



Office for Democratic Institutions and Human Rights

# REPUBLIC OF KAZAKHSTAN

PARLIAMENTARY ELECTIONS  
10 January 2021

ODIHR Limited Election Observation Mission  
Final Report



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**REPUBLIC OF KAZAKHSTAN  
PARLIAMENTARY ELECTIONS  
10 January 2021**

**ODIHR Limited Election Observation Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the authorities of the Republic of Kazakhstan and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Limited Election Observation Mission (LEOM) to observe the 10 January 2021 parliamentary elections. The ODIHR LEOM assessed compliance of the electoral process with OSCE commitments, other international obligations and standards for democratic elections, as well as national legislation. For the short term election observation, an International Election Observation Mission (IEOM) was formed as a common endeavour of the ODIHR LEOM and a delegation of the OSCE Parliamentary Assembly.

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 11 January concluded that “the 10 January parliamentary elections in Kazakhstan lacked genuine competition and highlighted the need of the announced political reforms. They were technically prepared efficiently amid the challenges posed by the outbreak of the COVID-19 pandemic. While five parties participated in the electoral process, and their candidates were able to campaign freely, limits imposed on the exercise of constitutionally guaranteed fundamental freedoms restrict the political space. Frequent revisions were made to the legal framework since the last parliamentary elections, some of which partially addressed a few previous ODIHR recommendations. Still, the legal framework is not yet conducive to holding elections in line with the OSCE commitments as long-standing systemic shortcomings remain. Notwithstanding some increasing scope for a plurality of opinions online, a subdued campaign further narrowed voters’ ability to make an informed choice. Concerted measures in the run up to elections prevented some domestic observers from an effective oversight. While voting itself was generally organized efficiently, many procedural aspects on election day lacked full transparency”.

The electoral legal framework remains inconsistent with a number of international commitments concerning the holding of democratic elections, despite frequent revisions since the last parliamentary elections. Positively, the amendments to the Election Law aimed to enhance participation of voters with disabilities. Other amendments only partially addressed some of the previous ODIHR recommendations, including on reducing the number of members required to register a political party, changing procedures for holding public gatherings, decriminalizing slander and introducing special measures to enhance participation of women as candidates. A number of other long-standing ODIHR recommendations remain unaddressed, including those related to fundamental freedoms, impartiality of election administration, eligibility to vote and stand for elections, voter registration, the media, and publication of election results. Constitutionally guaranteed fundamental freedoms remain significantly restricted by law, and the space for civil society and alternative voices to flourish is constricted.

Electoral preparations were efficiently administered by election commissions at all levels in line with the legal deadlines amid the COVID-19 pandemic. Given the dominance of the ruling party in the parliament and local councils, the appointment of commissions at all levels raised concerns about their independence. The Ministry of Health in coordination with the Central Election Commission (CEC) adopted health-related measures with respect to candidate nomination, campaign and election

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

day procedures. The CEC held regular public sessions and published decisions in a timely manner. Nevertheless, most decisions seemed to be agreed upon between CEC members in advance of formal sessions, detracting from transparency. An intensive voter information campaign held by the CEC focused largely on the verification of the voter lists and the date of elections. The authorities made significant efforts to facilitate participation of persons with disabilities in the electoral process, including access to information and polling stations.

There are almost 12 million people registered in the nationwide electronic voter register. A number of local and national institutions were involved in the compilation and cross-checking of the voter lists. Most ODIHR LEOM interlocutors did not express concerns about the accuracy of the voter lists, which were available for public scrutiny. Contrary to international good practice, voters can be added to the voter lists on election day at polling stations without administrative or judicial control, which opens up the possibility of multiple voting. Citizens declared incapacitated by court based on intellectual and psychosocial disabilities and criminally convicted prisoners, irrespective of the gravity of their crime, are not eligible to vote, which is not in line with international standards.

Candidate registration is marked by excessively strict requirements for the right to stand, contrary to international standards. The five contesting parties nominated a total of 312 candidates, though only two parties chose to nominate a sufficient number of candidates to compete for a majority in parliament. Information on individual candidates within the party lists was not easily accessible for voters. Despite recent legal changes, considerable barriers to exercising the freedom of association remain, and the range of political options is limited, with no new parties registered since 2013 despite several attempts.

Women are underrepresented in political life. A 30 per cent quota for women and/or youth on the candidate lists was introduced, but it is not binding for parties in the allocation of parliamentary seats. For these elections, women accounted for 28.8 per cent of candidates and 26 per cent of new members of parliament. While women are well represented in the lower-level election commissions, only two of the seven CEC members are women. Gender equality was a marginal campaign topic, and media focused almost exclusively on male candidates.

The campaign was not competitive, and contestants did not substantially challenge their rivals on their political platforms. All contesting parties expressly supported presidential policies, limiting the choice for voters. The tone was positive, and the main topics evolved around welfare and delivery of social services. The online and in-person campaigns were low-key, the latter compounded due to the COVID-19 pandemic. On the other hand, different non-registered opposition movements appeared much more active online. Systemic limitations on freedoms of assembly and expression impacted the scale of campaign activities. There is continuing *de facto* need for permission from local authorities to hold certain outdoor campaign-related assemblies, notwithstanding the revised Law on Peaceful Assemblies.

While the sources and ceilings for contributions to the party campaign funds are regulated, there are no caps for individual donations, potentially allowing for undue influence. The CEC published aggregate data on income and expenditures of parties during and after the campaign. Contestants' campaign finance reports were not published by the CEC, limiting transparency. The CEC conducts formal but not substantive oversight of campaign finance.

Overly broad and vague legal provisions, in particular related to defamation, "extremism" and the incitement to hatred, criminalize speech contrary to international law. Arrests, detentions and sentences on the grounds of these restrictions, including for activities in social networks, limit freedom of expression. State ownership and large state subsidies undermine the editorial independence of television stations. The majority of private national media outlets are owned by

business people close to the government. Monitored media provided limited, albeit equal, coverage of the campaign, but the lack of journalistic analysis meant voters were not fully informed about their choice. Nevertheless, there is an increasing space for plurality of news and opinions online. Televised debates offered a welcome opportunity for contestants to present their platforms.

All five political parties nominated candidates from minority populations, and some campaign materials were prepared in minority languages. Voter information materials and ballots were produced in the Kazakh and Russian languages only. Positively, no discriminatory language towards national minorities was observed during the campaign. The nine members of the parliament elected by the Assembly of the People of Kazakhstan represent, apart from Kazakhs, seven other ethnic communities.

The law provides for the right of electoral stakeholders to seek legal remedy, but lacks a clear mechanism for appealing the election results, as well as due process safeguards for dispute resolution in lower-level election commissions. Very few complaints were reported prior to election day and many ODIHR LEOM interlocutors expressed a lack of trust in election dispute resolution. The Supreme Court dismissed on formalistic grounds all complaints against the CEC, thus failing to ensure effective redress.

The Election Law provides for citizen and international observation of elections. Nevertheless, meaningful observation of some citizen observer groups was restricted by concerted measures taken by the authorities. Tax investigations initiated shortly before the elections, a new CEC resolution providing for a wide discretion of precinct election commissions in dismissing citizen observers, and the late introduction of obligatory COVID-19 testing, together amounted to unprecedented pressure on the activities of citizen observers.

The IEOM did not undertake systematic or comprehensive observation of election day proceedings. In the limited number of polling stations observed, voting was generally organized efficiently, and COVID-19 precautions were well respected. Nevertheless, many aspects of the process lacked full transparency, and meaningful observation by both citizen and international observers was oftentimes not possible, also due to COVID-19 measures. During the observation of counting of votes and tabulation of results, procedural safeguards were in general disregarded, which was of serious concern. Election day was calm, but the overwhelming presence of police in several cities effectively prevented preannounced peaceful demonstrations. While all contesting parties expressed satisfaction with the results, non-registered opposition movements alleged electoral fraud.

This report offers recommendations to support efforts to align elections in the Republic of Kazakhstan with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations focus on the need to ensure in law and in practice full respect for the freedoms of peaceful assembly, association and expression, provide for unrestricted election observation, enhance the independence and transparency of election administration, guarantee that the election campaign be conducted in an atmosphere free of fear of retribution, as well as ensure the integrity of election results. ODIHR stands ready to assist the authorities to address the recommendations contained in this and previous reports.

## **II. INTRODUCTION AND ACKNOWLEDGMENTS**

Following an invitation from the authorities of the Republic of Kazakhstan to observe the 10 January 2021 parliamentary elections, the Needs Assessment Mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) conducted from 27 to 29 October 2020 recommended to deploy an Election Observation Mission. Subsequently, ODIHR decided to change the format of the

observation activity to Limited Election Observation Mission (LEOM) as the deployment of short-term observers was infeasible due to the extraordinary circumstances caused by the COVID-19 pandemic and existing travel restrictions throughout the OSCE region. The ODIHR LEOM headed by Ambassador Jarosław Marcin Domański was deployed on 8 December, and consisted of an 11-member core team based in Nur-Sultan and 24 long-term observers deployed on 15 December across the country.

For the short-term election observation, an International Election Observation Mission (IEOM) was formed as a common endeavour of the ODIHR LEOM and a delegation of the OSCE Parliamentary Assembly (OSCE PA). Kristian Vigenin was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observers. Each of the institutions involved in this IEOM has endorsed the 2005 Declaration of Principles for International Election Observation. In total, 48 observers from 20 OSCE participating States were deployed, including 41 observers deployed by ODIHR and 7 observers from the OSCE PA; 52 per cent of members of the IEOM were women. In line with ODIHR methodology for LEOMs, the mission did not carry out a comprehensive or systematic observation of election-day proceedings but visited a number of polling stations on election day. The ODIHR LEOM remained in Kazakhstan until 19 January to follow post-election developments.

The ODIHR LEOM assessed compliance of the electoral process with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. This final report follows the Statement of Preliminary Findings and Conclusions, which was released at a press conference in Nur-Sultan on 11 January.<sup>2</sup>

The ODIHR LEOM wishes to thank the authorities of the Republic of Kazakhstan for the invitation to observe the elections, as well as the Central Election Commission (CEC) and the Ministry of Foreign Affairs (MFA) for their co-operation and assistance. It also expresses its appreciation to representatives of other national and local state institutions, the judiciary, 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 21 October 2020, President Kassym-Jomart Tokayev called elections for the 98 directly elected seats of the lower chamber of parliament (*Majilis*) for 10 January 2021. These were the first parliamentary elections since 2005 to have followed a full five-year parliamentary term. Elections for 216 local councils (*maslikhats*) were also held concurrently at regional and district levels.<sup>3</sup>

The elections took place against the backdrop of the COVID-19 pandemic and related health measures, which in addition to the health and economic costs, placed a limit on the number of participants in political meetings. Nevertheless, the pandemic did not appear to have a significant impact on the campaign or on the election administration.

The Constitution confers extensive powers on the executive. The president issues binding decrees and resolutions, determines domestic and foreign policies, appoints ministers and the 17 regional *akims* (governors), and plays a key role in the appointment of judges and other high-ranking officials, including 15 out of 49 senators. The country's first president, Nursultan Nazarbayev, accorded the permanent title of the Leader of the Nation (*Elbasy*), remains actively engaged in a number of official

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<sup>2</sup> See previous [ODIHR election observation reports on Kazakhstan](#).

<sup>3</sup> The ODIHR LEOM only observed the 10 January parliamentary elections although it assessed the impact of holding the regional and local elections together with the parliamentary elections.

capacities, including as chairperson for life of the Security Council of Kazakhstan, life-long member of the Constitutional Council, honorary life senator and Chairperson of the Assembly of the People of Kazakhstan (APK), which elects nine members of the *Majilis*.

The political landscape is heavily dominated by the ruling *Nur Otan* party. The distinction between the party and the executive branch of government is often blurred. In addition to his constitutionally provided roles, the first president remains the chairperson of *Nur Otan*.

Following the 2016 parliamentary elections, three parties were awarded mandates - *Nur Otan* with the a majority of 84 seats, followed by the Democratic Party *Ak Zhol* and the Communist People's Party of Kazakhstan (CPPK), with 7 seats each. The three other contesting parties which did not win any seats were the *Birlik* Party, the People's Democratic Patriotic Party *Auyl* and the Nationwide Social Democratic Party (NSDP). In November 2020, *Birlik* and CPPK changed their names respectively to *Adal* and the People's Party of Kazakhstan (PPK).

The political party landscape ahead of the 2021 elections remained largely unchanged. Five out of six officially registered parties participated in these elections: *Nur Otan*, *Ak Zhol*, the PPK, *Auyl* and *Adal*.<sup>4</sup> Other than *Nur Otan*, contesting parties see themselves as “constructive opposition” to the government and broadly support the president's agenda.<sup>5</sup> Despite at least nine attempts since the 2016 elections, no new political parties have been registered.<sup>6</sup> The limited degree of political pluralism, in particular the absence of authentic political opposition among contesting parties, meant that the 2021 elections were not a genuinely competitive contest with distinct political viewpoints. Systemic restrictions in law and in practice undermining the fundamental freedom of association limit the pluralistic nature of politics in the country, challenging Paragraphs 3 and 7.6 of the 1990 OSCE Copenhagen Document.<sup>7</sup>

Since his election in June 2019, the president has announced a series of political and economic reforms.<sup>8</sup> Some technical changes to the rules on the freedom of peaceful assembly and association were introduced in 2020 (see *Election Campaign*). The 2020 Law on Parliamentary Opposition, for the first time, formalized the role of the parliamentary opposition.

Notwithstanding these intentions, the authorities have so far demonstrated insufficient political will for reforms. The ability of citizens to participate in political life, although protected in the Constitution, continues to be hampered by the constraining legal framework and its restrictive implementation by the authorities.<sup>9</sup> There is an increased political debate online. However, political

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<sup>4</sup> The NSDP decided to boycott these elections.

<sup>5</sup> On 30 December, in summing up the work of the *Majilis* in 2020, the Speaker [stated](#) that “All the work of the deputies was focused on the implementation of the strategic tasks of the First President of Kazakhstan [...] as well as the initiatives and instructions of the Head of State Kassym-Jomart Tokayev”.

<sup>6</sup> The last party to gain official recognition was *Birlik* in 2013. The Ministry of Justice confirmed to the ODIHR LEOM that there were nine applications filed in 2019-2020, six of which were denied, and others were pending. The leadership of five political movements which had sought registration informed the ODIHR LEOM about detentions and criminal and administrative convictions as well as physical and economic threats to leaders and supporters of the initiatives and their families.

<sup>7</sup> In Paragraph 3 of the 1990 [OSCE Copenhagen Document](#), the OSCE participating States recognized “the importance of pluralism with regard to political organizations”. Paragraph 7.6 refers to “the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations”. Article 9.2 of the 2002 [CIS Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms](#) (2002 CIS Convention) states that “With authentic elections, there are a real political pluralism, an ideological variety and a multi-party system that are exercised through functioning of political parties”.

<sup>8</sup> See the president's [2019](#) and [2020](#) State of the Nation Address. See also president's [speech](#) on 14 December at the occasion of Independence Day and on [15 January 2021](#) announcing a second set of political reforms.

<sup>9</sup> See the [2016 Concluding observations on the second periodic report of Kazakhstan by the UN Human Rights Committee](#) (CCPR).

dissent, including in social networks, can result in prosecutions, sanctions and detentions, which deters alternative voices throughout the country and impacts on citizens' behaviour.

*Law and public policy should ensure that citizens can exercise their civil and political rights without fear of retribution, punitive administrative actions or intimidation. Authorities should abstain from measures which have the effect of restricting rights and freedoms and ensure prompt and impartial investigation of any abuse.*

Women are under-represented in political life. Women held only 1 out of 17 *akim* and 2 out of 22 ministerial positions at the time of these elections. While women had 29 seats in the outgoing *Majilis*, following introduction of the gender quota (see *Candidate Registration*) women received only 28 seats in the newly elected *Majilis*.

#### IV. ELECTORAL SYSTEM

Kazakhstan has a bi-cameral parliament consisting of a 107-member *Majilis* and an indirectly elected 49-member upper house (Senate).<sup>10</sup> Ninety-eight *Majilis* members (MPs) are elected in a nationwide constituency on the basis of a closed list proportional system, and the remaining nine are elected by the APK.<sup>11</sup> Despite previous ODIHR recommendations, the latter provision remains in place, at odds with Paragraph 7.2 of the 1990 OSCE Copenhagen Document, which states that all seats in at least one chamber of the national legislature should be directly elected.<sup>12</sup>

The Constitution stipulates an imperative mandate; those who leave or are excluded from their party, or whose party ceases its activity, lose their mandate. This conflicts with Paragraph 7.9 of the 1990 OSCE Copenhagen Document, which implies a free mandate.<sup>13</sup> The mandates are awarded to candidates by each party, and parties are not bound by the order of candidates on their list.

*The legislation should be revised to ensure that all seats in at least one chamber of the parliament are freely contested in a popular vote. In view of the personal character of a parliamentary mandate, deputies should be allowed to change parties or become independent if they so choose.*

Parties receiving at least seven per cent of all votes cast are allocated seats in the *Majilis*.<sup>14</sup> If only one party passes the threshold, the party receiving the second highest number of votes is given at least two seats.

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<sup>10</sup> The representative bodies of each of the 14 regions, as well as the cities of Almaty, Nur-Sultan, and Shymkent elect two members of the Senate each. In addition, the president appoints 15 senators.

<sup>11</sup> The APK is an advisory body appointed by the president with the stated goal of representing the diversity of Kazakhstan's many ethnic groups.

<sup>12</sup> See also Article 4.2 of the 2002 CIS Convention, which states that "all the mandates in one of the chambers of the national legislative body are an object of a free competition of candidates and/or of lists of candidates in the course of nationwide elections".

<sup>13</sup> The OSCE participating States, in Paragraph 7.9 of the 1990 OSCE Copenhagen Document, committed to "ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures". See also the Council of Europe's Commission for Democracy through Law (Venice Commission) [Report on the Imperative Mandate and Similar Practices](#).

<sup>14</sup> The Venice Commission has [indicated](#) that thresholds above five per cent are problematic, including because high thresholds lead to a high number of wasted votes. Some ODIHR LEOM interlocutors opined that lowering the threshold would be a welcome development to provide for a more pluralistic representation in the parliament. After the elections, the president proposed doing so. See *Post-Election Developments*.



*To increase the pluralism and representativeness of the parliament, consideration could be given to lowering the seven per cent threshold for parties to qualify for seat allocation.*

## V. LEGAL FRAMEWORK

The elections are primarily regulated by the 1995 Constitution and the 1995 Constitutional Law on Elections (Election Law). Other applicable laws include the Law on Political Parties, Law on Peaceful Assemblies, Law on Mass Media, Law on Broadcasting, Law on Communications, as well as the Criminal Code and the Code of Administrative Violations. The CEC issued regulations to supplement the law. Kazakhstan is a party to key international and regional instruments related to elections.<sup>15</sup>

The legal framework continues to be inconsistent with Kazakhstan's international commitments related to the holding of democratic elections owing to a number of undue restrictions on fundamental freedoms of association, peaceful assembly and expression, and on the suffrage rights, in violation of Paragraph 4 of the 1990 OSCE Copenhagen Document.<sup>16</sup> International organizations have repeatedly stated that the civil and political rights provided for by the Constitution and international treaties signed and ratified by Kazakhstan, including those related to the right to participate in the conduct of public affairs, are constrained by laws.<sup>17</sup>

The laws regulating the conduct of elections were subject to numerous changes since the last parliamentary elections. Since the 2017 constitutional reform, mostly related to redistribution of political powers, the Election Law was amended every year. The amendments, among other things, changed the structure of lower-level election commissions, introduced a joint quota of a minimum of 30 per cent representation of women and/or youth on the candidate lists, and aimed to enhance the electoral participation of voters with disabilities. Other laws regulating the conduct of elections were also amended or re-enacted after 2016, affecting, among other things, the registration of political parties and holding of public gatherings. Nevertheless, these reforms did not fully address most ODIHR electoral recommendations, including those related to fundamental freedoms of peaceful assembly, expression and association, independence of election administration, candidacy requirements, voter registration, the media, and publication of election results. Several ODIHR LEOM interlocutors expressed concerns about the lack of meaningful consultations preceding the amendments.

The Election Law creates a sufficient technical basis for the conduct of elections. However, it contains a number of shortcomings, such as provisions that allow for wide discretion on party and candidate registration and deregistration, a lack of effective safeguards against multiple voting and irregularities during counting of votes and tabulation of results, opaque campaign finance oversight rules, and inadequate due process guarantees during the review of complaints in lower-level commissions.

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<sup>15</sup> Including the 1966 [International Covenant on Civil and Political Rights](#) (ICCPR), 1965 [International Convention on the Elimination of All Forms of Racial Discrimination](#), 1979 [Convention for the Elimination of All Forms of Discrimination against Women](#), 2003 [UN Convention against Corruption](#) (UNCAC), and the 2006 [Convention on the Rights of Persons with Disabilities](#) (CRPD), 2002 CIS Convention. Kazakhstan is a member of the Council of Europe's Venice Commission and of the Group of States against Corruption (GRECO).

<sup>16</sup> The OSCE participating States, in Paragraph 4 of the 1990 OSCE Copenhagen Document, committed to "ensure that their laws, regulations, practices and policies conform with their obligations under international law".

<sup>17</sup> See, for example, Paragraphs 51-54 of the 2016 CCPR Concluding observations on the second periodic report of Kazakhstan and the [2020 Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism](#) (UN Special Rapporteur). Paragraph 5.3 of the 1990 OSCE Copenhagen Document obliges "the government and public authorities to comply with the constitution and to act in a manner consistent with law".

*The legal framework should be comprehensively revised to lift the restrictions on fundamental freedoms of peaceful assembly, expression and association, in line with OSCE commitments and other international obligations, and to address other long-standing ODIHR recommendations. The reform should be undertaken with open and meaningful consultation with all relevant stakeholders, well in advance of the next elections.*

## VI. ELECTION ADMINISTRATION

The election administration is permanent and three-tiered, comprised of the CEC, 232 Territorial Election Commissions (TECs) and 10,060 Precinct Election Commissions (PECs). Voting abroad was conducted at 66 polling stations established in embassies and consulates in 54 countries.<sup>18</sup>

Commissions at all levels have a five-year term and all commissions, except for the PECs, consist of seven members.<sup>19</sup> The CEC chairperson and two other CEC members are appointed by the president.<sup>20</sup> The *Majilis* and Senate each appoint two other CEC members. Given the predominance of the ruling party in these institutions and the lack of genuine political differentiation between the parties represented in the *Majilis*, the composition of the CEC is not politically diverse, potentially challenging its independence.<sup>21</sup> Two of the seven current CEC members and 67.7 per cent of the lower-level commissioners are women.

Lower-level commissions were elected in January 2019 by local councils (*maslikhats*), based on nominations from registered political parties. In case the number of party proposals is not sufficient, *maslikhats* may consider nominations from other public associations and superior election commissions.<sup>22</sup> Nominated individuals do not have to be members of the proposing organization and are not bound by its decisions. *Maslikhats* are not bound by the nominations of any of the proposing bodies and may accept or reject individual proposals through a vote. While the Election Law allows a maximum of one nominee from a political party per election commission, some TECs and PECs visited by the ODIHR LEOM had in practice more than one member affiliated with *Nur Otan*.<sup>23</sup>

Electoral technical preparations were administered efficiently and in line with legal deadlines. The CEC sessions were open to and regularly attended by party representatives and observers. Due to the COVID-19 pandemic, media were present in the CEC sessions only with their respective camera teams to transmit the sessions live, but journalists were given the opportunity to pose questions ahead of time or after each CEC session via Internet streaming. The CEC resolutions as observed by the ODIHR LEOM were adopted unanimously. Most decisions seemed to be agreed upon between CEC members in advance of formal sessions, as there was a lack of any meaningful discussion, undermining the public nature of the CEC activities and decreasing transparency of decision-making.

<sup>18</sup> The MFA informed the ODIHR LEOM that due to the COVID-19 pandemic, the number of voters registered abroad was significantly lower than during previous elections.

<sup>19</sup> By law, the PECs should have odd number of members and may consist of either 5 or 7 members to serve up to 2,000 voters or 7 to 11 members for up to 3,000 voters.

<sup>20</sup> In the current CEC, the deputy chairperson and the secretary were also appointed by the president.

<sup>21</sup> Paragraph 20 of the 1996 UN HRC [CCPR General Comment No.25](#) (CCPR General Comment No.25) 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”. The States parties to the 2002 [CIS Convention](#) committed themselves “to ensure establishment of independent, impartial electoral bodies to organize the conduct of democratic free and fair, authentic and periodical elections”.

<sup>22</sup> According to the CEC, 66.2 per cent of commissioners were nominated by political parties, 30.5 per cent by public associations and 3.3 per cent by higher-level election commissions. The CEC also informed that not all parties nominated their full quotas of commissioners.

<sup>23</sup> This was the case, among others, in Almaty and Mangystau regions.

Positively, decisions were published on the CEC website in a timely manner, and CEC members routinely participated in press briefings after the sessions.

At the same time the CEC did not publish important electoral data of public interest that would foster transparency, such as data on political party representation at the TECs and PECs, data on final voter lists, including number of voters added to the voter lists on election day, disaggregated by regions, polling stations as well as by age and gender, and detailed voting results disaggregated by the TECs and PECs. Although the CEC explained the lack of such publications with the lack of legal obligations to do so, it is a good practice to publish diverse electoral information to enable independent scrutiny of elections.<sup>24</sup>

*To increase transparency and accountability, the Central Election Commission should publish information of public interest, including all its decisions, detailed data on candidates, disaggregated voting results and other key electoral data, in a form that enables easy and prompt access. Consideration should be given to making these data available in formats accessible to different groups of persons with disabilities.*

The TECs are among others responsible for the organization, conduct and supervision of the elections in their territory, registration of party proxies, consideration of complaints against relevant PECs and tabulation of voting results. The PECs are responsible for notification of voters about voting locations, verifying voter lists, organization of voting and counting of votes and handling election day complaints.

Lower-level election commissions received logistical and operational support from state and local institutions. All lower-level commissions visited by the ODIHR LEOM were adequately resourced, operational and conducted their activities efficiently, in accordance with the election calendar. Sessions were usually held on an *ad hoc* basis.

The Ministry of Health, in co-ordination with the CEC, adopted measures to contain the spread of COVID-19, which applied to candidate nomination, campaign and election day proceedings. Some civil society interlocutors informed the ODIHR LEOM that the late imposition of some of these health-related requirements and the costs associated with these measures disrupted the deployment of observers by some citizen groups (see *Election Observation*).

The CEC, together with other institutions, organized nationwide cascade training of lower-level commissioners both online and in person.<sup>25</sup> The ODIHR LEOM assessed the quality of the training sessions observed positively, albeit at times the sessions could benefit from enhanced interaction of the participants. The CEC also conducted a large-scale voter information campaign, in both Kazakh and Russian, through television (TV) and radio broadcasts as well as online. This voter information was largely limited to the verification of the voter lists and the date of elections, with a specific information on the COVID-19 related measures provided only close to election day.<sup>26</sup> The CEC posted more information about elections, including in different formats, on their website.

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<sup>24</sup> [2011 UN General Assembly resolution 66/163](#), in particular, reiterates that “transparency is a fundamental basis for free and fair elections, which contribute to the accountability of Governments to their citizens, which, in turn, is an underpinning of democratic societies”. In addition, according to Article 13.1(b) of the UNCAC, State parties ensure “that the public has effective access to information”. See also Article 10 of the UNCAC.

<sup>25</sup> According to the CEC, more than 5,000 training sessions were organized for some 151,000 election commissioners.

<sup>26</sup> Paragraph 11 of the CCPR General Comment No.25 states that “Voter education and registration campaigns are necessary to ensure the effective exercise of Article 25 rights by an informed community”.

The CEC website is also available in versions for voters with sight and hearing impairments, and the CEC introduced simultaneous sign-language translation of all its sessions. The amended Election Law aimed to enhance participation of persons with disabilities in the electoral process and provided, among other things, for unimpeded access to all polling stations and voting, as well as the possibility of assisted voting by a person of choice. Positively, the majority of the polling stations visited by the ODIHR LEOM on election day provided unassisted access to voters with disabilities.<sup>27</sup>

*The important measures to guarantee unimpeded access of persons with disabilities taken by the Central Election Commission should be continued. Awareness training for polling officials as well as targeted voter education could increase the participation of persons with disabilities in the electoral process.*

## VII. VOTER REGISTRATION

All citizens of at least 18 years of age on election day have the right to vote. The Election Law continues to disenfranchise citizens imprisoned for any criminal act by a court, irrespective of the nature or gravity of their offence.<sup>28</sup> Citizens declared incapacitated by a court on the basis of intellectual and psychosocial disability are also ineligible to vote and stand for elections, contrary to international obligations.<sup>29</sup>

*The blanket deprivation of suffrage rights of citizens serving prison sentences and the restrictions on the basis of legal capacity for voting and standing for election should be reviewed in line with international standards and obligations.*

Voter registration is passive and is based on the state population register. Local executive bodies (*akimats*) aggregate records based on voters' place of residence and submit these data to respective TECs twice a year. The Election Law obliges the TECs to verify and transmit the records to the CEC. Any discrepancies or duplications are forwarded to *akimats* for their consideration. In line with a previous ODIHR recommendation, the CEC maintains the nationwide electronic voter register. As of 10 January, the CEC announced 11,915,903 voters, including 11,171 voters registered abroad.

By law, the *akimats* are responsible for formation and accuracy of the voter lists. For these elections, the voter lists were forwarded by *akimats* to relevant PECs by 20 December and made available from 26 December at polling stations for public scrutiny upon request. Voters were able to verify their records and request corrections either in person at polling stations or through call centres established at *akimats*.

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<sup>27</sup> To facilitate the access, the Ministry of Labour and Social Development developed a digital "Interactive Accessibility Map" indicating polling stations accessible for voters with physical disabilities; however, the ODIHR LEOM noted that relevant information was not always accurate.

<sup>28</sup> Paragraph 24 of the 1990 OSCE Copenhagen Document states that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law". Paragraph 14 of the CCPR General Comment No.25 states that grounds for deprivation of voting rights should be "objective and reasonable". In [Hirst v. United Kingdom \(No 2\) \(2005\)](#), the European Court of Human Rights while assessing a possibility to impose a blanket restriction of the right to vote on all convicted prisoners concluded that "such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be".

<sup>29</sup> According to Article 29 of the CRPD, "State parties shall [...] ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected". Paragraph 48 of the CRPD Committee's [2014 General Comment No. 1 to Article 12 of the CRPD](#) states that "a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [and] the right to stand for election".

Voters who intended to vote away from their place of permanent residence could request a temporary change of registration until 10 December. Additionally, within 16 days before election day, voters could apply for an Absentee Voting Certificate (AVC), allowing to vote on election day in any polling station across the country.<sup>30</sup> From 5 to 9 January, some categories of voters could be registered to vote in “special” polling stations in military units, rest houses, health resorts, and hard-to-reach areas. The CEC informed the ODIHR LEOM that the voters, while being included in “special” voter lists, remained in the voter lists of their permanent residence, due to lack of time to process such changes.

*Efforts to improve the accuracy of voter lists should continue. An effective data exchange between election commissions and akimats should enable timely correction of records in the voter lists during a given electoral period.*

Contrary to international good practice, eligible voters omitted from the voter lists can be added by the relevant PEC to the voter list on election day, provided they prove their residence within the precinct, without administrative or judicial control.<sup>31</sup> Although ODIHR LEOM interlocutors did not express major concerns regarding the accuracy of the voter lists, the potential for multiple voting remains.

*In order to strengthen the integrity of voter registration, supplementary registration of voters on election day should only be permitted in accordance with clearly defined legal rules, subject to judicial or administrative control, with effective safeguards against multiple registrations.*

## VIII. CANDIDATE REGISTRATION

Eligible voters aged 25 or older who have resided permanently in the country for at least 10 years before election day are eligible to stand.<sup>32</sup> The Election Law further excludes from the right to stand those with an unexpunged criminal record and those found guilty of a corruption offence. Only registered political parties may nominate candidates who must be members of the nominating party.<sup>33</sup> Independent candidates and electoral blocs are not permitted.<sup>34</sup> Overall, candidate registration is marked by excessively strict requirements for the right to stand, which run counter to international standards.

*Independent candidates should be allowed to stand for parliamentary elections. Restrictions on candidacy based on residency and criminal records should be reviewed in line with international standards and good practice.*

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<sup>30</sup> According to the CEC, 39,768 voters applied for a temporary registration and 10,599 received AVCs.

<sup>31</sup> According to section I.1.2.iv of the Venice Commission’s [2002 Code of Good Practice in Electoral Matters](#) (Code of Good Practice), “polling stations should not be permitted to register voters on election day itself”.

<sup>32</sup> Paragraph 15 of the CCPR General Comment No.25 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”. According to section I.1.1.c.iii of the Venice Commission’s Code of Good Practice, “length of residence requirement may be imposed on nationals solely for local or regional elections”.

<sup>33</sup> The CEC informed the ODIHR LEOM that it received three applications from self-nominated candidates.

<sup>34</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document provides for “the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”. Article 3.4 of the 2002 CIS Convention states that “every citizen should have equal legal possibilities to propose him/herself as a candidate in elections”. See also Paragraph 17 of the CCPR General Comment No.25, which states that “the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties”.

The 2020 amendments to the Law on Political Parties halved the minimum number of members required for party registration from 40,000 to 20,000.<sup>35</sup> Notwithstanding this reduction, no new parties have been registered since 2013, despite at least nine attempts to do so since the last parliamentary elections. The signing up of the 20,000 members is the penultimate stage of the party registration process. No political movements seeking registration reached this stage due to onerous legal and administrative hurdles, such as collecting and verifying by the Ministry of Justice (MoJ) of at least 1,000 signatures of party supporters required to set up a party initiating committee, as well as a need to hold a founding congress of at least 1,000 people. The initiative groups also informed the ODIHR LEOM of incidents of pressure against their leaders and supporters.<sup>36</sup> This runs contrary to Paragraph 7.6 of the 1990 OSCE Copenhagen Document and other international standards.<sup>37</sup>

*The legislative requirements and onerous administrative procedures for the registration of political parties should be comprehensively revised in order to respect and encourage pluralism and freedom of association. Registration of political parties should be carried out objectively, transparently and be subject to effective judicial control.*

Candidates are nominated by registered political parties through nationwide party lists. By the legal deadline of 30 November, five parties submitted their lists. For the first time, a quota applied to the nomination of candidates, which required each list to have at least 30 per cent of women and/or youth.<sup>38</sup> Of the 312 candidates, 90 were women (28.8 per cent) representing an increase from the 20.1 per cent in the previous parliamentary elections. Only one party, *Ak Zhol*, had more than 30 per cent of female candidates.<sup>39</sup> The quota does not bind parties to award the mandates won to women and/or youth, and only one of the three parliamentary parties, *Nur Otan*, has allocated more than 30 per cent of its mandates to women.

*Further measures to enhance women's participation in political life should be considered. To ensure the effective increase of women among members of parliament, an efficient gender quota system should be applied both to candidate lists and the allocation of mandates.*

Parties can nominate 30 per cent more candidates than the number of seats available, allowing a total of 127 names on their list. In order to be registered by the CEC, parties that had received less than seven per cent of votes in the previous parliamentary elections had to pay a monetary deposit of KZT 637,500 (some EUR 1,250) for each candidate on their list.<sup>40</sup> The cost of each candidate's nomination may constitute a potential deterring factor for nominating a higher number of candidates.

Only two parties competed for a majority of the positions available - *Nur Otan* nominated 126 candidates (of whom 37 were women), the PPK 113 (33 women). *Ak Zhol* competed with 38

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<sup>35</sup> The party is required to have 17 branches, one per region, each of which must have at least 600 members. Paragraph 102 of the 2020 [ODIHR and Venice Commission Guidelines on Political Party Regulation](#) reads that "Provisions regarding the limitation of political parties purely on the grounds that they represent a limited geographic area should generally be removed from relevant legislation".

<sup>36</sup> The non-registered opposition movement Our Right informed the ODIHR LEOM that they were prevented from holding their founding congress in March 2019 due in part to the detention of three of the movement's leaders. The non-registered Democratic Party of Kazakhstan (DPK) informed the ODIHR LEOM that in February 2020 hundreds of its supporters were detained shortly before the congress was due to be held. The political movement *El Tiregi* informed the ODIHR LEOM that the MoJ twice rejected their 1,000 signatures, in November 2020 and January 2021, claiming that there were deceased people on the list yet without providing evidence.

<sup>37</sup> See also Article 9.6 of the 2002 CIS Convention states that "any arbitrary or discriminatory application of norms for registration of political parties ... is not allowed".

<sup>38</sup> Youth refers to those who are between the minimum registration age of 25 and 29 years old.

<sup>39</sup> The CEC did not publish the age of candidates, and neither citizens nor observers were able to independently verify compliance with the youth quota.

<sup>40</sup> At the time of the observation EUR 1 was equal to some KZT 510 (Kazakhstani *Tenge*).

candidates (12 women), *Auyl* with 19 (4 women), and *Adal* with 16 (4 women), which made it impossible for any of them to claim a majority in parliament. In total, party lists included 34 incumbents from the outgoing *Majilis*. *Nur Otan* made a feature of their first ever primary elections to select 77 of their candidates. Other parties employed a mix of branch nominations and central quotas for their candidate lists.

Although parties have the choice to rank the candidates on their lists prior to the elections, the allocation of individual mandates was decided only after the elections. While the CEC listed individual candidates in the decisions on party list registration and posted this information on its website, the lists of candidates were neither easily accessible in the public domain nor available at polling stations. The IEOM also observed that in practice voters had little or no information about the candidates. Combined, these practices limited the right of voters to make an informed choice, contrary to good practice.<sup>41</sup>

On 27 November, following a call by the Democratic Choice of Kazakhstan (DCK) to citizens to vote for the NSDP, the latter decided to boycott the elections.<sup>42</sup> Among the stated reasons were the perceived likelihood of an unequal campaign environment and electoral fraud, based on previous experiences, as well as the risk of association with the DCK posed to the NSDP.<sup>43</sup>

Breaches of campaign and campaign finance rules provided for in the Election Law may lead to deregistration of a candidate or party and, if detected after election day, to invalidation of election results. The law does not specify whether deregistration applies to serious breaches only, and if there are possibilities for parties to rectify inaccuracies, thus containing no legal safeguards to prevent disproportionate sanctions and challenging Paragraph 7.7 of the 1990 OSCE Copenhagen Document.<sup>44</sup>

*The Election Law should be revised to guarantee that candidate deregistration and invalidation of election results are exceptional measures applied in case of gross violations of legislation as determined by a court. Applying such measures should always respect the principle of proportionality and be based on clear legal grounds.*

## IX. ELECTION CAMPAIGN

The Election Law provides that political parties have equal rights and conditions for participation in the elections. The misuse of state resources, charitable actions and the promising of goods, services, money or economic gains to voters are prohibited. Candidates in state positions are prohibited from using their official position to their advantage in the campaign. Campaigning by state and local

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<sup>41</sup> Section I.3.3.1.b.ii of the Venice Commission's Code of Good Practice provides that "the public authorities have a number of positive obligations; *inter alia*, they must enable voters to know the lists and candidates standing for election, for example through appropriate posting". Article 9.3 of the 2002 CIS Convention states that "with authentic elections, voters are provided with free access to information on candidates, lists of candidates, political parties (coalitions) and on the process of elections".

<sup>42</sup> The political movement DCK was declared "extremist" and banned in March 2018. *Koshe* Party, found by a court to be a front organization for the DCK, was banned in May 2020. The accused organizations claimed that they were not notified of the hearings and therefore were not legally represented.

<sup>43</sup> See the NSDP [press release](#) (in Russian).

<sup>44</sup> Paragraph 7.7 of the 1990 OSCE Copenhagen Document commits participating 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".

government bodies and their officials while on duty is illegal. The ODIHR LEOM was not aware of any official complaints or investigations on these issues.

The campaign ran from 10 December to 8 January.<sup>45</sup> Generally, the campaign was low-key, with the few campaign events being further limited due to the winter weather, COVID-19 restrictions, and the electorate's perception of the relative unimportance of the *Majilis* elections. Some ODIHR LEOM interlocutors, including from political parties, believed that the election results were pre-determined, rendering both campaigning and voting low-stake exercises.

Throughout the campaign, all parties were supportive of the president's and first president's policies, and none challenged the dominant position of *Nur Otan*. As a result, the campaign was not competitive, and voters were presented with few discernible political alternatives. Parties' campaigns were highly centralized, with most attention given to party leaders, who in the case of *Nur Otan*, was not a candidate. Party programmes were mostly declarative rather than specific; the only party to propose significant constitutional changes was *Ak Zhol* that advocated for a gradual move to a parliamentary system of government; it also proposed higher penalties for electoral fraud. *Nur Otan* called for further economic, social and infrastructure development, as well as to fight corruption and promote the use of the Kazakh language. Both *Auyl*, which presented itself as a rural party, and *Ak Zhol*, which claimed to represent small and medium business owners, promoted the use of the Kazakh language and identity. *Adal* promoted itself as a party of entrepreneurs, and the PPK presented its communist heritage as a party with left-wing ideology and a multi-ethnic approach.

*Nur Otan's* campaign had a significant preponderance of billboards across the country. Parties made use of the poster space provided by local authorities and organised small-scale meetings in person and also online, in addition to door-to-door campaigning. Despite the global pandemic and its health and economic implications, the parties generally did not address the government's response to the COVID-19 pandemic in their campaign platforms, apart from *Nur Otan* in particular promoting their charitable activities which ended two days before the calling of the elections.<sup>46</sup> The references early in the campaign by some Russian politicians to the historical status of the northern regions of Kazakhstan featured widely in the public sphere and appeared to increase support for Kazakh nationalism.

The ODIHR LEOM observed 24 political campaign events and noted the small number of publicly accessible political meetings, caused only in part by the COVID-19 pandemic. In very few cases were parties willing to announce events in advance. Most but not all of the observed political meetings were of 30 people or fewer in accordance with pandemic measures, though other measures, such as mask-wearing and social distancing, were less well adhered to.<sup>47</sup> Meetings were low-key and uncontroversial. No inflammatory language or hate speech was recorded at any observed event. Before election day, the ODIHR LEOM received few reports of pressure on public sector employees and students to vote in general, and, in some cases, for *Nur Otan* specifically.<sup>48</sup> Some of these alleged that state employees were expected to vote multiple times, and to provide photographic evidence of having voted. On election day, the IEOM observed that many voters asked for their pictures to be taken on their phones while casting their ballots.

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<sup>45</sup> The IEOM did not observe any violations of the campaign silence on 9 January and election day.

<sup>46</sup> *Nur Otan* [established a charity](#) *Birgemiz* ("together") in March 2020, which distributed some KZT 33.9 billion to 650,000 families between March and October. Posters displaying *Birgemiz* logo were prominent during the campaign, in addition to *Nur Otan's* posters. *Nur Otan's* campaign slogan was *#BizBirgemiz* ("we are together").

<sup>47</sup> See Ministry of Health [decree](#) of 10 December (in Russian).

<sup>48</sup> The ODIHR LEOM received the reports of pressure in East Kazakhstan region and Nur-Sultan.



The tepid nature of the campaign was mirrored online. The most popular social networks used by contestants were Facebook, Instagram, Twitter and YouTube. *Adal*, followed by *Nur Otan*, had the most active campaigns.<sup>49</sup> Parties oftentimes replicated the same post in Kazakh and Russian and occasionally addressed specific segments of society, including women and youth. Parties offered weekly reviews of past in-person campaign activities but did not announce in advance schedules of planned events, further weakening access of the electorate to their activities. The tone used was largely positive, with no reference to other contestants' political platforms. The topics coincided with the messages promoted during in-person campaigns and focused on the delivery of social services and welfare. *Nur Otan* also included the fight against corruption as an online campaign topic. The NSDP, following their announcement that they would boycott the elections, ceased posting on social networks.

Gender equality was not a prominent campaign topic. The PPK proposed an end to the legal discrimination against women being employed in specific jobs, and *Nur Otan* proposed measures to combat domestic violence. Although women appeared in electoral events, there were only a few women speakers.<sup>50</sup> Notwithstanding the introduction of the new gender quota, parties did not actively promote women candidates, and women are not visible in party leadership positions.

The 2020 Law on Peaceful Assemblies technically redefined the previous requirement for "permission" to "notification" for certain outdoor campaign-related assemblies.<sup>51</sup> While peaceful assemblies in the form of picketing, gatherings and rallies require "notification", permission is still required for peaceful assemblies in the form of demonstrations and processions.<sup>52</sup>

Freedom peaceful of assembly is further restricted in practice further challenging Paragraph 7.7 of the 1990 OSCE Copenhagen Document. *Akimats* can refuse a notification on minor technical grounds, and it is illegal to publicise an event while a notification is being reviewed.<sup>53</sup> Organizers need *de facto* permission to hold assemblies in a limited number of pre-determined locations, which tend to be far from city centres.<sup>54</sup> Some political actors informed the ODIHR LEOM that they had

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<sup>49</sup> *Adal* featured on average 10 posts daily, while *Nur Otan* averaged 6 posts.

<sup>50</sup> With the exception of the PPK meetings, as observed at campaign events by the ODIHR LEOM.

<sup>51</sup> According to Article 21 of the ICCPR, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others".

<sup>52</sup> Paragraph 25 of the 2019 ODIHR and Venice Commission [Guidelines on Freedom of Peaceful Assembly](#) states: "It is not necessary under international human rights law for domestic legislation to require advance notification of an assembly, but prior notice can enable the State to better ensure the peaceful nature of an assembly and to put in place arrangements to facilitate the event, or to protect public order, public safety and the rights and freedoms of others. A notification regime should never be turned into a de facto authorization procedure. The procedure for providing advance notification to the public authorities should not be onerous or overly bureaucratic". According to the [2013 Report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association](#), States are called "to ensure that peaceful assemblies are governed at most by a regime of notification regarding the holding of peaceful assemblies, in lieu of a regime of authorization and the notification procedure, where introduced, should be as simple and expeditious as possible".

<sup>53</sup> In practice, according to some ODIHR LEOM interlocutors, the decisions to authorise assemblies are often elevated to the higher-level regional authorities by *akimats*. The local authorities in Almaty informed the ODIHR LEOM that a spelling mistake could be grounds for rejection. Organizers need to provide detailed information about planned demonstrations, including the topics of discussion and the sources of financing.

<sup>54</sup> Several citizens were sentenced to administrative detention for participating, or calling for participation in, unauthorised demonstrations. On 16 December, while political parties in Almaty and other regions took part in commemorations related to Independence Day, in Almaty the ODIHR LEOM witnessed two separate groups of around 20 activists each from *Oyan Qazaqstan* and the unregistered DPK, surrounded by up to 100 uniformed police who prevented them from placing flowers at the Dawn of Independence monument. See also *Election Day*.

hundreds of requests for demonstrations denied since the last presidential election in 2019.<sup>55</sup> Such a restrictive approach is not in line with the stated aim of the law to facilitate freedom of peaceful assembly.

Election contestants also need to notify local authorities in order for individual campaigners to hand out leaflets outdoors. All five contesting parties informed the ODIHR LEOM that they supported this mechanism and did not recognize it as restricting the freedoms of peaceful assembly and expression; which further reflected the uncompetitive nature of the campaign.

*To comply fully with international standards, the Law on Peaceful Assemblies should be revised and implemented in a manner which facilitates the exercise of the right of all people to peaceful assembly.*

Unlike the election contestants, various opposition movements appeared much more active online. They openly criticized the political establishment. Different groups offered various protest tactics, including boycotting the elections, spoiling ballots, and demonstrating in different locations.<sup>56</sup> At least 28 citizens were fined or detained for campaigning for *Ak Zhol* following a call by the DCK to vote for the party.<sup>57</sup>

The 2018 amendments to the Election Law limit the conduct of opinion polls only to organizations registered in the country with at least five years of relevant experience, which appears to be an excessive requirement. The law further prohibits exit polls and requires interested organizations to notify the CEC on planned polling activities; however, the CEC interpreted the legal framework in a way that authorisation was effectively required.<sup>58</sup> Few opinion polls were published before election day - in all of them only *Nur Otan* would exceed the seven per cent threshold necessary to enter parliament.

## X. CAMPAIGN FINANCE

Campaign and political party finance are primarily regulated by the Election Law and the Law on Political Parties. While there is no public funding of the parties' campaigns for parliamentary elections, parties represented in the *Majilis* receive funding for regular activities from the state budget.<sup>59</sup>

Parties can fund their campaigns from their own sources in the amount of up to KZT 212.5 million and from private donations in the amount of up to KZT 425 million.<sup>60</sup> There are no caps for individual donations, potentially allowing for undue influence on parties by corporate entities or wealthy

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<sup>55</sup> According to Our Right movement, in 2019 their requests for a peaceful demonstration were denied 35 times before being permitted by the authorities. The *akimat* in Almaty informed the ODIHR LEOM that in 2020 there were 479 "notifications" submitted, but 184 of these were rejected and 13 withdrawn by the applicants. In Aktobe and Kostanay, there were 69 and 32 "notifications" submitted in 2020, of which only 8 and 7 respectively were accepted.

<sup>56</sup> According to news reports and opposition sources, one person was placed under involuntary psychiatric observation for destroying a *Nur Otan* poster. See, for example, media report [Kazakh Activist Placed In Psychiatric Clinic](#).

<sup>57</sup> The citizens were charged for production or distribution of 'anonymous' campaign materials, campaigning on behalf of the party without written consent, and unauthorised assemblies (Articles 113, 118 and 488 of the Code of Administrative Violations).

<sup>58</sup> The CEC authorised 10 entities to conduct opinion polls. Of the parties, only *Nur Otan* sought accreditation.

<sup>59</sup> Parliamentary parties receive state funding in proportion to the votes they obtained in the last elections.

<sup>60</sup> Any donations exceeding the stated limits must be returned to the donors. Two thirds of funds remaining on the parties' accounts after election day are transferred to the state budget, and one third is returned to the donors.

individuals.<sup>61</sup> Donations from foreign or anonymous sources as well as from state and religious organizations are forbidden. Candidates and political parties are also prohibited from accepting goods or services free of charge.

*To promote grassroots party-building and prevent undue influence by private donors and political corruption, consideration could be given to establishing individual caps on private donations to political parties for regular activities and campaigns.*

The CEC is the primary oversight body for campaign finance. Dedicated bank accounts for campaign incomes and expenditures were opened by the CEC upon registration of party lists. In conformity with the law, the specified bank provided weekly reports to the CEC that published the aggregated amounts of contestants' campaign incomes and itemized expenditures twice before election day, as well as on 21 January.<sup>62</sup> As it is not required by the law, the CEC did not publish details disclosing the identities of the donors and the amounts of individual donations, detracting from transparency.<sup>63</sup> According to the law, contestants should submit their campaign finance reports within five days after the publication of election results. Positively, the CEC elaborated a detailed template for such reports, providing for disclosure of donation sources and itemized expenditures. Nevertheless, as of the time of writing of this report, the CEC did not publish the finance reports of political parties.

*To enhance transparency, detailed campaign finance reports should be published, including data on the sources of funding and itemised expenditures.*

According to the CEC, it implements oversight based on official reports from the bank and does not conduct substantive audit to reveal non-disclosed income or expenditures. The Code of Administrative Offences provides for fines for failure to report campaign expenditures and for funding the campaigns bypassing the designated bank account. No such sanctions were reported to be imposed.

*Campaign finance contributions and expenditures should be subject to a comprehensive scrutiny by the Central Election Commission that should be granted a legal mandate and resources to conduct substantive investigations upon campaign finances.*

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<sup>61</sup> Paragraph 213 of the 2020 [ODIHR and Venice Commission Joint Guidelines on Political Party Regulation](#) provides that "Reasonable limitations on private donations may include the determination of a maximum amount that may be contributed by a single donor. Such limitations have been shown to be effective in reducing the possibility of corruption or the purchase of political influence". Although not directly applied to Kazakhstan, Article 3b ii of the Council of Europe Recommendation [CoE Rec 2003\(4\)](#) recommends that "States should consider the possibility of introducing rules limiting the value of donations to political parties".

<sup>62</sup> According to the CEC, *Nur Otan* received and spent some KZT 637 million, *Auyl* 490 million, *Adal* 385 million, *Ak Zhol* 370 million, and the PPK 376 million.

<sup>63</sup> According to Article 12.4 of the 2002 CIS Convention, the signatory states "shall provide for an open and transparent nature of all money donations to candidates, political parties (coalitions), participating in elections, in order to avoid any prohibited donations". Article 7.3 of the 2003 UNCAC recommends states to "tak[e] appropriate legislative and administrative measures ... to enhance transparency in the funding of candidatures for elected public office". Paragraph 247 of the 2020 ODIHR and Venice Commission Guidelines on Political Party Regulation states that "Voters must have relevant information as to the financial support given to political parties, as this influences decision making and is a means of holding parties accountable".

## XI. MEDIA

### A. LEGAL FRAMEWORK

The rights to freedom of expression and access to information, as guaranteed by the Constitution and international law, continue to be undermined by undue provisions in the Criminal Code and other legislation. Although slander was removed from the Criminal Code in June 2020,<sup>64</sup> other provisions related to defamation, including on “insult” and “distribution of deliberately false information”, remain criminalized, contrary to international commitments.<sup>65</sup>

Special protection of the “honour and dignity” of the president, the first president and public officials is granted by the Criminal Code, while the Election Law prohibits media from discrediting the “honour and dignity” of candidates and political parties. The legislation lacks clear definition of these restrictions.<sup>66</sup> These prohibitions stifle genuine political debate and result in self-censorship of the media. In addition, the 2017 amendments to the Law on Mass Media oblige journalists to obtain the permission of individuals named in their coverage before publishing information involving “personal, family, medical, banking, commercial and other secrets protected by law”. Several journalists informed the ODIHR LEOM that these provisions made investigative journalism almost impossible.

Article 20.2 of the ICCPR prohibits “incitement to discrimination, hostility or violence”. However, any relevant prohibitions and limitations to freedom of expression must be in strict conformity with the principles of legality, legitimacy and proportionality.<sup>67</sup> International bodies have previously noted that overly broad and vague provisions in the Criminal Code on the incitement to hatred and “extremism” do not provide for legal certainty and are used to unduly restrict the freedoms of religion, expression, assembly and association in Kazakhstan.<sup>68</sup>

The Office of the Prosecutor General declared that any statements, including sharing of posts or comments in support of the banned organization DCK on social networks, may result in charges based on Article 405 (organization of or participation in the activity of a prohibited extremist organization)

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<sup>64</sup> Instead of becoming a civil matter solely, defamation is now treated as an administrative violation, and state authorities still initiate the cases. The law provides for up to 30 days in administrative detention for slander and excessive fines of up to KZT 2 million. Representatives of international and regional institutions for freedom of expression have recommended the repeal of all criminal defamation laws and their replacement, where necessary, with appropriate civil defamation laws. See among others the [2002 Joint Declaration](#) on International Mechanisms for Promoting Freedom of Expression by the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media (RFoM) and OAS Special Rapporteur on Freedom of Expression.

<sup>65</sup> According to Paragraph 47 of the [2011 CCPR General Comment No.34 to the ICCPR](#) “States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty”.

<sup>66</sup> According to the [2020 Joint Declaration](#) on Freedom of Expression and Elections in the Digital Age, public figures should tolerate “a higher degree of criticism and scrutiny than ordinary citizens”. In addition, any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous and narrowly and precisely drawn so as to enable individuals to predict with reasonable certainty in advance the legality or otherwise of a particular action. See also Paragraph 38 of the 2011 CCPR General Comment No.34 to the ICCPR.

<sup>67</sup> Article 19.3 of the ICCPR states that restrictions “shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order ... or of public health or morals”. Paragraph 52 of the 2011 CCPR General Comment No.34 to the ICCPR provides that whenever a State limits expression, it is necessary to “justify the prohibitions and their provisions in strict conformity with Article 19”. The 2013 [Rabat Plan of Action](#), an initiative of the UN High Commissioner for Human Rights, suggests a high threshold for defining restrictions on freedom of expression, incitement to hatred, and for the application of Article 20 of the ICCPR.

<sup>68</sup> See Articles 174, 179 and 405 of the Criminal Code and Summary of the [2020 Report of the UN Special Rapporteur](#).

or Article 182 (creation, management of extremist group or participation in its activity) of the Criminal Code.<sup>69</sup> In the months leading up to the elections, media reported on arrests, detentions and sentences of citizens based on Article 405 of the Criminal Code, including for activities on social media.<sup>70</sup> The criminal sanctions for participation in the activity of a prohibited extremist organization, may lead up to two years of imprisonment with potential ban to hold certain offices or engage in certain activities for up to three years.

*Restrictions in the legislation of the constitutionally guaranteed right to freedom of expression, including related to defamation and the incitement to hatred, should be in strict conformity with the principles of legality, legitimacy and proportionality.*

The Election Law provides contestants with access to paid airtime and space under equal conditions. According to the Law on Mass Media, broadcasters, print media and all “Internet resources” are considered media outlets and are overseen by the Ministry of Information and Social Development (MISD) that also grants broadcasting licences.<sup>71</sup> All media outlets are obliged to devote an equal amount of coverage to contestants’ campaigns. The MISD informed the ODIHR LEOM that although “network publications”, such as social media accounts, are subject to the same rules, during the election period, social networks are not obliged to provide an equal amount of coverage of contestants and are not included into the quantitative monitoring by the MISD. On 9 January, the MISD reported that monitored media provided largely equal coverage of contesting political parties.<sup>72</sup>

## **B. MEDIA ENVIRONMENT**

According to the MISD, only some 25 per cent of over 4,500 registered media outlets are active. TV, the main source of political information, is either state-owned or largely state-subsidized. The ultimate ownership of commercial media outlets is lacking transparency. Some ODIHR LEOM interlocutors claimed that the majority of private national media outlets are owned by business people close to the government, and in particular to the family of the first president, resulting in a lack of diversity.

Many ODIHR LEOM interlocutors opined that the dependence of media, in particular TV, on considerable state subsidies undermines their editorial independence.<sup>73</sup> Representatives of independent media outlets informed that subsidies further distort competition in a limited advertising market.

*Information on ownership and sources of funding of media outlets should be publicly disclosed. To support a diverse media landscape and to enhance editorial autonomy, the allocation of government subsidies and advertising should be transparent.*

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<sup>69</sup> See the [statement](#) of the Office of the Prosecutor General from 13 March 2018 (in Russian).

<sup>70</sup> For instance, according to [media](#) and [NGO](#) reports, journalist and blogger Aigul Utepova was under house arrest since 17 September 2020 reportedly for her YouTube videos and posts on social media critical of the government; on 23 November, she was forcibly placed in a psychiatric hospital, and on 11 December returned to house arrest. On 12 December, [Diana Baimagambetova was arrested](#) and placed in pre-trial detention until 12 February 2021 for “participation in a banned organization”. Ms. Baimagambetova spent in 2020 a total of 45 days under administrative arrest for participating in three unauthorized gatherings. On 21 December 2020, [Alibek Moldin was sentenced](#) to a year of restriction of liberty for “participation in banned organization” due to his activities on social networks. Reportedly, he was prohibited from posting on social networks and instant messengers until 21 December 2021.

<sup>71</sup> Although social media accounts carry same responsibility as media outlets, such as potential liability for third party content, only contracted journalists receive accreditation.

<sup>72</sup> According to the [report](#), the MISD monitored 47 TV stations, 321 print media and 131 online media outlets.

<sup>73</sup> In 2018, the NGO Legal Media Centre lost an appeal to the Supreme Court against the MISD. The Ministry refused to provide information about media organizations receiving government financing.

The public debate is gradually shifting to the Internet, which provides an increasing space for pluralism of news and opinions. However, international bodies have previously reported on disproportionate interference into Internet freedom, including the blocking of websites and social media by state bodies on very broad grounds and without prior court decision.<sup>74</sup> The MISD and the National Security Committee are entitled to block websites and halt media outlet operations, without prior judicial oversight.<sup>75</sup> A recommendation in December 2020 for citizens to install a government-issued “root certificate” to all devices enabling access to Internet was counteracted by international providers, including Apple, Google, Microsoft and Mozilla, by blocking the certificate on their browsers.

*To ensure the effective exercise of freedom of expression, any restrictions on the operation of websites, blogs and other Internet-based resources should be transparent, clearly defined by law, subject to judicial oversight and conform to the strict tests of necessity and proportionality.*

### C. MEDIA MONITORING FINDINGS

[Click Here to Read Media Monitoring Results](#)



The ODIHR LEOM media monitoring results revealed that the coverage devoted to the election campaign on TV and in online media was limited.<sup>76</sup> Ninety per cent of covered political actors on all TV stations were male. Monitored TV stations generally followed their obligation to devote an equal amount of coverage to contesting parties in their news. *Khabar TV* devoted 22, 18, 19, 24 and 17 per cent to *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and the PPK, respectively, while *Qazaqstan TV* devoted 26, 18, 18, 15 and 23 per cent of its news coverage to the respective political parties. On the First Eurasian Channel *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and the PPK received 18, 18, 19, 28 and 18 per cent of campaign coverage, respectively, while *KTK* devoted 20, 21, 19, 21 and 20 per cent to them.<sup>77</sup>

Nevertheless, the news coverage, including coverage of political actors in their institutional capacity demonstrated that *Khabar TV* devoted 17, 14, 15, 39 and 15 per cent of news coverage to *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and the PPK, respectively, while these parties received 20, 13, 13, 35 and 18 per cent respectively on *Qazaqstan TV*. On the First Eurasian Channel *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and the PPK received 11, 11, 12, 54 and 12 per cent of coverage, while *KTK* devoted 18, 19, 17, 28 and 18 per cent of news coverage to these parties. All news coverage was in a positive (some 70 per cent) or a neutral tone. The complete absence of critical tone in the news and other current events programmes reflected the lack of analytical journalistic reporting and the non-competitive nature of the campaign. The coverage in online media, though limited, was more diverse.

*Khabar TV* broadcast a live debate, organized by the CEC, on 30 December; two other debates were broadcast by *Qazaqstan TV* and *KTK*, with representatives of all contesting parties.<sup>78</sup> In a welcome development, these debates, all held in primetime, provided an opportunity for all contesting parties to present their platforms and engage with each other.

<sup>74</sup> See Paragraph 27 of the [2020 Report of the UN Special Rapporteur](#) and the 2018 [statement](#) of the OSCE RFoM.  
<sup>75</sup> Paragraph 15 of the 2011 UNHRC General Comment No.34 reads: “States parties should take all necessary steps [...] to ensure access of individuals thereto (online media)”. [The 2012 UNHRC Resolution on the promotion, protection and enjoyment of human rights on the Internet](#) affirms that “the same rights that people have offline must also be protected online, in particular freedom of expression”.

<sup>76</sup> Between 13 December 2020 and 8 January 2021, the ODIHR LEOM monitored five TV stations (*Khabar TV*, *Qazaqstan TV*, First Eurasian Channel, *7 Channel* and *KTK*), and five online media outlets (*tengrinews.kz*, *informburo.kz*, *vlast.kz*, *azattyq.org* and *kaztag.kz*).

<sup>77</sup> *7 Channel* does not broadcast newscasts.

<sup>78</sup> The debates on *Qazaqstan TV* (22 December) and *KTK* (26 December) were marked as paid political advertising, paid for by the political parties.

## XII. PARTICIPATION OF NATIONAL MINORITIES

According to official statistics, ethnic Kazakhs constitute 63.1 per cent of the population followed by Russians with 23.7 per cent. Other sizable ethnic communities are Uzbeks, Ukrainians, Uighurs, Tatars and Germans.<sup>79</sup> The Constitution and the Law on Languages provide that Kazakh is the state language, Russian is used on an equal basis along with the Kazakh language in state institutions and local self-administrative bodies, and other languages shall be promoted.

Minority languages were not used at campaign events observed by the ODIHR LEOM, but some contestants informed the ODIHR LEOM that in addition to Kazakh and Russian, they printed their campaign materials in other languages used by minorities. No discriminatory rhetoric or actions directed towards minority populations were reported or observed during the campaign.

The Election Law provides for ballots to be printed in Kazakh and Russian languages. No ballots for the parliamentary elections were printed in other languages spoken by minorities. While the ODIHR LEOM was not aware of any significant complaints on this issue from minority communities, this practice is not fully in line with OSCE commitments and other international standards.<sup>80</sup>

The Law on Political Parties prohibits the formation of parties based on national, ethnic or religious origin. The Election Law does not require data on ethnic origin for the registration of candidates, except for the nine nominees from the APK at the discretion of the candidates. All five parties nominated candidates from national minorities. According to the CEC, ethnic Kazakhs accounted for 79.8 per cent of candidates and ethnic Russians for 13.8 per cent. The remaining 6.4 per cent of candidates included 10 other ethnicities.<sup>81</sup> There are no legal requirements on the disaggregation of data on ethnic origin for election commission members.

The APK elected nine MPs on 11 January. Two of them come from the ethnic Kazakh community, and one each from Armenian, Azerbaijani, Korean, Kurdish, Russian, Tatar and Uighur communities.

## XIII. COMPLAINTS AND APPEALS

The provisions on electoral disputes are dispersed in the Election Law, Civil Procedures Code, Law on the Administrative Procedures, and the Law on Procedures for Consideration of Petitions, resulting in ambiguities and legal uncertainty regarding the pertinent rules to be applied. Legislation does not provide for due process safeguards for the review of complaints in lower-level election commissions.<sup>82</sup>

*The legal framework for complaints and appeals should be reviewed to eliminate ambiguities and to provide for a consolidated procedural base and due process safeguards for the resolution of election disputes at election commissions of all levels.*

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<sup>79</sup> The last [official census](#) was conducted in 2009.

<sup>80</sup> Paragraph 32.5 of the 1990 OSCE Copenhagen Document states: “persons belonging to national minorities have the right to have access to and exchange information in their mother tongue”. Paragraph 12 of the CCPR General Comment No.25 states: “information and materials about voting should be available in minority languages”.

<sup>81</sup> These are ethnic Azerbaijanis, Belarusians, Chuvashs, Germans, Koreans, Poles, Tatars, Uighurs, Ukrainians and Uzbeks. See [CEC press release](#) from 10 December.

<sup>82</sup> While the Law on the Administrative Procedures contains certain safeguards regarding the process in the CEC, providing for the right of complainant to be notified of and personally participate in the hearing, there are no procedural rules and guarantees provided for the review of complaints in lower-level commissions.

Election-related complaints may be filed by citizens and other stakeholders with the election commissions or courts, within 10 days of the alleged violation. Election commissions have five days to consider complaints, and three days to review appeals against decisions of lower-level commissions. Complaints filed within five days before election day must be reviewed immediately. If a complaint is filed both to a commission and a court, the commission suspends the case.

The CEC informed the ODIHR LEOM that it had received 104 applications before and 13 on or after election day. While some of the submissions by voters and citizen observers raised legal grievances, no application was qualified as a complaint and hence reviewed in an open session.<sup>83</sup> The ODIHR LEOM was made aware of few complaints reviewed by lower-level commissions before election day. Many ODIHR LEOM interlocutors from civil society explained the low number of complaints by the lack of competitiveness of the elections and low trust in the election dispute resolution process.

Complaints against the CEC are reviewed by a Supreme Court judge in the first instance whose decision can be further appealed to a Supreme Court cassation panel in the final instance. The Election Law provides that final results announced by the CEC can be appealed to the Constitutional Council, within 10 days of their announcement, but only by the president, prime minister, speakers of both houses or one-fifth of the total number of members of the parliament. The legislation is vague as to whether final results announced by the CEC can also be appealed to the Supreme Court, and the ODIHR LEOM interlocutors demonstrated a lack of consistent understanding of these provisions.<sup>84</sup> The Election Law does not establish clear criteria for invalidation of results.

*The Election Law should be amended to explicitly provide for the right of electoral stakeholders to file complaints against election results at all levels. It should also clearly specify jurisdiction over such complaints, as well as set objective criteria for a potential invalidation of election results.*

The Supreme Court received 44 complaints before election day, most of these against the CEC resolution affecting citizen observation (see *Election Observation*).<sup>85</sup> All these complaints were dismissed either as filed beyond the legal deadlines or on overly formalistic grounds, without a possibility for the appellants to rectify technical mistakes.<sup>86</sup> Hearings were held online to comply with COVID-19-related sanitary measures. Parties to the case, as well as those willing to follow the process could get access upon registration on the Supreme Court's website.

On election day, a large number of complaints on alleged violations were lodged with the PECs and TECs, most of them by domestic observers. As a general rule, these were not treated as complaints, and no responses were provided to the complainants.<sup>87</sup> The ODIHR LEOM was made aware of some 20 complaints lodged with district courts regarding election day violations, most of these concerning alleged violation of observers' rights. All of these complaints were dismissed on formalistic grounds

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<sup>83</sup> The law distinguishes applications from complaints where an application is defined as any written communication to state institutions by citizens and legal entities. The applications are dealt within the framework of the Law on Procedures for Consideration of Petitions within general deadlines of 15 to 30 days.

<sup>84</sup> While the Civil Procedures Code provides that decisions and actions (inaction) of the CEC can be appealed to the Supreme Court, there are no rules to regulate appeals against the results lodged in parallel both to the Constitutional Council and the Supreme Court. In the meeting with the ODIHR LEOM, the Supreme Court did not confirm whether it was eligible to adjudicate appeals against election results.

<sup>85</sup> The ODIHR LEOM was made aware of only three complaints lodged with district courts; all were subject to adjudication by the Supreme Court and hence denied.

<sup>86</sup> Some complaints were dismissed on such grounds as non-indication of the telephone or the ID number of the appellant, or the contact details of the CEC, or for not specifying where the CEC decision in question was published.

<sup>87</sup> The CEC informed the ODIHR LEOM that election-day reports of violations are registered as "acts", not considered as complaints and hence entail no obligation on the part of the commissions to provide a formal written answer.



or denied. Overall, the widespread practice of dismissing complaints for minor defects in format falls short of providing effective redress, contrary to OSCE commitments and other international obligations.<sup>88</sup>

*To provide for effective redress to all stakeholders and increase public trust in election dispute resolution, election commissions and courts should give thorough and impartial consideration to the substance of all reports related to electoral violations or disputes. In line with good practice, a template for complaints could be provided, and decisions on inadmissibility of complaints on formal grounds, such as deficiencies in format, should be avoided.*

#### **XIV. ELECTION OBSERVATION**

In line with OSCE commitments, the Election Law provides for party, citizen and international observation of elections. Political parties are also entitled to have proxies and only they but not observers can request a recount of votes. While international observers are accredited by the CEC, there is no formal accreditation procedure for domestic observers and proxies.<sup>89</sup>

Citizen observers from some non-profit organizations faced concerted measures to prevent their effective election observation. Several ODIHR LEOM interlocutors reported unprecedented pressure experienced by some groups of observers before, during and after election day and considered that as a response to the protests which followed election day irregularities uncovered by citizen observers in the 2019 presidential election.

The ODIHR LEOM was made aware of some 30 non-profit organizations and human rights groups, including those which observed previous elections, being subject to tax investigations in the run-up to these elections, severely impacting their ability to conduct activities. Following the elections, on 15 January, all activities of the citizen observer group ECHO were suspended until 15 April 2021 and the organization was imposed an administrative fine of KZT 583,400. On 25 January, a similar three-month suspension of activities order and a fine of KZT 2 and 1 million respectively were imposed on human rights organizations, the Kazakhstan International Bureau for Human Rights and the International Legal Initiative, which had been involved in training of election observers.<sup>90</sup>

The Election Law does not set any qualification criteria on non-profit organizations for observing the elections. Nevertheless, on 4 December, the CEC adopted a resolution recommending the lower-level commissions to limit the right to observe to only those non-profit organizations which, in their founding declaration or statute, have a declared objective of “implementation and protection of the political rights and freedoms of citizens”. According to public explanation by the CEC, this was up to the PECs how to interpret that decision as to which organization meets the stated criteria. On

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<sup>88</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document stipulates that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”. Article 2 of the ICCPR provides that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”. Section II.3.3b of the Venice Commission’s Code of Good Practice recommends the procedure for election disputes “be simple and devoid from formalism, in particular concerning the admissibility of appeals”.

<sup>89</sup> The CEC accredited a total of 398 international observers from 10 international organizations and 31 foreign states.

<sup>90</sup> According to [media reports](#), the Head of the Service of State Incomes stated that these sanctions were imposed for technical mistakes. Civil society organizations in question noted that they were not given an opportunity to correct the mistakes and [appealed to the state authorities](#) to stop attacks against the human right organizations.

election day, this created further uncertainty hindering some citizen groups from observing.<sup>91</sup> Some citizen observers claimed that for practical reasons and as a matter of principle, since they disputed the legality of the CEC resolution, they would not change their charters.<sup>92</sup>

The CEC also regulated observers' rights to make photos, video and audio recordings during the voting process and prohibited publication and dissemination of recorded material, with a stated aim to ensure protection of personal data of people at polling stations.<sup>93</sup> The ODIHR LEOM was informed that a number of citizen observers were prevented by the PECs from taking any pictures or making videos, and at least 15 observers were accused of live broadcasting and expelled from the polling stations.

At the same time, many ODIHR LEOM interlocutors regarded a number of well-resourced organizations which deployed observers as closely aligned with the government, seeking to dilute and disrupt citizen observation.<sup>94</sup> Cases of deliberate conflict escalation and disruption of observation process by some observer groups were directly observed by the ODIHR LEOM on election day.

The late introduction of obligatory COVID-19 related testing for observers was perceived as a further step to hinder citizen observation, as the additional costs for COVID-19 tests were not foreseen in their operational budgets.<sup>95</sup> In Almaty on 9 January, the bulk of observation activities of one observer group was halted by the authorities, as the PCR tests were allegedly conducted by a non-authorized laboratory. Some ODIHR LEOM interlocutors opined that COVID-19 preventive measures were not applied as genuine health protection means, but rather as an excuse to prevent meaningful observation.

*The authorities, including the Central Election Commission, should abstain from restrictive interpretation and inconsistent implementation of the rules of participation of observers in the electoral process. Any such rules should be clear, announced in a timely manner and non-discriminatory.*

## XV. ELECTION DAY

In line with ODIHR methodology, the ODIHR LEOM did not observe election day proceedings in a comprehensive or systematic manner but followed voting, closing and counting, and tabulation in a limited number of polling stations in 13 out of 17 regions of the country.

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<sup>91</sup> Two citizen observer groups, Wings of Liberty and Youth Information Service of Kazakhstan, informed the ODIHR LEOM that 17 of their observers were denied entry based on the PEC's interpretation of their statute.

<sup>92</sup> The MoJ informed the ODIHR LEOM that 94 organizations amended their statutory documents since 4 December.

<sup>93</sup> The CEC ruled that the recorded material could be used only as evidence material in civil, administrative and criminal cases, and no online video broadcasting from polling stations by observers were allowed.

<sup>94</sup> Paragraph 8 of the [Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations](#) states that "no one should be allowed to be a non-partisan citizen election observer or monitor unless she or he is free from any political, economic or other conflict of interest that would hinder that person from conducting her or his election observation and monitoring activities in a non-discriminatory, impartial accurate and timely manner".

<sup>95</sup> The Ministry of Health [Resolution No 69](#) of 29 December and the [Sanitary Requirements on Election Day](#) of 30 December obliged all observers and proxies in polling stations located in regions designated as "medium and high COVID-19 risk zones", to present a five-day valid negative PCR test. In order to be eligible for free PCR tests, observing organizations had to submit to *akimats* a number of registration documents by 3 January, in an effective time frame of only 12 hours. According to the CEC, 33,326 observers were tested free of charge.

Election day was generally calm. The overwhelming presence of police and security services in several cities effectively prevented political movements from holding preannounced peaceful demonstrations.<sup>96</sup> After elections, the authorities informed the ODIHR LEOM that following the public calls of the DCK and its supporters to demonstrate on election day the preventive measures were undertaken to ensure public order and safety of electoral proceedings. In Almaty, the IEOM witnessed two separate groups of some 20 activists each surrounded by up to 100 police officers for up to nine hours in the winter weather in what appeared to be punitive measures.<sup>97</sup> The media and civil society groups reported a number of detentions of activists on election day.<sup>98</sup> Internet slow-downs in Almaty and Nur-Sultan and shutdowns of some media websites were reported throughout the day.<sup>99</sup>

Voting procedures were generally followed at the polling stations observed by the IEOM. Nevertheless, IEOM observers noted strong indications of ballot box stuffing, signatures lacking on the voter lists as compared with the high voter turnout announced by the PECs observed, multiple entries in the supplementary voter lists signalling substantial issues with the accuracy of voter registration, ballot boxes not sealed properly, and unauthorized people present in polling stations. Following the instructions of the PECs observed to remain at a considerable distance, both party proxies and domestic observers, albeit present in high numbers, often had no clear view of procedures, particularly voter identification.

Mitigating measures against COVID-19 were generally in place, and personal protective equipment was available in all polling stations visited for commissioners, observers and voters. However, social distancing was not always respected inside voting areas, and the IEOM noted instances of overcrowding. In most polling stations visited, PEC members limited the maximum number of people present and turned away observers, including from the IEOM.<sup>100</sup> Notwithstanding the requirement to have a negative PCR test in high and medium-risk zones, IEOM observers were not consistently asked to present these.

In most polling stations where counting was observed, the PECs did not consistently follow procedures, failing to announce voters' choice or the number of votes cast per party, routinely skipping important reconciliation safeguards, such as counting the unused ballot papers and voters' signatures in voter lists, and not posting voting results protocols. The IEOM and domestic observers were requested by the PECs to remain at a large distance from the count, which considerably limited transparency of the process.<sup>101</sup>

In 8 of the 12 TECs where tabulation was followed by the IEOM, the process was not transparent. The IEOM was neither able to verify the entry of results into databases at TEC level, nor granted access to the nationwide tabulation. In most cases, domestic observers and proxies were not present, and overcrowding did not allow to follow health protection protocols. Two TECs visited by the IEOM

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<sup>96</sup> This was observed in Aktobe, Almaty, Kyzylorda, Nur-Sultan, Oskemen and Shymkent.

<sup>97</sup> The IEOM repeatedly contacted police on election day but was not provided with any information on the reasons for the stand-off.

<sup>98</sup> Civil society groups reported over 300 detainees countrywide on election day, with more than half in Almaty. The Ministry of Internal Affairs in an official [statement](#) informed that all persons were released from detention and nobody was brought to administrative or criminal charges.

<sup>99</sup> According to the authorities, prosecutor offices did not order blocking Internet resources or access thereto.

<sup>100</sup> The Wings of Liberty and Youth Information Service of Kazakhstan also informed the IEOM of their observers denied entry by the PECs.

<sup>101</sup> Article 14.3e of the 2002 CIS Convention states that national observers shall have the right "to observe vote count in the conditions that provide for visibility of ballot counting procedure" and Article 15.8d states that international observers shall have the right "to observe voting, vote count and tabulation of the election results under the conditions providing for transparency of ballot counting".

during the election night were closed and no tabulation was on-going; two other TECs postponed the tabulation until the following day for no apparent reason.<sup>102</sup>

The voter turnout was announced at 63.2 per cent. The CEC did not publish results disaggregated by the PECs, thereby circumventing a crucial transparency safeguard and undermining public confidence.

*To ensure integrity of election results, uniform provisions and procedural safeguards should be adhered to during the counting and tabulation processes in full view of observers. To enhance transparency and accountability, election results should be published disaggregated by district and polling station.*

## XVI. POST-ELECTION DEVELOPMENTS

The CEC announced final election results on 12 January. No new political parties entered the *Majilis*. All five participating parties expressed satisfaction with the political outcome, and none objected the results. *Nur Otan* again received a qualified majority of more than two thirds of the seats in the *Majilis*, and following the new Law on Parliamentary Opposition, *Ak Zhol* and the PPK were officially designated as the parliamentary opposition. Both these groups abstained in the vote to re-appoint the prime minister.<sup>103</sup> The new law also resulted in two of the seven parliamentary committees being chaired by non-*Nur Otan* MPs. Two of the committees are chaired by women.

On the other hand, non-registered movements from both within the country and in exile alleged electoral fraud and condemned the treatment of protestors on election day. On 15 January, the day of inauguration of new MPs, the leader of the DPK held a “one person picket” in Almaty accusing the new MPs of being trespassers. Several citizen observer groups alleged numerous electoral irregularities.

On 15 January, the president announced a second package of political reforms, including a proposal for a reduction of the national electoral threshold from seven to five per cent. He also proposed the direct elections of *akims* (instead of their appointment), making the registration of political parties easier, allowing online petitions and introducing the option of voting “against all” on future ballots.

## XVII. RECOMMENDATIONS

These recommendations, contained throughout the text, are offered to further enhance the conduct of elections in the Republic of Kazakhstan and to support efforts to bring them fully in line with OSCE commitments, other international obligations, and standards for democratic elections.<sup>104</sup> These recommendations should be read in conjunction with past ODIHR recommendations that Kazakhstan

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<sup>102</sup> The former was the case in Atyrau and Mangystau regions; the latter in Aktobe and Shymkent.

<sup>103</sup> The PPK opposed the re-appointment of the prime minister, citing economic issues resulting from the COVID-19 pandemic and the slow implementation of the reforms proposed by the president, despite not having overtly criticised the government during the campaign.

<sup>104</sup> In 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 LEOM as follows: none of the recommendations from the [ODIHR final report on the 2016 parliamentary elections](#) (2016 Final Report) and from the [ODIHR final report on the 2019 presidential election](#) (2019 Final Report) were fully implemented. The recommendations 4, 5, 8, 14 and 21 from the 2016 Final Report, and 15 and 23 from the 2019 Final Report were mostly implemented. The recommendations 1, 12, 17 and 19 from the 2016 Final Report and 1, 6, 8, 12, 13, 18, 19, 22, 24, 26 and 28 from the 2019 Final Report were partially implemented. See also the ODIHR [electoral recommendations database](#).

has yet to address. ODIHR stands ready to assist the authorities of Kazakhstan to further improve the electoral process and address the recommendations contained in this and previous reports.

#### **A. PRIORITY RECOMMENDATIONS**

1. Law and public policy should ensure that citizens can exercise their civil and political rights without fear of retribution, punitive administrative actions or intimidation. Authorities should abstain from measures which have the effect of restricting rights and freedoms and ensure prompt and impartial investigation of any abuse.
2. The legislative requirements and onerous administrative procedures for the registration of political parties should be comprehensively revised in order to respect and encourage pluralism and freedom of association. Registration of political parties should be carried out objectively, transparently and be subject to effective judicial control.
3. The legal framework should be comprehensively revised to lift the restrictions on fundamental freedoms of peaceful assembly, expression and association, in line with OSCE commitments and other international obligations, and to address other long-standing ODIHR recommendations. The reform should be undertaken with open and meaningful consultation with all relevant stakeholders, well in advance of the next elections.
4. The authorities, including the Central Election Commission, should abstain from restrictive interpretation and inconsistent implementation of the rules of participation of observers in the electoral process. Any such rules should be clear, announced in a timely manner and non-discriminatory.
5. Restrictions in the legislation of the constitutionally guaranteed right to freedom of expression, including related to defamation and the incitement to hatred, should be in strict conformity with the principles of legality, legitimacy and proportionality.
6. To ensure integrity of election results, uniform provisions and procedural safeguards should be adhered to during the counting and tabulation processes in full view of observers. To enhance transparency and accountability, election results should be published disaggregated by district and polling station.

#### **B. OTHER RECOMMENDATIONS**

##### **Electoral system**

7. To increase the pluralism and representativeness of the parliament, consideration could be given to lowering the seven per cent threshold for parties to qualify for seat allocation.
8. The legislation should be revised to ensure that all seats in at least one chamber of the parliament are freely contested in a popular vote. In view of the personal character of a parliamentary mandate, deputies should be allowed to change parties or become independent if they so choose.

##### **Election administration**

9. To increase transparency and accountability, the Central Election Commission should publish information of public interest, including all its decisions, detailed data on candidates, disaggregated voting results and other key electoral data, in a form that enables easy and prompt

access. Consideration should be given to making these data available in formats accessible to different groups of persons with disabilities.

10. The important measures to guarantee unimpeded access of persons with disabilities taken by the Central Election Commission should be continued. Awareness training for polling officials as well as targeted voter education could increase the participation of persons with disabilities in the electoral process.

### **Voter registration**

11. The blanket deprivation of suffrage rights of citizens serving prison sentences and the restrictions on the basis of legal capacity for voting and standing for election should be reviewed in line with international standards and obligations.
12. Efforts to improve the accuracy of voter lists should continue. An effective data exchange between election commissions and akimats should enable timely correction of records in the voter lists during a given electoral period.
13. In order to strengthen the integrity of voter registration, supplementary registration of voters on election day should only be permitted in accordance with clearly defined legal rules, subject to judicial or administrative control, with effective safeguards against multiple registrations.

### **Candidate registration**

14. Independent candidates should be allowed to stand for parliamentary elections. Restrictions on candidacy based on residency and criminal records should be reviewed in line with international standards and good practice.
15. Further measures to enhance women's participation in political life should be considered. To ensure the effective increase of women among members of parliament, an efficient gender quota system should be applied both to candidate lists and the allocation of mandates.
16. The Election Law should be revised to guarantee that candidate deregistration and invalidation of election results are exceptional measures applied in case of gross violations of legislation as determined by a court. Applying such measures should always respect the principle of proportionality and be based on clear legal grounds

### **Election campaign**

17. To comply fully with international standards, the Law on Peaceful Assemblies should be revised and implemented in a manner which facilitates the exercise of the right of all people to peaceful assembly.

### **Campaign finance**

18. To promote grassroots party-building and prevent undue influence by private donors and political corruption, consideration could be given to establishing individual caps on private donations to political parties for regular activities and campaigns.
19. To enhance transparency, detailed campaign finance reports should be published, including data on the sources of funding and itemised expenditures.

20. Campaign finance contributions and expenditures should be subject to a comprehensive scrutiny by the Central Election Commission that should be granted a legal mandate and resources to conduct substantive investigations upon campaign finances.

### **Media**

21. Information on ownership and sources of funding of media outlets should be publicly disclosed. To support a diverse media landscape and to enhance editorial autonomy, the allocation of government subsidies and advertising should be transparent.
22. To ensure the effective exercise of freedom of expression, any restrictions on the operation of websites, blogs and other Internet-based resources should be transparent, clearly defined by law, subject to judicial oversight and conform to the strict tests of necessity and proportionality.

### **Complaints and appeals**

23. The legal framework for complaints and appeals should be reviewed to eliminate ambiguities and to provide for a consolidated procedural base and due process safeguards for the resolution of election disputes at election commissions of all levels.
24. The Election Law should be amended to explicitly provide for the right of electoral stakeholders to file complaints against election results at all levels. It should also clearly specify jurisdiction over such complaints, as well as set objective criteria for a potential invalidation of election results.
25. To provide for effective redress to all stakeholders and increase public trust in election dispute resolution, election commissions and courts should give thorough and impartial consideration to the substance of all reports related to electoral violations or disputes. In line with good practice, a template for complaints could be provided, and decisions on inadmissibility of complaints on formal grounds, such as deficiencies in format, should be avoided.

## ANNEX I: FINAL RESULTS<sup>105</sup>

Total number of registered voters	11,919,241
Total number of voters who voted	7,539,280
Turnout (percentage)	63.2

<b>Party Name</b>	<b>Number of valid votes</b>	<b>Percentage</b>	<b>Seats in <i>Majilis</i></b>
<i>Nur Otan</i>	5,148,074	71.09	76
<i>Ak Zhol</i>	792,828	10.95	12
People's Party of Kazakhstan	659,019	9.10	10
<i>Auyl</i>	383,023	5.29	0
<i>Adal</i>	258,618	3.57	0

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<sup>105</sup> As officially published by the [CEC](#).



## ANNEX II: LIST OF OBSERVERS IN THE LIMITED ELECTION OBSERVATION MISSION

### OSCE Parliamentary Assembly

Kristian Vigenin	MP	Special Co-Ordinator	Bulgaria
Pia Kauma	MP		Finland
Sereine Mauborgne	MP		France
Farimah Daftary	OSCE PA Secretariat		France
Alexandra Toussaint	OSCE PA Secretariat		France
Guido Almerigogna	OSCE PA Secretariat		Italy
Anastasiya Griadasova	OSCE PA Secretariat		Kyrgyz Republic

### ODIHR LEOM Core Team

Ambassador Jarosław Marcin Domański	Head of Mission	Poland
Armen Mazmanyán		Armenia
Anna Papikyan		Armenia
Michaela Sivich		Austria
Elma Šehalić		Germany
Ahmad Rasuli		Kyrgyz Republic
Roman Railean		Moldova
Michał Gałkowski		Poland
Karolina Semina		Russian Federation
Saša Pokrajac		Serbia
Martina Barker-Ciganiková		Slovakia
Dominic Howell		United Kingdom

### ODIHR LEOM Long-term Observers

Anush Hayrapetyan	Armenia
Veronika Homolová	Czech Republic
Roman Stanek	Czech Republic
Sini-Tuulia Numminen	Finland
Ingo Buettner	Germany
Anke Kerl	Germany
Janina Markewitsch	Germany
Beata Fal	Hungary
Sara Mazzali	Italy
Giuliano Salis	Italy
Emil Shakir Uulu	Kyrgyz Republic
Kristina Bogdanova	Russian Federation
Evgeny Loginov	Russian Federation
Andrey Ostvald	Russian Federation
Valentin Voronkov	Russian Federation
Johanna Lindén	Sweden
Astrid Nunez	Sweden
Sigrid Utterman	Sweden
Ben Jones	United Kingdom
Aleksandra Pajević	United Kingdom
Paul Wesson	United Kingdom
Joseph Worrall	United Kingdom
Nabil Al-Tikriti	United States of America
Rebecca Graham	United States of America
Gregoire Houel	United States of America

## 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](http://www.osce.org/odihr)).