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Observation of the early presidential election in Kazakhstan (3 April 2011)

Report
Bureau of the Assembly
Rapporteur: Ms Yuliya L'OVOCHKINA, Ukraine, European Democrat Group (EDG)

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1. 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 from the Minister for Foreign Affairs and Secretary of State of Kazakhstan, the Bureau of the Assembly, at its meeting on 10 March 2011, constituted an ad hoc committee composed of five members (one from each political group) and appointed me as its Chairperson.

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

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

Ms Elsa PAPADIMITRIOU Greece

Socialist Group (SOC):

Mr Tadeusz IWIŃSKI Poland

Alliance of Liberals and Democrats for Europe (ALDE):

Baroness NICHOLSON United Kingdom

European Democrat Group (EDG):

Ms Yulia LIOVOCHKINA Ukraine

Group of the Unified European Left (UEL):

Mr Jaakko LAAKSO Finland

Secretariat:

Mr Vladimir Dronov, Head of Secretariat, Interparliamentary co-operation and election observation

Mrs Daniele Gastl, Assistant, Interparliamentary co-operation and election observation

Mr Serguei Kouznetsov, Legal Advisor to the ad hoc committee, Secretariat of the Venice Commission

3. The ad hoc committee was supposed to act as part of the International Election Observation Mission (IEOM), which also included the election observation missions of the Parliamentary Assembly of the Organization for Co-operation and Security in Europe (OSCE-PA) and of the Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR).

4. Regrettably, due to a major disagreement with the two OSCE institutions mentioned above, our delegation was excluded from the negotiating process on the joint statement of the IEOM. The OSCE institutions expected us to approve a document prepared by them bilaterally. In the absence of due consultation, and in accordance with our Election Observation Guidelines, our delegation did not accept being given the junior partner treatment and decided to go ahead with a separate press conference and a separate statement.

5. The ad hoc committee met in Astana from 1 to 4 April 2011 and held meetings, *inter alia*, with representatives of the presidential candidates, of the Central Election Commission (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. On the day following the election, the Head of the Delegation was also received by President Nursultan Nazarbayev, candidate for his own succession. The programme of the meetings of the ad hoc committee appears in Appendix 1.

6. On election day, the ad hoc committee split into three teams, observing the elections in and around Astana and in Karaganda.

7. The ad hoc committee concluded that the outcome of the vote in the early presidential election, held on 3 April 2011, reflected the will of Kazakhstan's electorate. The text of our press statement issued the day following this election appears in Appendix 2.

8. The ad hoc committee wishes to thank the Kazakh authorities, and in particular the Kazakh representative to the Council of Europe, for the support and co-operation given to the ad hoc committee in accomplishing its mission.

2. Political and legal context

9. The early presidential election in Kazakhstan came in the wake of a citizen's initiative, whose origins and logic are still unclear to this delegation, to hold a referendum on the extension of the term of office of the incumbent President until 2020. The President rejected the Parliament's initiative, the Parliament overruled that decision, and the Constitutional Council upheld the President's decision. The President then proposed holding an early presidential election. On 3 February 2011, the Parliament amended the constitution to allow the President to call an early election. The following day, President Nazarbayev called the election.

10. With 10 political parties registered in Kazakhstan, the ruling Nur Otan party is the dominant political force that holds all 98 elected seats in the Majilis (the lower chamber of Parliament). The opposition contends it is being discriminated against through harassment by the authorities who, allegedly, erect obstacles in the way of registration and the holding of peaceful rallies, and deny equal access to the media.

11. The legal framework for elections is primarily made up of the Constitution, the Constitutional Law on Elections (Election Law) and regulations of the CEC. In addition, provisions of the Law on Political Parties, the Law on Peaceful Assemblies, the Civil Procedure Code, the Criminal Code and the Administrative Offences Code apply.

12. Amendments to the Constitution and the Election Law were adopted in haste in February 2011, with no public debate, with a view to allowing the early presidential election to take place. Amendments to electoral legislation so close to the election run counter to recommendations of the Venice Commission, according to which such changes should normally not be made closer than one year to the day of the election.

13. The legal framework continues to include restrictions on freedom of assembly and on freedom of expression, as well as lack of due process guarantees to ensure efficient redress in the complaints and appeals system.

14. Moreover, the legal framework could further be improved through the establishment of clear criteria for the evaluation of candidates' Kazakh language proficiency, the introduction of safeguards for a pluralistic representation on election commissions at all levels; greater transparency in the tabulation process, not least through the publication of polling station result protocols (the latter is currently not provided for by the Election Law).

3. Election administration and voter and candidate registration

15. The election was administered by a four-tiered election administration consisting of the Central Election Commission (CEC), 16 Territorial Election Commissions (TECs), 207 District Election Commissions (DECs) and 9 725 Precinct Election Commissions (PECs).

16. The CEC Chairperson and two members are appointed by the President, while the Senate and the Majilis appoint two CEC members each. Lower level commissions are appointed by local councils based on proposals from political parties. Each candidate could register up to three proxies per precinct. Parties not represented in election commissions could appoint a non-voting member to each of the lower level commissions.

17. According to the CEC, about 90% of commission members proposed by opposition parties had been nominated; if their membership in commissions was low, this was because some of those parties had failed to come up with a sufficient number of candidates to fill the posts in election commissions.

18. Election commissions at all levels handled the technical aspects of the elections in a highly professional manner. Their sessions were open to the public and media and they conducted a large-scale voter awareness campaign. The CEC provided lower level commissions with training and guidelines on various aspects of the process. Commissions acted in a timely manner and respected the existing deadlines.

19. Local executive bodies are in charge of compiling voters' lists. A nationwide electronic voter register is maintained by the CEC. On the eve of the voting day, the number of registered voters was 9 181 700.

20. Candidates could be nominated through self-nomination or by a public association. To qualify for approval by the CEC, the nominee had to be a citizen of Kazakhstan by birth, at least 40 years of age, fluent in Kazakh language and resident in Kazakhstan for at least 15 years. In order to be registered, prospective candidates had to submit at least 91 010 valid support signatures, pay an election deposit of about €4 000, and produce tax declarations for themselves and their spouse. Of the 22 original nominees, the CEC registered four candidates.

21. Some candidates failed to pass the language test. There were no clear criteria to evaluate the results of the test. It was widely rumoured that the Kazakh language proficiency test was used by the authorities to effectively filter out unwanted candidates. The signature verification process lacked transparency. Territorial Election Commission verification protocols contained no reasoning for the invalidation of signatures. Candidates or their proxies were routinely not invited to attend the verification. Some people are of the opinion that candidates who were registered and thus allowed to run in the election had been hand-picked to create an illusion of a competitive environment, whereas there was none, since those candidates never challenged the policies of the incumbent.

4. The campaign period and media environment

22. Four candidates ran in this election: Mr Nursultan Nazarbayev, the incumbent President, leader of the Nur Otan Party; Mr Gani Kasymov, Senator, leader of the Party of Patriots of Kazakhstan; Mr Jambyl Akhmetbekov, Communist People's Party of Kazakhstan (CPPK); Mr Mels Eleusizov, Chairperson of the Ecological Union Tabigat of Kazakhstan.

23. The incumbent did not campaign in person, delegating instead this task to the Nour Otan political party. Throughout the campaign period no distinction was made between the incumbent as a candidate and his position as President.

24. The other candidates did not challenge the President and positioned themselves as his supporters. Their campaigns, with the exception of the CPPK, were low-key and barely visible outside Astana and Almaty. The CPPK relied on its grass-root supporters and a network of branches and used this campaign to promote the party's image with a view to the next parliamentary elections.

25. The campaign environment was somewhat lacklustre due to the absence of contenders in real opposition to the incumbent. The Azat, Ak Zhol and Ruhaniyat parties opted out of the election. Other political parties abstained on the grounds that the election was called at short notice, which impeded candidate registration and proper campaigning.

26. The Communist People's Party of Kazakhstan (CPPK), along with the Alga Party, backed by civil society groups, called for a boycott of the election whose legitimacy looked questionable to them. The nationwide media turned a blind eye to the boycott initiative. This delegation held the opinion that the very short campaign period was not conducive to a real competition.

27. While the Constitution guarantees freedom of expression, this freedom is effectively restricted by the manner in which constitutional provisions protecting the honour and dignity of every person and the criminalisation of defamation and insult may be used. Substantial state subsidies undermine the independence of both state and private media outlets. The blockage of websites, such as that of the independent newspaper, the *Respublika,* is a source of concern.

28. Broadcast and print media generally provided equal coverage of candidates in the news. However, analytical election-related programmes were conspicuous by their absence. Under the CEC guidelines, coverage of the candidates in their institutional role cannot be regarded as campaign coverage. As a result, the incumbent received more than two hours of positive coverage outside the news programmes.

5. Complaints and appeals

29. The Election Law does not establish a clear-cut complaints and appeals procedure. There is no consistent interpretation of the election dispute resolution process. The adjudication of election-related disputes generally lacked transparency, due process and well-reasoned decisions, which impaired prospects for any effective legal redress.

30. The CEC received 12 complaints before election day and did not decide on any of them in a plenary session by voting as required by law. The law also requires that all CEC decisions be posted electronically and made public, but this was not the case in this election.

6. Election day – vote, vote count and tabulation

31. On election day, voting took place in a calm and relaxed atmosphere. The ad hoc committee welcomed the large number of domestic political party and NGO observers who were present in the majority of the polling stations observed.

32. Opening and voting procedures were duly followed in most of the polling stations visited by Parliamentary Assembly observers. The vote count was not as positively assessed due to lack of transparency and failure to follow the established procedures.

33. We were informed that tabulation in many District Election Commissions lacked transparency, with international observers being restricted in their observation.

34. As a result of this election, Mr Nazarbayev obtained 96.15% of the vote, leaving other contestants far behind (Mr Kasymov obtained 1.24%, Mr Akhmetbekov obtained 1.21% and Mr Eleusizov obtained 0.79% of the votes cast). Turnout was 89.98%.

7. Conclusions and recommendations

35. The outcome of the early presidential election in Kazakhstan held on 3 April 2011 reflects the will of Kazakhstan's electorate.

36. The ad hoc committee welcomes the political will of the Kazakh authorities to organise more democratic elections and therefore calls upon them to urgently address the shortcomings, in particular, those relating to the legal framework, that are noted in this report.

37. The ad hoc committee welcomes the overall professionalism and dedication of electoral administrators but calls for further improvements in this area, not least with regard to vote count and vote tabulation.

38. The ad hoc committee welcomes the more balanced media behaviour compared to previous elections. However, in the light of the structure of ownership and control of the mass media in Kazakhstan, the ad hoc committee believes that the media should gain a greater degree of independence.

39. The ad hoc committee calls on the authorities of Kazakhstan to implement measures with a view to improving electoral conditions for all concerned.

Appendix 1 – Programme

Friday 1 April 2011

14:00-14:10 **Opening by the Heads of Parliamentary Delegations**

– Mr Tonino Picula, Head of the Delegation of the OSCE Parliamentary Assembly and Special Co-ordinator to lead the OSCE short-term observers
– Ms Yulia Liovochkina, Head of the Delegation of the Parliamentary Assembly of the Council of Europe

14:10-14:20 **Political Background**

– Ambassador Alexandre Keltchewsky, Head of the OSCE Centre in Astana

14:20-15:20 **Briefing by the OSCE/ODIHR Election Observation Mission**

Introduction and overview of findings to date:

– Ambassador Daan Everts, Head of the OSCE/ODIHR Election Observation Mission

Election day procedures:

– Mr Alexey Gromov, Election Analyst

Observation forms:

– Mr Anders Eriksson

15:20-16:00 **Electoral Administration**

– Mr Kuandyk Turgankulov, Head of the Central Election Commission

16:20-17:15 **Presidential candidates/ Candidates' proxies**

– Mr Nursultan Nazarbayev, Chairperson of Nur Otan (Fatherland's Ray of Light)
– Mr Jambyl Akhmetbekov, Communist People's Party of Kazakhstan
– Mr Mels Eleusizov, Chairperson of the NGO Ecological Union "Tabigat"
– Mr Gani Kasymov, Chairperson of the Party of Patriots of Kazakhstan

17:15-18:00 **Round table with political party representatives**

– Mr Vladimir Kozlov, Alga Party (former Democratic Choice of Kazakhstan)
– Mr Bulat Abilov, All-National Social Democratic Party Azat (Azat)
– Mr Alikhan Baimenov, Chairperson, Ak Zhol Democratic Party of Kazakhstan

18:00-18:40 **Round table with media and NGO representatives**

– Ms Diana Okremova, Director, Social Fund "The Northern Kazakhstan Legal Media Center"
– Mr Adil Jalilov, Director, Media Alliance (Alliance of 11 media NGOs in Kazakhstan)
– Ms Anara Ibrayeva, Kazakhstan International Bureau for Human Rights and Rule of Law
– Ms Zauresh Batalova, Housing Campaign Group

18:40-19:30 **Technical arrangements and deployment of Parliamentary Assembly short-term observer teams**

– Distribution of regional briefing packs to Parliamentary Assembly short-term observer teams
– Area specific briefings conducted by the OSCE/ODIHR long-term observers for the Parliamentary Assembly short-term observer teams deployed in Astana and the Astana region
– Meeting with interpreters and drivers

Sunday 3 April 2011

All day Observation of opening, voting, vote count

22:00 Meeting of the ad hoc committee

Monday 4 April 2011

11:30	Press conference

Appendix 2 – Kazakhstan: Statement by the observer delegation of the Parliamentary Assembly of the Council of Europe

Strasbourg, 04.04.2011 – The observer delegation of the Parliamentary Assembly of the Council of Europe (PACE)[1] welcomes the orderly organisation and conduct of the voting in the 3 April early Presidential election in Kazakhstan. Electoral officials conducted their work efficiently and, generally, demonstrated a high degree of professionalism. Polling stations observed were exemplarily well equipped for a good election, and the overall atmosphere was relaxed and business-like. The turnout was good, which testifies to public confidence in the process.

The delegation was informed by independent observers that media behaviour in the run-up to the election was more balanced than in the past, and that a broad voter awareness campaign had been conducted in the country.

At the same time, the PACE delegation is concerned over unequal electoral conditions, as well as calls for a boycott of the election by a number of political forces, which resulted in a diminished scope of choices for the electorate. The latter, however, underscores the need for a stronger opposition to emerge in Kazakhstan. Therefore, PACE would stand ready to assist the further development of Kazakhstan's political culture. That would help bring about a greater diversity of political platforms. Furthermore, despite the modest progress in the wake of the last elections, conditions still need to be seriously improved for Kazakhstan to qualify as a genuine democracy.

PACE has observed elections in Kazakhstan in the past and is pleased to state progress from one election to another in this country. The delegation is united in its view that despite certain imperfections that invariably mar all elections in any country, the outcome of this vote truly reflects the will of Kazakhstan's electorate.

Kazakhstan is not a member of the Council of Europe, however its parliament is bound by a co-operation agreement with PACE. A further possible extension of ties between Europe's oldest international organisation and Kazakhstan is being explored.

The five-member cross-party PACE delegation was in Kazakhstan at the invitation of Kanat Saudabayev, Minister of Foreign Affairs and Secretary of State. It had meetings with representatives of the presidential candidates and party representatives, as well as representatives of the media and civil society. It was also received by Mr Saudabayev. On the day following the election, the head of the delegation was received by President Nursultan Nazarbayev who had run as a candidate in this vote.

1. Yulia Liovochkina, Head of Delegation (Ukraine, EDG), Elsa Papadimitriou (Greece, EPP/CD), Tadeusz Iwinski (Poland, SOC), Baroness Nicholson (United Kingdom, ALDE), Jaakko Laakso (Finland, UEL).