



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

PARLIAMENTARY ELECTIONS

19 September and 3 October 2004

OSCE/ODIHR Election Observation Mission Report



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**REPUBLIC OF KAZAKHSTAN
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**OSCE/ODIHR Election Observation Mission
Final Report¹**

I. EXECUTIVE SUMMARY

In response to an invitation by the Central Election Commission of the Republic of Kazakhstan, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed the 19 September 2004 elections to the Majilis, the lower house of Parliament. A second round of elections on 3 October was observed on a limited scale. The OSCE/ODIHR has assessed the Parliamentary elections in terms of their compliance with domestic legislation, the 1990 OSCE Copenhagen Document, and other international standards.

The 19 September Majilis elections were the first elections to be held since the 2003 elections to local government bodies and the 1999 Parliamentary elections. However, while these elections reflected improvement over past parliamentary elections, serious shortcomings remain, and the election process fell short of OSCE commitments and other international standards for democratic elections in many respects.

Despite these shortcomings, the following improvements are noted:

- Amendments to the election law provide the basis for increased transparency to the overall election process, although further improvements are necessary to bring the election legislation more closely in line with OSCE commitments;
- The registration of twelve parties, among them the opposition party Democratic Choice of Kazakhstan (DCK);
- Seven TV debates, while restrictive in format, gave the parties an opportunity to inform the public of their views, and there were no cases of media outlets being shut down or journalists being prosecuted, as had occurred in previous elections;
- Domestic observers were given more legal rights providing them with greater access to the process than in previous elections, although they were not always permitted to exercise these rights in practice;
- The authorities demonstrated an openness to international observation, beyond their OSCE commitments;
- Central Election Commission (CEC) voter education efforts were carried out professionally and effectively, particularly with regard to electronic voting.

Most of the shortcomings reflect a lack of transparency in election administration, and a lack of the commensurate level of political will necessary to implement the election legislation in an effective and impartial manner. Some, however, stem from remaining problems in the election legislation. Elements of these elections that were inconsistent with national legislation, OSCE election-related commitments, Council of Europe, and other international standards for democratic elections include the following:

¹ This report is also available in Kazakh and Russian, but the English version remains the only official version.

- Two opposition leaders were unable to run for office, due to convictions which are widely viewed as politically motivated;
- The CEC functioned in an arbitrary, selective and non-transparent manner and, to the best of the EOM's knowledge, did not meet in public session to take decisions during the official campaign period as provided for in the election law;
- The composition of election commissions lacked political balance;
- Media monitoring revealed a strong bias in the news coverage of the election campaign, particularly in favor of the dominant pro-presidential parties;
- Considerable pressure to support pro-presidential parties was placed on voters, especially by local government officials and by supervisors in the workplace;
- The late decision, just prior to the first day of elections, to offer the choice of parallel paper balloting in the 10 per cent of polling stations where electronic voting was implemented led to organizational difficulties, the potential for multiple voting, and added unnecessary complexities to the tabulation process;
- The complaints and appeals process was ineffective and non-transparent.

The introduction of electronic voting for these elections was controversial, especially when it appeared that voters would be required to use it in all major urban centers. In the end, voters could choose between paper and electronic voting in the 10 percent of polling stations where e-voting was available. The e-voting system, unique to Kazakhstan, has positive aspects, but lacks transparency in its current configuration, as it does not provide for the possibility of a manual audit.

In both rounds, there were problems on election day itself, particularly in the accuracy of the voter register. There were significant discrepancies between paper and electronic voter lists, and there were inconsistent and non-transparent procedures for adding voters to the voter lists on election day. Many voters were turned away at the polling station because their names could not be found in the voter lists.

The completion of counting at polling station level and tabulation at higher election commissions were also problematic. Domestic observers were not given copies of the protocols in all cases, nor were the results posted at every polling station as prescribed in the law. Combined with reports and observations of protocols being altered or rewritten after having left the polling station, this constituted a fundamental breach of transparency, and negated safeguards for crosschecking the integrity of the results.

The CEC had indicated to the IEOM and to other organizations that it would publish final results broken down by polling station, which would have greatly contributed to the transparency of the counting and tabulation process. However, this fundamental step has not been taken to date.

The composition of the newly elected Majilis is almost exclusively pro-presidential. Only one Member of Parliament was elected from an opposition party, and he has refused to take up his seat. None of the opposition parties have recognized the outcome of the elections. The speaker of the outgoing Majilis, and top of the candidate list for the main pro-presidential Otan party, has also refused to take up his seat in the new Majilis, citing election irregularities.

This report makes a number of recommendations, including further improvements to the election law. While the Republic of Kazakhstan has taken some recognizable steps since

the 1999 elections towards meeting OSCE election-related commitments, a number of outstanding issues remain to be addressed. Many of the recommendations could be fully implemented in time for the 2006 presidential elections. However, the most critical requirement for conducting elections in accordance with OSCE commitments is the political will to ensure an impartial and professionally administered implementation of the law. The OSCE/ODIHR continues to stand ready to assist the authorities and civil society of Kazakhstan to improve its electoral process.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation by the CEC of the Republic of Kazakhstan, the OSCE/ODIHR established an Election Observation Mission (EOM) on 10 August 2004. The Mission was headed by Ambassador Robert L. Barry (USA) and was composed of a 15 member core team based in Astana and Almaty; as well as 16 long-term observers based in eight locations. Nationals from 16 participating States were represented in the OSCE/ODIHR EOM.

Parliamentary elections in the Republic of Kazakhstan were held on 19 September 2004. A second round of elections took place on 3 October 2004 in 22 of the 67 single mandate constituencies.

Ahead of election day, the OSCE/ODIHR EOM was joined by some 305 short-term observers from 34 OSCE participating States. This included 33 observers from the OSCE Parliamentary Assembly (OSCE PA), led by Mr. Ihor Ostash MP (Ukraine), Vice President of the OSCE Parliamentary Assembly, who was appointed by the OSCE Chairman-in-Office as Special Co-ordinator for the OSCE short-term observation. In addition, the Parliamentary Assembly of the Council of Europe sent a delegation of 10 parliamentarians led by Ms Tana de Zulueta MP (Italy). In a joint effort, on the 19 September, the International Election Observation Mission (IEOM) visited more than 1,300 polling stations, out of a total of some 9,400 polling stations in the country. IEOM observers were present in 10 out of the 16 regional administrative regions.

For the second round of elections on 3 October, the OSCE/ODIHR EOM was headed by Ambassador Lubomir Kopaj (Slovak Republic) and comprised five core staff and six long-term observers from six OSCE participating States. Election day observation was conducted by 24 observers in 93 polling stations in seven of the 22 constituencies, including ten short-term observers from embassies of OSCE participating States. While no statement was issued regarding the second round, relevant observations are incorporated in this report.

The EOM issued two Interim Reports prior to the elections and a Statement of Preliminary Findings and Conclusions on 20 September 2004. This Final Report should be read in conjunction with these reports as well as the OSCE/ODIHR Needs Assessment Mission report of June 2004 and the OSCE/ODIHR Assessment of the Constitutional Law on Elections of the Republic of Kazakhstan, August 2004.²

The OSCE/ODIHR wishes to express its appreciation to the Ministry of Foreign Affairs and the Central Election Commission of the Republic of Kazakhstan, as well as to other

² <http://www.osce.org/odihr/index.php?page=elections&div=analyses&country=kz>

authorities and civil society organizations, international organizations, the OSCE Center in Almaty and resident embassies and consulates of OSCE participating States, for their cooperation and assistance throughout the course of the observation.

III. POLITICAL BACKGROUND

According to the Constitution, adopted by referendum on 30 August 1995, Kazakhstan is a presidential republic. Kazakhstan has a bicameral parliament, consisting of the Majilis and the Senate. The Constitution, amended in 1998, provides for a strong presidential system, and Parliament has limited powers beyond accepting or rejecting laws proposed by the President. Presidential elections are due in 2006.

The 77-seat Majilis is elected by popular vote, with 67 deputies elected from single mandate districts and 10 deputies elected on party lists according to a national proportional formula, including a seven percent threshold. The election process employs two different ballots to this end. The election law provides for a second round in the event that no candidate in a single mandate contest receives more than 50 percent of the vote. The upper house, the 39-member Senate, is not elected by direct vote.

The recently concluded Majilis elections are the first to this body since October 1999. Those elections, as well as the presidential elections of January 1999, were assessed by the OSCE/ODIHR as falling short of OSCE elections-related commitments.

Kazakhstan has expressed interest in the chairmanship of the OSCE for 2009, and this election was seen as an important opportunity to demonstrate its commitment to a democratic election process. The authorities frequently expressed their stated desire for democratic reform.

IV. LEGISLATIVE FRAMEWORK

The key legal document defining the framework for the Majilis elections is the Constitutional Law of the Republic of Kazakhstan on Elections in the Republic of Kazakhstan (the election law), which was amended in 2004. The law was amended after the dialogue that commenced with the 2000 Round Table Process held under the auspices of the OSCE in cooperation with the authorities of Kazakhstan.

In the Assessment of the Constitutional Law on Elections of the Republic of Kazakhstan the OSCE/ODIHR stated that while some of the amendments represent progress, further improvements are necessary in order that the election law fully meets OSCE commitments for democratic elections, as set forth in the 1990 Copenhagen Document. The assessment noted that the extent to which the newly amended law can have a positive impact on the election process is ultimately determined by the level of political will exhibited by institutions and officials responsible for implementing and upholding the law in an effective and impartial manner.

Some of the remaining shortcomings in the election law identified in the Assessment were reflected in these parliamentary elections, such as limitations on the right to be elected,³ disproportional sanctions leading to deregistration,⁴ the lack of sufficient guarantees for inclusive, pluralistic representation on election commissions,⁵ the lack of a transparent and effective process for resolution of complaints,⁶ and lack of enforcement of media regulations.⁷

One of the key problematic issues with regard to this election was the lack of transparency of the election administration. The CEC and its subordinate commissions often took decisions in private, without notifying affected parties in advance or providing them with the opportunity to be heard. In some cases, involving de-registration of candidates on the eve of the election, decisions were not communicated in a timely manner. This practice is inconsistent with legal requirements that election commissions conduct their business publicly and openly (Art 20.1).

In addition to further amendments to the election law, the overall legal framework governing elections also requires improvement. Specific regulations directly relating to the election process are restrictive in nature, and concerns that they leave room for local authorities to make arbitrary decisions have been borne out by this election. For example, the election law guarantees parties and candidates access to the voters, but in practice the Presidential Decree “On the Order of Organization and Implementation of Peaceful Gatherings, Meetings, Marches, Pickets and Demonstrations” permits local authorities to deny permission for such events in an arbitrary manner. In these elections, there were several examples where permission for rallies or meetings with voters was denied or restricted in an evidently biased manner.⁸ The Law “On Fight Against Corruption,” which contains provisions allowing de-registration of candidates for errors in financial reporting, at times was also applied in a politically biased manner.⁹

A number of different issues concerning the election process are governed by other laws and legal acts, such as CEC regulations, Law on Mass Media, Law on Political Parties, Code on Administrative Violations, Law on Fight Against Corruption, and others. This legislation should also be reviewed and amended in order for the overall legal framework to be fully consistent with OSCE commitments and other international standards for democratic elections.

V. ELECTION ADMINISTRATION

A. ELECTION COMMISSIONS

The Central Election Commission (CEC) heads a four level system of Election Commissions. Below the Republic level, election commissions act at Territorial, District

³ For example, Bolat Abilov, Co-Chairman of Ak Zhol, was de-registered on the basis of a conditional court sentence for slander. ODIHR has previously recommended that people sentenced for minor crimes not be limited in their electoral rights

⁴ See section VI Registration of Parties and Candidates for details

⁵ See section V Election Administration for details

⁶ See section IX Complaints and Appeals for details

⁷ See section VIII Media for details

⁸ See section VII Election Campaign for details

⁹ See section VI Registration of Parties and Candidates for examples.

(Constituency), and Precinct level. All election commissions consist of 7 members. The Majilis appoints all members of the CEC, at the proposal of the President of the Republic; members of lower level Election Commissions are elected by corresponding Maslikhats.

The issue of the composition of election commissions is of fundamental concern. Although the members of Territorial, District and Precinct Commissions were elected by the corresponding Maslikhats “on the basis of proposals by political parties” as formally provided by law, figures provided by the CEC on the composition of these commissions throughout the country clearly show that representation on most commissions strongly favored pro-governmental parties. Countrywide, nominees put forward by the pro-government parties Asar and Otan were appointed in 99.7 percent and 98.8 percent of cases respectively, while the percentage of appointments of nominees by the opposition parties Ak Zhol and DCK was 51.6 percent and 20 percent.

Opposition parties claim to have been discriminated against in many cases. For example, the OSCE/ODIHR EOM learned that in Atyrau city, pro-government parties together held all but four of the 83 chairmanships and 83 secretary positions. Ak Zhol, DCK and the CPK each had only one commission member in total, and no chairmanships or secretary positions. For Atyrau oblast as a whole, Otan nominated 444 candidates to serve on PECs, of which 365 were appointed, while Ak Zhol nominated 200, of which 18 were appointed.

The CEC’s explanation for the imbalance of political party representation in election commissions was the low participation of political parties in the 2003 Maslikhat elections. This situation highlights the need for incorporating guarantees for inclusive and pluralistic composition of election commissions in the election law. The current law only partially addresses previous OSCE/ODIHR concerns about formation of election commissions.

B. ADMINISTRATION OF THE ELECTIONS

The OSCE/ODIHR EOM concluded that the Central Election Commission (CEC) functioned in a non-transparent manner and made arbitrary and selective decisions throughout the election process. To the best knowledge of the EOM, the CEC did not meet in open session with the necessary five-person quorum from the beginning of the campaign period through the election day itself. Important decisions, such as the one authorizing a summons requiring a DCK candidate to appear in court on charges of having organized an unsanctioned demonstration, appear to have been made in private and without a necessary quorum.¹⁰ A CEC recommendation to the media not to air a CPK/DCK bloc advertisement also seems to have been made without a quorum and was subsequently withdrawn. Other complaints about media by opposition parties were not acted on or were discussed by the CEC-organized Public Council without making any decisions on a course of remedial action.¹¹

CEC members were traveling extensively around the country during the pre-election period, and thus the decisions, including those on complaints and on sanctions of candidates, were made by telephone and fax. However, this situation does not meet the

¹⁰ During the pre-election period candidates are immune from arrest or administrative sanction unless the CEC decides otherwise.

¹¹ The Public Council was created by the CEC as an advisory body for the resolution of media disputes. It consisted of political parties, government officials, media representatives, and members of the CEC.

legal requirement for access by stakeholders to the CEC decision-making process.¹² While the CEC has cited the size of Kazakhstan as a justification for this arrangement, other geographically extensive states manage to meet this challenge while maintaining a transparent decision-making process at central level. The practice of dispersing CEC members around the country, throughout the entirety of the election campaign, is inconsistent with open and transparent functioning of election commissions.

Despite repeated requests, the OSCE/ODIHR EOM was never provided with a full list of CEC decisions in force. Additional requests that were made by the OSCE/ODIHR EOM, and denied by the CEC on security grounds, included those pertaining to information on ballot production, transport and storage as well as the quantity of ballots produced.

At the lower levels, some election commissions operated in a very transparent and open manner, yet in four of the eight regions observed in the pre-election period, regional election commissions avoided informing OSCE/ODIHR EOM observers or domestic observers of their meeting schedules.

A week before the first round of the election, the CEC instructed Precinct Election Commissions (PECs) provisionally selected for e-voting to open, test their equipment, and invite voters to practice voting. The results were uneven, demonstrating that some PECs would have serious difficulty operating the system. As a result, the number of PECs where e-voting was to be used was reduced in the week before the election, and a parallel paper balloting process was established in the remaining e-voting polling stations.

While under the circumstances this was a positive step, the ambitious scale on which the introduction of e-voting was originally planned, and the lateness of the decision, contributed to confusion on election day and were characteristic of a non-transparent election administration. In part, the lateness of this decision was due to the government's delay in forming a State Commission to decide on electronic voting, a legal pre-requisite to a CEC decision on the scale of e-voting.

There was an extensive voter information and education program around the country, and special efforts were made to inform the electorate about the newly introduced e-voting technology. The CEC produced a comprehensive information booklet, which was distributed to voters as well as several television spots. One aspect of information which was not made public until two days before the election was the fact that voters did not need to have a bar code affixed to their identification in order to vote. In fact, the opposite was widely communicated, including by election administrators.

C. ELECTRONIC VOTING SYSTEM

The "Sailau" electronic voting (e-voting) system was developed in Kazakhstan and is meant to manage the voter register through voter identification, enable electronic balloting, report voter turnout to the CEC periodically, enable fast tabulation of results, and generate protocols at polling station level.

E-voting was a controversial issue, beginning with the late introduction of e-voting amendments to the election law during its third reading in March 2004. Opposition political leaders had urged that it be introduced gradually so as to build public confidence,

¹² Article 20-1.3

as did some prominent pro-government leaders. Others, including the CEC Chairperson, advocated introducing the system in all major urban centres with adequate electronic infrastructure.

The State Commission responsible by law for making the decision to establish e-voting was formed only five days before election day. The scope of e-voting was decided only on 17 September, and some PECs appeared poorly prepared as a result. According to the CEC decision, e-voting was to be used in 961 of 9,480 polling stations.¹³

This was the first election in which OSCE/ODIHR has observed e-voting on a significant scale. The OSCE/ODIHR EOM did not seek to verify the system in a strictly technical sense, a responsibility which should be primarily reserved for domestic stakeholders, but assessed its introduction and use on the basis of the principles of transparency, secrecy of the vote, verifiability, security, accessibility to voters, and public confidence. Measured against these principles, certain challenges still remain to be overcome.

The e-voting system was not transparently and independently certified, which would have contributed to confidence in the system by domestic stakeholders. A review was carried out by a group composed of experts invited by the CEC and experts nominated by some political parties. However, the OSCE/ODIHR EOM expert was not allowed to observe without signing a confidentiality agreement. The group concluded that “hacking into the system and falsifying the election results were ruled out,” although one opposition political party representative declined to sign the report. This group of experts did not publish detailed technical arguments for their conclusions.

As the Sailau system does not produce a paper record of ballots cast, it does not have a manual audit capacity. Therefore, there is no possibility for a recount as required by Article 43.9 of the election law. The lack of a recount capability means that no verification possibility exists, should the integrity of the data recording device be called into question.¹⁴

The system does generate, if requested by the voter directly after voting, a private PIN code that the voter can theoretically use to check the final control protocols, thus verifying that his or her vote was recorded correctly. However, that same PIN code, if provided by the voter to a party, candidate, or employer, would demonstrate how he or she voted. This opens the potential for violation of the secrecy of the vote as well as intimidation. Though this was not observed or alleged during this election, the system, as it stands, nevertheless admits this possibility. Moreover, observers noted, only in exceptional cases, that the final control protocols with PIN codes were posted in polling stations, rendering the PIN code without practical effect.

Protection against manipulation from outside or incidental technical malfunction appeared sufficient. The system generated redundant, periodic, local backups, and all data transmission sent through communication lines was encrypted. However, the system uses normal telephone connections between polling stations and Regional Election Commissions, and these are potentially vulnerable to unauthorized monitoring or to distortion of transmitted information.

¹³ According to the CEC website. Definitive data was never provided to the EOM.

¹⁴ See also, OSCE/ODIHR Assessment of the Constitutional Law on Elections, page 19.

Overall, the system had many positive design features, and where properly used it can contribute to the speed and accuracy of administering the elections and counting the vote. However, even in urban areas many voters experienced difficulty with the process, particularly in manipulating the bar code reader, which must be precisely positioned over the candidate's or party's bar code. The difficulties in using the system were evidenced by the fact that polling station staff had to assist voters in 37 percent of e-vote polling stations observed. It must be noted that this assistance was contrary to law and frequently compromised the secrecy of the ballot.

In addition, voters offered a choice between voting electronically and voting with paper ballots chose in the great majority of cases to use paper ballots, and analysis of the figures provided by the CEC indicate that the proportion choosing paper voting over e-voting grew during the second round. This would suggest that public confidence in the system should be increased and more voter education work done before introducing the system on a larger scale.

D. VOTER LISTS

The CEC has made efforts to update and computerize the voter lists and improve their accuracy. However, as noted in the Observation of Voting and Counting section below, significant problems remain with the voter lists. In one constituency in Almaty, a formal complaint was filed prior to 19 September alleging that several thousand voters were left off voter lists, apparently due to a dispute between local government officials. Voters were urged to check the voter lists at polling station level prior to the elections, but very few took this opportunity.

The election law prescribes a quarterly review of the voter lists by the local authorities, and the CEC is tasked with producing a uniform electronic registration of voters. This process started in March 2004, on the basis of lists provided by the Akimats. At a press conference on 13 September, the CEC Chairperson stated that approximately 8.4 million voters were registered. The final number of eligible voters was not announced before election day. Kazakhstan has a population of some 15 million.

The dual paper and electronic systems in use in e-vote polling stations gave a clear indication of voter list problems. On election day there were frequent cases of major discrepancies between the number of entries in the electronic voter list and the paper voter list. For instance, in a polling station in Astana City, there was a difference of 1,200 voters in the two voter lists.¹⁵ In some cases, the electronic version of the voter list contained a significantly higher number than the paper list, but the converse was also frequently true.

For the second round, discrepancies between the electronic and paper lists had been reduced in many cases in Almaty, although differences remained. Some polling station chairmen reported that the lists had been updated between the two rounds of voting, while others reported that the lists were the same as in the first round. The election law is not clear on this point, but the fact that voter lists were not uniformly dealt with is problematic.

Finally, the number of registered voters in each Majilis constituency varies significantly, from 92,000 (District 1, Astana) to 154,000 (District 10, Akmola). Thus, voters do not

¹⁵ Constituency Election Commission two, polling station 84

have equivalent representation, in contravention of the Copenhagen commitment to provide equal suffrage.

VI. REGISTRATION OF PARTIES AND CANDIDATES

The registration of parties and candidates was completed efficiently and without serious incident. Political party and candidate registration thus marked a positive step towards meeting the Copenhagen commitments.

Ten seats of the 77-seat Majilis were elected from party lists, on the basis of proportional representation. The CEC registered eight political parties and two party blocs to contest these ten seats, including the Democratic Choice of Kazakhstan, which had not been registered in 1999. The 67 remaining seats in the Majilis are filled on the basis of single-mandate constituency contests. By 18 August, the day before the official start of the campaign, the CEC had registered 623 candidates in 67 constituencies in addition to 106 candidates on party and bloc lists.

While the initial registration of candidates was positively assessed by the OSCE/ODIHR EOM, the campaign period witnessed de-registrations of candidates. This included the co-chairman of the Ak Zhol, Bolat Abilov, who was de-registered on the basis of a suspended sentence for a slander conviction. Mr. Abilov was also de-registered in the 2002 by-elections. In total, there were at least 32 cases of candidates being de-registered, some very close to election day, and some of whom were de-registered on questionable grounds, including financial reporting errors. At least two candidates were subsequently re-registered.

The CEC de-registered ten single mandate candidates on 16 September due to the submission of allegedly deficient financial information. This decision was not made in open session, and the candidates were not informed that the CEC was considering their cases. Candidates received faxes notifying them of the CEC decision only on 18 September, and one candidate told the EOM that he did not learn that he had been de-registered until election day. For these ten candidates it was too late to appeal effectively for reinstatement, since the legal deadline for reinstatement had already expired. On the night of 18 September, and into election day, the Supreme Court heard appeals in seven of these cases. The CEC decision was upheld in most instances but was overruled in one case involving a candidate in Pavlodar, Constituency 52. Although the candidate announced his intent to pursue invalidation of the election in that constituency, he did not do so, claiming pressure and intimidation. The OSCE/ODIHR has previously recommended that the provision for de-registration of candidates based on financial reporting errors invites abuse and should be omitted from the law.

Two candidates from the Uzbek national minority in South Kazakhstan were also deregistered by a Constituency Election Commission, at least one of which in questionable circumstances. See the Participation of Minorities section below for further details.

VII. ELECTION CAMPAIGN

Most of the 12 political parties registered for these elections, either individually or in blocs, describe themselves as pro-presidential. The largest party is Otan (Fatherland), of

which President Nazarbayev is the honorary chairman. The two other main pro-presidential forces are Asar, led by Ms Dariga Nazarbayeva, daughter of the President, and the Aist bloc, a coalition of the Agrarian and Civic parties. The two main opposition forces are Ak Zhol and the bloc Oppositional People's Union of Communists and DCK, formed by the Communist Party of Kazakhstan and the Democratic Choice of Kazakhstan.

The other five parties playing a lesser role in the campaign were Auyl, Party of Patriots of Kazakhstan, Rukhaniyat, Communist People's Party of Kazakhstan, and the Democratic Party of Kazakhstan.¹⁶ Self-nominated candidates also played a significant part in the campaign, although a number of these were members of or supported by political parties.

The campaign was generally calm, with relatively few large demonstrations or rallies. On the pro-government side, Otan and Asar sponsored concerts, meetings and other events across the country. Those two parties dominated billboard and other public advertising space in urban areas. The pro-government bloc Aist was also active and visible.

Ak Zhol and the Oppositional Peoples' Union of Communists and Democratic Choice of Kazakhstan (here after, the CPK/DCK bloc) actively campaigned. However, the CPK/DCK bloc in particular faced a pattern of interference that hindered its ability to convey its message to the electorate. This pattern included detentions of DCK activists by police on at least three occasions in Almaty and Pavlodar, and interference from local authorities in holding campaign events in several instances (e.g., Almaty, Kostanai, and Pavlodar). CPK/DCK bloc advertisements were pulled from television broadcasts just prior to the election at the informal request of the CEC, a request which was later retracted (see Media section below).

Ak Zhol and the CPK/DCK bloc had threatened a boycott, citing pressure on voters, imbalance in the media, and the planned extensive introduction of e-voting. In the end, however, they encouraged their supporters to vote.

Two opposition leaders, Galymzhan Zhakianov of the DCK and Bolat Abilov of Ak Zhol, were unable to be candidates in these elections. Mr. Zhakianov is serving a sentence for a conviction on corruption charges, and Mr. Abilov has a suspended sentence for slander. Both convictions are widely viewed as being politically motivated.

Local government officials appeared to exert excessive influence during the campaign. There have been numerous, credible allegations of bias in the decisions of local authorities, including denial of permission to opposition parties to hold meetings (or of permission being granted too late for an event to be held) and unfair allocation of public space for advertising. For example, there were allegations from single-mandate candidates in North Kazakhstan, that while one of the candidates was permitted to hold rallies in favorable locations, the rest of the candidates were often given permission to hold meetings with voters only on the outskirts of town. In another instance, DCK had difficulties in obtaining permission from Akimat of Astana to hold a meeting downtown. Similar cases were observed in Mahtaaral (South Kazakhstan) and in Almaty.

¹⁶ The EOM met with representatives of all political parties during the course of the campaign and was available for meetings with candidates and parties on request.

Moreover, there were a number of indications of the use of administrative resources on behalf of pro-government candidates.¹⁷ For example, in North Kazakhstan oblast there were repeated charges that the regional Akimat¹⁸ pressured voters to support the Aist candidate, and this case was taken up by the Public Prosecutor. In Taraz, the local Akimat organized an event to welcome home an Olympic champion but which clearly promoted Otan. Observers also noted the interference of the Akimats in some regions in the work of the election commissions, especially in Almaty and Oskemen.

The OSCE/ODIHR EOM also received several credible reports of pressure on voters, especially on teachers and other public employees, to join parties and to vote for particular parties or candidates. In one case, a university lecturer told the OSCE/ODIHR EOM that her contract had not been extended due to her support for Ak Zhol. In Atyrau, a Rukhaniyat party official told observers that immigrants applying for citizenship were given a Rukhaniyat membership card to sign by representatives of the immigration authorities. This also obliges the immigrants to pay a 50 tenge per month membership fee. In addition, Ms Altynash Zhaganova, the president of Rukhaniyat and head of the Kazakhstan immigration office, apparently ordered that her poster be put up in the immigration office in Atyrau. There were further reports of pressure on voters on election day in both rounds (See sections on election day below).

VIII. MEDIA

A. BACKGROUND

A large number of media outlets operate in the country. By official government statistics from June 2004, there are currently 2,041 media outlets in Kazakhstan. Of these, 1,575 are in private hands (or media holdings), 466 are stated owned, and 981 of these outlets have national coverage. There are 1,859 print media outlets, 171 electronic media outlets (including 40 radio, 131 TV/radio companies), and 11 news agencies.

Many media outlets are concentrated in a few private hands or holdings close to the President and his family. Although Dariga Nazarbayeva, candidate and leader of Asar party, suspended her position of chairperson of the managing board of the media holding Khabar for the pre-election period, Khabar continued to display a bias towards the pro-presidential parties. Dariga Nazarbayeva publicly declared that she would resign and leave the position at Khabar once elected to the Parliament.

Media monopolization and concentration often influences editorial policy, contravening international standards. For example, the Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression¹⁹ notes the responsibility of media owners to respect the editorial independence of journalists, recommends the prevention of undue concentration of media ownership, and highlights

¹⁷ Opposition parties and independent candidates made numerous allegations of abuse of administrative resources, which could not always be verified by observers. However, similar allegations were made by party leaders in Asar and Otan.

¹⁸ The Akimat is any local self-government executive body at regional level or lower.

¹⁹ N. 190, December 2002. The UN Special Rapporteur also announced in his 1999 annual report that “a monopoly or excessive concentration of ownership of media in the hands of a few is to be avoided in the interest of developing a plurality of viewpoints and voices”

the need for political officials and members of government who own media outlets to resolve this conflict of interests.

In the lead up to the elections, the authorities took some steps to improve the media environment in the campaign period. A leading opposition figure was appointed as Minister of Information and the CEC organized seven television debates and adopted media regulations. These actions were not matched by efforts to ensure equitable coverage of political parties in news broadcasts.

B. LEGAL FRAMEWORK FOR THE MEDIA

The Constitution of the Republic of Kazakhstan states that freedom of speech must be guaranteed and censorship prohibited. As a consequence, every person has the right to receive and impart information through any means, including the media. The two main documents regulating the media during the election campaign are the election law and the Election Media Rules.²⁰

The election law prescribes that during the pre-election campaign, all the media have the duty to exercise unbiased interpretation of the election campaign of candidates and political parties.²¹ At the same time, the election law recognizes the right of candidates and parties to conduct pre-election campaigns on an equal basis, and the duty of the State to guarantee unimpeded access to the media.²²

Every candidate is entitled, at the expense of the State, to one fifteen minute address on TV, one ten minute address on radio and two articles in the print media. Paid political advertisements are also permitted on a non-discriminatory basis. The OSCE/ODIHR EOM was not aware of any violations or complaints regarding this issue.

The CEC and the Ministry of Information established rules on conducting the pre-election campaign – the Election Media Rules – which reinforced some of the principles included in the election law. Among these rules were the duty of the media to inform the public on election matters, the duty to provide unbiased coverage of the election campaign, the duty of journalists registered as candidates to interrupt their journalistic activity of covering the elections, and the duty to refrain from disseminating results of opinion polls during the five days prior to election day.

International best practices suggest including provisions for equal or equitable access to the media for all political contestants. The results of the EOM media monitoring demonstrate that the newscasts of central television broadcasters failed to give either equal or equitable access to the ten registered parties and blocs.²³

The Election Media Rules state that the CEC is the body in charge of monitoring compliance with the Rules on conducting the pre-election campaign through the media. During the election campaign, the CEC activated a media monitoring unit, thereby formally fulfilling its mandate of verifying the compliance of the media outlets with the

²⁰ The official name of the Election Media Rules is “Rules on campaign in the media and information support of the elections of the deputies of Majilis of the Republic of Kazakhstan”

²¹ Article 27.7 of the Election Law

²² Article 28.1 and 28.2 of the Election Law

²³ See Media Monitoring charts

Election Media Rules. However, neither the methodology nor the results of the monitoring effort were ever published. While the attempt of the CEC to monitor media is a welcome development, the value of such an effort depends on the level of transparency.

The CEC created a “Public Council” involving media representatives and political parties to discuss complaints about media coverage. However, the CEC took no action to provide an effective remedy to the unbalanced coverage and rejected all the formal complaints submitted by the opposition parties on this matter. The passive approach of the CEC, lower level commissions and the courts, to complaints concerning equal coverage and equal access issues in the media, is not a sufficient response to ensure equality of candidates in the media. Moreover, it encourages further aggravation of the situation and abuse by the media outlets and political stakeholders.

Although the general legal framework covered some important guarantees for a balanced and fair coverage of the election campaign, the references to the Criminal Code and to the Law on Confidential State Affairs regarding defamation and discrediting the dignity and honor of the President undermine the freedom of the media to act as a genuine watchdog of the political system. In general, ambiguous defamation laws are open to arbitrary application and do not contribute to the development of freedom of the media.

C. MEDIA MONITORING

Throughout the campaign period, the OSCE/ODIHR EOM monitored four television stations with nation-wide coverage in the country. The selection was made on grounds of nation-wide coverage and estimated number of viewers, as well importance for the election campaign and voter information. The sample comprised the state channel Kazakhstan-1, the mostly state owned channel Khabar, and the private stations Channel 31 and KTK. The main important print media (dailies and weeklies) in Kazakh and Russian languages were also analyzed.²⁴

The standard OSCE/ODIHR media monitoring analyzes quantitative and qualitative aspects of the political pluralism in the media. The media monitoring aimed at providing reliable data on the distribution of time and space given to each election contestant, thus verifying whether the media system guaranteed a sufficient level of information on the various political alternatives in a balanced and equitable manner.

The majority of the information about politics and the election campaign was contained in the news programs. Paid political advertising was predominately used by Ak Zhol and the Aist bloc.

The state television station Kazakhstan-1 devoted 64 percent of its political news coverage to Otan and its members. The tone of coverage was mainly neutral, but the other nine parties and blocs received little coverage. The Aist bloc received 9 percent of the airtime devoted to the political news coverage, while the remaining 8 registered parties and blocs, including Asar, received less than 6 percent of airtime in the pre-election period.

²⁴ The periodicals monitored were Aikyn, Egemen Kazakhstan, Izvestiya v Kazakhstane, Karavan, Kazakhstanskaya Pravda, Liter, Megapolis, Novoe Pokolenie, PANORAMA, Respublika, SOZ, Nachnem s ponedelnika, Vremya, Zhas Alash, Delovaya Nedelya, Kazakhstan

Khabar television station largely favored Asar and Otan, with 44 percent and 31 percent respectively. These two parties also fared better in terms of positive coverage, while the opposition party Ak Zhol (5 percent) and the CPK/DCK bloc (7 percent) received little coverage. The coverage of the opposition was most often negative.

The news programs of the private station Channel 31 was more balanced in its coverage of the main contestants, although favoring Ak Zhol (36 percent of political news coverage). Channel 31 aired some current event programs covering campaign issues where Ak Zhol and Otan parties received greater coverage. Asar was given little coverage by Channel 31.

The commercial television station KTK was notably biased in favor of Asar and its candidates (45 percent of all political news coverage). KTK newscasts repeatedly contained editorial attacks against opposition parties, mainly against Ak Zhol - 90 percent of the airtime devoted to Ak Zhol by KTK was assessed as distinctly negative in tone.

The OSCE/ODIHR EOM did not observe any cases of media being shut down or of journalists being prosecuted, as occurred in past elections. However, in the last week of the campaign, all monitored TV stations discontinued broadcast of paid advertisements of the CPK/DCK bloc featuring imprisoned DCK leader Galymzhan Zhakianov. The discontinuation of the advertisements was based on a recommendation of the CEC. The CPK/DCK bloc lodged a case with the Supreme Court, but the Court ruled against them after the CEC withdrew its request. The fact that these ads were pulled without an official CEC decision, and the uncertain legal foundation for doing so, raised questions about the extent to which the media feels free from official pressure and about the impartial implementation of media regulations.

The OSCE/ODIHR EOM verified a case of official interference in media editorial freedom in Petropavlovsk. In this incident, the head of the Department of Internal Policy in the Akimat of North-Kazakhstan Region sent a letter to the editors of regional newspapers suggesting contents and formats of election coverage designed to favor Otan. The Public Prosecutor and the CEC acted upon the complaint filed by Ak Zhol, and disciplinary action was recommended. This was limited to a warning to the official by his direct supervisor, the oblast Akim.

The CEC organized seven debates inviting all the ten registered parties or blocs on central television stations Kazakhstan-1 and Khabar. While some parties criticized the restrictive format of the programs, these debates provided an opportunity for the public to be informed on the political alternatives.

The print media offered a more diverse picture than did the electronic media, even though most publications displayed a partisan editorial policy. The opposition newspapers *Respublika* (former *Assandi Times*) and *Soz* published articles critical of the government and pro-presidential parties. Of particular note is the fact that the state-owned newspaper *Kazakhstanskaya Pravda*, like the state electronic media, did not provide balanced coverage of the campaign.

There were no observed violations of the election silence period.

IX. COMPLAINTS AND APPEALS

The legislative framework allows voters, candidates and political parties to file complaints and appeals with election commissions, courts, and prosecutors. The OSCE/ODIHR EOM is aware of over 200 formal complaints.²⁵

The complaints and appeals process is non-transparent and largely ineffective. Election commissions at all levels were reluctant to take decisions on complaints, instead referring them to other authorities. For instance, on 17 September, Ak Zhol filed a complaint to the CEC concerning failure to act on previous complaints, most of which had been addressed to the CEC. Although complaints at lower levels were often not well documented or involved relatively minor issues, there were also complaints of a serious nature.

The CEC did not take decisions on complaints in open session, and thus parties, candidates and observers were unable to attend meetings at which decisions were taken, in contradiction of Art 20-1.3 of the election law. Representatives of the CEC did meet regularly with political parties to discuss issues of concern to them, including matters such as placement of posters, criminal charges against candidates and other campaign-related issues. Media-related complaints were discussed at the Public Council, which also included party representatives. While the creation of such groups is welcome and provides a forum for exchange of information, the groups did not appear to be an effective mechanism for deciding on complaints.

The complaint process was inconsistently applied at lower levels. While the OSCE/ODIHR EOM was able to observe how election commissions discussed and dealt with complaints in Almaty, Kostanai, and South Kazakhstan, in other locations this was not possible. In some regions, the Regional Election Commission (REC) did not hear election-related complaints at all, for example, in Aktobe region. Instead all cases were referred to the prosecutor's office. The Territorial Election Commission of Almaty failed to act in the case of several thousands of voters being left off the voter list, raising concerns about their willingness to deal with serious election-related issues.

The Public Prosecutor plays an active role in the complaints and appeals process, monitoring the election process and taking action as circumstances warrant. Prosecutors' offices at the national and regional levels cooperated with the OSCE/ODIHR EOM, providing updated information regarding the numbers, types and dispositions of complaints. According to the information from the General Prosecutor's office, in the period from 15 June to 3 October, prosecutors at different levels had received 1,131 appeals. By 3 October, they had resolved 615 of them, often by providing interpretation of the law.

Nevertheless, these actions do not necessarily result in increased accountability. According to information provided by the Prosecutor's office, no criminal cases had been initiated regarding election-day complaints of violations of election law. Despite widespread allegations from both opposition and pro-government candidates regarding

²⁵ The CEC only irregularly provided information to the EOM on complaints they received, although it informed the EOM that fewer official complaints were made in these elections in comparison with the 1999 parliamentary elections.

abuse of administrative resources by Akims and other local authorities, the Public Prosecutor has opened only four disciplinary proceedings for such abuse.

In a few instances, administrative proceedings were initiated against election commission members for cases of alleged fraud. In Kostanai, for example, administrative proceedings were initiated against a PEC member in Constituency 46 for issuing several ballots to one voter.

While the active role of the Public Prosecutors is welcome, and fills a gap in the complaints and appeals process, their involvement provides a less transparent and independent method of dealing with complaints and appeals than would be the case with the courts or the election commissions.

Several complaints were decided by the courts, including one in which it noted the requirement that election commissions take decisions on cases submitted to them.²⁶ In one Supreme Court case, the judge also admonished the CEC for violation of election law provisions on transparency.²⁷

X. PARTICIPATION OF WOMEN

More female candidates ran for the Majilis in 2004 than for the previous election in 1999. 24 women (22 percent) were on the party lists of the eight parties and two blocks, and 87 (17 percent) women were nominated in the single mandate districts. The number of women on party lists more than doubled from the 1999 Majilis elections. For the first time, a party chairwoman, Dariga Nazarbayeva, played a pivotal role in the election campaign. Her party Asar obtained 11.38 percent of the votes and received a mandate through the party list, and Dariga Nazarbayeva was elected to parliament.

In spite of these positive signs, there was no significant increase in the number of women elected to the Majilis. In 2004, nine women were elected, an increase of one since the 1999 elections. This means that women, who make up 52 percent of the population, are significantly underrepresented with 11.6 percent of the membership of the Majilis.

The majority voting system in the single mandate districts represents an additional obstacle for women. Only 6 out of these 67 mandates are occupied by women (5 mandates were won during the first and 1 during the second ballot), which amounts to only 8.9 percent of the mandates. Out of the 10 mandates allocated through the proportional representation system, 3 women (30 percent) were elected into parliament. Otan, the party with the most mandates, now has 6 women in the Majilis, two of whom were elected through the party list and four in single mandate districts. Asar is represented by two women in parliament, one via the party list and one elected from a single mandate district. A self-nominated woman candidate was elected in a single mandate district.

²⁶ The Supreme Court in the case *Aspandiarova vs. CEC, Khabar TV and party Asar*, made a private definition requiring the CEC to take action in connection with a decision of District Election Commission 3, where it had decided “to limit itself to a discussion” of a complaints submitted by the candidate.

²⁷ The Supreme Court, in the case of a candidate from District Election Commission 10 challenging the decision of the CEC on his de-registration, made a private definition to the CEC for violations of Art. 20-1, in connection with the fact that candidate was not notified that the CEC was considering his de-registration.

Many female candidates alleged discrimination against their candidacies. They claimed that their campaigns were not covered by the media, that administrative resources were used against them, that they were sometimes pressured to withdraw, and that they lacked financial resources available to men. Some of these candidates had little experience or training in running a professional campaign. Women's concerns were not a central focus in the electoral campaigns of the various parties.

Women were encouraged to vote and there was no evidence that they were discriminated against at the polls. Moreover, women played a major role in election administration, including as chairperson of the CEC. However the practice of family voting, proxy voting and group voting was tolerated in some 25 percent of polling stations observed, though prohibited by law. These violations often have the effect of disenfranchising women voters.

XI. PARTICIPATION OF MINORITIES

The environment for minority participation in the elections was generally positive. Minority issues did not play a large role in the election campaign, although one televised debate was devoted to the issue. On 31 August, President Nazarbayev promoted the concept of unity among ethnic groups under one "Kazakhstani nation."

The candidate lists published by the CEC include ethnic origin, although disclosure by the candidate is optional. More than three-fourths of Majilis candidates were ethnic Kazakhs, while 57 percent of the population is Kazakh. Ethnic Russians represent the second largest group of candidates, about 16 percent, while accounting for 27 percent of the population. About two percent of the candidates are Ukrainians, while the rest (less than one percent each) of candidates are from the following ethnic groups: Uzbek, German, Korean, Tatar, Belarusian, Jewish, Ossetian, Uighur, Azeri, Balkar and Polish.

Two candidates from the Uzbek national minority in South Kazakhstan, Constituency 63, were de-registered under questionable circumstances. The majority of the population in this constituency is Uzbek. Abdumalik Sarmanov, senior editor of "Zhanubi Kazakhstan," was de-registered on 27 August based on comments he made that were published in three local Uzbek newspapers. The second candidate, Sultan Abdiraimov, was de-registered on 16 September and notified only the next day. The local court upheld the de-registration on the grounds that he had placed posters and banners in unauthorized places; that the slogan "Residents, if we unite, we will win" had the intention of inciting ethnic tension; and that it was too late for him to be re-registered.

Kazakhstan's 2002 Law on Political Parties prohibits organization of parties based on ethnic origin, gender and religion. Consequently, some small parties were not registered.

XII. DOMESTIC OBSERVERS

The amended Election Law has improved the provisions for independent domestic observers to carry out their activities throughout the election process. However, implementation of these provisions at lower levels of election administration was uneven.

Despite legal guarantees, the Republic Network of Independent Monitors reported that many election commissions misinformed them regarding the timing of sessions, did not provide observers with a copy of protocols of their sessions and in some cases did not give them access to sessions. This led them to call for greater transparency of election administration.

On election day, domestic observer groups reported that they were generally permitted access to polling stations, overcoming early morning obstructions to entry in polling stations in some instances. However, their movement inside the polling stations was restricted, and they were often assigned a position at a distance from the polling procedures that did not permit effective observation.

More difficulties were encountered in counting and tabulation. In Aktobe City, domestic observers reported that their access was denied or restricted and that they were not able to obtain copies of protocols in some cases.

The Republican Network of Independent Monitors considered the election violations to be worse than the 1999 Majilis elections, citing the abuse of supplemental voter lists, multiple voting, numerous vote count problems, and instances of interference from Akims. The group stated that many problems stemmed from the composition of the election commissions. The domestic observer organization Election and Democracy reported violations in a number of categories in its post-election statement, but concluded that the elections had been “conducted successfully” and that irregularities observed would not significantly alter the results.

XIII. OBSERVATION OF VOTING AND COUNTING

A. VOTING

For the first round of elections on 19 September, approximately 9,480 polling stations were established to serve the voters throughout Kazakhstan. The IEOM deployed 305 international observers in 152 teams, who observed voting in approximately 1,300 different polling stations and filled in 1,687 observation forms.

The observers were deployed prior to election day to the following oblast centers, where long-term observers had been present for the previous four weeks in order to follow the preparations for elections: Astana, Pavlodar, Oskemen, Almaty, Shymkent, Atyrau, Aktobe and Kostanai. Observers covered locations within a four-hour radius from these centers. In addition, observer teams were deployed to Aktau, Kyzylorda and North Kazakhstan.

Most observer teams reported that the opening procedures started in a timely manner, and that 90 percent of polling stations observed opened on time. Candidate proxies were present in 90 percent of the polling stations at the opening. However, in one third of the polling stations observed, unauthorized persons were present at opening, mainly police officers and representatives of the local authorities.

The conduct of the election day proceedings was marred by the late decision (16 September) to add paper balloting as an option in the proposed e-voting polling stations, supposedly to give the voter a choice between the two options. This scenario had

repeatedly been excluded by the CEC, and regulations for this parallel system were not in place. This created last-minute uncertainty and difficulties for lower level commissions, particularly the resulting need for dual paper and electronic voter lists in the affected polling stations. The electronic and paper voter lists were not integrated, and voters could not be checked against both lists to prevent the possibility of multiple voting. In addition, the two lists frequently did not have the same number of voters, sometimes with a discrepancy of several hundred voters.

A significant number of voters in both electronic and paper ballot polling stations were not on the list. In some cases, this was due to internal migration, but in other cases it was the result of errors in compiling the list. In Oskemen, Constituency 28, an entire village appeared to have been omitted. Many citizens were turned away on election day or re-directed to other polling stations, but many were added to the voter list. Election day additions to the voter lists are permitted but only under circumstances strictly regulated by higher level commissions. However, it appears that widespread additions were made, as EOM observers witnessed voters being added to the list in 16 percent of locations visited.

Moreover, the basis for adding voters to the list varied widely, sometimes from polling station to polling station within a district. In some cases, the PECs required a document proving residence, but in other cases the PECs were observed making additions on the basis of telephone confirmation with no supporting documentation (in Akmola, Astana, and Oskemen City, for example). The addition of voters on the basis of a telephone call is at best a non-transparent process; at worst, it could result in the arbitrary disenfranchisement of voters or in manipulation of the voter list.

In general, PEC members appeared to do their best to cope with the last minute changes, unclear regulations, and the need to assist voters having difficulties with e-voting. Nevertheless, IEOM observers found the overall conduct of the polling process to be “bad or very bad” in 13 percent of the 1,177 polling stations observed, noting a rather high instance of problems or irregularities. Observers reported that polling was “very good” in 42 percent of polling stations and “good” in 45 percent.

Observers found that PEC members were comfortable in operating the e-voting system itself in 94 percent of the polling stations observed. However, the voters had more difficulty with the e-voting procedures, as IEOM observers estimated voter understanding as “bad or very bad” in 32 percent of the polling stations visited, in contrast to 15 percent for polling stations with only paper balloting. In 19 percent of e-voting polling stations visited, there were observations of voters who were unable to complete e-voting.

According to the law, voters needing assistance can be assisted by a person of the voter’s choice, except for members of PECs, observers, and party proxies, all of whom are specifically prohibited from doing so. There were violations of this provision in many cases, and in 37 percent of the polling stations with e-voting, PEC members were observed assisting the voters after they had begun the voting process. This compromised the secrecy of the vote. Furthermore, it was noted that this assistance extended in some places to telling the voter which party to vote for.²⁸

²⁸ In addition, cases of chairpersons denying the voters the right to choose paper voting over e-voting was reported by several observers - e.g., in Oskemen and Pavlodar.

Group voting, or family voting, took place in 25 percent of observed polling stations. Voting by proxy was observed in 5 percent of the polling stations. Observers also noted successful interventions by PEC Chairpersons to prevent abuses, particularly to stop group and proxy voting.

Other observations include the fact that unauthorized personnel were present in 28 percent of polling stations observed. Paper ballots were not always signed by a PEC member as prescribed in 9 percent of observed polling stations. According to the law, unsigned ballots are counted as invalid. IEOM observers noted campaign material in the proximity of 16 percent of polling stations.

As noted, the late changes regarding the provision of paper balloting in all polling stations placed an additional burden on lower level election commissions. The Akimats did play a role in the effort to make the operation work logistically, but in some instances appeared to interfere more than assist, for example, in Kostanai.

The peaceful conduct of polling, with no violent incidents observed, was a positive aspect of election day. Other positive aspects included the introduction of transparent ballot boxes as a confidence-building measure, and the presence of political party representatives in nearly all polling stations observed.

B. COUNTING

The closing of polling stations, counting and tabulation processes were problematic, complicated by the late decision to allow supplemental paper balloting in e-vote stations. The overall counting process was assessed negatively in a high instance of cases observed (28 percent).²⁹ The reasons cited by observers included lack of control over ballots, unauthorized persons in polling stations (49 percent) and widespread failure to post result protocols (45 percent). Whereas observers and party agents are entitled by law to a copy of the results protocol, in 28 percent of cases observed they could not obtain copies. Observers reported procedural problems or omissions in 20 percent of cases observed, and two-thirds of these cases were in direct relation to e-voting.

Closing the e-voting process was particularly problematic, perhaps partly because these PECs were overburdened with the need to close both paper and e-vote processes. There were some instances of technical difficulties in transmitting the electronic data and of PEC members not signing the protocol. Another problem was the failure to seal the data recording device immediately after close of polling (over half of e-vote polling stations observed). This omission compromises the integrity of the data in the event that the results are challenged.

The process of producing the protocols was often lengthy and confusing for the PEC members. In 30 percent of polling stations, PEC members had notable difficulty in filling out the protocols. Several observers also reported what appeared to be deliberate attempts to delay the vote count in order to induce observers to leave.

²⁹ The observer teams rate the overall conduct of the count in the polling station observed as follows, very good - 38 percent, good - 34 percent, bad - 21 percent, very bad - 7 percent.

Observers reported that in Oskemen City, the counting and closing were particularly chaotic, and that PECs were delivering voter lists to the Department of Immigration for undetermined reasons.

Almost all polling stations closed on time. Party proxies were present in all polling stations observed, and domestic observers in 71 percent.

C. TABULATION OF RESULTS

The tabulation process was complicated due to the parallel processes of tabulating electronic votes and paper ballots, and further compounded by the failure to use the required single summary protocol in many cases.

Some IEOM observers reported problems of getting access to places where results were tabulated, for example in Atyrau and in South Kazakhstan constituency 65. In 17 percent of the cases observed observers could not observe the data input process. Domestic observers also reported difficulty in gaining access to tabulation of results.

IEOM observers, party proxies, and domestic observers reported that protocols were rewritten after the polling station chairpersons attempted to hand over the results. In some instances, this was done to correct minor discrepancies, but the rewriting of protocols is non-transparent, especially given the high number of incidents in which protocols were not given to observers and proxies, and were not posted at the polling station.

In the days following the election, long-term observers visited higher level commissions. These commissions had clear difficulty in consolidating the protocols, especially in the locations where e-voting and paper balloting had taken place in the same polling stations. Candidate proxies and domestic observers only observed the work of the higher level commissions on a very limited scale.

XIV. SECOND ROUND OF ELECTIONS

The second round of elections was held in 22 constituencies on 3 October. The OSCE/ODIHR EOM observation of the second round was more limited than in the first round, and the sample of 93 polling stations visited was insufficient to ensure a statistically sound survey. EOM observers were present in eight of the constituencies, notably constituencies 3, 5, and 7 in Almaty.

Most problems observed in the first round were also apparent in the second round, although the process seemed to be generally improved in Shymkent, Kyzylorda, and Kokshetau. The e-voting polling stations again had a parallel paper voting process. No further training had been offered to prepare PECs for this more complicated process, nor did they appear to have additional human resources to deal with the increased number of duties. This resulted in chaotic conditions in some PECs in Almaty. As noted above, the use of electronic voting in comparison to paper voting declined in the second round.

Voter lists continued to be a significant weakness. In some cases, voter lists had been amended since 19 September, according to chairpersons. However, this varied even within a respective constituency, as other chairpersons stated that the voter lists were the same as those on 19 September. The procedures for adding voters continued to be non-transparent

and inconsistent. Some PECs required voters to produce various documents, while others were observed adding voters on the basis of telephone calls.

In some polling stations only a handful of voters were added to the list, in others dozens were added. In two Almaty polling stations, it was observed that more than 700 voters were added to each list on election day. In addition, the voter lists and the additional lists were often not made available to EOM observers or to domestic observers.

A few chairpersons reported that they were cross-checking the paper and electronic voter lists to prevent multiple voting, but this did not happen in most of the polling stations observed. This situation, together with the inconsistent procedures for adding people to the voter list, created the opportunity for multiple voting. There were two cases in which voters said that they had voted on more than one occasion at different polling stations. One of the voters alleged that this was done at the behest of an employer. There were reports from an international observer and from domestic observers that in constituency 5, voters were being bused to multiple polling stations.

At the university in Almaty, where over 700 student voters were added to the voter list, there was a large crowd of students waiting to vote throughout the day. Students reported that they had been told to vote by university authorities. This is in contravention of Article 10.3 of the election law.

The counting and closing procedure proceeded well in general, although there were disputes serious enough to require the immediate involvement of the Public Prosecutor's office. There were continuing problems of access for domestic observers and party proxies. In addition to refusals to let observers and proxies see the voter list, there were several instances in which observers/proxies were not able to obtain protocols. Both are in contravention of the election law and the principle of transparency. There was only one observed instance of a protocol being posted in the polling station as required by law. As in the first round, closing procedures at e-voting polling stations were inconsistently applied, with many not properly sealing the data recording device.

XV. ANNOUNCEMENT OF ELECTION RESULTS

The preliminary results of the first round of elections were announced by the CEC on 20 September; however, the official CEC Decision on the results, the determination of the party list results, was not made public by the CEC until 27 September. Though this was within the legal deadlines, the publication of the results could have been done earlier. It was unclear what caused the delay. For the second round, the CEC announced the results on 4 October.

The CEC did not publish the results tabulated by polling stations, as it had previously committed to doing. The election law is unclear, but Articles 12.16-1 and 14.9 seem to indicate an intention that polling station results be published on the CEC website. It is a basic element of transparency that stakeholders be able to check results protocols issued at polling station level in comparison with the final results.

According to the CEC, four political parties passed the seven percent threshold in the proportional party list system and entered the Majilis. Of total votes cast, Otan received

60.61 percent, Ak Zhol - 12.04 percent, Asar - 11.38 percent, and Aist 7.07 percent. The next closest to the threshold was the CPK/DCK bloc with 3.44 percent. The official turnout was 56.49 percent.

In the 67 single mandate constituencies, 45 deputies obtained more than 50 percent of the votes cast in their respective constituencies and were elected in the first round. In the remaining 22 constituencies, runoff elections were held between the two candidates who had received highest number of votes.

The final results of the election were as follows:

Parties and blocs	Party List	Single Mandate 1 st Round	Single Mandate 2 nd Round	Total Number of Seats
Otan Party	7	26	9	42
Ak Zhol Party	1			1
Asar Party	1	2	1	4
AIST Bloc	1	9	1	11
CPK/DCK Bloc				0
Democratic Party			1	1
Auyl Social Democratic Party				0
Party of Patriots				0
People's Communist Party				0
Rukhaniyat Party				0
Self-nominated candidates		8	10	18
Total	10	45	22	77

There are also indications that a number of self-nominated candidates were informally or formally associated with one of the parties. Thus, the actual representation of parties in the Parliament is to be seen after the factions are formed. Considering this, Otan's representation in the parliament will be higher, as many of the elected self-nominated candidates were associated with Otan.

After the elections, the opposition made unsuccessful attempts to request invalidation of the elections and joined in a statement that called the elections illegitimate.

The only Ak Zhol candidate elected to the parliament declined to take up his seat, stating that this was in protest at the conduct of the elections. This leaves the Majilis without any formal opposition. The Speaker of the outgoing Majilis, and co-chair of Otan, also refused his seat, citing widespread election irregularities.

XVI. RECOMMENDATIONS

With a presidential election scheduled in 2006, attention should be focused on those reforms necessary to address the identified shortcomings in the electoral process as cited in this report. The OSCE/ODIHR offers the following recommendations for consideration by the authorities and civil society of the Republic of Kazakhstan, in order to bring elections more closely in line with OSCE Commitments. In addition, the OSCE/ODIHR

reiterates the recommendations contained in its detailed assessment of the election law, some of which are repeated below.

A. LEGAL FRAMEWORK

1. Provisions of the election law providing for the denial of candidate registration based on a conviction for defamation should be deleted. Provisions of the election law providing for denial of candidate rights due to minor errors in financial reporting should be amended.
2. The law should be amended to guarantee an inclusive and broad representation of political parties on election commissions.
3. The election law should clearly define what constitutes campaigning before the official start of the campaign period.
4. Provisions of law requiring that state controlled media provide balanced coverage of election campaigns should be clarified, and the Election Law should be amended to specify that the Central Election Commission or other body has powers to enforce the obligations set out in the law that regulate the media during elections.
5. The law should require a permanent, auditable record of e-voting, as is provided when paper ballots are generated by voting machines and preserved for eventual recount.
6. To promote transparency, the law should clearly require the CEC to announce final results broken down by polling station.
7. The Election Law should be amended to clearly define the procedures for complaints and appeals, including the respective competent bodies, their open and independent functioning, and the times by which all complaints and appeals must be lodged and adjudicated. The law should clarify the obligation of election commissions to make decisions on appeals directed to them.
8. The Election Law should be amended to ensure that mandates belong to elected candidates rather than political parties. In particular, an elected candidate should not forfeit a mandate due to a change in political affiliation, liquidation of the party, or due to a post-election decision of a political party, regardless of the concrete formula used to allocate seats.
9. There are a number of legislative acts which affect the election process, such as the law on political parties, the code of administrative violations, the law on the fight against corruption, the law on the mass media, and others, which should be reviewed for their consistency with the election law.

B. ELECTION ADMINISTRATION

10. Before the presidential election, the composition of the Central Election Commission should be modified to ensure a political balance through inclusive and pluralistic representation, with a view to enhancing overall confidence in the process.
11. The Central Election Commission should ensure that regular open meetings are held during the election campaign and that decisions are reached in accordance with the principles of openness, transparency and the rule of law.
12. Decisions of election commissions should be rendered in writing, made in a timely fashion and communicated to the public.
13. The voter lists and the procedures for compiling them should be comprehensively reviewed. The question of conflicting paper and electronic voter lists should be

resolved, and provisions for adding names to the voter list on election day should be regularized.

14. Last minute decisions on de-registration of candidates should be eliminated.
15. Before the next Majilis election, constituency boundaries should be adjusted to decrease the discrepancies in the numbers of registered voters.
16. There should be vigorous action to prosecute local officials and supervisors who exert pressure on voters or who threaten voters with retaliation if they do not support certain candidates or parties.
17. There should be enhanced training of lower level election commissions on the 2004 amendments to the election law. Sufficient funding should be made available for effective training.

C. ELECTRONIC VOTING

18. To develop public confidence in the “Sailau” electronic voting system, a paper audit trail and recount capacity should be introduced, and the use of the PIN code should be discontinued. There should be independent domestic certification of the e-voting system.
19. Modifications should be made to the system to make it easier to record a vote and to accommodate those with poor eyesight.
20. Use of the Sailau system should be introduced gradually and with more voter education.

D. MEDIA

21. Steps should be taken to expand the diversity of media ownership and to ensure that media owners respect the editorial independence of their outlets.
22. Parties and candidates, in addition to the CEC, should be involved in deciding on rules governing debates.
23. Provisions of the criminal code and the law on confidential state affairs concerning defamation should be modified so they cannot be misused for political purposes, for example, by defining libel as a civil rather than a criminal offense.

E. PARTICIPATION OF WOMEN

24. Measures to increase the number of women elected to the Majilis should be considered. These could include an increase in the number of seats in the Majilis elected on the basis of proportional representation, gender quotas for candidate lists, or voluntary agreement among parties to include more women on party lists.

GLOSSARY

Akim: Head of the executive body at regional level or lower.

Akimat: Any local self-government executive body at regional level or lower.

Majilis: Lower house of the Parliament of Kazakhstan

Maslikhat: Legislative bodies at regional level or below.

Oblast: Any of the 16 regions of Kazakhstan

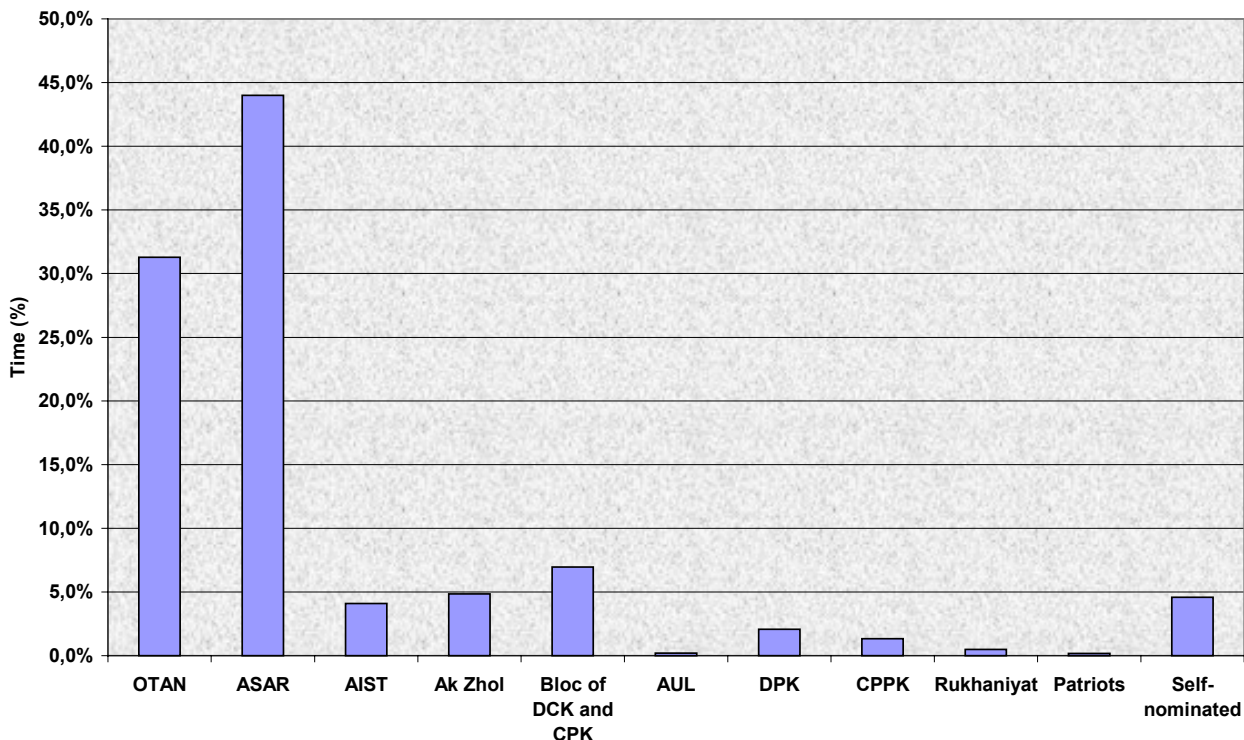
Sailau: The electronic voting system used in Kazakhstan

Tenge: Currency of Kazakhstan

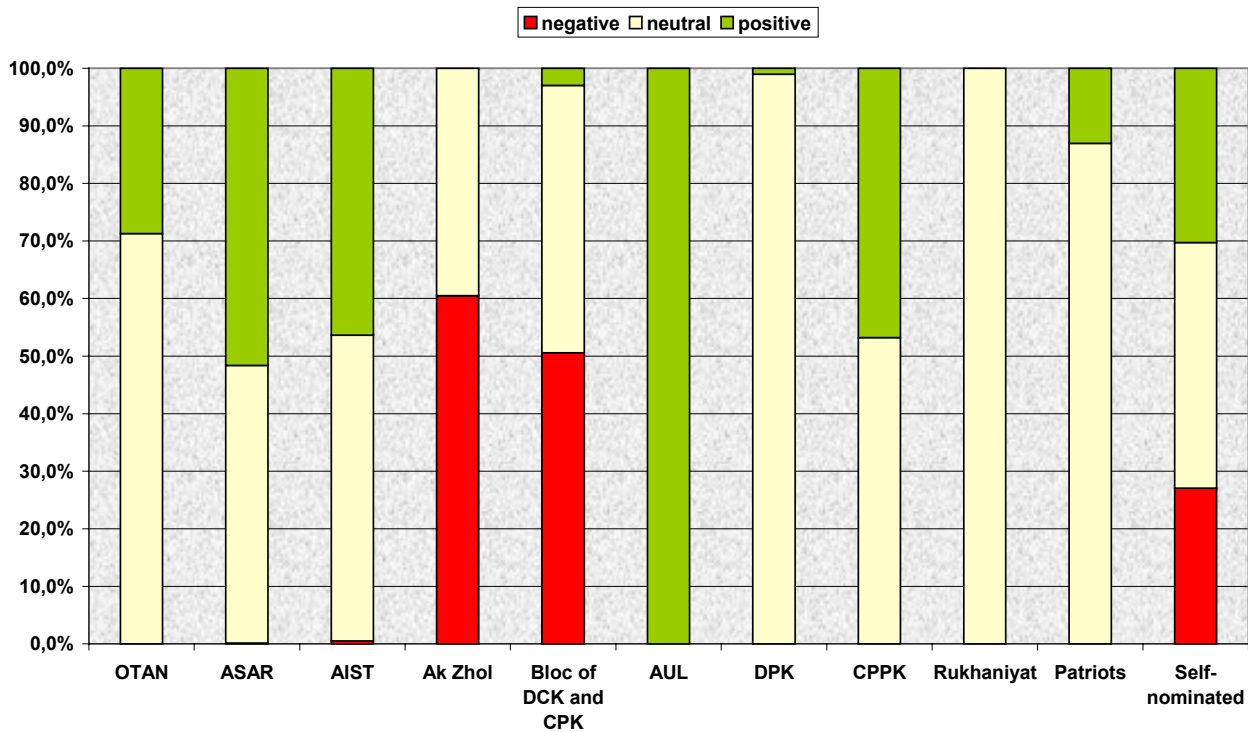
ANNEX: MEDIA MONITORING OF ELECTION CAMPAIGN NEWS COVERAGE

Khabar Television – News Programmes (August 19 - September 17)

1 Distribution of time among political forces

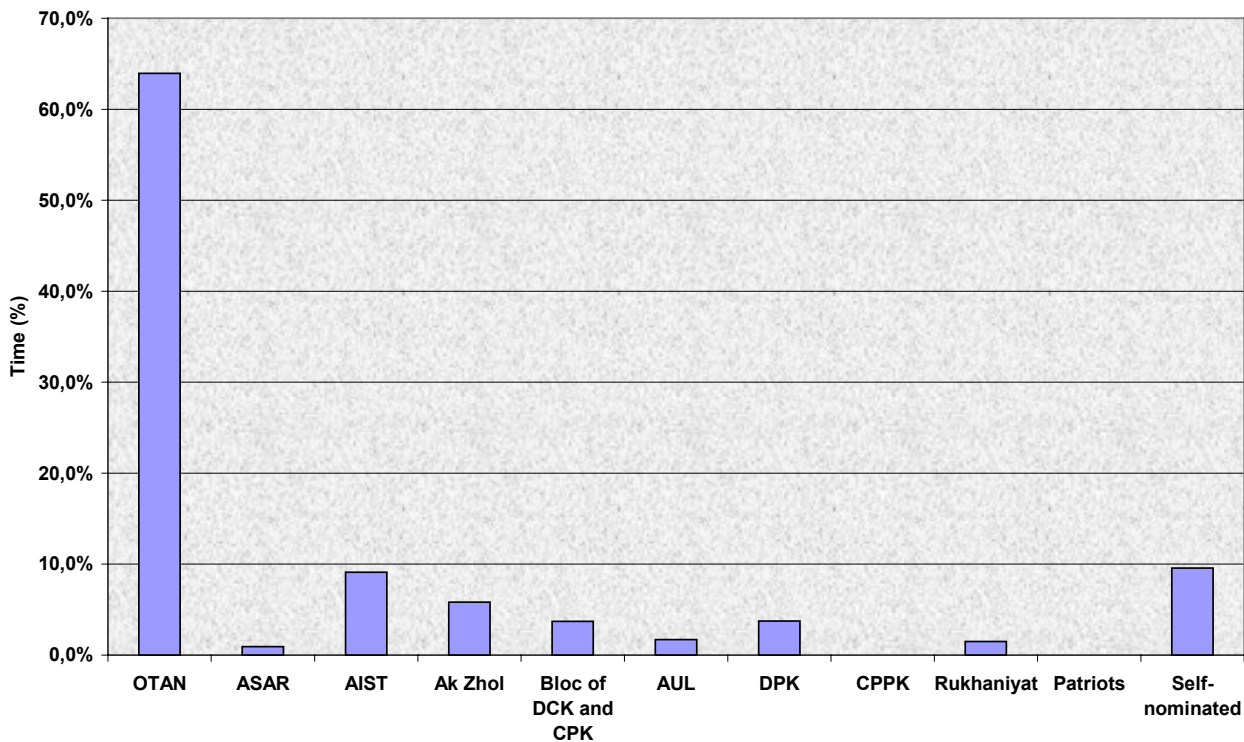


1.2 Tone of the coverage of political forces

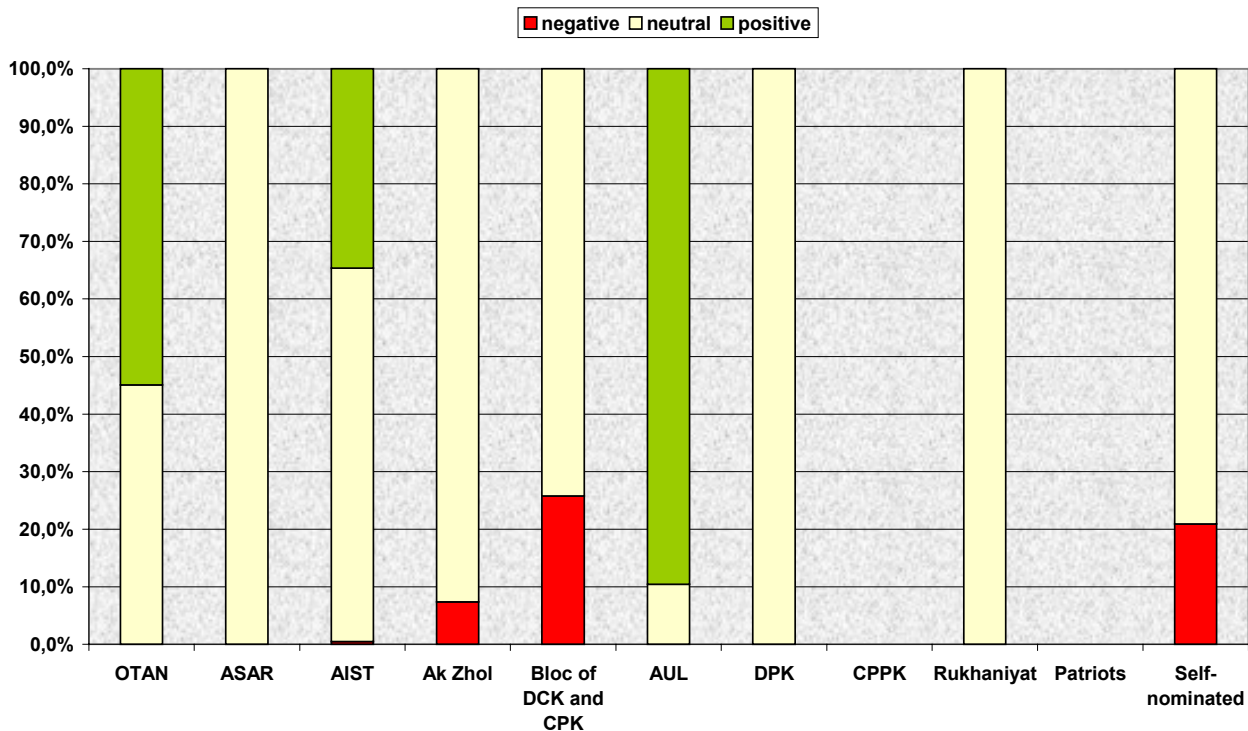


Kazakhstan 1 Television – News Programmes (August 19 - September 17)

2 Distribution of time among political forces

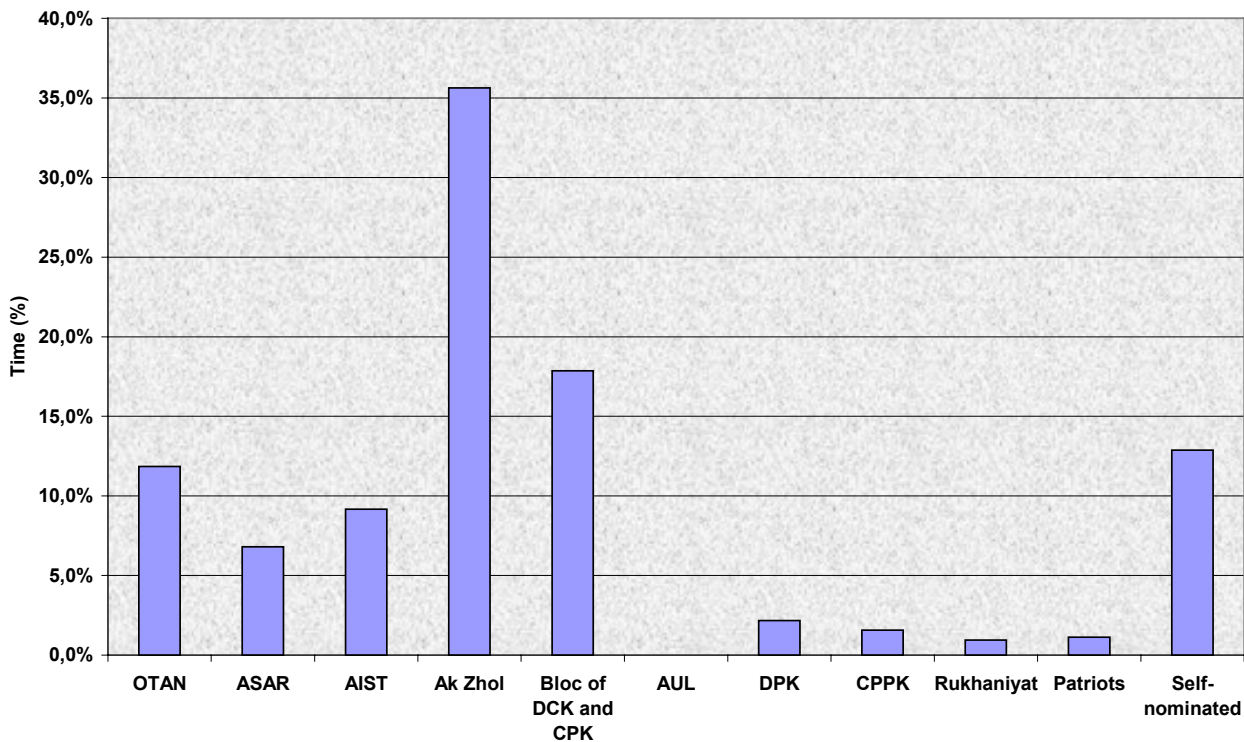


2.1 Tone of the coverage of political forces

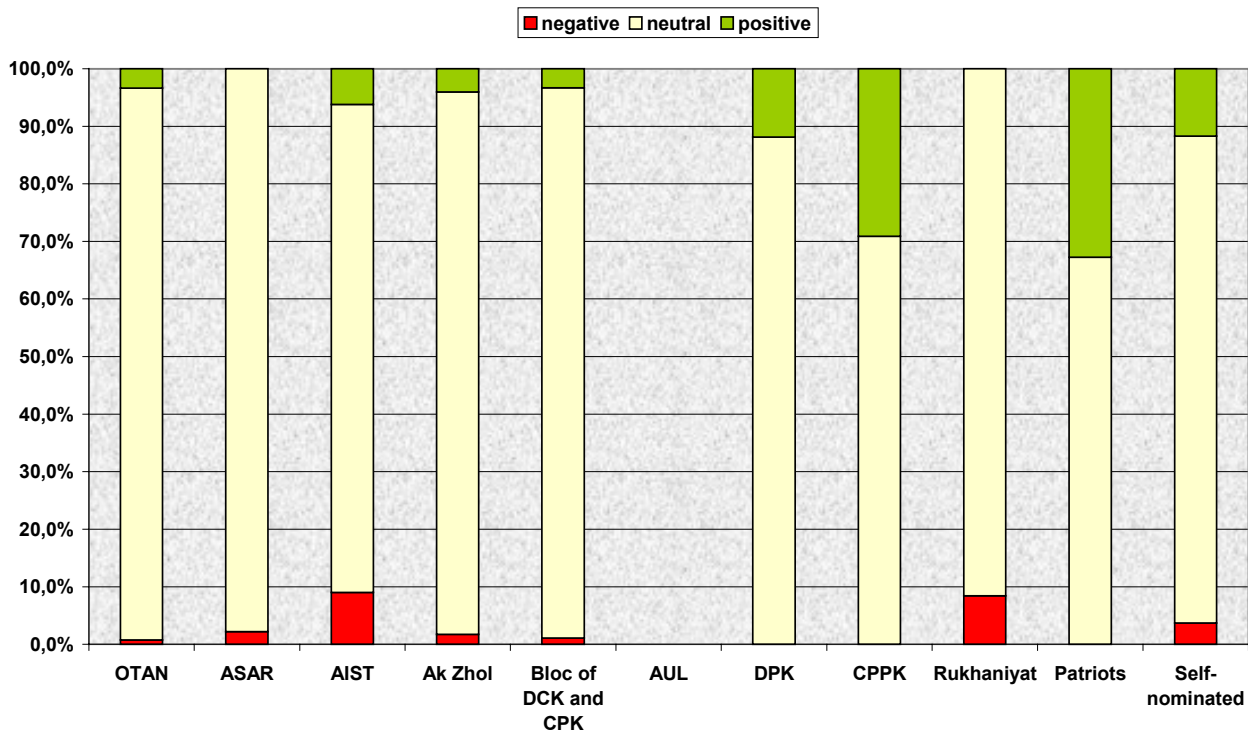


Channel 31 Television – News Programmes (August 19 - September 17)

3 Distribution of time among political forces

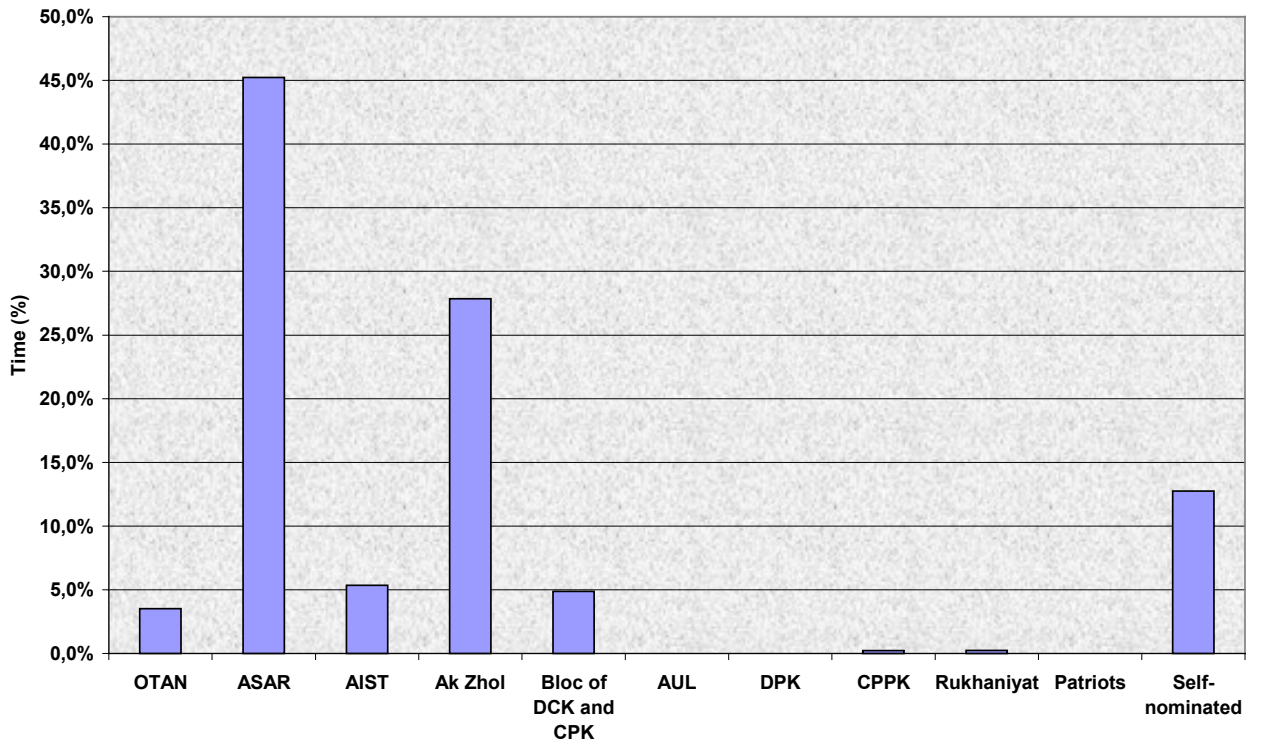


3.1 Tone of the coverage of political forces

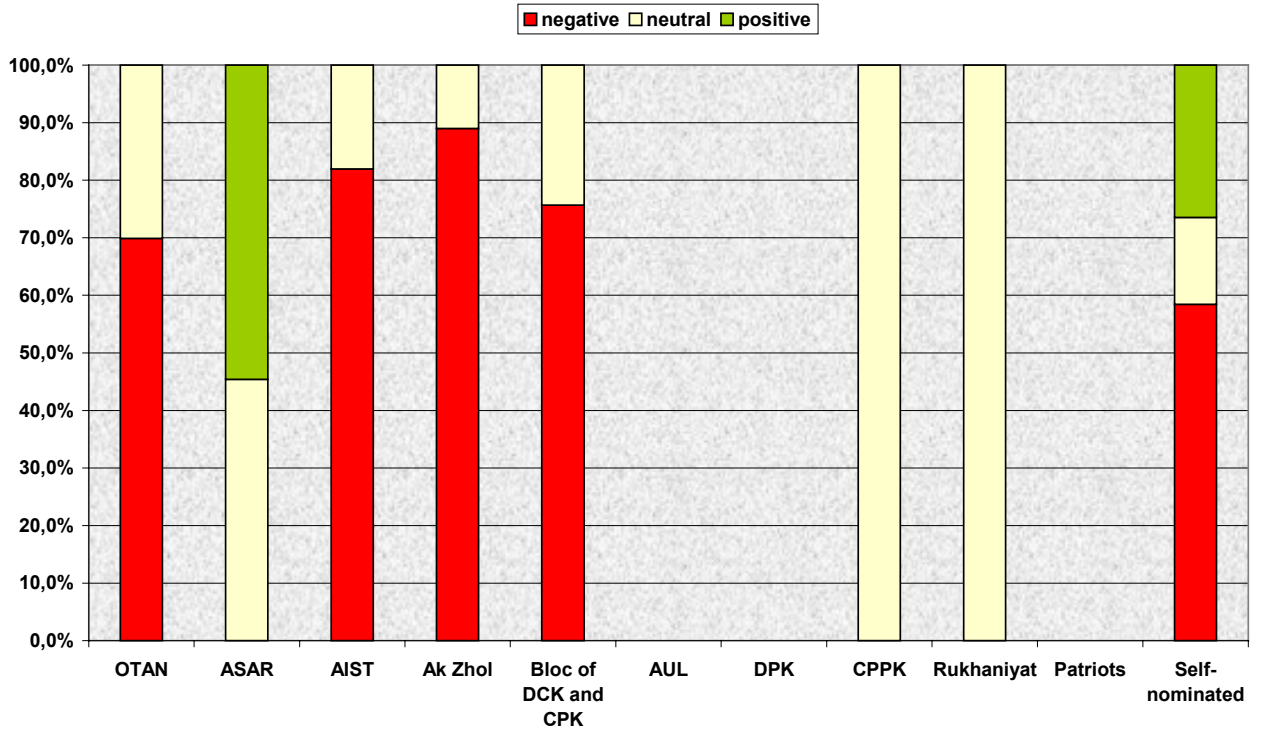


KTK Television – Prime Time News Programmes (August 25 - September 17)

4 Distribution of time among political forces



4.1 Tone of the coverage of political forces



ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the 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 Document).

The 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 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It coordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, legislative support, and trafficking in human beings. The ODIHR implements a number of targeted assistance programs annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States and to discuss particular thematic areas.

The 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. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

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).