁷² The OSCE RFoM, on several occasions, has stated that “too often journalists work under pressure and fear, lacking access to information, especially public information which could be provided by the authorities” and that “detention of journalists in Kazakhstan is of grave concern”.⁷³

Criminal defamation, insult and spreading of false information provisions should be repealed in favour of civil sanctions designed to restore the reputation harmed, rather than compensate the plaintiff or punish the defendant. Sanctions should be strictly proportionate to the harm caused and the use of non-pecuniary remedies should be prioritized.

According to the Law on Media, social networks are considered mass media. The Information Committee under the Ministry of Information and Social Development informed the ODIHR EOM that it conducted qualitative media monitoring of all national media outlets, 150 websites in the country and all popular social networks. Although the scope and methodology of its monitoring was not publicly available, the Information Committee informed the ODIHR EOM that the focus of the monitoring was on the compliance of the media with legal provisions.

Consideration could be given to establishing an independent media oversight body mandated to conduct media monitoring. The methodology and results of such monitoring should be made public.

The Prosecutor General issued two general warnings on 8 and 23 May related to the conduct of opinion polls, restrictively interpreting the law and sanctioning those that did not include information about how, when and by whom the polls were conducted, including physical persons that conducted opinion polls on social media.⁷⁴ During the campaign period, based on results of the media monitoring by the Information Committee, four news portals and three individuals were fined for conducting opinion polls online.⁷⁵



B. MEDIA MONITORING FINDINGS

The campaign was covered mostly in the nationwide state-funded media. Some private media informed the ODIHR EOM that they preferred not to report on election-related issues due to over-restrictive regulations. The CEC chose *Khabar TV* to conduct the sole debate that was organized for all electoral contestants on 29 May. Four candidates participated, while the remaining three were represented by proxies, including the incumbent. No women took part in the debate, with the only woman candidate represented by her male campaign manager. The participants spoke Kazakh or Russian without interpretation, limiting the ability of voters who speak only one of the two languages to form an informed opinion.

⁷² Incitement is punishable with imprisonment from 12 to 20 years, and spreading false information is punishable with limitation of freedom or imprisonment from 3 to 7 years. There is no statute of limitation for media cases.

⁷³ See OSCE RFoM statements from [5 April 2018](#), [8 November 2018](#), and [27 February 2019](#).

⁷⁴ The prosecution invoked Article 120 of the Administrative Offences Code and Article 28.9 of the Election Law.

⁷⁵ Prior to election day, the prosecutor initiated eight media-related court cases. Seven concerned breaches of regulation of opinion polls. Four news portals (*Nur.kz*, *Kazak yni*, *Socium Kyzylorda* and *Exclusive.kz*) were fined approximately EUR 180. Three individuals were fined approximately EUR 90 for posts on their social network pages, two of which were appealed and rejected (*See Complaints and Appeals*). One more case was related to a violation for publishing campaign materials without first submitting the pricelist to the CEC.

During the campaign, Mr. Nazarbayev, in his capacity as First President, enjoyed significant media attention, including in most headlines.⁷⁶ The state-funded broadcasters dedicated between 14 and 31 per cent of their coverage to Mr. Nazarbayev including election-related coverage. Mr. Tokayev received between 10 and 53 per cent coverage in respect of his daily presidential duties, while as candidate he received between 9 and 20 per cent. The other candidates received between 5 and 20 per cent each, in the monitored broadcasters. While the state-funded newspapers followed the same pattern, two independent newspapers monitored by the ODIHR EOM focused on negative coverage of Mr. Nazarbayev.

The coverage of all the candidates was either positive or neutral and their activities were often presented by proxies. In general, media did not provide the viewers with a comprehensive analysis of campaign platforms of candidates. As for the paid advertisements, all candidates provided video spots to the state-funded broadcasters, but only Mr. Tokayev's spots appeared on two of three monitored private channels. While media respected the formal allocation of airtime for candidates during the campaign, the extensive coverage of the incumbent in his official capacity and support for his election by the First President did not provide a level playing field for all candidates. This, alongside the lack of critical analysis by media, limited voters' ability to make an informed choice.⁷⁷

The media should be required to report on the incumbent and the authorities in a balanced manner. Formats of election coverage and decisions on paid election-related material should depend solely on the media's own editorial policy.

According to the CEC, no media-related complaints or appeals were submitted with the CEC or the Information Committee, who may sanction individuals or entities according to the Administrative Code. However, the ODIHR EOM was informed that the news portal Hola News submitted an appeal with the CEC on an 11-minute long report aired on *Khabar TV* about Mr. Nazarbayev's meeting with members of *Nur Otan*. Allegedly, the report contained elements of campaigning in favour of Mr. Tokayev. Hola News requested clarification as to whether there were elements of campaigning, and if it would be registered as a violation of the equal coverage provision of the candidates. On 1 July the CEC finalized their review of the appeal and concluded that the report in question was part of the news coverage and not related to the election campaign. The Information Committee, who conducts media monitoring and was consulted by the CEC on the matter, concurred with the CEC's decision.

XI. COMPLAINTS AND APPEALS

Election-related complaints may be filed by all electoral stakeholders with election commissions or courts within ten days of the alleged violation.⁷⁸ Election commissions have five days to consider complaints, and three days to review appeals against decisions of lower-level commissions.

⁷⁶ During the campaign period, the ODIHR EOM monitored the following media outlets: TV stations: *Khabar TV*, *Qazaqstan TV* (state-funded broadcasters), *First Eurasian Channel* (a mostly state-funded broadcaster), *Channel 31* and *KTK* (private channels). Radio: *Kazakh Radio* (state-funded). Newspapers: *Egemen Kazakhstan* and *Kazakhstanskaya Pravda* (state-funded dailies), *DAT*, *Liter*, *Vremya*, *Zhas Alash* (private periodicals). Online outlets: sputniknews.kz, tengrinews.kz, and www.zakon.kz.

⁷⁷ In paragraph 10.1 of the 1990 OSCE Copenhagen Document States reaffirm to "respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information. See also 2011 [UNHRC General Comment No. 34](#).

⁷⁸ In case a complaint is simultaneously submitted to both, the election commission must suspend any proceedings until the court ruling enters into force. Section II.3.3 of the 2002 Venice Commission's Code of Good Practice in Electoral Matters recommends avoiding positive or negative conflict of jurisdiction, so that "neither the appellants nor the authorities should be able to choose the appeal body".

Complaints filed within five days before or on election day must be reviewed immediately.⁷⁹ The ODIHR EOM observed several cases in which TECs relinquished jurisdiction on complaints in favour of the courts, which subsequently decided they were under the competence of the TECs, eventually leaving those complaints unexamined.

To provide legal certainty, the legal framework should be amended to eliminate the possibility of concurrent jurisdictions and simplify the dispute resolution process by designating competencies to a single institution.

According to the statistical compilation received by the ODIHR EOM from the CEC, it considered 203 applications, 27 of which were qualified as complaints. The applications were considered without formal hearings by the CEC and without granting the opportunity to the applicants to provide additional arguments. Despite requests, the CEC did not publish nor provide the ODIHR EOM with the texts of complaints or official decisions and responses, undermining effective remedy, contrary to OSCE commitments.⁸⁰

To ensure transparency of the election dispute resolution process and access to an effective remedy for all stakeholders, the law should require that all applications of a dispute nature be treated as formal complaints, that all complaints are reviewed in open sessions, and that decisions are reasoned and made public in a timely manner.

The Supreme Court receives complaints and appeals challenging CEC decisions. Candidate registration or de-registration can be challenged within ten days of the CEC decision, and the Supreme Court has ten days to issue a final decision. The judgement could potentially be delivered after the campaign starts, undermining equal possibility for campaigning. Five appeals related to candidacy requirements for registration were submitted to the Supreme Court, four of which were considered inadmissible and one was rejected.⁸¹

The final election results may not be appealed before the courts but only to the Constitutional Council which is not part of the judicial system.⁸² The final results can be appealed within ten days of the announcement only by the president, speakers of both houses of parliament, or at least one fifth of the members of parliament or the prime minister. Citizens are deprived of the right to challenge the

⁷⁹ According to the law, election commissions should resolve complaints related to inclusion to voter lists on the same day and their decisions are subject to further expedited judicial review.

⁸⁰ According to the CEC, overall, 35 applications were received during candidate registration and 168 after the campaign began. The majority concerned issues of election administration (119) and applications for self-nomination (34), 8 were deemed inadmissible and 27 were transferred to respective TECs for examination. Paragraph 5.11 of the 1990 OSCE Copenhagen Document provides that “administrative decisions against a person must be fully justifiable and must as a rule indicate the usual remedies available” and paragraph 5.10 commits participating States to provide everyone with “effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”.

⁸¹ These cases concerned constitutionality of candidacy restrictions. One of the decisions was reviewed and upheld on cassation by the Supreme Court Civil Law Judicial Collegium. Another appeal was related to the assessment of the language test and alleged damage to the reputation of the nominee by the public announcement of the test results. The Court conducted three hearings on the case, one closed to the public and ODIHR EOM observers, and dismissed the appeal.

⁸² The Constitutional Council is a governmental body tasked with interpreting constitutional provisions, determining the constitutionality of bills and legal acts, as well as the validity of presidential elections in case the results are challenged. It consists of seven members, three are appointed by the president, including the chair, two respectively by the Senate and the *Majilis*. The members of the Constitutional Council have the status of civil servants dismissible by the appointing officials; the former presidents are granted lifelong membership by the Constitution.

results, contrary to good electoral practice.⁸³ The law does not establish clear conditions or criteria for invalidation of election results.

The Election Law should be amended to allow all electoral contenders and voters to directly appeal the results before a court. The law shall establish clear conditions for invalidation of election results.

The Constitution provides that the courts exercise justice independently. However, judges at all levels are nominated or appointed, and dismissed, by the president and are therefore put under dependency of the executive, including through disciplinary measures, which is contrary to the principle of separation of powers.⁸⁴ Some courts requested approval of the *Akimats* to conduct meetings with the ODIHR EOM, indicating lack of independence from the executive.

Allegations of electoral offenses can be filed with public prosecutors or courts who should consider them within five days. The prosecutors actively monitor compliance with electoral legislation.⁸⁵ The Deputy Prosecutor General announced that on the election day 19 violations were identified related to unlawful campaigning, issuing multiple ballot papers to voters, ballot box stuffing, voting at several polling stations. Out of 18 administrative cases initiated, 12 concerned issuing multiple ballot papers and six on proxy voting.⁸⁶ It was reported that the PEC members involved were suspended, and that all additional ballot papers were invalidated. On election day, the CEC reported that it received 11 applications and complaints, but no further information on the results of their review was provided publicly. The ODIHR EOM observed that multiple complaints on election law violations were filed to PECs and TECs by citizen observers and voters. In some cases, PEC members allegedly refused signing the protocols due to such violations. Contrary to the law, no information on complaints and appeals on election day were published online or provided to the ODIHR EOM by PEC members, undermining transparency and public trust in the integrity of the electoral process.

The election commissions should maintain and publish logs of annotated complaints on their websites, for public scrutiny.

XII. ELECTION OBSERVATION

In accordance with OSCE commitments, the Election Law provides for both citizen and international observers. In addition, candidates and registered political parties are each entitled to one proxy per polling station. Citizen observers may be nominated by public associations and non-profit organizations. While international observers are accredited by the CEC, there is no formal accreditation procedure for citizen observers and proxies.⁸⁷

⁸³ Section II.3.3.3.f of the 2002 Venice Commission's Code of Good Practice in Electoral Matters recommends direct legal standing in challenging election results: "All candidates and all voters ... must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections".

⁸⁴ Paragraph 5.12 of the 1990 OSCE Copenhagen Document requires the States Parties to ensure independence of judges and the impartial operation of the public judicial service. Para 19.2 of the [1991 OSCE Moscow Document](#) reiterates the obligation of States to ensure judicial independence in practice and prohibits improper influence on judges. See also the [Venice Commission's Report on Judicial Appointments](#) and the [Venice Commission's European Principles of the Independence of the Judiciary](#).

⁸⁵ During the campaign, the prosecutor initiated eight election-related court cases. Seven concerned breaches of regulation on opinion polls. Four news portals (*Nur.kz*, *Kazak yni*, *Socium Kyzylorda* and *Exclusive.kz*) were sentenced to fines of approximately EUR 180. Three individuals were fined for approximately EUR 90 for posts on their social network pages (*See Election Campaign*), two of which were rejected on appeal. At least one individual was fined for destruction of campaign posters.

⁸⁶ In Nur-Sultan, Almaty and Almaty oblast, as well as in Atyrau, Kyzylorda, Mangistau and Turkestan oblasts. As of 19 July, the courts sentenced 20 individuals with administrative fines of EUR 150 each.

⁸⁷ Citizen observers are required to have a letter from their nominating organization.

Several organizations deployed observers, including most notably Next.kz, “Wings of Liberty”, the Youth Information Service of Kazakhstan (MISK), and the civil society “Echo”.⁸⁸ In the run-up to elections, the observation platform *Amanat* announced plans to deploy observers in almost every polling station (some 9,000 observers). A considerable number of ODIHR EOM interlocutors questioned the independence of this observer group, citing political affiliation. By the 3 June deadline, the CEC accredited 1,013 international observers.⁸⁹

XIII. ELECTION DAY

Election day was efficiently organized, but a significant number of procedural errors during voting, counting and tabulation, as well as several cases of electoral malfeasance and overall lack of transparency, were observed. While the polling proceeded in a generally calm and orderly manner, as observed by the ODIHR EOM, a number of peaceful protests organized in Nur-Sultan, Almaty, Semey, and Shymkent resulted in a disproportionately forceful response by police to disperse or arrest protesters. The authorities’ response to peaceful gatherings on, and after, election day contradict the fundamental principle of freedom of assembly, as stipulated in paragraph 9.2 of the 1990 OSCE Copenhagen Document and paragraph 21.1 of the 1991 OSCE Moscow Document.⁹⁰ (see *Post-Election Developments*).

The law enforcement agencies should implement a human rights-based approach to policing assemblies and refrain from excessive and disproportionate use of force towards participants of assemblies. The authorities should effectively investigate and adequately sanction any alleged instances of ill-treatment committed by law-enforcement officials.

The IEOM observed and received credible follow-up reports that several hundred protesters were detained in Nur-Sultan and Almaty, including journalists and human rights defenders. Later, court trials were organised at detention centres, closed to the public and observers, without a possibility for legal defence, and in breach of other procedural rules (see *Post-Election Developments*).⁹¹

Throughout election day, meaningful transparency was not always provided. In a number of polling stations, IEOM observers were prevented from following the process and in many cases they were not allowed to scrutinize the voter lists or were requested to remain at a large distance from the polling proceedings and the vote count. Despite the recent amendments to the Election Law, election observers are still not granted direct and effective opportunities to observe the voting and counting process, as well as to the tabulation of results. During counting, the observers did not have a clear

⁸⁸ “Echo” deployed 170 stationary observers and 62 mobile observers across the country. “Wings of Liberty” deployed 99 stationary observers. MISK deployed 82 stationary observers. Next.kz deployed 1,256 observers nationwide and 11 abroad.

⁸⁹ The CEC accredited observers from ODIHR, OSCE PA, CIS, CIS IPA, the Cooperation Council of Turkic Speaking Countries, the Shanghai Organization for Cooperation, the Organization of Islamic Cooperation and the Collective Security Treaty Organization. The CEC also accredited 147 bilateral observers from 41 different countries.

⁹⁰ Paragraph 9.2 of the 1990 OSCE Copenhagen Document states that “everyone will have the right of peaceful assembly and demonstration. Any restrictions which may be placed on the exercise of these rights will be prescribed by law and consistent with international standards.” Paragraph 21.1 of the 1991 OSCE Moscow Document requires that “law enforcement personnel, when enforcing public order... act in the public interest... [and] use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement”.

⁹¹ Article 9 of the ICCPR safeguards the right to liberty and security of person, and ensures that deprivation of liberty is conducted “in accordance with procedure established by law”. Article 14 ensures the right “to a fair and public hearing by a competent, independent and impartial tribunal, (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing... (g) not to be compelled to testify against himself or to confess guilt”. See also, paragraphs 5.10, 5.16 and 5.17 of the 1990 OSCE Copenhagen Document.

view of procedures in 26 per cent of observations, and were not able to observe without restrictions in 25 per cent. The PECs did not fully co-operate with the IEOM observers in 8 per cent of polling stations visited during voting, and 20 per cent of polling stations visited during the vote count. The law does not provide international observers with the right to receive certified copies of the election result protocols at the PEC or TEC levels.⁹²

Measures should be taken to ensure unrestricted access of citizen and international observers to the entire electoral process, including clear view of all procedures within polling stations and tabulation premises during voting, counting, and tabulation.

A. OPENING AND VOTING

Most polling stations opened on time. Some procedures were not followed, including counting and announcing the number of ballots, in almost half of observations. Some 28 per cent of observed polling stations were inaccessible to voters with disabilities.

Voting was assessed negatively in 6 per cent of polling stations. The IEOM observed unauthorised persons in 6 per cent of polling stations. Serious irregularities were observed in polling stations across the country, including series of identical signatures in voter lists (9 per cent of observations), voters without an ID being allowed to vote (3 per cent) and group voting (4 per cent). IEOM observed ballot box stuffing in 23 polling stations and received additional video material that showed ballot box stuffing in at least 19 other polling stations. Many of these videos were also widely circulated on social media. In 4 per cent of polling stations, individuals outside the polling stations were systematically recording who turned out to vote.

IEOM observers noted that a significant number of voters were added to the voter list on election day, amounting to, on average, some 25 voters per polling station.⁹³ However, according to the CEC, the total increase in the number of voter list entries from 20 May until the closing of the polling stations was 12,369 (see also *Voter Registration*). In some cases, voters were added without having a residence in the given precinct. The IEOM observed that City Service Centre (*TSON*) personnel, located at polling stations, printed on-demand residence certificates to anyone who requested them, with which voters could be registered to vote on election day.⁹⁴ No mechanism was in place to prevent the same person requesting multiple residence certificates, which was observed by the IEOM. The PECs did not retain AVCs in 12 per cent of polling stations observed or record the data of voters who voted with the AVCs in 13 per cent of polling stations, which underscored serious challenges with AVC safeguards that undermine the integrity of voter lists and cannot guarantee the equality of votes.

B. THE VOTE COUNT

Counting was evaluated negatively by IEOM observers in more than half of polling stations observed, raising serious questions about whether ballots were counted and reported honestly, as required by paragraph 7.4 of the 1990 OSCE Copenhagen Document.⁹⁵ Observers were restricted from following the vote count in a quarter of polling stations observed. The IEOM observed deliberate falsification in

⁹² Issuance of a TEC's results protocols to any authorized person present at the tabulation of results is mentioned only in the "Methodological Guideline for Territorial Election Commissions on the preparation and conduct of early elections of the President of the Republic of Kazakhstan - June 9, 2019" issued by the CEC.

⁹³ Of these, some 40 polling stations observed had more than 100 voters added on election day.

⁹⁴ By 11am, *TSON* offices in polling stations 138 and 139 in Nur-Sultan, informed the IEOM that they issued some 200 and 150 residence certificates, respectively. The CEC informed IEOM observers it did not intend to conduct any *ex-post* audits of the use of residence certificates on election day.

⁹⁵ Paragraph 7.4 of the 1990 OSCE Copenhagen Document stipulates that "[...]the participating States will [...] ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public."

11 per cent of counts observed, including indications of ballot box stuffing in 9 per cent of observations. Significant procedural errors were observed. In half of the observations, the PECs did not determine the number of ballots issued by counting voters' signatures or announce the number of voters and unused ballots.

More than half of observed PECs did not establish the number of voters who voted with AVCs. In almost one-third of polling stations, unused ballots were not cancelled before opening the ballot boxes. PECs rarely announced the voters' choice during the count and in some cases, the ballots were not correctly separated into different piles before being counted.

In one-fifth of observations, the number of homebound voters was not recorded in the protocol. The number of ballots in the mobile ballot boxes was higher than the number of homebound requests in 81 per cent of counts observed, but such ballots were invalidated in only 19 per cent of cases. In 9 per cent of all counts observed, the total number of ballots exceeded the number of voters who voted. More than half of PECs failed to announce the figures they entered in the protocols, which were not posted in almost half of cases. Some PECs did not fill the protocols completely and in ink. Despite the explicit legal provision that observers should be permitted to observe the process "in conditions enabling good observation", observers did not always have a clear view of the counting.

C. TABULATION AND THE ANNOUNCEMENT OF RESULTS

The IEOM observed the handover and results tabulation process in 95 of 232 TECs. Tabulation was assessed negatively in one-fifth of TECs visited, mainly due to lack of transparency (in 22 TECs), which is significant, but also due to observation of electoral malfeasance in 9 TECs.⁹⁶ This included completion of count protocols at TECs (19 cases), as well as TEC staff instructing PEC chairpersons to change results (13 cases), in violation of the law. IEOM observers were restricted in their observations in 21 TECs and they did not have a clear view of the process in many TECs. No meaningful observation was possible in 16 TECs due to lack of co-operation of the TEC staff. In Nur-Sultan city TEC and three TECs in Turkistan and Shymkent, IEOM observers were denied access. The conditions for reception and tabulation of protocols were not adequate in 15 TECs, and some were overcrowded. A number of PEC protocols could not reconcile in 23 TECs observed.

Several procedural shortcomings were noted by ODIHR EOM observers, including some cases of PECs delaying the transfer of protocols to the TECs. In some instances, observers noted that the votes from one candidate were reassigned to another.⁹⁷ In some cases, IEOM observers reported that the TEC postponed the tabulation of protocols received from PECs until the following day for no apparent or justified reason and without processing them in the presence of observers.⁹⁸ Although not explicitly forbidden by law, such practice diminishes the integrity of reported election results and has a detrimental effect on the confidence in its legitimacy.

To ensure integrity of election results, more detailed, uniform provisions and procedural safeguards should govern the tabulation process. This should include public, uninterrupted sessions from the closing of polling stations until the completion of tabulation.

⁹⁶ As observed at TECs in Almaty, East Kazakhstan, Kyzylorda, Nur-Sultan, Pavlodar, Turkistan and Zhambyl. In addition, in Zhalagash and Kyzylorda TECs (Kyzylorda Oblast) all PEC protocols were pre-signed by all PEC members.

⁹⁷ In PS 562 in Almaty, the PEC results showed that candidates Kossanov and Tokayev got 812 and 934 votes respectively, whereas the TEC results compilation summary shows 176 and 1,143 votes, respectively. In PS 8 in Akmola, PEC protocol shows 389 votes for Tokayev and the TEC summary compilation shows 421 (32 more). According to the information made available to the CEC by TECs, there were no recounts of PEC-level results.

⁹⁸ For example, in Aktau, Atyrau, Karakiya, Kyzylorda, West Kazakhstan, Zarma and Zhambyl.

The law does not require the CEC to publish the number of invalid ballots within the CEC results protocol.⁹⁹ In contrast, PECs and TECs are obliged to record and compile such figures in their results protocols. However, the number of invalid ballots was inconsistently aggregated by a number of TECs, which reported zero or a very low number of invalid ballots.¹⁰⁰ The CEC did not publish results disaggregated by PECs, thereby circumventing a crucial transparency safeguard and undermining public confidence. The voter turnout was reported at 77.5 per cent.

The CEC final result protocol should include the number of blank, invalid and spoiled ballot papers and the number of voters added to the voter lists on election day.

To enhance transparency and safeguard the integrity of election results, the CEC should publish PEC protocols on its website, disaggregated by polling station, for each territorial unit.

XIV. POST-ELECTION DEVELOPMENTS

Following numerous detentions that occurred on election day during peaceful protests, the ODIHR EOM observed that expedited court trials were organised at detention centres, closed to the public and observers. ODIHR EOM observers present at the detention centres were informed from the released detainees and their lawyers that these trials were conducted without examination of evidence or a possibility for a meaningful legal defence, and that the proceedings were conducted in breach of a number of other procedural rules.¹⁰¹ The verdicts seen by the ODIHR EOM were primarily based on the police statements with guilt established solely on presence at the protests. The sanctions included fines and administrative arrests of up to 15 days for participation or organization of illegal public assemblies.¹⁰² The appeal hearings were formal and in general, lasted 15 minutes in many cases.¹⁰³ In Nur-Sultan and Almaty, detentions and arrests continued until 12 June.¹⁰⁴

The CEC announced preliminary results on 10 June ahead of the deadline, a day before the legal deadline to receive the TEC-level aggregated results.¹⁰⁵ On 12 June, the CEC declared the acting president, Mr. Tokayev, as the winner with 70.76 per cent of the vote. The inauguration of the president took place on 12 June, prior to the expiration of deadlines for challenging the election results at the Constitutional Council and the verification of candidates' campaign finance reports, both of which could potentially influence the validity of the election results.

⁹⁹ Uncompleted (blank) ballot papers are considered and counted together with other invalid ballots.

¹⁰⁰ For a total of 53 TEC results protocols collected by the IEOM observers, the average number of invalid and blank ballots was 0.01 per cent. Notably, Bayzak, Glubokovsky, Zharminskiy, Chromtau, Alginskiy rayon TECs (with 54,000, 38,000, 26,000, 25,000 and 30,000 voters having voted respectively), each reported zero invalid ballots. Semey City TEC reported zero invalid ballots for 172,543 voters. Merken *rayon* TEC did not report any invalid ballots for 53,000 voters.

¹⁰¹ Article 9 of the ICCPR safeguards the right to liberty and security of person, and ensures that deprivation of liberty is conducted in accordance with procedure established by law. Article 14 ensures the right to a fair and public hearing by a competent, independent and impartial tribunal, (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing... (g) not to be compelled to testify against himself or to confess guilt. See also, paragraphs 5.10, 5.16 and 5.17 of the 1990 OSCE Copenhagen Document.

¹⁰² Although these verdicts were not published, the ODIHR EOM observers attended the publicly-held hearings on appeals at the courts during which the initial verdicts were challenged and reviewed.

¹⁰³ In some cases, the defence lawyers were deprived of the possibility to effectively represent their clients, as multiple hearings were conducted simultaneously. In the majority of cases, the appellate judgments granted the prosecutors' requirements.

¹⁰⁴ On 17 June, several individuals were fined up to EUR 290 for incitement to organise public gatherings.

¹⁰⁵ The CEC's [press release](#) that followed the 10 June session stated that "In accordance with Article 65 of the [election law], Kassym-Zhomart Tokayev is considered to be elected the President of the Republic of Kazakhstan".

The timeline for announcing election results should ensure that all legal possibilities for appeals are exhausted before the CEC officially declares the winner.

XV. RECOMMENDATIONS

These recommendations as contained throughout the text are offered with a view to further enhance the conduct of elections in Kazakhstan and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past ODIHR recommendations that have not yet been addressed.¹⁰⁶ ODIHR stands ready to assist the authorities of Kazakhstan to further improve the electoral process and to address the recommendations contained in this and previous reports.

D. PRIORITY RECOMMENDATIONS

1. Restrictions in the legislation related to constitutionally guaranteed fundamental rights and freedoms should be lifted. Excessively wide formulations of such restrictions in the law should be avoided to ensure legal certainty and prevent arbitrary implementation of the law. Any limitation of rights should be result of a judicial process and proportional to the aim it seeks.
2. To enhance independence and impartiality of the election administration, the Election Law should be amended to guarantee an inclusive and broad representation of political parties in election commissions at all levels. The principle that one political party has one member in a commission should be adhered to, and the distribution of leadership positions in the PECs and TECs should be reconsidered.
3. The blanket withdrawal of voting rights of citizens serving prison sentences should be revised to ensure proportionality between the limitation imposed and the severity of the offense committed. The norms disenfranchising persons with disabilities shall be abolished to ensure universal suffrage.
4. To safeguard the integrity of the voter register, election day registration should not be permitted at polling stations. To prevent multiple voting, voters registered in special polling stations should be excluded from the voter lists of the polling stations of their residence, and issuance of Absentee Voting Certificates should be conditional and subject to a post-election audit.
5. Consideration should be given to removing the residency, language and professional experience requirements for candidate eligibility and ensuring that any restrictions on the right to stand for those with criminal convictions are proportionate to the severity of the offence.
6. The Law on Peaceful Assemblies should be amended to require a simple notification procedure for holding a public gathering, instead of the current authorization requirement.

¹⁰⁶ According to the paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. The follow-up of prior recommendations is assessed by the ODIHR EOM as follows: recommendation 12 from the 2016 Final Report, and recommendation 11 from the 2015 final report are mostly implemented. Recommendations 1, 3, 4, 7, 8, and 20 from the 2016 Final Report, as well as recommendations 7, 12, 14, 18, 25 and 32 from the 2015 final report are partially implemented.
See also www.paragraph25.odihr.pl.

7. The authorities should develop safeguards to ensure a clear separation between state and party and ensure that election campaigning is conducted in an atmosphere free from intimidation and fear of retribution. The authorities and political parties should refrain from coercing public-sector employees, students and others to attend campaign events.
8. Criminal defamation, insult and spreading of false information provisions should be repealed in favour of civil sanctions designed to restore the reputation harmed, rather than compensate the plaintiff or punish the defendant. Sanctions should be strictly proportionate to the harm caused and the use of non-pecuniary remedies should be prioritized.
9. The Election Law should be amended to allow all electoral contenders and voters to directly appeal the results before a court. The law shall establish clear conditions for invalidation of election results.
10. To enhance transparency and safeguard the integrity of election results, the CEC should publish PEC protocols on its website, disaggregated by polling station, for each territorial unit.
11. The timeline for announcing election results should ensure that all legal possibilities for appeals are exhausted before the CEC officially registers the winner.

E. OTHER RECOMMENDATIONS

Background and Political Context

12. To promote political pluralism ahead of elections and facilitate registration of political parties, membership requirements for registration of political parties should be revised in the Law on Political Parties.

Legal Framework and Electoral System

13. In an open consultation with all relevant stakeholders, a comprehensive review of the legal framework for elections should be undertaken to address identified gaps and inconsistencies. CEC regulations should adequately supplement the legal framework to ensure consistency in procedures implemented by lower-level commissions.

Election Administration

14. To increase transparency and accountability, the CEC should be tasked to publish online, and in accessible format, the summary and breakdown of all relevant election information.

Voter Registration

15. The voter registration system could be further improved through the use of permanent, electronic voter register managed and maintained by one institution. Detailed and uniform procedures for compiling and updating the register should be in place and be consistently applied.

Candidate Registration

16. Independent candidates should be allowed to stand for presidential elections.
17. The legal framework should be amended to establish clear, objective and reasonable criteria for candidate registration, including the regulation on verification of supporting signatures and, if

retained, the evaluation of language fluency. Consideration could be given to opt for a single guarantee condition.

Election Campaign

18. Political parties should facilitate women's political advancement at all levels of decision making and integrate gender issues into their platforms.

Campaign Finance

19. The law should include clear reporting and auditing procedures for campaign finance, including from public funds. Submission and publication of candidates' interim finance reports before election day should be required in order to provide for accountability. To enhance transparency, the law should mandate that detailed financial reports are submitted and published in a timely fashion.

20. To ensure legal certainty, the criteria for application of campaign finance sanctions, as stipulated under different laws, should be clarified, as well as the authority to apply such sanctions.

Media

21. Media outlets should be free to establish their own editorial policies. State authorities should refrain from any interference in the activities of media and journalists, between and during election periods. In order to establish a publicly accountable independent broadcaster, consideration could be given to transforming the state-owned broadcasters into a public service broadcaster.

22. Restrictions on access to websites and other internet-based resources should be subject of judicial oversight. The judicial review of any proposed restrictions should be public, including the decisions and the full list of blocked websites.

23. Consideration could be given to establishing an independent media oversight body mandated to conduct media monitoring. The methodology and the results of such monitoring should be made public.

24. The media should be required to report on the incumbent and the authorities in a balanced manner. Formats of election coverage and decisions on paid election-related material should depend solely on the media's own editorial policy.

Complaints and Appeals

25. To provide legal certainty, the legal framework should be amended to eliminate concurrent jurisdictions and simplify the dispute resolution process by designating competencies to a single institution.

26. To ensure transparency of the election dispute resolution process and access to an effective remedy for all stakeholders, the law should require that all applications of a dispute nature be treated as formal complaints, that all complaints are reviewed in open sessions, and that decisions are reasoned and made public in a timely manner.

27. The election commissions should maintain and publish logs of annotated complaints on their websites, for public scrutiny.

Election Day

28. The law enforcement agencies should implement a human rights-based approach to policing assemblies and refrain from excessive and disproportionate use of force towards participants of assemblies. The authorities should effectively investigate and adequately sanction any alleged instances of ill-treatment committed by law-enforcement officials.
29. Measures should be taken to ensure unrestricted access of citizen and international observers to the entire electoral process, including clear view of all procedures within polling stations and tabulation premises during voting, counting, and tabulation.
30. To ensure integrity of election results, more detailed, uniform provisions and procedural safeguards should govern the tabulation process. This should include public, uninterrupted sessions from the closing of polling stations until the completion of tabulation.
31. The CEC final result protocol should include the number of blank, invalid and spoiled ballot papers and the number of voters added to the voter lists on election day.

ANNEX I: FINAL ELECTION RESULTS¹⁰⁷

Registered voters	11,960,364
Voted	9,274,110
Mobile voting	105,682
Voting with AVCs	22,502
Voter turnout	77.5%

Candidate	Votes	Percentage
Zhambyl Akhmetbekov	167,649	1.82
Daniya Yespayeva	465,714	5.05
Amirzhan Kossanov	1,495,401	16.23
Toleutai Rakhimbekov	280,451	3.04
Amangeldy Taspikhov	182,898	1.98
Kassym-Jomart Tokyaev	6,539,715	70.96
Sadi-Bek Tugel	84,582	0.92

¹⁰⁷

Source: [CEC website](#).

ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION

OSCE Parliamentary Assembly

George	TSERETELI	Georgia	Special Co-ordinator
Margareta	KIENER NELLEN	Switzerland	Head of delegation
Ani	SAMSONYAN	Armenia	MP
Roman	HAIDER	Austria	MP
Reinhold	LOPATKA	Austria	MP
Maximilian	UNTERRAINER	Austria	MP
Tahir	MIRKISHILI	Azerbaijan	MP
Pavel	PLZÁK	Czech Republic	MP
Christoph	NEUMANN	Germany	MP
Paul	PODOLAY	Germany	MP
Andreas	SCHWARZ	Germany	MP
Zsolt	CSENGER-ZALÁN	Hungary	MP
Luigi	AUGUSSORI	Italy	MP
Alex	BAZZARO	Italy	MP
Gianluca	CASTALDI	Italy	MP
Mauro	DEL BARBA	Italy	MP
Gianluca	FERRARA	Italy	MP
Emanuele	SCAGLIUSI	Italy	MP
Vito	VATTUONE	Italy	MP
Inese	IKSTENA	Latvia	MP
Gustave	GRAAS	Luxembourg	MP
Josee	LORSCHÉ	Luxembourg	MP
Sivert	BJØRNSTAD	Norway	MP
Siv	MOSSLETH	Norway	MP
Barbara	BARTUŚ	Poland	MP
Grzegorz	FURGO	Poland	MP
Mirosław	SUCHOŃ	Poland	MP
Jacek	WŁOSOWICZ	Poland	MP
Miguel	SANTOS	Portugal	MP
Victor-Paul	DOBRE	Romania	MP
Petru	MOVILA	Romania	MP
Artem	TUROV	Russian Federation	MP
Ľuboš	BLAHA	Slovakia	MP
Johan	BÜSER	Sweden	MP
Margareta	CEDERFELT	Sweden	MP
Jasenko	OMANOVIĆ	Sweden	MP
Sven-Olof	SÄLLSTRÖM	Sweden	MP
Linda	WESTERLUND SNECKER	Sweden	MP
Mehmet Sait	KIRAZOĞLU	Turkey	MP
Royston	SMITH	United Kingdom	MP
John	WHITTINGDALE	United Kingdom	MP

Alisher	KADIROV	Uzbekistan	MP
Lukas	MUSSI	Austria	Staff of Delegation
Silvia	ANDRISOVA	Czech Republic	Staff of Delegation
Farimah	DAFTARY	France	OSCE PA Secretariat
Iryna	SABASHUK	Ukraine	OSCE PA Secretariat
Dimitrije	TODORIĆ	Serbia	OSCE PA Secretariat
Anna	DI DOMENICO	Italy	OSCE PA Secretariat
Stephanie	KOLTCHANOV	France	OSCE PA Secretariat

ODIHR EOM Short-term Observers

Andon	KUME	Albania
Brunilda	PEÇI	Albania
Narine	MOVSESYAN	Armenia
Ani	MNATSAKANYAN	Armenia
Jillian	COLLINS	Australia
Gudrun	MOSLER-TÖRNSTRÖM	Austria
Jan	TOMESEK	Austria
Peter	STORER	Austria
Sophie	BUßJÄGER	Austria
Theresa	BAUMANN	Austria
Anar	AKBAROV	Azerbaijan
Maryam	MAJIDOVA	Azerbaijan
Anar	PIRIYEV	Azerbaijan
Aghajavid	RAMAZANOV	Azerbaijan
Musa	JAFAROV	Azerbaijan
Elnur	NURIYEV	Azerbaijan
Aynur	SABITOVA	Azerbaijan
Ilqar	NURI	Azerbaijan
Sona	ALIYEVA	Azerbaijan
Aydan	FARAJOVA	Azerbaijan
Lala	CHALABIZADA	Azerbaijan
Tamerlan	HAZANSADE	Azerbaijan
Fakhraddin	HASAN-ZADA	Azerbaijan
Gadir	KHALILOV	Azerbaijan
Tural	SHIRIN	Azerbaijan
Ramin	HABIBZADE	Azerbaijan
Rashid	YUSIFBAYLI	Azerbaijan
Nushaba	MAMMODOVA	Azerbaijan
Babak	AGHAYEV	Azerbaijan
Nemat	KHUDUZADE	Azerbaijan
Ramin	NURALIYEV	Azerbaijan
Vasif	AMIRASLANOV	Azerbaijan
Mir kamal	ALI-ZADE	Azerbaijan
Teymur	MALIK-ASLANOV	Azerbaijan
Sergeu	ZHARTUN	Belarus
Maksim	SAPSAI	Belarus
Oscar	JANSSENS DI BISTHOVEN	Belgium
Peter	VAN LOO	Belgium
Michal	ČERNÝ	Czech Republic
Zora	GONCHAROV	Czech Republic
Jakub	LEWANDOWSKI	Czech Republic
Jan	FALTUS	Czech Republic
Mette	SELCHAU	Denmark

Ingrid	POULSEN	Denmark
Lars	HOLLAENDER	Denmark
Peter	BRASHOLT	Denmark
Inge	CHRISTENSEN	Denmark
Michael	POULSEN	Denmark
Finn	NIELSEN	Denmark
Henrik	WITTRUP	Denmark
Anja	SILJAK	Denmark
Sulev	LAANE	Estonia
Paula	MINKKINEN	Finland
Kaisa	STANDISH	Finland
Rauli	LEPISTÖ	Finland
Noora	SIMOLA	Finland
Pierre-Yves	MALLET-PERRIER	France
Julie	JORÉ	France
Benedicte	CONTAMIN	France
Rémi	PELLERIN	France
Benoit	BOUYSSOU	France
Volker	Dr.WEYEL	Germany
Tom	HØYEM	Germany
Richard	ZWEIG	Germany
Henning	HORSTMAYER	Germany
Iris Cordellia	ROTZOLL	Germany
Bernd	LEBER	Germany
Martin Karl-Josef	HORTIG	Germany
Thomas	FROEHLICH	Germany
Janine	HANSEN	Germany
Kurt	HIRSCHLER	Germany
Christoph	LAUG	Germany
Mathias	NEUKIRCHEN	Germany
Dierk	HELMKEN	Germany
Ulrike	BICKEL	Germany
Jürgen	KLIMKE	Germany
Judith	ABDEL-MASSIH-THIEMANN	Germany
Ruth Monika	LINDEN	Germany
Christiane	SCHWARZ	Germany
Christoph	VEITH	Germany
Janina	MARKEWITSCH	Germany
Timur	CETIN	Germany
Frank	FISCHER	Germany
Andreas	KUCHER	Germany
Hans	DOEHNE	Germany
Rainer	KLEFFEL	Germany
Josef	LEHLEITER	Germany
Martin	OHLSEN	Germany
Monika	LENHARD	Germany
Eckart	ROHDE	Germany
Benjamin	SMALE	Germany
Arno	HUEBNER	Germany
Clemens	JÜRGENMEYER	Germany
Michael	JELONEK	Germany
Anke	SMOLLICH	Germany
Günter	LANG-LENDORFF	Germany
Markus	VOGEL	Germany
Reinhard	HESSE	Germany

Michael	WAHLEN	Germany
Gesa	KARRENBROCK	Germany
Emilia	CARCABASSI	Germany
Krisztina	KATONA	Hungary
Iván	KOVÁCS	Hungary
Gillian	IVORY	Ireland
Adrienne	BOYLE	Ireland
Cathal	KELLY	Ireland
Hannah	McCARTHY	Ireland
Elena	SECONDO	Italy
Daniele	PEDRETTI	Italy
Sylvia	PIETROPAOLO	Italy
Rocco Giovanni	DIBIASE	Italy
Ilaria	FACCIN	Italy
Renata	TARDIOLI	Italy
Carlo Giuseppe	IMARISIO	Italy
Hiroumi	SHIMASE	Japan
Arata	DEGUCHI	Japan
Jin Dong	KIM	Korea
Soo Geun	JI	Korea
Kairat	OSMONALIEV	Kyrgyz Republic
Bektur	OSMONBAEV	Kyrgyz Republic
Pauls	GAILITIS	Latvia
Inga	GILYTE	Lithuania
Rolandas	AGINTAS	Lithuania
Apolonia	VERSCHOOR	Netherlands
Lodewijk	VAN BANNING	Netherlands
Deniss	VAN DER LAAN	Netherlands
Peter	DE HAAN	Netherlands
Willem	KORTHALS ALTES	Netherlands
Ane Aida	UTNE	Norway
Janne	HARALDSEN	Norway
Eldrid	ROEINE	Norway
Gunnar	BAUSTAD	Norway
Ewa Tamara	ŁUKASIK	Poland
Helena	KOPERSKA-STEPANIUK	Poland
Marek	ZIOLKOWSKI	Poland
Magdalena	POLAK-ŻOŁĄDKIEWICZ	Poland
Jan	BRODOWSKI	Poland
Marcin	POPLAWSKI	Poland
Krzysztof	BARTCZAK	Poland
Hanna	ZOBEL	Poland
Barbara	MROWKA-JASIECKA	Poland
Anna	ZAMEJC	Poland
Arkadiusz	LEGIEĆ	Poland
Bartłomiej	KOKOSZKA	Poland
Robert-Constantin	CARAPANCEA	Romania
Oana-Adriana	IACOB	Romania
Konstantin	GUZ	Russian Federation
Veronika	SHMELEVA	Russian Federation
Sergei	ANNENKOV	Russian Federation
Aleksei	MARKOV	Russian Federation
Ilya	CHERNYSHEV	Russian Federation
Anna	LYSENINA	Russian Federation
Enver	AKHMEDOV	Russian Federation

Valerii	SHAGEEV	Russian Federation
Petr	VOLOKOVYKH	Russian Federation
Stanislav	LAGUTIN	Russian Federation
Arif	GADZHIEV	Russian Federation
Sergey	BABURKIN	Russian Federation
Dmitry	BAGDULIN	Russian Federation
Diana	AINETDINOVA	Russian Federation
Ivan	PEREVERTOV	Russian Federation
Oleg	ILYASHEV	Russian Federation
Konstantin	EMELIN	Russian Federation
Andrei	BORODIN	Russian Federation
Anna	PERELETOVA	Russian Federation
Alexander	IGNATOV	Russian Federation
Kamilia	DZHABBAROVA	Russian Federation
Aleksei	POGONIN	Russian Federation
Sviatoslav	TERENTEV	Russian Federation
Bulat	MUBARAKSHIN	Russian Federation
Amir	BILIALITDINOV	Russian Federation
Evgeny	LOGINOV	Russian Federation
Natalia	SHMELEVA	Russian Federation
Vasily	KORCHMAR	Russian Federation
Aleksandr	TARNAVSKII	Russian Federation
Andrei	MOLOCHKOV	Russian Federation
Ekaterina	GRIGORYEVA	Russian Federation
Kristina	BOGDANOVA	Russian Federation
Boris	DIAKONOV	Russian Federation
Alexey	STEPANOV	Russian Federation
Anna	ZHUROVICH	Russian Federation
Marina	SHOLKOVA	Russian Federation
Ruslan	GOLUBOVSKIY	Russian Federation
Aleksandr	ROGOV	Russian Federation
Vladimir	PONOMAREV	Russian Federation
Kamil	MAGOMEDOV	Russian Federation
Anna	GOZHINA	Russian Federation
Elena	BALANDINA	Russian Federation
Andrey	OSTVALD	Russian Federation
Petr	YAKHMENEV	Russian Federation
Karina	BAGIEVA	Russian Federation
Nina	MACHACOVA	Slovakia
Ondrej	GARAJ	Slovakia
Rebeca	PALMER	Sweden
Frida	ANDERSSON	Sweden
Eva	JAKOBSSON	Sweden
Björn	TEDEMAN	Sweden
Victor	ROJAS CAMARGO	Sweden
Björn Erik	LUNDQVIST	Sweden
Ola	SEGNESTAM LARSSON	Sweden
Martin	DAMARY	Switzerland
Valérie	NADRAI	Switzerland
Daniele	D'ESPOSITO	Switzerland
Mario	BARFUS	Switzerland
Ahmet	SEN	Turkey
Hatice nur	SAĞMAN	Turkey
Hüseyin lazıp	DIRIÖZ	Turkey
Altay	ALPER	Turkey

Maria	DEVIS	United Kingdom
Abigail	KEMP	United Kingdom
Karen	WYKURZ	United Kingdom
Melanie	LEATHERS	United Kingdom
Joseph	WORRAL	United Kingdom
Alexander	ANDERSON	United Kingdom
Mary	BROOKSBANK	United Kingdom
Alida	MELANCON	United States
Miklos	SOLYOM	United States
Lee	BAUER	United States
Michael	MARTIN	United States
Sebastien	PEYROUSE	United States
Lyndon	ALIIN II	United States
Gia	ROWLEY	United States
Stephen	FORD	United States
Deborah	ALEXANDER	United States
Daniel	KLINGENBERG	United States
Mary	BLUESTOCKING	United States
Robert	IRISH	United States
John	WINTER	United States
Julie	GALBRAITH	United States
Tereza	LEWIS	United States
Nasser	ISHAQ	United States
Anne	PESKOE	United States
Gloria	FUNCHEON	United States
Charles	MELANCON	United States
Nina Louise	FRANKEL	United States
Azita	RANJBAR	United States
Mathew	CAHILL	United States
Jeremy	PINE	United States
Gligor	TASHKOVICH	United States
Sherry	MURPHY	United States
Nabil	AL-TIKRITI	United States
Tina	VELCICH	United States
Joshua	BURGIN	United States
Jenny	SOWRY	United States
Steven	WAGENSEIL	United States
Azizjon	YULDOSHEV	Uzbekistan
Dilafruz	SUFIEVA	Uzbekistan
Zaurbek	ASLANOV	Uzbekistan
Shomansur	SHAYAKUBOV	Uzbekistan
Farkhod	NASRIDDINOV	Uzbekistan

LONG-TERM OBSERVERS

ODIHR EOM Core Team

Urszula	GACEK	Head of Mission	Poland
Goran	PETROV	Deputy Head of Mission	North Macedonia
Zarona	ISMAILOVA	Political Analyst	Germany
Adolfo	CAYUSO-MARTINEZ	Elections Analyst	Spain
Yelena	KOVALYOVA	Legal Analyst	Belarus
Kira	KALININA	Media Analyst	Russian Federation
Marcell	NAGY	LTO Coordinator	Hungary
Ivana	STANOJEV	PA Liason	Serbia
Robert	BYSTRICKÝ	Statistic Analyst	Slovakia
Lela	TSAAVA	Operations Expert	Georgia
Karolina	SEMINA	Procurement and Contracts Officer	Russian Federation
Mikheil	GOLIJASHVILI	Security Expert	Georgia
Farrukh	JURAQULOV	Finance Officer	Tajikistan

ODIHR EOM Long-term Observers

Camille	FORITE	France
Martin	ROSSMAN	Austria
Nina	VESSEL	Norway
Bujar	HALO	Italy
Eleonora	BULAT	Moldova
Victor	PAZINSKI	Switzerland
Anush	HAYRAPETYAN	Armenia
Steven	YOUNG	United States
Anne	UHLIQ	Germany
Andrey	KARBOVSKIY	Russian Federation
Maria Elena	AMADORI	Italy
Stefan	ZIEGLER	Switzerland
Eva Kristin	PEDERSEN	Norway
Ales	JAKUBEC	Czech Republic
Monica	GIAMBONINI	Switzerland
Lev	TARSKIKH	Russian Federation
Sheila	JAGHAB	United States
Alexander	BERDITSKIY	Russian Federation
Mashu	POULSEN	Denmark
Emil	SHAKIR UULU	Kyrgyzstan
Elizaveta	BORISOVA	Russian Federation
Ingo	BUETTNER	Germany

ABOUT ODIHR

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

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas, including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

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

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

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

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