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Observation of the extraordinary parliamentary elections in Kazakhstan (18 August 2007)

Report
Bureau of the Assembly
Rapporteur: Mr David Wilshire, United Kingdom, European Democrat Group

The Parliamentary Elections in Kazakhstan on 18 August 2007 showed welcome progress in the pre-electoral process and during the conduct of the vote. However, several shortcomings were noted, some of which were serious. This was especially the case with regard to the legal framework and conduct of the vote count and tabulation, which are not in line with Council of Europe standards for democratic elections.

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. Following an invitation by the Minister of Foreign Affairs of Kazakhstan, the Bureau of the Assembly decided, on 25 June 2007, to set up an Ad Hoc Committee of 5 members, one from each of the political groups in the Assembly, to observe the extraordinary Parliamentary Elections in Kazakhstan, scheduled for 18 August 2007, and appointed Mr David Wilshire (United Kingdom / EDG) 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 Piotr GADZINOWSKI Poland

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

Mrs Corien W.A. JONKER The Netherlands

Alliance of Liberals and Democrats for Europe (ALDE)

Mr Paul WILLE Belgium

European Democrat Group (EDG)

Mr David WILSHIRE

United Kingdom

Group of the Unified European Left (UEL)

Mr Hakki KESKIN

Germany

Secretariat

Mr Bas KLEIN, Deputy Head, Interparliamentary Co-operation and Election Observation Unit
Mrs Daniele GASTL, Assistant, Interparliamentary Co-operation and Election Observation Unit

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 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 Astana from 16 to 20 August 2007 and held, *inter alia*, meetings with representatives of the political parties, the Chairman of the CEC, the Head of the Election Observation Mission of the OSCE/ODIHR and his staff, as well as representatives of civil society and the mass media. 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 Extraordinary Parliamentary Elections in Kazakhstan, held on 18 August 2007, reflected welcome progress in the pre-election process and during the conduct of the vote, but that a number of OSCE and Council of Europe standards were not met, in particular with regard to elements of the new legal framework and to the vote count. The joint IEOM press release issued the day after these elections appears in Appendix 2.

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 Kazakh representatives to PACE, for the support and co-operation given to the Ad Hoc Committee in accomplishing its mission.

II. Political and legal context

8. A series of amendments to the Constitution of Kazakhstan were adopted by the Kazakh Parliament on 12 May 2007. These amendments, *inter alia*, increased the number of deputies in the Majilis (lower house of the Parliament) from 77 to 107; increased the number of appointed senators; removed the term-limit for the first, incumbent, President of Kazakhstan; and reduced the Presidential mandate from 7 to 5 years.

9. The Election Code was amended on 19 June 2007, to reflect the changes to the Constitution. Following the adoption of the amended Election Code, the President dissolved the Majilis and, on 20 June 2007, called for extraordinary elections to be held on 18 August 2007.

10. The amendments to the Election Code changed the system of elections for the Majilis. Previously, the Majilis was elected under a mixed, predominantly majoritarian, system whereby 67 seats were elected via a majoritarian, and 10 seats via a proportional, election system. Under the amended Election Code, 98 seats are now elected via a proportional system based on closed party lists in a single national constituency with a, high, 7% threshold. The remaining 9 seats are not elected but chosen by the Assembly of People of Kazakhstan, which is appointed by the President. The fact that 9 seats in the Majilis are not directly elected by popular vote, combined with a fully appointed Senate, runs counter to Council of Europe standards for democratic elections, which clearly state that at least one chamber of the legislature should be fully elected by direct suffrage.

11. The amended Election Code does not provide for individual candidatures in the elections for the Majilis, and stipulates that all candidates on a list should be members of the party that registers the lists. In addition, the amended Constitution increases the residency requirement for candidates from 5 to 10 years. These restrictions to stand for election are not in line with Council of Europe standards, which, *inter alia*, specify that a length of residence requirement may only be imposed on nationals for local and regional elections.

12. The amendments to the Constitution removed the prohibition on imperative mandates. According to the amended Constitution, deputies will lose their mandate if they resign, or are ejected, from the party on whose list they were elected, or if that party terminates its activity. This runs counter to the principle of a free and independent mandate for the deputies, and gives a disproportionate level of control of the party leadership over “their” deputies, at the cost of transparency and accountability vis-à-vis the voters.

13. After the elections, the parties that pass the threshold to enter Parliament can freely choose how to distribute the mandates among the candidates on their list. As a result, candidate lists are in alphabetical order and not displayed at the polling station. As noted by the Venice Commission on similar occasions, this is not in line with the basic democratic principle that the voter should be entitled to know the consequences of his or her vote.

14. In a change from previous legislation, parties are now prohibited from forming electoral blocs or party coalitions for elections.

15. The calling of the early elections came as a surprise to a number of parties, who had little time to adapt their electoral strategies to the new electoral framework. This was the case in particular with regard to the above mentioned prohibition on the formation of electoral coalitions, which can now only be achieved through the formal merging of party structures.

16. The calling of the early elections interrupted the stated goal of the Kazakh authorities to implement recommendations made by the IEOMs for previous elections, of which PACE had been a part. As a result, most of the concerns mentioned on those occasions were not addressed in the legal framework for these elections.

III. Election Administration Candidate and Voter Registration

17. These elections were administered by a four-tiered election administration consisting of the Central Election Commission (CEC), 16 Regional Election Commissions (RECs), 205 Territorial Election Commissions (TECs) and 9,727 Precinct Election Commissions (PECs).

18. All election commissions are composed of 7 members appointed for a five-year term. The composition of the CEC for these elections was governed by the provisions in the previous electoral framework. The amendments to the Constitution that changed the composition of the CEC will only take effect after these elections. For these elections, the members of the CEC were elected by the Majilis on the proposal of the President of Kazakhstan. All members of the other Commissions (RECs, TECs and PECs) are elected by their respective Maslikhats (local and regional councils), based on nominations by political parties and public associations. Political parties may nominate one member for each election commission. Parties that do not have a nominee appointed on an election commission may send one non-voting delegate to these election commissions.

19. As a result of the appointment system used, the governing Nur Otan party was considerably more represented on the elections commissions than other parties. In addition, the chairman of practically all election commissions was a representative of this party. Regrettably, this undermined, to a certain extent, the plurality of the election commissions.

20. The election commissions, and particularly the CEC, generally administered the elections in a transparent and efficient manner. In some regions, the separation between local authorities and election commissions was not always maintained.

21. In a welcome development, the CEC stated its intention to publish the results for each election commission in conjunction with the publication of the aggregate results. If implemented, this will allow electoral stakeholders, as well as individual members of the public, to control the correct transmission

of individual protocols and tabulation of the results. This in turn will significantly improve the transparency of the tabulation process and public confidence in the results of the elections.

22. Since 2004, Kazakhstan has provisions in its Elections Code that allow for the use of electronic voting. For these elections, electronic voting was available as a voting option in 1,512 polling stations which serve approximately 33% of the electorate. In those polling stations where electronic voting was available, voters could choose to vote by paper ballot or electronically. The concerns expressed by PACE Ad Hoc Committees for previous elections with regard to the electronic voting system remain largely unaddressed. These concerns include, *inter alia*, the lack of independent certification of the system and the possibility that the PIN code provided to voters to check that their vote is well registered could be used by third parties to control how a voter has voted. It should be noted that many parties expressed scepticism with regard to electronic voting, which indicates that confidence in the system is still low.

23. The Ad Hoc Committee welcomed the efforts by the authorities to improve the accuracy of the voters' lists. Voters' lists were made available for public inspection before the elections in the polling stations and on the CEC website. In addition, telephone hotlines were established in Astana and Almaty. However, PACE observers noted a number of persons who appeared on the voters' list in more than one polling station, which is an indication that further improvements of the voters' list are still needed. This is of some concern, as in Kazakhstan the voters' lists are the main mechanism for preventing multiple voting.

24. The registration of existing parties was inclusive and all 7 parties that applied were registered for these elections. The Communist Party of Kazakhstan did not submit a candidate list in protest of the change from a majoritarian to a proportional election system.

25. In order to register for elections, political parties must be registered as a party with the Ministry of Justice. The requirements, as well as the verification process, are too stringent and a single mistake in an application is eliminatory, even if all legal requirements are met. In addition, there is no legal timeframe within which the Ministry of Justice must take a decision on an application to be registered as a political party. As a result, two prospective parties still had their applications pending and were therefore prevented from running in the elections.

IV. Pre-election period and Media environment

26. The electoral campaign took place in a calm and conducive environment. The election campaign of the governing Nur Otan party was the most extensive and visible during the pre-electoral period. In a welcome development over previous elections, the campaign generally took place without undue interference from local and state authorities. However, many parties complained about the high cost of campaigning including deposits for candidates and election materials. Access to privately owned advertisement space on billboards proved to be difficult for most parties.

27. Campaign materials, mostly from the Nur Otan party, were present in several polling station commission premises, in contravention of the Election Code. In addition, a number of campaign offices were located in local government buildings, which blurred the distinction between State and party structures and resources.

28. Access to media, for all parties, was significantly improved over previous elections. This was largely the result of a ruling by the CEC, which, in the absence of legal requirements for the provision of free airtime and newspaper space, provided all contestants with free airtime on state-funded TV and radio, as well as free advertisement space in the state-funded newspapers. In addition, a series of debates, involving all seven parties, were organised at CEC instigation on two state-funded television stations.

29. Free speech and absence of censorship are provided for in the Constitution. In addition, the Electoral Code stipulates that media should provide for an unbiased interpretation of the electoral campaign of all parties. However, existing legal provisions regarding defamation and libel undermine the principle of free speech and can lead to self-censorship by journalists.

30. Monitoring by the OSCE/ODIHR Election Observation Mission showed that most broadcast and print media, including the state-funded media, showed clear bias in favour of the ruling Nur Otan party in their coverage of the campaign

31. One issue of concern in Kazakhstan is the structure of ownership and control of the electronic mass media which is mostly in the hands of people belonging to, or close to, the President's family and ruling party.

V. Election day – Vote, Vote count and tabulation

32. On Election Day, the vote took place in a calm and efficient manner with no incidents recorded. The Ad Hoc Committee welcomed the large number of domestic party and NGO observers which were present in the majority of the polling stations observed.

33. Multiple voting by the same persons was observed on a number of occasions, including by your rapporteur. In addition, in a significant number of the polling stations observed, apparently identical signatures were noted on the voters' lists, which could be a further indication that multiple voting had occurred. According to data provided by the CEC, at least 1.300 multiple votes were cast electronically, raising some doubts about the electronic voting system used. In the case of multiple voting observed by your rapporteur, the persons concerned appeared to be present on the voters' list in both polling stations. This raises some doubts about the accuracy of the voters' lists and their use as a means to prevent multiple voting.

34. Regrettably, the conduct of the elections deteriorated during the vote count and tabulation process. International observers were restricted in their work in a significant number of polling stations, and, in the majority of polling stations observed, ballot papers were not shown, nor was the choice on the ballots announced to the observers present, as required by law. This raises concerns with regard to the transparency of the vote count. In addition, a number of serious shortcomings were observed, including disregard for the counting procedures prescribed by law and falsification by PEC members of signatures on the voters' lists and election protocols. In a significant number of polling stations, the results protocols were not posted publicly, as required by law, which undermined the possibility for the public to check the correct tabulation of the results.

35. According to the preliminary results, only one party, the governing Nur Otan party, passed the threshold to enter Parliament. The official turnout for these elections was 64,5%, but large geographical variations were noted. The turnout in Almaty, the largest urban centre in Kazakhstan, was unexplainably low, at 22,5%.

36. Although the option to vote electronically was available for 33% of the voters, only approximately 4% of the voters used the electronic voting system, which seems to confirm the low public confidence in the system.

VI. Conclusions and recommendations

37. The Parliamentary Elections in Kazakhstan on 18 August 2007 showed welcome progress in the pre-electoral process and during the conduct of the vote. However several shortcomings were noted, some of which were serious. This was especially the case with regard to the legal framework and conduct of the vote count and tabulation, which are not in line with Council of Europe standards for democratic elections.

38. The Ad Hoc Committee welcomes the political will of the Kazakh authorities to organise more democratic elections and therefore calls upon them urgently to address the remaining shortcomings that are noted in this report.

39. The recent changes to the legal framework for these elections are in many aspects a step backwards over previous legislation and are not in line with Council of Europe standards. In this respect, it should be noted that several previous recommendations with regard to the electoral framework remain unaddressed. The Ad Hoc Committee therefore strongly recommends that the Kazakh authorities initiate a reform of the Constitution and Election Code, in order to ensure that the legal framework for future elections complies with Council of Europe standards. The Venice Commission of the Council of Europe should be actively involved in this process.

40. The high threshold resulted in the election of a one-party Parliament, which is not a true reflection of the range of political views existing in the Kazakh society. This is all the more problematic in the light of the introduction of the imperative mandate, which could easily turn a one-party Parliament

into a one-opinion Parliament. It is clear that these arrangements undermine the development of a genuinely pluralist democracy in Kazakhstan. The Ad Hoc Committee therefore recommends that the imperative mandate be abolished, and that the threshold be considerably lowered for future elections.

41. The Ad Hoc Committee welcomes the improved access to the media for all parties during the campaign period. However, in the light of the structure of ownership and control of the mass media in Kazakhstan, the Ad Hoc Committee expects that all parties will continue to enjoy the same equal access, also outside the official campaign period.

42. Despite the welcome improvement of the voters' list, its accuracy is still a point of concern. The registration of the same persons on more than one voters' list facilitates multiple voting, as observed during these elections. The Ad Hoc Committee therefore recommends the establishment of a central computerised voters' list that will allow detection of multiple registrations for the same person.

Appendix 1

**AD HOC COMMITTEE FOR THE OBSERVATION OF THE PARLIAMENTARY ELECTIONS IN
KAZAKHSTAN (18 August 2007)**

16 to 19 August 2007

Programme

Wednesday, 15 August 2007

Evening/Night

Arrival of the members of the delegation. All members will be met the airport and provided with transfers to:

RIXOS PRESIDENT HOTEL
Tauelsizdik, 7 street
ASTANA, 010000
Kazakhstan
astana@rixos.com
Phone.: +7.3172.24 50 50
Fax: +7.3172.24 27 60

Thursday, 16 August 2007

Intercontinental Hotel

12:00 Ad Hoc Committee Meeting

Joint Briefing Programme

13:00 Opening by the Heads of Delegation

13:30 Political analysis by the Head of the OSCE Mission in Astana

14:00 Briefings by the OSCE/ODIHR Election Observation Mission

15:30 Meeting with the Chairman of the CEC

16:30 Roundtable with NGO representatives

Friday, 17 August 2007

Intercontinental Hotel

Joint Briefing Programme (Cont.)

09:00 Meeting with the political parties

11:00 Roundtable with Media representatives

12:00 Practical arrangements

13:00 Lunch

Afternoon: deployment to the regions

Saturday, 18 August 2007

Observation of the Parliamentary Elections

Sunday, 19 August 2007

09:00 Ad Hoc Committee meeting

16:00 Press Conference (tbc)

Evening / night: departure of the members of the delegation

Monday, 20 August 2007

Departure of the members of the delegation (Cont.)



Appendix 2

INTERNATIONAL ELECTION OBSERVATION MISSION **Parliamentary Elections, Republic of Kazakhstan, 18 August 2007**

PRESS RELEASE

Kazakh elections: progress and problems

Astana, 19.08.2007 – While the 2007 parliamentary elections in Kazakhstan reflected welcome progress, a number of international standards were not met, in particular with regard to elements of the new legal framework and the vote count, concluded the International Election Observation Mission deployed to monitor the 18 August elections.

Voting was conducted in a calm atmosphere and was assessed positively by observers. However the vote count was assessed negatively in over 40 per cent of polling stations visited, mainly due to procedural problems and lack of transparency.

“Notwithstanding the concerns contained in the report, I believe that these elections continue to move Kazakhstan forward in its evolution towards a democratic country,” said Senator Consiglio Di Nino, Special Co-Ordinator of the OSCE short-term observers and Head of the OSCE Parliamentary Assembly delegation.

David Wilshire, the Head of the delegation of the Parliamentary Assembly of the Council of Europe, said: “Building a democracy is a long and hard task. However, the people of Kazkhstan are making real progress. I am not surprised that more needs to be done but saddened that the outstanding challenges include some fundamental matters.”

Ambassador Lubomir Kopaj, who heads the long-term election observation mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), stressed that the election legislation reform, which was interrupted by the early elections, needs to be resumed as soon as possible. “The authorities have demonstrated a willingness to improve the election process, but our observations show that Kazakhstan still needs to make many improvements.”

In the pre-election period, candidates enjoyed increased ability to convey their messages to voters. Candidate list registration was inclusive. The Central Election Commission worked transparently and adopted numerous decisions to regulate the election process and conducted extensive voter education. Observers enjoyed good co-operation with the authorities.

However, a combination of restrictive legal provisions stands in the way of developing a pluralistic political party system and decreases accountability of elected representatives to voters. Those include a high threshold for representation in the parliament, provisions that parties choose only after the elections which candidates become members of parliament and undue limitations on the right to seek public office.

Furthermore, nine of the 107 seats in the lower house of parliament are not contested by popular vote, but appointed, and the governing Nur Otan party received favourable treatment by authorities and State media.