



Office for Democratic Institutions and Human Rights

KYRGYZ REPUBLIC

ASSESSMENT OF THE ELECTION CODE AS AMENDED BY THE LEGISLATIVE ASSEMBLY IN THE SECOND READING ON 25 DECEMBER 2003



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I. INTRODUCTION

This assessment reviews and comments on the Election Code (hereafter “the Code”) of the Kyrgyz Republic as amended by the Legislative Assembly on 25 December 2003. This assessment is based on an unofficial English translation of the Code, as reflected in 93 articles on 127 pages of text.

The OSCE/ODIHR previously commented in November 2003 on proposed amendments to the Code proffered by both executive and legislative branches of government.² This assessment supersedes the OSCE/ODIHR November 2003 assessment of proposed amendments.

This assessment is provided with the goal of assisting the authorities in the Kyrgyz Republic in their efforts to develop a sound legal framework for democratic elections. However, as previously stated by the OSCE/ODIHR, the extent to which any amendments can have a positive impact will ultimately be determined by the degree to which state institutions and officials implement and uphold the Code.³

This assessment does not warrant the accuracy of the translation reviewed, including the numbering of articles, paragraphs, and sub-paragraphs. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation. A law can be assessed only on the literal translated text that is provided for review.

II. EXECUTIVE SUMMARY

Some of the amendments to the Code, including a number introduced subsequent to the November 2003 OSCE/ODIHR assessment, mark progress. However, the Code significantly limits civil and political rights and some new amendments, introduced subsequent to the November 2003 OSCE/ODIHR assessment, not only fail to address many prior concerns but compound them. As a result, the current text of the Code requires improvement to bring it in line with OSCE commitments set forth in the 1990 Copenhagen Document and other international standards for democratic elections. Notably, the Code:

¹ The OSCE/ODIHR engaged Jessie Pilgrim, legal expert, for this review.

² *See* Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003).

³ *See* Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003); Review of Amendments to the Election Code, Kyrgyz Republic (15 February 2002); Final Report on Parliamentary Elections in the Kyrgyz Republic, 20 February and 12 March 2000 (10 April 2000).

- Contains limitations on the right to be a candidate that are contrary to OSCE commitments and other international standards;
- Permits premature termination of an elected candidate's mandate, contrary to Paragraph 7.9 of the OSCE 1990 Copenhagen Document and other international standards;
- Creates procedures for candidate registration that can be used to prevent legitimate candidates from participating in elections;
- Does not provide satisfactory procedures for voting, counting of ballots, tabulation of results, and determination of winning candidates;
- Does not provide for full and complete transparency and observation of all aspects of the election process;
- Contains limitations on the rights to free speech, expression, and association that are contrary to OSCE commitments and other international standards;
- Does not provide a satisfactory process for filing complaints and appeals to protect suffrage rights;
- Makes it impossible to challenge fraudulent election results where the fraud is discovered after the protocols have been signed;
- Creates the opportunity for indefinite delay of the determination of election results and indefinite "suspension" of a candidate's registration while a criminal case is pending against the candidate; and
- Increases multi-party representation and pluralistic representation on election commissions only to a limited degree.

Some previous OSCE/ODIHR recommendations have been considered and adopted. Recognized improvements include:

- Reducing the financial obstacles for candidate registration for Presidential elections;
- Granting choice to dual office holders as to which office must be relinquished;
- Increasing the number of days for public scrutiny of voter lists;
- Strengthening the provisions for maintaining order in a polling station; and
- Permitting observers to become familiar with the Shailoo automated information system and its software.

Recommendations are made in this assessment with the objective of correcting shortcomings in the Code. However, it must be emphasized that in addition to bringing the election legislation of the Kyrgyz Republic more closely in line with OSCE commitments, there must be a commensurate commitment on the part of state institutions and officials to fully and effectively implement the Code in order for there to be democratic elections in the Kyrgyz Republic.

III. DISCUSSION OF THE AMENDED ELECTION CODE

Discussion of the amended Election Code is presented under five general topics and not in the numerical order in which articles appear in the Code.⁴ The five topics are: Candidacy Rights, Election Commissions, Election Rules, Transparency, and Legal Protections.⁵ This thematic approach facilitates evaluation on the degree to which the amended Election Code is in line with OSCE commitments and other international standards for democratic elections.

A. *Candidacy rights*

It is a universal human rights principle that every citizen has the right, on a non-discriminatory basis and without unreasonable restrictions to: (1) take part in the conduct of public affairs, directly or through freely chosen representatives; (2) vote and to be elected at genuine, periodic, elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (3) have access, on general terms of equality, to public service in his or her country.⁶ The amended Election Code does not satisfy this fundamental principle, as it contains several provisions that prevent citizens who should have the opportunity to participate in representative government, from exercising their right to be a candidate for public office.⁷ The Code creates a punitive system for punishing candidates; and the system created is subject to abuse by those who control election commissions. This permits usurpation of the will of voters as it grants significant power to election commissions to determine who can be a candidate, who can remain a candidate, and which candidates can stay in office after elected. These impermissible limitations on candidacy rights are considered in the order in which they appear in the amended Election Code.

⁴ The Code regulates elections of the President, members of the Jogorku Kenesh, deputies of local keneshes, and heads of local self-government.

⁵ The Candidacy Rights topic discusses provisions of the law that open and close the door for citizens who seek the opportunity to participate in representative government by being a candidate for public office; Election Commissions discusses provisions that govern the election commissions that are responsible for the administration and conduct of election processes; Election Rules discusses all aspects of the campaign - including media, voting, counting of ballots, tallying of results, and declaration of winners; Transparency discusses what mechanisms are in place to ensure that the election processes are open to public scrutiny to ensure that the will of the people is respected and that the election results are not fraudulent; and Legal Protections discusses what mechanisms are in place to ensure that citizens, candidates, and political parties can seek meaningful redress in the event of violation of legal rights.

⁶ *See, e.g.*, Article 25 of the International Covenant on Civil and Political Rights. This right is also stated in Article 23 of the Constitution of the Kyrgyz Republic. An unofficial English translation of the Constitution of the Kyrgyz Republic, as amended by the referendum of 2 February 2003, is the version of the constitution referenced in this assessment.

⁷ The OSCE/ODIHR has previously expressed concerns about cancellation of candidate registration. *See* Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003); Review of Amendments to the Election Code, Kyrgyz Republic (15 February 2002); Final Report on Parliamentary Elections in the Kyrgyz Republic, 20 February and 12 March 2000 (10 April 2000).

1. Article 3 Limitation on Candidacy Rights

Article 3 of the Code sets forth the right of suffrage for citizens of the Kyrgyz Republic. Paragraph (4) of Article 3 abrogates the passive right of suffrage of a citizen whose “previous conviction has not been expunged or cancelled according to the procedure established by law”. Under this paragraph, the passive right of suffrage is denied based on any conviction, regardless of the nature of the underlying crime. The denial of suffrage, due to a conviction for *any* crime, is a questionable exercise of state power. The denial of candidacy should occur only where a person has been convicted of committing a crime of such a serious nature that forfeiture of political rights is indeed proportionate to the crime committed. The principle of proportionality in the restriction of civil and political rights is expressly recognized in Articles 17 and 18 of the Constitution of the Kyrgyz Republic. The paragraph (4) of Article 3 abrogation of the passive right of suffrage is not consistent with international standards and would appear to be contrary to the Constitution of the Kyrgyz Republic.⁸

The OSCE/ODIHR recommends that Article 3 be amended so that denial of candidacy can occur only where a person has been convicted of committing a crime of such a serious nature that forfeiture of political rights is indeed proportionate to the crime committed.⁹ The forfeiture should be for an established period of time, likewise proportionate, and restoration of political rights should occur automatically after the expiration of this period of time.¹⁰ Legal barriers to candidacy must always be scrutinized as they limit voter choice and prevent candidates from seeking public office based on disqualifying conditions that may be unrelated to the character of the office.

2. Articles 28, 36, and 56 Limitations on Candidacy Rights

The OSCE/ODIHR noted in its November 2003 assessment that Articles 28, 36, and 56 permit the cancellation of registration of a candidate for a variety of reasons.¹¹ The OSCE/ODIHR noted that the sanction of cancellation of registration is

⁸ Articles 17 and 18 of the Constitution, though, appear to conflict with paragraph (2) of Article 56 of the Constitution, which states: “No person with criminal record may be elected a deputy of the Jogorku Kenesh of the Kyrgyz Republic unless such record shall have been expunged and canceled in such manner as law may provide.” A “criminal record” could include a record of unjustified, unproven allegations, and a person with a “criminal record” could even be found innocent during the course of judicial proceedings. Thus, there must be a translation error in Article 56 and it is likely that the phrase “conviction of a serious crime” is intended instead of “criminal record”. Interestingly, the Constitution does not contain a similar “criminal record” prohibition for candidates for the Presidency.

⁹ Further, the law should specifically list those crimes that are considered to be so serious that forfeiture of a fundamental human right – suffrage – is required.

¹⁰ Paragraph (4) of Article 3 indicates that restoration of suffrage rights is not automatic. The relevant legal provision for expunging or cancelling a conviction should be considered when evaluating paragraph (4) of Article 3.

¹¹ Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003), at page 4.

disproportionate, in light of the conduct in these articles that can be a basis for cancellation.¹² The OSCE/ODIHR concluded:

Although the wrongful acts listed in Articles 28, 36, and 56 should be punished, the punishment of cancellation of registration is disproportionate. In addition to potential abuse by election commissions, these provisions could lead to efforts to “cancel” an election opponent as part of the quest for electoral victory. Democratic elections should be premised on election in one’s own right rather than defeat of opponents through “cancellation”.¹³ **The OSCE/ODIHR recommends** that the possibility to cancel a candidate’s registration be limited to the situation where the candidate does not possess the legal requirements for candidacy, and that Articles 28, 36, and 56 be accordingly amended.¹⁴

Several amendments to these and other articles in the Code might create the impression that this concern has been addressed. The illusion of rectification is fostered by amendments in Articles 36 and 56 requiring a “comprehensive” court decision prior to cancellation of candidate registration in some instances. These amendments, coupled with new text in Article 56¹⁵ that might appear to prevent cancellation other than as provided by the limited provisions of Article 56, do not, however, address prior OSCE/ODIHR concerns about cancellation of candidacy.

A careful reading of the text of the Code establishes that the concern about cancellation of candidate registration not only remains, but has been compounded. First, Article 56(1)(B) expressly permits cancellation of candidate registration if a candidate is involved in *any* violation of a “pre-election” campaign provision. This

¹² As an example, a single telephone call on a government telephone can be a basis for cancellation of registration. Although wrongful acts should be punished, cancellation of registration is disproportionate. It would be more appropriate to authorize the imposition of a monetary fine and/or imprisonment based on consideration of several factors, which could include: (a) the threat that the violation presents to the conduct and administration of future elections, (b) whether the violator profited from the violation, either monetarily or through the allocation of a mandate for the violator or the violator’s political party or coalition, (c) the duration and pervasiveness of the conduct giving rise to the violation, (d) whether and to what degree there was an effort to conceal the violation, (e) the attitude and conduct of the violator upon discovery of the violation, (f) whether government authorities or public officials or resources were involved in the violation, (g) the number of times the violation occurred, (h) the number of other persons involved in the violation, and (i) the potential harm to free, fair, democratic, and transparent elections in the future.

¹³ In addition to general concerns previously expressed on the cancellation of registration issue, the OSCE/ODIHR has noted that cancellation on the grounds of “abuse of freedom of mass media” is certainly subject to abuse. *See* Review of Amendments to the Election Code, Kyrgyz Republic (15 February 2002).

¹⁴ Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003), at pages 4-5.

¹⁵ The amendment states: “Grounds for cancellation of the candidate’s registration, decision of the election commission on cancellation of the election results laid down in this article are considered to be comprehensive. Any restriction of the citizen’s election right to be elected based on other grounds other than the ones mentioned in this article will be construed as an obstruction to implementation by the citizen of his/her election rights and punished in accordance with the law.”

automatically incorporates provisions contained in Articles 28 and 36 into Article 56 since many “pre-election” campaign provisions are stated in Articles 28 and 36. Paragraph (9) of Article 36 further incorporates “Articles 30-35 of this Code” and “other rules of pre-election campaigning”. Paragraph (9) also recognizes the right to seek “law-enforcement” and court assistance to “suppress ‘illegal’ campaigning activity” and cancellation of candidate registration. Thus, the grounds for cancellation of candidate registration are numerous and broad. Second, Article 56 introduces a *new* ground for cancellation – bribery by a “close relative”. As Article 8 defines close relatives to include siblings, feuding families as well as competing candidates now have a new means to inflict harm. Instead of addressing OSCE/ODIHR concerns, these articles have been expanded and there are new grounds for canceling candidate registration.

Finally, Article 56 allows for the indefinite “suspension” of candidacy registration. Paragraph (2) of Article 56 requires the delay of determination of election results and “suspension” of a candidate’s registration pending a verdict in a criminal case against a candidate. Although the amendment places this obligation to delay and “suspend” on the respective election commission, the commission’s obligation is based on the failure of the court to render a verdict. Ultimately, however, this power to “suspend” candidacy rests with anyone who has the ability to bring about the filing of a criminal proceeding against a candidate.

Amendments to the Code have not addressed OSCE/ODIHR concerns. Indeed, the amendments have created additional concerns and will certainly result in confusion and the strong likelihood of disenfranchisement of candidates.

A basic principle embodied in OSCE commitments is that voters have the opportunity to choose in genuinely democratic elections, from among the citizenry, those persons who are to govern. Inherent in this principle is the possibility that the voters may not choose the best candidates for governance. However, it is sacrosanct that the right to choose belongs to the people in a democracy. Voters are best suited to judge the intellectual capacity, honesty, integrity, and general persona presented by candidates. Articles 28, 36, and 56 severely limit voter choice. **The OSCE/ODIHR recommends** that Articles 28, 36, and 56 be accordingly amended.

3. Article 61 Limitation on Candidacy Rights

Article 61 requires a candidate to have a “good command” of the state language, which the article defines as “the ability to read, write, express thoughts/ideas and make public speeches in the state language”.¹⁶ Article 61 further requires the candidate to “write up his/her election program pledges on not less than three pages”; “read a printed text on not less than three pages”; and “make an oral presentation for 15 minutes stating the main provisions of his/her election program pledges”.

The Constitution of the Kyrgyz Republic does not require that the President be a skillful orator and author, much less a skillful orator and author “in the state

¹⁶ Article 61 expands the text of Article 43 of the Constitution, which requires “command of the state language”.

language”. In fact, Article 5(3) of the Constitution expressly states that “rights and freedoms of citizens shall not be abridged on account of ignorance of the state or official languages.” Further, this constitutional article provides that “the Russian language shall be used in the Kyrgyz Republic as an official language.” Thus, the requirement in Article 61 presents constitutional concerns.

Article 61 is problematic for other reasons as well. First, the article does not state clear and objective criteria for determining proficiency, but instead allows for a subjective “proficiency” decision by a Parliamentary approved “Linguistic Commission”. Second, application of the article will exclude the candidacy of citizens who have visual or vocal impairments. Third, the article presents concerns under international standards and domestic constitutional provisions that prohibit discrimination.¹⁷ **The OSCE/ODIHR recommends** that Article 61 be amended to address *all* of these concerns. It may be that the only satisfactory solution that respects the principle of non-discrimination is the removal of Article 61 from the Code.

4. Article 64 Limitation on Candidacy Rights of Independent Candidates

Article 64 regulates creation of campaign funds for candidates in Presidential elections. Article 64 permits campaign funds for candidates to come from three separate sources. However, the source in paragraph (2)(b) is limited to a candidate nominated by a political party or election bloc. Thus, this article discriminates against independent candidates as it prohibits independent candidates from receiving funds from political parties or election blocs.¹⁸ Paragraph 7.5 of the OSCE 1990 Copenhagen Document provides that citizens have the right “to seek political or public office, individually or as representatives of political parties or organisations, without discrimination”. Further, a political party should have the right to provide financial support to an independent candidate in an election where the political party has not nominated its own candidate. A small political party may not have sufficient strength to nominate a candidate for a Presidential election. However, it should have the right to support a candidate, financially and otherwise. **The OSCE/ODIHR recommends** that the limiting phrase “that nominated him/her” be reformulated so that an independent candidate can receive financial support from political parties. However, the article should clearly state that the total amount of contributions from political parties cannot exceed the amount stated in the paragraph.

5. Post-election Cancellation of Candidate Registration

The OSCE/ODIHR has previously expressed concern about post-election cancellation of candidate registration.¹⁹ This concern remains as paragraph (1) of Article 56 of the Code specifically identifies where cancellation of candidate registration is limited to “five (5) days preceding the election day.” Other legal grounds for candidate

¹⁷ See Paragraph 7.3 of the OSCE 1990 Copenhagen Document; Articles 2 and 21 of the Universal Declaration of Human Rights; Articles 25 and 26 of the International Covenant on Civil and Political Rights; Articles 1(6), 5, and 15(3) of the Constitution of the Kyrgyz Republic.

¹⁸ Articles 74, 85, and 92 have similar provisions and should be accordingly amended.

¹⁹ See Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003), at page 7.

cancellation, not specifically identified in paragraph (1) of Article 56, would permit cancellation of the registration of an elected candidate. In fact, paragraph (2) of Article 56 expressly recognizes this possibility as it requires the delay of the determination of election results and “suspension” of candidacy registration pending a verdict in a criminal case against a candidate. The possibility to “suspend” or subsequently cancel the registration of a candidate who received the number of votes necessary to win the election is contrary to the commitment formulated in Paragraph 7.9 of the 1990 OSCE Copenhagen Document: “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”. Although Article 56 is a “legal provision”, it is not a legal provision that is in conformity with democratic parliamentary and constitutional procedures.²⁰ Democratic principles require that the will of the electorate be duly respected. **The OSCE/ODIHR recommends** that the Code be amended to allow post-election cancellation only where the elected candidate does not meet requirements for candidacy under the Constitution.

6. Over-Regulation of Political Parties/Election Blocs

Paragraph (3) of Article 25 states: “The decision to join an election bloc shall be taken at a congress (conference) of the political party.” Paragraph (4) of Article 72 states: “Nomination of candidates for single-electoral districts by political parties shall be carried out at their congresses (conferences) with identification of the district where each candidate shall run.” These provisions fail to consider previous recommendations of the OSCE/ODIHR calling for more liberal provisions for the formation of election blocs and nomination of candidates.

The Code imposes an excessive degree of regulation and represents a limitation on the rights and freedoms usually enjoyed by political parties and election blocs. This is a concern as, in past elections, the CEC has decided to de-register a whole electoral bloc because the congress at which its list of candidates was selected was deemed to be invalid by a court. This over-regulation of political parties and election blocs acts as a limitation on candidacy rights. **The OSCE/ODIHR recommends** that Articles 25 and 72 be amended to delete this over-regulation. However, if these provisions remain in the Code, it should be ensured that failure to fully comply with the provisions results in the need for a party/bloc to hold a new congress and choose a new set of candidates, rather than the complete de-registration of the party or bloc.

Paragraph (1) of Article 60 and paragraph (4) of Article 72 empower the CEC and the Ministry of Justice to be present at a party congress for the nomination of candidates by a political party (or election bloc). Paragraph (3) of Article 83 empowers the district election commission and Ministry of Justice to be present at a party congress for the

²⁰ See, e.g., Articles 51 and 56 of the Constitution of the Kyrgyz Republic; See also *Sadak and Others v. Turkey*, Application Nos. 25144/94, 26149/95, 26154/95, 27100/95 and 27101/95, European Court of Human Rights (11 June 2002) (post-election forfeiture of a mandate is incompatible with the very essence of the right to stand for election and to hold parliamentary office, and infringes the unfettered discretion of the electorate to exercise free and universal suffrage).

nomination of candidates by a political party in local elections. There is no legitimate basis for these provisions. In addition to the observation above that such congresses should not be obligatory, provisions for the intrusion of the CEC, Ministry of Justice, and district election commission in the internal meetings of a political party (or election bloc) are a further infringement of the right of political parties to conduct their legitimate political affairs outside of the scrutiny of the authorities. **The OSCE/ODIHR recommends** that these three provisions be deleted from the Code.

7. Correction of Defects in Candidate Registration Documents

The Code provides that, within ten days (or five depending on the election) of receipt of candidate registration documents, the respective election commission shall register the candidate or issue a motivated decision on the refusal to register. The Code makes no provision for the possibility of a candidate to correct a defect in documents. Candidates should not be denied registration based on a defect in documents where the defect can be corrected in a timely manner. **The OSCE/ODIHR recommends** that Articles 63, 73, 83, and 91 of the Code be amended to provide that in cases where the respective election commission identifies incorrect or incomplete information, it shall immediately notify the applicant, who shall have 48 hours to submit corrected information. The election commission should be required to consider re-submitted documents within 24 hours, and either register the candidate or issue a motivated decision on the refusal to register. Although this would delay the campaign for the candidate concerned, it would allow the possibility for the candidate to participate in the elections and not be denied candidacy based on a minor defect in submitted documents.²¹

8. Formation of Electoral Constituencies

Article 19 of the Code provides for the formation of electoral constituencies. This article requires improvement.

It is important that electoral constituencies be established sufficiently in advance of elections. This is necessary to ensure that political parties and prospective candidates have the opportunity to become familiar with the demographics of constituencies in order to determine the viability of competing in a particular constituency and to engage in preliminary planning for the election campaign. The timeframe stated in the Code allows establishment of constituencies relatively shortly before an election. **The OSCE/ODIHR recommends** that the Code provide that all constituencies must be established and published at least six months before an election.

The Code does not state at what time intervals constituencies are examined and re-established. Generally, most countries examine and re-establish constituencies every ten years. This allows for constituencies to be periodically adjusted as necessary, in order to reflect population changes within constituencies. The Code, however, allows for constituencies to be changed much more frequently – in fact, before every election. Frequent changes in election constituencies should be avoided. Electoral

²¹ The amendment to paragraph (5) of Article 28, which allows for the submission of “missing” documents before the registration deadline, does not address this concern.

manipulation through the drawing of constituencies becomes a more distinct possibility when constituencies are changed frequently. Further, the fundamental rationale for single member constituencies – making deputies accountable to their electorate and creating a link between the deputy and voters – is completely undermined when deputies know that they will acquire new voters with new constituencies. There is not sufficient language in either proposal to prevent the changing of constituencies between elections. **The OSCE/ODIHR recommends** that language be included in the proposal that is ultimately accepted to prevent the re-establishment of constituencies between elections.

Both proposals base the formation of constituencies on the number of registered voters. Representative democracy is based on the principle that all citizens, even those who are not registered to vote, are entitled to representation in parliament. Each deputy in parliament should represent approximately the same number of citizens. Thus, each electoral constituency should have approximately the same number of citizens, regardless of the number of citizens in the constituency that are registered to vote. **The OSCE/ODIHR recommends** that the Code provide that, if sufficient and reliable population data is available, the basis of formation of constituencies is the number of citizens instead of the number of registered voters.

The Code is not clear as to how many multi-member constituencies, and the number of deputies to be elected in a multi-member constituency, are established for elections of local keneshes (legislative assemblies). Article 8 defines a multi-member constituency as “an electoral district, in which several deputies (MPs) are elected whereby the electorate vote for each one of them as an individual person” (sic). Article 82 provides that Oblast and Bishkek city level keneshes can have up to 20 multi-member constituencies. Rayon and city level keneshes can have up to 10 multi-member constituencies. Town and ayil (village) level keneshes can have up to seven multi-member constituencies. However, the Code does not provide any details on the number of multi-member constituencies, other than indicating parameters in vague terms through the “up to” phrasing. Nor does the Code provide any details on the number of members in a constituency other than that constituencies should be “established with approximate equality of the number of voters per each member” (Article 82). **The OSCE/ODIHR recommends** that the Code be amended to provide sufficient detail so that voters, political parties, and candidates understand the electoral system for elections of local keneshes.

B. Election Commissions

The OSCE/ODIHR has previously expressed concern that election commissions are not pluralistic, subject to the control of government authorities, and do not act independently.²² An amendment to Article 11 partially addresses this concern by creating the possibility for political parties to collectively appoint up to 1/3 of the

²² See Review of Amendments to the Election Code, Kyrgyz Republic (15 February 2002); Final Report on Parliamentary Elections in the Kyrgyz Republic, 20 February and 12 March 2000 (10 April 2000); Final Report on Presidential Elections in the Kyrgyz Republic, 29 October 2000 (16 January 2001).

members of an election commission. This amendment, although an improvement in the Code, does not ensure sufficient pluralism or impartiality of election commissions or ensure that they will be less subject to the control of government authorities.

Once again, **the OSCE/ODIHR recommends** that the legislature further amend the articles regulating the appointment of election commissions. The Code should be amended to substantially broaden and guarantee the representation of political parties on election commissions, including the CEC.

The OSCE/ODIHR also recommends that the provision for replacement of election commission members be amended to prevent removal of a member for political reasons.²³ At a minimum, the amendment should provide for (1) written notice to the commission member of the proposed grounds for removal, (2) a hearing before an appropriate tribunal to contest the challenged removal, (3) a voting requirement greater than simple majority in order to support the removal, and (4) the right to appeal to a court to challenge a decision for removal.

An amendment to paragraph (3) of Article 11 provides that the chairpersons of Oblast, Bishkek City and Osh City election commissions shall be full-time officials. This is in addition to the Chairperson of the CEC. This amendment will hopefully increase the professionalism of electoral administration as well as facilitating preparations for the elections.

Paragraph (7) of Article 11 has also been amended concerning the membership of election commissions. The OSCE/ODIHR has commented during previous elections that precinct and district election commissions have been dominated by local state officials and that this was detrimental to at least the perception of impartiality of these commissions. This amendment provides that that “Civil and municipal servants shall not comprise more than one-third of the total number of election commission members”. It can be argued that in the absence of substantial confidence in the election process that such persons should not be members of election commissions at all because they are beholden to the state authorities.

The Code does not address the issue of where an election commission office may be located. The location of an election commission inside a governmental institution building can be explained as a logistical issue connected with the supplying of sufficient support for election administration. However, the location of an election commission on the premises of a governmental institution can raise concern. Thus, **the OSCE/ODIHR recommends** that the Code be amended to require, in the first instance and where possible, that the CEC and all other election commissions be located in non-governmental buildings.

²³ Paragraph (3) of Article 16 regulates replacement of a member of an election commission. The amendments in paragraphs (10) and (11) of Article 10, which address the issue of replacement of an entire commission, do not address this concern.

C. Election Rules

1. Voter Lists

The OSCE/ODIHR has previously commented that inaccuracies in the voter lists have constituted a problem in prior elections and led to a large number of voters being included in additional lists. As the practice of adding voters to lists shortly before an election creates the opportunity for electoral fraud, the OSCE/ODIHR recommended that a voter requesting to be added to a list due to a move to a new place of residence should be required to produce a certificate of de-registration from the previous place of residence. An amendment to paragraph (3) of Article 22 addresses this recommendation as it requires the presentation of such a certificate.

Paragraph (1) of Article 22 states that lists of voters at precinct stations shall be presented for general familiarizing and additional updating not later than 15 calendar days prior to election day. This may not be sufficient time for public scrutiny, appeals, decisions and revisions. The OSCE/ODIHR recommended that the legislature consider whether this time is sufficient and amend the Code to provide for additional time if this would improve the quality of the voter lists. An amendment to this provision increases the number of days from 15 to 19.

Paragraph (2) of Article 22 allows for amendment of the voter lists on election day. While such a provision is used in some countries, it is subject to abuse. If sufficient time is allowed for consideration and amendment of the voter lists, as recommended above, then election day addition should not be necessary and, considering problems noted in past elections, should be avoided. **The OSCE/ODIHR recommends** that Article 22 be accordingly amended.

2. Election Campaign Provisions

Paragraph (2) of Article 30 defines permissible activities during an election campaign. By defining “permissible activities”, it is implied that other legitimate activities, that are not specifically included in paragraph (2), are not permissible. **The OSCE/ODIHR recommends** that paragraph (2) of Article 30 be amended to state that it is not to be applied, interpreted, or construed as a limitation on other legitimate means of political campaigning.

Paragraph (7) of Article 30 states “Pre-election campaigning shall be prohibited in foreign mass media disseminated on the territory of the Kyrgyz Republic”. There is no legitimate basis for such a limitation. This provision violates the principle that a citizen has the right to receive and impart information regardless of frontiers.²⁴ OSCE participating states recognize that citizens have the right “to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts.”²⁵ OSCE participating

²⁴ See Article 19 of the Universal Declaration of Human Rights; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 16 and 36 of the Constitution of the Kyrgyz Republic.

²⁵ Paragraph 26.1 of the OSCE 1991 Moscow Document.

states also commit themselves “to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information, which we consider to be an essential component of any democratic, free and open society.”²⁶ **The OSCE/ODIHR recommends** that this prohibition be deleted from the Code.

Paragraph (8) of Article 30 provides that if a mass media official is a candidate, then his or her TV station or newspaper is not permitted to cover the candidate’s activities. This is contradictory to the principle of offering equal conditions for all candidates. It is also a limitation on the freedom of speech and expression afforded to private media. **The OSCE/ODIHR recommends** that this provision be reformulated to ensure equal treatment of all candidates and respect for private media’s right to free speech and expression.

Paragraph (3) of Article 31 states: “It shall be prohibited to publish in mass media the results of public opinion polls, forecasts of election results, other research materials in connection with elections from the moment of registration of candidates”. This presents two problems. First, such a period of prohibition on opinion polls is excessive. Second, the inclusion of a prohibition on “other research materials” is ambiguous and could constitute a restriction on normal media coverage of an election. **The OSCE/ODIHR recommends** that such references are deleted and replaced with the following text: “It shall be prohibited to publish in mass media the results of public opinion polls within seven days of the day of the election.”

Articles 30 and 32 permit the purchase of paid political advertisements. However, the Code does not require that these broadcasts be identified as paid political advertisements. **The OSCE/ODIHR recommends** that Articles 30 and 32 be amended to require proper identification of these advertisements as paid political advertisements.

Paragraph (1) of Article 35 limits the right to issue printed campaign materials to “candidates, political parties, election blocs”. As each citizen has the rights to free expression, association, and speech, which encompass the right to issue printed campaign materials, paragraph (1) impermissibly limits the rights of a citizen. This limitation is contrary to international standards and domestic constitutional law.²⁷ **The OSCE/ODIHR recommends** that paragraph (1) be amended to include all citizens. Further, paragraph (1) also requires submission of these materials to election commissions in order to ensure that the materials comply with the Code. This requirement for approval of printed campaign materials prior to their dissemination also violates international standards and domestic constitutional law.²⁸ **The OSCE/ODIHR recommends** that the second sentence of paragraph (1) of Article 35 be deleted from the Code.

²⁶ Paragraph 26 of the OSCE 1999 Istanbul Document.

²⁷ See Articles 19 and 20 of the Universal Declaration of Human Rights; Articles 19 and 22 of the International Covenant on Civil and Political Rights; Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 16 and 17 of the Constitution of the Kyrgyz Republic.

²⁸ *Id.*

Paragraph (2) of Article 36 prohibits many types of campaign material and speech, including campaign material or speech that “excites” or creates “animosity” on “social” issues. The current formulation of this paragraph is too broad. It is permissible to prohibit campaign materials and speech that are calculated to incite violence. However, as currently written, this paragraph could be interpreted to prohibit campaign speech and political discussion on important social problems and issues in the country. **The OSCE/ODIHR recommends** that this paragraph be reformulated so that it cannot be applied to limit legitimate political discourse during the campaign.

Paragraph (6) of Article 36 prohibits campaign materials “that can damage dignity, honour or business reputation of candidates”. Article 36 provides that a person who violates paragraph (6) is subject to prosecution. This limitation on free expression of speech and political opinions prevents a robust and vigorous campaign, which is critical to election campaigning in a democracy. Outside the context of a political campaign, a government may limit freedom of expression in order to protect the reputation or rights of others.²⁹ However, in the context of a political campaign in which candidates make a conscious decision to enter the public sphere to compete for public office, a law for the protection of the reputation or rights of others cannot be applied to limit, diminish, or suppress a person’s right to free political expression and speech.³⁰ **The OSCE/ODIHR recommends** that paragraph (6) of Article 36 be amended to comply with international standards. **The OSCE/ODIHR also recommends** that paragraph (3) of Article 57 be amended for the same reasons.

3. Financing of Elections

An amendment to Article 50 partially addresses a previously expressed OSCE/ODIHR concern that the prohibition on foreign funding would prevent legitimate observation activities and support of domestic observer groups. Although the amendment partially addresses previous concerns, Article 50 requires further improvement as its current formulation is still contrary to Paragraph 10.4 of the OSCE 1990 Copenhagen Document, wherein participating OSCE States commit to allow domestic observer groups “to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations and to solicit, receive and utilize for the purpose of promoting and protecting human rights and fundamental freedoms voluntary financial contributions from national and international sources as provided for by law.” Clearly, the Article 50 limitation on “foreign funding” is contrary to the commitment to allow unhindered access to “voluntary financial contributions from national and international sources”. **The OSCE/ODIHR recommends** that paragraph (1) of Article 50 be amended to ensure that the prohibition on foreign funding cannot be applied to preclude international or

²⁹ See, e.g., Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

³⁰ See, e.g., *Oberschlick v. Austria*, Case No. 6/1990/197/257, European Court of Human Rights (23 May 1991); *Lopes Gomes Da Silva v. Portugal*, Application No. 37698/97 European Court of Human Rights (28 September 2000); *Bowman v. The United Kingdom*, Case No. 141/1996/760/961, European Court of Human Rights (19 February 1998); *Incal v. Turkey*, Application No. 41/1997/825/1031, European Court of Human Rights (9 June 1998).

domestic observer organisations from full engagement in observation activities, including the training of observers, deployment of personnel, compilation of data, fact finding, and subsequent analyses and reporting, and to ensure compliance with Paragraph 10.4 of the OSCE 1990 Copenhagen Document.

Paragraph (1) of Article 56 is of concern as it provides additional grounds for cancellation of a candidate's registration. Under this paragraph, some violations of the procedures for campaign financing (Article 51) can result in the cancellation of candidacy. **The OSCE/ODIHR recommends** that this cancellation provision be deleted from paragraph (1) of Article 56.

4. Early Voting

Article 41 of the Code governs the early voting process. As noted in the November 2003 OSCE/ODIHR assessment, the pending amendments proffered two competing proposals concerning Article 41. One proposal was to remove the early voting process from the Code. The other proposal was to increase the opportunities for early voting with the possibility, in some cases, of counting ballots and establishing results as early as three days before the election. The OSCE/ODIHR recommended, in light of the opportunity under Article 38 for obtaining an "outside voting certificate" and due to past electoral fraud observed with voting outside of regular polling stations on election day³¹, that the early voting process should be deleted from the Code. The OSCE/ODIHR further noted that early voting, in addition to increasing the opportunity for electoral fraud, places a greater burden on election administration and significantly hinders observation efforts. The burden placed on observer organizations and candidate representatives is substantial.

The version of Article 41 adopted for inclusion in the Code provides for a broad early voting process for a period of "9 to 1 days before the election day." Such a substantial opportunity for early voting is difficult to regulate in a transparent manner and significantly increases the opportunity for electoral fraud. **The OSCE/ODIHR recommends** that Article 41 be amended and early voting limited to a period of "3 to 1 days before the election day", and only between the hours of 10:00 and 14:00, in order to ensure that observers have a reasonable opportunity to observe the early voting process.

5. Mobile Voting

The provisions for "mobile voting" in Article 42 have been amended. A positive amendment in paragraph (1) replaces the phrase "or due to other reasons" with "or disability". This amendment comports with a prior OSCE/ODIHR recommendation that mobile voting be available only to a voter that cannot attend regular voting due to health reasons. However, Article 42 should also provide that all other provisions for voting and transparency are applicable to mobile voting. **The OSCE/ODIHR recommends** that Article 42 state that all procedures for identifying a voter, issuing a ballot, and for observation are applicable to the mobile voting procedure. Further, the

³¹ Prior OSCE/ODIHR reports have noted that electoral fraud is much more prevalent with early voting and mobile voting than with regular voting in a polling station on election day.

number of persons who have used the mobile ballot box must be recorded in the polling station protocol and successive protocols and tabulations by election commissions. In addition, the two or more precinct election commission members who administer mobile voting should be from different political parties.

6. Voting Procedures

An amendment to paragraph (13) of Article 10 requires that ballot boxes should be made of transparent materials. This is a welcome amendment to increase transparency and confidence in the process.

Paragraph (2) of Article 20 states that “Precincts (polling stations) shall be established ... with not more than 3,000 voters per precinct”. This number is very high and places a severe administrative burden on the precinct election commissions. In places where the required resources are available, **the OSCE/ODIHR recommends** that the number of voters allocated to a precinct be decreased to a more manageable number, such as between 1,000 and 1,500.

Paragraph (5) of Article 40 provides that, in polling stations with less than 500 registered voters, a voter is not required to provide documented proof of personal identification. This provision is not acceptable as it contravenes Paragraph 7.3 of the OSCE 1990 Copenhagen Document that guarantees universal and equal suffrage rights to all citizens. The same voting rules must apply to all voters.³² **The OSCE/ODIHR recommends** that this provision in Article 40 be deleted and that Article 40 include a general provision requiring that all procedures for identifying a voter and issuing a ballot are applicable for voting in “special” precincts (military, hospitals, remote areas, etc.).³³

The second part of paragraph (7) of Article 40 states, concerning voting in multi-member constituencies in local kenesh elections: “the number of candidates for whom the voter may vote shall not exceed the number of mandates in the constituency.” However, the Code does not provide any guidance on the electoral system used for these multi-member constituencies. **The OSCE/ODIHR recommends** that the Code be amended to provide sufficient detail so that voters, political parties, and candidates understand the electoral system for elections of local keneshes.

The OSCE/ODIHR noted in its November 2003 assessment that there were two competing amendments in paragraph (7) of Article 40 concerning the manner of marking the ballot. One proposal provided that the voter places a mark in the square on the ballot related to the candidate whom the voter selects. The second proposal allowed the voter to vote “against all candidates”. The OSCE/ODIHR recommended that the first proposal be adopted as positive voting is much preferred over negative

³² See Paragraph 7.3 of the OSCE 1990 Copenhagen Document; Articles 2 and 21 of the Universal Declaration of Human Rights; Articles 25 and 26 of the International Covenant on Civil and Political Rights; Articles 1(6) and 15(3) of the Constitution of the Kyrgyz Republic.

³³ Similar provisions should be included in the corresponding articles for determination, announcement, and publication of results from special polling stations.

voting. **The OSCE/ODIHR again recommends** that positive voting be used instead of negative voting.

7. Determination of Election Results

Before the substantive processes for determining results can be discussed, it must be noted that amendments to Articles 46 and 56 create significant uncertainty for the determination and announcement of election results. First, the amendment to paragraph (6) of Article 46 makes it impossible to challenge fraudulent results where the fraud is discovered after the protocols have been signed. The OSCE/ODIHR has previously stated its concern with any provision that prevents the possibility to challenge fraudulent results where the fraud cannot be discovered until after the voting has occurred.³⁴ Second, the amendment to paragraph (2) of Article 56 permits the delay of determination of election results and suspension of a candidate's registration pending a court verdict in a criminal case against the candidate. This amendment allows the indefinite delay of determination of election results. **The OSCE/ODIHR recommends** that both of these provisions be removed from the Code.

The procedure in paragraph (6) of Article 44 for counting ballots in mobile ballot boxes is of concern. The procedure requires that all ballots in a mobile ballot box be invalidated if the number of ballots in the mobile ballot box exceeds the number of written applications requesting to vote outside the premises. This provision treats voters unequally and discriminates against mobile voters because this invalidation requirement does not apply to regular ballot boxes. The same counting rules must apply to all voters.³⁵ Further, the existence of one ballot too many is not a sufficient justification for invalidating all mobile ballots. The better practice is to count mobile ballots with regular ballots so that the same counting rules apply to each type of ballot. **The OSCE/ODIHR recommends** that Article 44 be amended to address these concerns. One hundred legitimate and valid mobile ballots should not be invalidated just because one extra ballot is found in the mobile ballot box.

Paragraph (21) of Article 44 provides that a copy of the precinct (polling station) protocol "shall be posted for general information in the place, established by the precinct election commission." **The OSCE/ODIHR recommends** that paragraph (21) be amended to provide that the protocol shall also be posted at the precinct election commission. **The OSCE/ODIHR also recommends** that a similar provision be included in paragraph (6) of Article 45 for the posting of an election commission protocol. Regrettably, an amendment to paragraph (6) of Article 45 *has deleted the requirement that this protocol be publicly posted.*

Paragraph (9) of Article 45 allows for a recount of votes. **The OSCE/ODIHR recommends** that this paragraph be amended to state that the notice to observers of the recount shall be provided in a timely manner. It is preferable for the paragraph to

³⁴ See Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003), at page 21.

³⁵ See Paragraph 7.3 of the OSCE 1990 Copenhagen Document; Articles 2 and 21 of the Universal Declaration of Human Rights; Articles 25 and 26 of the International Covenant on Civil and Political Rights; Articles 1(6) and 15(3) of the Constitution of the Kyrgyz Republic.

state a specific minimum number of hours sufficient to allow for any necessary travel to observe the recount. **The OSCE/ODIHR** also recommends that paragraph (9) of Article 45 be amended to require public posting of the recount protocol and that copies be provided to all observers who are present when the protocol is completed.

Article 45 regulates the procedure for determining the election results by superior election commissions. **The OSCE/ODIHR recommends** that Article 45 be amended to clearly state that all results, including the summary table required by paragraph (3), provide the results of mobile voting and early voting, and that all information is broken down to the precinct level so that all results can be traced from the lowest level of voting through the tabulations at each level of election commission, including the CEC. This degree of detail is necessary to enable observers to track results and locate specifically where mistakes or potential fraud has occurred if the numbers are unlawfully changed during the tabulation processes.

Article 46 regulates invalidity of results. The grounds for invalidation are not clear in the English text and paragraphs (4) and (5) appear to be contradictory. Sub-paragraphs (a) and (b) of paragraph (4) appear to state the single principle that invalidation should occur *only* where an electoral irregularity could have affected the determination of the winning candidate. The second sub-paragraph (c) of paragraph (5), however, appears to apply criteria that disregards this single principle and focuses on the electoral irregularity that was committed.³⁶ **The OSCE/ODIHR recommends** that Article 46 be clarified and that invalidation should occur *only* where an electoral irregularity could have affected the determination of the winning candidate, regardless of the nature of the electoral irregularity. Further, any electoral irregularity, regardless of the nature of the irregularity, should be justification for invalidation if the irregularity could have affected the determination of the winning candidate.

Article 48 provides for the publication of election results. Regrettably, an amendment to paragraph (4) of Article 48 *has deleted the requirement that the results of subordinate commissions be included in the published results*. **The OSCE/ODIHR recommends** that paragraph (4) of the article be amended to require that publication of results must be in the form of tables with all relevant details, which will enable all interested parties to audit the outcome of the elections from polling stations, through intermediate levels, to the CEC level. The tables should include the number of voters in each polling station who used the mobile ballot box and other alternative voting procedures in order to identify particular areas where the proportion of votes cast using mobile or other alternative voting procedures is unusually high, which may be an indicator of electoral fraud.

D. Transparency

The amended Election Code provides for some observation of election processes. However, the Code should be improved in the area of transparency.

³⁶ There are two sub-paragraphs (c) in the translation reviewed.

Paragraph (2) of Article 17 does not include domestic or foreign observers in the list of persons who have the general right to attend meetings of election commissions, and paragraph (6) limits domestic and foreign observers' observation of election day activities of election commissions to "when they establish the results of voting, the election returns, compile corresponding protocols on the results of voting, and election results, as well as at a repeated count of votes". As a result of this language, domestic and foreign observers are limited in their observation activities. Transparency of the *electoral processes* is a fundamental principle required by OSCE election related commitments and other international standards. Paragraph 8 of the OSCE 1990 Copenhagen Document recognizes the importance of the presence of observers, both foreign and domestic, to enhance the *electoral processes*. Observation should include the right to observe all electoral processes, including all activities, meetings, and decision making in election commissions, before, during, and after elections. **The OSCE/ODIHR recommends** that paragraphs (2) and (6) of Article 17 be accordingly amended.

Paragraph (4) of Article 17 limits an observer organisation to one observer in a polling station. This limitation is not appropriate where there is sufficient space for more than one observer from each organisation. Observer organisations often deploy observers in teams of two persons. **The OSCE/ODIHR recommends** that paragraph (4) include additional language that states the limitation is not applicable where there is sufficient space to accommodate a two person observer team.

The language in paragraph (7) of Article 17 implies that an observer will only be permitted to observe in one polling station or election commission. Effective observation requires that an observer be accredited and able to attend several polling stations and election commissions. **The OSCE/ODIHR recommends** that paragraph (7) be accordingly amended.

The Code should clearly state that all observers have the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of protocols and tabulations of results at all levels, *during the entirety of the election process*. The Code should also establish an expedited process for observers to obtain corrective relief when an election commission denies the rights of an observer, including the right to be registered as an observer, or fails to consider an application for accreditation as an observer.

Article 39 of the amended Election Code does not define who can observe the printing of ballot papers and who can be present when the ballot papers are delivered from the printing house. Further, it limits observation of the destruction of defective ballots at the printing house to election commission members and candidate representatives. Both the printing and delivery processes, as well as the destruction of defective ballots, should be open to the same level of transparency as other parts of the election process. Accordingly, **the OSCE/ODIHR recommends** that the Code be amended to explicitly allow the printing process, delivery of ballot papers to election commissions, and destruction of defective ballots be open to observers and representatives of the media.

E. Legal Protection

1. Impossibility to Challenge Fraudulent Results Where the Fraud is Discovered After Signing of Protocols

The amendment to paragraph (6) of Article 46 makes it impossible to challenge fraudulent results where the fraud is discovered after the protocols have been signed. The OSCE/ODIHR has previously stated its concern with any provision that prevents the possibility to challenge fraudulent results where the fraud cannot be discovered until after the voting has occurred.³⁷ **The OSCE/ODIHR recommends** that this provision be removed from the Code.

2. Lack of a Uniform and Consistent Process for Legal Protections

Articles 54 and 55 of the Code fail to establish a uniform and consistent process for protecting suffrage rights. Although paragraph (3) of Article 55 provides that an election commission must “suspend” its consideration of a complaint when the complaint has also been presented to a court, the possibility of filing a complaint with either an election commission (Article 54) or a court (Article 55) creates the possibility of “forum shopping” and inconsistency in decisions.³⁸ As uniformity and consistency in decisions is important, **the OSCE/ODIHR recommends** that challenges to decisions be filed in only one forum designated by the Code – either a court or higher election commission. If the forum designated by the Code is an election commission, then the Code must provide that the right to appeal to a court is available after exhaustion of the administrative process.

The OSCE/ODIHR recommends that Articles 54 and 55 be amended to state a clear, understandable, *singular* hierarchical complaint process that defines the roles of each level of election commission and each level of courts. It is important that this process be uniform to prevent “forum shopping”. This process should also identify which bodies act as fact finding bodies of first instance and which bodies act as appellate review bodies. Finally, at minimum, the Code should provide the following for voters, candidates, and political parties:

- the right to file a complaint to protect suffrage rights;
- the right to present evidence in support of the complaint;
- the right to a public hearing on the complaint;
- the right to a fair hearing on the complaint;
- the right to an impartial tribunal to decide the complaint;
- the right to transparent proceedings on the complaint;
- the right to an effective remedy;

³⁷ See Assessment of Pending Amendments to the Election Code, Kyrgyz Republic (5 November 2003), at page 21.

³⁸ Paragraph (5) of Article 27 similarly allows a decision on refusal to register a candidate to “be appealed in the superior election commission or in court.”

- the right to a speedy remedy; and
- the right to appeal to an appellate court if a remedy is denied.³⁹

Article 55 and other provisions in the Code provide some of the protections noted above. However, not all required protections are provided in the Code. Further, it would be better to include all of these protections in a single article (or closely grouped articles) in the Code regulating complaints and appeals.

3. Deadline for Complaints and Appeals

Both Articles 54 and 55 have a deadline of 10 days for filing a complaint or appeal. This deadline is triggered by election day, regardless of whether the election results are known and regardless of whether it is possible to discover the electoral irregularity within the 10 days. **The OSCE/ODIHR recommends** that the Code be amended to provide an exception to this deadline where the election results are not known within 10 days or where the electoral irregularity could not have been discovered within 10 days. However, this recommendation should not be misconstrued as contradictory with OSCE/ODIHR recommendations for expeditious and prompt adjudication of election disputes. This recommendation is to ensure that suffrage rights and the integrity of the election results are not arbitrarily disregarded where an election has been stolen and the theft cannot be discovered for example until 11 days later.

IV. CONCLUSION

The current text of the amended Election Code requires improvement in order to respect OSCE commitments and other international standards. There are also technical drafting concerns with the Code that have been noted in this assessment. All of these concerns should be addressed in order to create a sound legal framework for democratic elections.

This assessment is provided by the OSCE/ODIHR with the goal of assisting the authorities in the Kyrgyz Republic in their stated objective to improve the legal framework for elections, meet OSCE commitments and other international standards, and develop the best practices for the administration of democratic elections. The OSCE/ODIHR stands ready to assist the authorities in their efforts and hopes that there will also be a commensurate commitment on the part of the authorities to fully and effectively implement the Code at future elections.

³⁹ See Articles 8 and 10 of the Universal Declaration of Human Rights; Paragraph 13.9 of the OSCE 1989 Vienna Document, Paragraphs 5.9 through 5.12 of the OSCE 1990 Copenhagen Document, and Paragraphs 18 through 21 of the OSCE 1991 Moscow Document. Further, the comments and recommendations stated in the OSCE/ODIHR Review of the Election Legislation for Election Disputes, Appeals and Penalties, Republic of the Kyrgyz Republic (26 April 2001) should be considered when the legislature considers additional amendments to the Election Code.