

Parliamentary Assembly Assemblée parlementaire



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Observation of the presidential elections in Kazakhstan (4 December 2005)

Report
Ad hoc Committee of the Bureau of the Assembly
Rapporteur: Mr Tadeusz Iwinski, Poland, Socialist Group

Despite improvements in the election administration, the presidential elections in Kazakhstan on 4 December 2005 did not meet a number of internationally accepted standards for democratic elections. While voting took place in a calm and organised manner serious shortcomings were observed in the vote count and tabulation process. Patterns of intimidation and harassment as well as interference in the election campaign, including by state security and police forces, undermined the democratic conduct of these elections. Democratic development has not yet matched the rapid economic development of Kazakhstan in the recent years. Further democratic reform as well as the improvement of the living conditions of the rural population, as announced by the President during the election campaign, will be essential for a continued democratic development in Kazakhstan.

I. Introduction

1. On 27 April 2004, the Parliamentary Assembly of the Council of Europe and the Parliament of the Republic of Kazakhstan signed a co-operation agreement to establish a political dialogue with a view to promoting the principles of parliamentary democracy, the rule of law and respect for human rights and fundamental freedoms in Kazakhstan. Since then, representatives of the Kazakh parliament have regularly participated in the work of the Assembly. Following an invitation by the Chairperson of the Central Election Commission of Kazakhstan, the Bureau of the Assembly decided on 7 October 2005 to set up an ad hoc Committee of 5 members, one from each the political group in the Assembly, to observe the presidential elections in Kazakhstan scheduled for 5 December 2005. At its meeting on 25 November 2005, the Bureau appointed Mr Tadeusz Iwinski (Poland / SOC) as Chairperson and Rapporteur of the ad hoc Committee.

2. Based on proposals by the political groups in the Assembly, the ad hoc Committee was composed as follows:

Socialist Group (SOC)

Mr Tadeusz IWINSKI Poland

Group of the European People's Party (EPP/CD)

Mr Jan RZYMELKA Poland

Alliance of Liberals and Democrats for Europe (ALDE)

Mr Johannes RANDEGGER Switzerland

European Democrat Group (EDG)

Mr Mevlüt ÇAVUSOĞLU Turkey

Group of the Unified European Left (UEL)

Mr Doros CHRISTODOULIDES Cyprus

SECRETARIAT

Mr Bas KLEIN Deputy to the Head of Secretariat of the Interparliamentary Cooperation and Election Observation Unit

Ms Farida JAMAL Administrative Assistant for elections

3. The ad hoc Committee acted as part of the International Election Observation Mission (IEOM) which also included the election observation missions of the Parliamentary Assembly of the OSCE and the European Parliament, as well as the election observation mission of the Organisation for Co-operation and Security in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

4. The ad hoc Committee met in Almaty on 2 December and in Astana from 3 to 5 December 2005. In Almaty the ad hoc Committee held, *inter alia*, meetings with the Presidential candidates or their representatives, the head of the election observation mission of the OSCE/ODIHR and his staff, as well as representatives of the civil society and mass media. In addition, in Astana, the ad hoc Committee met the President of Kazakhstan both in his capacity as Head of State and presidential candidate, the Head of the Central Election Committee, as well as with the Speaker of the Senate of Kazakhstan. The programme of the meetings of the ad hoc Committee appears in Appendix 1.

5. On Election Day the ad hoc Committee split into 3 teams which observed the elections in and around Astana.

6. The IEOM concluded that the Presidential Elections in Kazakhstan on 4 December 2005, despite some improvements in the election administration during the pre-electoral period, did not meet a number of OSCE commitments and other standards for democratic elections.

7. The ad hoc Committee is grateful for the logistical support given by the OSCE/ODIHR election Observation Mission and wishes to thank the Kazakh authorities, and in particular the Kazak representative to PACE, for the support and co-operation given to the ad hoc Committee in accomplishing its mission.

II. Political and legal context

8. Kazakhstan has undergone rapid economic growth in recent years fuelled by the increased income from its vast oil reserves. This economic growth has mostly benefited the urban population, increasing to some extent the gap between rural and urban populations. Despite there being more than 130 ethnic groups, inter-ethnic relations in Kazakhstan can be considered a model for the region, as a result of which Kazakhstan has been spared the ethnic tensions that have surfaced in other countries in the region. Mindful of the recent events in neighbouring countries, democratic reform, as well as the improvement of the living conditions of the rural population, was a major element in the election campaigns of all presidential candidates including that of the incumbent President Mr Nazarbayev.

9. According to the Constitution of Kazakhstan, as adopted by referendum on 30 August 1995, Kazakhstan is a presidential republic with the president elected by popular vote for a seven year term. In addition, the Constitution stipulates that no person can be elected President for more than

two consecutive terms. The incumbent President Mr Nazarbayev, who is in his first term of office following the adoption of the new constitution in 1995, was elected head of state in January 1999. Prior to the adoption of the new Constitution Mr Nazarbayev was elected President by the Supreme Soviet of Kazakhstan in 1991, confirmed by an election that same year, and whose term was extended until 2000 by a national referendum.

10. The Constitution of Kazakhstan provides that the President is elected in a two round electoral system. In order to be elected in the first round of the election, a presidential candidate must receive more than 50% of the votes cast. If none of the candidates receives 50% of the votes, a second round of elections will be held between the two candidates that received the highest number of votes in the first round. In the second round a simple majority of the votes is sufficient to be elected President.

11. The Presidential elections in Kazakhstan were governed by the Constitutional Law on Elections, The Law on Peaceful Assemblies, as well as provisions in other laws and legal acts. In addition, on 9 September 2005, President Nazarbayev issued a decree instructing state and local authorities to ensure free and fair elections.

12. The election law of Kazakhstan was amended several times, most notably in 2004 after a dialogue that started with the round table process under the auspices of the OSCE to address shortcomings noted during the 1999 Parliamentary elections. The IEOM that observed the Parliamentary elections in 2004, of which PACE was a part, still noted significant shortcomings and therefore recommended further reform of the election law. Regrettably none of the recommendations made regarding the legal framework for elections were implemented by the authorities.

13. The election law was further amended in April 2005 *inter alia* introducing absentee voting on the basis of a certificate issued by a Precinct Election Commission and increasing the possibilities for mobile voting. Regrettably some of these amendments, most notably those prohibiting election related public meetings between the end of the campaign and the official publication of the results, run counter to internationally accepted democratic principles. On 14 November 2005 the CEC proposed that the Parliament remove the amendment restricting public meetings, however this change was not adopted by Parliament before Election Day.

14. The Law on Peaceful Assemblies, in conjunction with the Code on Administrative Violations give local executive authorities undue discretion to deny requests for meetings and to decide on their venue and timing, which runs counter to the principle of freedom of Assembly. Moreover, the practical application of the constitutional provisions to protect the honour and dignity of the President and presidential candidates in effect limited the political discourse during the campaign, as well as the possibility for candidates to freely disseminate information among the voters.

15. The use of the electronic voting system, first introduced during the 2004 parliamentary elections, was expanded to approximately 15% of the polling stations serving around 32% of the voters. The Central Election Commission decided at an early stage that voters voting in a polling station where electronic voting was available would be given the choice to use the e-voting system or to vote by paper ballot. In response to concerns expressed by international observers after the 2004 parliamentary elections, a single paper voters list for both e-voting and voting by ballot paper was introduced in polling stations where e-voting was available.

16. Several improvements have been made to the electronic voting system, in particular with regard to simplifying the user interface, which addressed some of the concerns of the IEOM after the 2004 parliamentary elections. Regrettably two of the main shortcomings of the system identified by the IEOM in 2004 were not addressed. The system still lacks a "paper trail" – a printed copy of the electronic ballot which is then put in a special ballot box by the voter – and therefore lacks a manual audit capacity or possibility for recount in the case of election disputes. In addition, the option of generating a pin code, upon request, for the voter to check his or her vote on the final protocols was retained in the system. While this was ostensibly done to increase voter's confidence in the system, if given to a third party, this PIN code could be used to demonstrate how a voter has voted, infringing on the secrecy of the vote and opening the potential for intimidation.

17. The ad hoc Committee regrets that the electronic voting system could not be independently certified. A private company that assessed the voting system prior to these elections indicated that the standards used were a state secret. This lack of transparency of the testing and certification process undermines public confidence in this system.

III. Election Administration

18. The Presidential elections were administered by a four-tier election administration consisting of the Central Election Commission (CEC), 14 Regional Election Commissions (RECs) and the City Election Commissions of Astana and Almaty, 2004 District Election Commissions (DECs) and 9,580 Precinct Election Commissions (PECs).

19. All election commissions consist of 7 members appointed for a five year term. The members of the CEC are appointed by the Majilis, based on the proposal of the President of the Republic. All other election commissions are elected by the corresponding Maslikhats (Regional Councils), based on proposals by political parties. In the PECs the two parties that supported the incumbent President had the highest levels of representation, while the parties that identified themselves as opposition had a relatively low level of representation. This was mainly considered the result of the latter parties' low level of representation on the bodies appointing the election commissions.

20. A large number of PECs included several workers from the same institution or company. The Election law stipulates that election commissions should not consist of workers from one and the same organisation, but according to the CEC this requirement was satisfied when at least one commission member worked in a different organisation than the other members. However the independence of an election commission could be questioned when a majority of its members have a hierarchical relationship at their place of work.

21. The CEC administered the elections in a professional and open manner, which was a welcome improvement over previous elections. In addition the CEC took several decisions aimed at improving the transparency and efficient functioning of the election administration.

22. The ad hoc Committee welcomed the large-scale voter education and mobilisation programmes organised by the CEC, as well as extensive training programmes for the members of the lower level election commissions. As a result of these education programmes the lower level election commissions were well prepared for their tasks on Election Day.

IV. Candidate and Voter Registration

23. The deadline for nomination of candidates expired on 4 October after which the nominees had 20 days to provide the necessary documentation to be registered as candidates. This documentation includes support signatures from no less than one percent of the registered voters collected in at least two thirds of the 14 regions and cities of Almaty and Astana, tax certificates, as well as proof that the candidates have paid the legal election deposit. In addition the nominees must pass a mandatory Kazakh language test.

24. The registration process was in general considered to be sufficiently open. In total 5 candidates were registered for these elections out of 18 nominees. Of the nominees that were not registered, four did not pass and one did not take the mandatory language test, two withdrew before the registration deadline and 6 did not submit the required documentation before the legal deadline.

25. Efforts were undertaken to improve the accuracy of the voters' lists, by voter education programmes and door-to-door verification. Moreover, in a welcome development, the voters' lists were generally available for public inspection by 18 November 2005. Local prosecutors' offices played a positive role in the updating of the voters' lists, requesting on a number of occasions that election commissions correct errors they encountered in the lists.

26. On 18 November 2005, the CEC took a decision to improve the handling and accounting of absentee voters certificates (AVCs), *inter alia* limiting the number of AVCs to 5% of the registered voters per region. However this decision was taken too late to be truly effective with in some regions the number of AVCs issued being as high as 18% of the registered voters. In addition the absence of a uniform format for these certificates lead to a degree of confusion on Election Day.

V. Pre-election period

27. The election campaign started on 25 October 2005 but was affected by the decision of the incumbent President, and presidential candidate, not to campaign in person. Initially billboards, posters and banners of the incumbent President visually dominated the campaign, with other candidates reporting that private companies and local administrations had informed them that no space was available for their advertising. Later during the campaign other candidates gained access to some billboard spaces, especially in Astana, but a considerable visual disparity remained.

28. All candidates were granted designated closed venues to meet voters throughout the country. However, initially two candidates complained that the allocated spaces for meetings were too small and too remotely located. In line with the Law on Peaceful Assemblies all candidates had to seek permission 10 days in advance for open-air rallies and meetings. The campaign of the leading opposition candidate, Mr Tuyakbai, reported that the majority of its requests for open-air meetings were rejected by local executive authorities, and that for practically all meetings approved only venues at some distance from the city centres were granted.

29. Numerous incidents of disruption and interference by unidentified forces in campaign events, mainly those of opposition candidates, were reported. This was detrimental to the campaign environment and led to increased tension between pro-governmental and pro-opposition supporters.

30. The ad hoc Committee is seriously concerned by reports of interference and harassment by the state security and police forces during the campaign. Vehicles carrying campaign materials were stopped for security checks and searched, and detentions of campaign staff distributing campaign materials or contacting voters were reported and observed. In addition, numerous reports were received of university students across the country being pressured by their professors and rectors to vote in these elections and in several cases to vote for the incumbent President. A number of these reports could be confirmed by the OSCE/ODIHR EOM.

VI. Media

31. Television broadcasts are the main source of information for the public in Kazakhstan followed by the printed media and radio. The structure of control and ownership of the electronic mass media, which are mainly in the hands of people belonging to, or close to, the President's family, is an issue of concern in Kazakhstan.

32. The broadcast media showed a clear bias, and dedicated most of their news coverage, to the incumbent, albeit mostly in his capacity as President of Kazakhstan. State TV, apart from excessive coverage of the President, provided a reasonably balanced and unbiased coverage of all candidates. While showing clear bias in favour of one candidate or the other, the printed media offered a more diverse range of views.

33. In line with the election law all candidates were provided free and equal airtime and space on the State channel and printed media. Paid advertisement space and time on private media, though expensive, was available to all candidates under equal financial conditions and was widely used, in particular during the last two weeks of the campaign.

34. Several newspaper were fined, or had editions confiscated, on the grounds that they had violated the constitutional provisions to protect the honour and dignity of the President and presidential candidates, raising concerns about the extent of the freedom of the Press in Kazakhstan.

VII. Election day - Vote count and tabulation

35. On Election Day voting took place in a calm and well organised manner. The presence of unauthorised persons in 11% the polling station stations, at times interfering with the work of the election commissions and instructing people how to vote, was a point of serious concern. Moreover, multiple and proxy voting were observed in a significant number of polling stations as were violations of the secrecy of the vote.

36. As a result of the improved user interface no problems were encountered with the use of the electronic voting system. However, in polling stations that were served by the e-voting system, two thirds of the voters still preferred paper ballots, and voters who used the system frequently did not sign the voters' list, removing an important safeguard against multiple voting.

37. Students often came to vote in large and organised groups. There were indications that pressure had been exerted on students to vote. Your rapporteur observed that the names of students who voted were registered at the entrance of a polling station, ostensibly for "statistical reasons".

38. Regrettably, the procedures during the vote count and tabulation were assessed as bad or very bad in a large number of polling stations. A significant number of serious violations were observed including tampering with the results protocols in 10% of the polling stations visited. Again, the presence of unauthorised persons proved to be problematic in more than 20% of the DECs visited.

VIII. Conclusions and recommendations

39. Despite improvements in the election administration, the presidential elections in Kazakhstan on 4 December 2005 did not meet a number of internationally accepted standards for democratic elections. While voting took place in a calm and organised manner serious shortcomings were observed in the vote count and tabulation process. Patterns of intimidation and harassment, as well as interference in the election campaign, including by state security and police forces, undermined the democratic conduct of these elections. Democratic development has not yet matched the rapid economic development of Kazakhstan in the recent years. Further democratic reform as well as the improvement of the living conditions of the rural population, as announced by the President during the election campaign, will be essential for a continued democratic development in Kazakhstan.

40. The newly elected President and Parliament of Kazakhstan should implement, without further delay, the recommendations regarding the legal framework for elections as made by the IEOM after both these elections and the Parliamentary Elections in 2004. The Parliament of Kazakhstan should request the opinion of the Council of Europe's Venice Commission on any changes to the laws governing elections, as it is invited to do in the co-operation agreement with PACE.

41. The ad hoc Committee welcomes the improvements made to the electronic voting system and notes that electronic voting can improve the efficiency of the election process and increase public confidence in the elections as it can reduce the possibility for human error and manipulation. However, the shortcomings noted, most notably the absence of a paper audit trail and the possibility for abuse of the PIN Code, undermine the advantages of the system and should be addressed by the authorities in time before future elections. In order to increase public confidence in the electronic voting system, the standards for testing and verification of the system should be made public and independent certification should be allowed and facilitated.

42. Intimidation and harassment as well as undue interference in the campaign and election processes by executive authorities, including state security and police forces, run counter to internationally accepted standards for democratic elections and should not be allowed to reoccur during future elections.

43. A balanced election administration that reflects the political make-up of society is essential to ensure the confidence of the public and electoral stakeholders in the unbiased conduct of the elections. Therefore it is recommended that at least half the members of the CEC should be independently nominated rather than nominated by the President of Kazakhstan for parliamentary approval. Moreover, minimum requirements for the number of representatives of opposition parties in election commissions at all levels should be set to ensure a balanced composition of these commissions.

44. The structure of control and ownership of the mass media remains problematic and legislation should be adopted to avoid monopoly tendencies and to ensure balanced media coverage. Moreover, the constitutional provisions to protect the honour and dignity of the President and presidential candidates undermine the principle of freedom of expression and should be abolished.

45. Taking into account the complex socio-political situation in Kazakhstan and neighbouring countries it is essential that ad hoc Committees to observe elections in Kazakhstan are able to make their own independent observations of the pre-electoral process and do not solely depend on information provided by other partners. The ad hoc Committee therefore suggests that the Bureau authorises a pre-electoral mission when it decides to observe future elections in Kazakhstan.

APPENDIX I

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30 November 2005

Ad hoc Committee on the observation of the Presidential election in Kazakhstan

4 December 2005

Programme

Friday, 2 December 2005 (ALMATY)

Venue: Ibrai/Machambet Room, Hyatt Regency Hotel, Almaty

13:00 Statements by the heads of delegations

Meeting with presidential candidates

14:15-15:00 Mr. Bakhytzhon Zhumagulov, Head of election campaign of Mr. Nursultan Nazarbayev

15:00-15:45 Mr. Zharmakhan Tuyakbai

15:45-16:30 Mr. Yerasyil Abylkasimov

16:30-17:15 Ms. Lyudmila Zhulanova, Head of election campaign of Mr. Alikhan Baimenov

17:15-18:00 Mr. Mels Yeleusizov

18:00 - 19:00 NGOs/Media

- Mr. Evgenyi Zhovtis, Director of the "Kazakhstan International Bureau for Human Rights and Rule of Law"
- Ms. Taskyn Rahimbek, President of the Republican Network of Independent Monitors
- Ms. Tamara Kaleyeva, President of the International Foundation for Protection of Speech "Adil Soz"
- Ms. Tsoy Lera, Editor-in-Chief of the "Panorama" weekly magazine (confirmed)

Saturday, 3 December 2005 (ASTANA)

- 11:00 Departure from Hotel to the airport
- 12:55 Flight to Astana
- 16:30 Meeting with CEC Chair, Mr Onalsyn Zhumabekov
- 17.15 Meeting with the Speaker of the Senate, Nurtay Abykayev

Sunday, 4 December 2005

Observation of Election and vote count

Monday, 5 December 2005

- 08:00-10:00 Debriefing of PACE delegation
 - 04.00 Press Conference *Intercontinental Hotel, Astana*
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APPENDIX II

PRESS RELEASE

INTERNATIONAL ELECTION OBSERVATION MISSION

Kazakh election flawed despite some administrative improvements

ASTANA, 5 December 2005 – Despite some improvements in the election administration prior to election day, the 4 December presidential election in Kazakhstan did not meet a number of OSCE commitments and other international standards for democratic elections. While candidate registration was mostly inclusive and gave voters a choice, undue restrictions on campaigning, harassment of campaign staff and persistent and numerous cases of intimidation by the authorities limited the possibility for a meaningful competition.

These are the preliminary conclusions of the International Election Observation Mission for the presidential election. Some 460 observers from 43 countries observed the election day in a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the Parliamentary Assemblies of the OSCE and Council of Europe, and the European Parliament. The voting was generally calm and peaceful, but the process deteriorated during the count, which was viewed as bad or very bad in one out of four counts observed. Unauthorised persons interfering in polling stations, cases of multiple voting, ballot box stuffing and pressure on students to vote were observed during voting and during the count, observers saw tampering with result protocols and a wide range of procedural violations.

"Regrettably, despite some efforts which were undertaken to improve the process, the authorities did not exhibit sufficient political will to hold a genuinely good election that is in line with

international standards," said Bruce George, President emeritus of the OSCE Parliamentary Assembly and the Special Co-ordinator for the short-term observers.

State media largely met their legal obligations to provide free airtime to candidates but overall media bias in favour of the incumbent and legal restrictions on freedom of expression and dissemination of information diminished the possibility for electors to make a fully informed choice. Statements by the authorities alleging plans for violent actions by the opposition increased tension.

The Head of the delegation from the Parliamentary Assembly of the Council of Europe, Tadeusz Iwinski, said: "The active participation clearly shows the interest and hopes of the Kazakh people in the development of a democratic society. However, the high attendance caused in some cases overcrowding in polling stations, which hindered the voting process and the secrecy of the vote." Struan Stevenson, Head of the European Parliament delegation added: "We witnessed some improvements in the electoral process and were encouraged by these signs. Nevertheless we are of the view that much work remains to be done if Kazakhstan's embryonic democracy is to grow and mature."

The Central Election Commission administered the election in a generally transparent manner, taking into account a number of previous ODIHR recommendations regarding election administration. However, none of the 2004 ODIHR's recommendations suggesting changes to existing election legislation has been implemented to date.

Ambassador Audrey Glover, Head of the OSCE/ODIHR's long-term observation mission, expressed regret that the Kazakh authorities did not provide "a level playing field for a democratic election, whereby the candidates enjoyed equal treatment and opportunities to campaign so that voters could make an informed choice. This is despite assurances from the president that the election would be free and fair."

The observation mission noted positive elements of the pre-election process, including a change in the electronic voting systems, which has made it more user-friendly. A debate among presidential candidates was broadcast live, although the incumbent chose not to participate and thereby reducing the value of the event for the electorate.

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Shortcomings included restrictions on campaigning; meeting and advertising space and disruption of campaign events. The application of the law on protection of the honour and dignity of candidates limited political discourse and freedom of expression. There was evidence of pressure exerted on students to vote in favour of the incumbent and the certification and testing of the electronic voting system was non-transparent, undermining public confidence in the system.

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