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Observation of the early parliamentary elections in Kazakhstan (15 January 2012)

Election observation report

Bureau of the Assembly

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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.

2. Following an invitation from the Minister for Foreign Affairs of Kazakhstan, the Bureau of the Assembly, at its meeting on 24 November 2011, constituted an ad hoc committee composed of 11 members to observe the early parliamentary elections scheduled for 15 January 2012 and appointed me as the Chairperson of the ad hoc committee.

3. 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)
 - Francis AGIUS, Malta
 - Elsa PAPADIMITRIOU, Greece
 - Karin STRENZ, Germany
- Socialist Group (SOC)
 - Nebahat ALBAYRAK, Netherlands
 - Jonas GUNNARSSON, Sweden



- Tadeusz IWŃSKI, Poland
- European Democrat Group (EDG)
 - Christopher CHOPE, United Kingdom
 - Tügrül TÜRKEŞ, Turkey
- Alliance of Liberals and Democrats for Europe (ALDE)
 - Mike HANCOCK, United Kingdom
 - Jordi XUCLÀ, Spain
- Group of the Unified European Left (UEL)
 - Andrej HUNKO, Germany
- Venice Commission
 - Aivars ENDZINS, Member of the European Commission for Democracy through Law (Venice Commission)
- Secretariat:
 - Mr Bogdan Torcatoriu, Secretary, Interparliamentary co-operation and election observation
 - Mr Franck Daeschler, Assistant, Interparliamentary co-operation and election observation
 - Mr Serguei Kouznetsov, Secretariat of the Venice Commission

4. The ad hoc committee was 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).

5. The ad hoc committee, due to major disagreements with ODIHR, which expected the Parliamentary Assembly delegation to approve their documents without due consultation, and which was addressing the Assembly delegation as a junior partner, decided to go ahead with a separate statement and a separate press conference. Even though, at the first internal meeting of the ad hoc committee, the nine members present proposed and decided – unanimously – to proceed once again independently, as we were all opposed to the rather unbalanced attitude reflected in the ODIHR interim report, I asked my colleagues to allow me to work towards a good co-operation with the OSCE-PA and ODIHR. This proved to be a very difficult task but at the end of the day we managed to even out differences, to “see” and to “recognise” the positive sides of Kazakhstan’s efforts and, without ignoring the shortcomings, to encourage this young democracy to develop and flourish within an effective multiparty environment.

6. The ad hoc committee met in Astana from 13 to 16 January 2012. It held meetings, *inter alia*, with representatives of the political parties contesting the elections, of political parties and movements not contesting the elections, of the Central Election Commission (CEC), with 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 (for the ad hoc committee's programme, see Appendix 1).

7. During the three days preceding the election day, as Head of the Assembly Delegation, and accompanied by one or two colleagues and/or the secretariat, I was received by President N. Nazarbayev (he asked to see me alone), the Secretary of State K. Saudabayev, the Minister of Foreign Affairs, Y. Kazykhanov, the Chairperson of the Senate, K. Mami, and the Chairperson of the Central Election Commission, K. Turgankulov. We also had working lunches with the Deputy Chairperson of the Senate, A. Sudyin, and the Chairperson of the Constitutional Council, I. Rogov. The Ambassador of Kazakhstan in Belgium, Mr Yerik Utembayev, met with us twice, and put us in contact with important national and international observers but also with some candidates for the Assembly of the Peoples of Kazakhstan, an institution that represents Kazakhstan’s minorities. All our meetings convinced us that Kazakhstan has decided to match its dynamic economic performances with social and democratic progress. Presiding the OSCE in 2011, the Organisation of Islamic Cooperation this year and seeking the improvement of its relations with the European Union and with the Council of Europe in particular, Kazakhstan is trying and deserves to achieve a role in global decision-making.

8. On election day, the ad hoc committee split into seven teams, which observed the elections in and around Astana, Almaty, Aktau and Zhanaozen.

9. The joint press conference took place the following day. It reflected a “pluralistic” dimension of views between the OSCE/ODIHR and the Assembly. This was useful for the Kazakhstan side in terms of understanding that the democratic course is not and should not be understood as a monolithic process. The joint press release is to be found in Appendix 2.

10. The ad hoc committee wishes to thank the Kazakhstan authorities, in particular the Ministry of Foreign Affairs, for the support and co-operation given to the ad hoc committee in accomplishing its mission.

2. Political and legal context

11. The Parliament of Kazakhstan is bicameral. The lower house (Majilis) has 107 members and the upper house (the Senate) has 47 members who are indirectly elected. 98 members of the Majilis are directly elected for a five-year term, through a proportional system with party lists, and nine members are elected by the Assembly of the Peoples of Kazakhstan (in contrast to the Copenhagen Document that provides for “all seats in at least one chamber of the national legislature to be freely contested in a popular vote”).

12. Deputies lose their mandate if they leave or are excluded from their party or if the party ceases its activity. Independent candidacies and electoral blocks are not allowed.

13. The entry threshold is 7%. However, pursuant to an amendment of 2009, the law provides for at least two parties to be represented in parliament. If only one party passes the threshold, then the party obtaining the second highest number of votes will be also allocated at least two seats in the Majilis.

14. The electoral legislation comprises the Constitution, the Election Law and regulations from the Central Election Commission (CEC), which is a permanent body composed of members appointed by the President of Kazakhstan, the Senate and the Majilis.

15. On 16 November 2011, further to an appeal from 53 deputies to the President of Kazakhstan, the latter decreed the dissolution of the Majilis and called for early elections on 15 January 2012 (more than six months ahead of the schedule).

3. Election administration and voter and candidate registration

16. The elections were administered by four levels of election commissions: the CEC, 16 Regional Election Commissions (RECs), 207 Territorial Election Commissions (TECs) and 9 764 Precinct Election Commissions (PECs).

17. Fifty-six special PECs were organised in 46 countries for out-of-country voting.

18. Each commission (CEC, REC, TEC and PEC) has seven members. The CEC is a permanent body, while the lower-level commissions are active during election periods only. The CEC chairperson and two CEC members are appointed by the President, two members by the Senate and two members by the Majilis. Members of the lower-level commissions are appointed by the local councils, on the basis of nominations from political parties, from public associations or from higher-level election commissions. It has been reported that, in many cases, members nominated by other parties or public associations belonged, in fact, to Nur Otan, the ruling and – until recently – the only party. The overwhelming majority of commission chairpersons were Nur Otan members. Moreover, the distinction between local executive bodies and election commissions was unclear, and this did not favour the necessary feeling of trust in the impartiality of the election administration.

19. From a technical point of view, the CEC prepared the election well and, in general, it met the legal deadlines. CEC sessions were open to observers and to the media, but there were complaints on occasion which negatively affected the desired transparency.

20. Voters’ lists were compiled by local executive bodies. The CEC checked the voters’ lists for errors on the basis of a nationwide electronic voter register and a further verification of voters’ lists was conducted by the PECs. Voters who were planning to be away from their place of residence could apply for an absentee voting certificate at their PEC until 6 p.m. on the day preceding election day.

21. Of the 10 registered political parties, eight submitted candidate lists which were registered by the CEC. However, the CEC subsequently de-registered the Rukhaniyat party list on 28 December 2011, based on alleged violations of rules in nominating candidates. Furthermore, a number of candidates were de-registered by the CEC on 6 and 8 January 2012, as the tax authorities had announced that they had detected inaccuracies in their tax declarations. The de-registered candidates were not given the opportunity to appeal.

22. The Communist Party of Kazakhstan was suspended for six months, until March 2012, for allegedly having violated the law and was thus prevented from contesting the 15 January elections.

4. The campaign period and media environment

23. The campaign was low-key. Several factors seem to have contributed to this: the harsh weather conditions, the New Year celebrations, the celebrations marking the 20th anniversary of Kazakhstan's independence and the limited political competition. It would be untruthful and unfair not to mention, as a further reason, the Kazakhs' general contentment with and approval of their President.

24. The campaign was mainly conducted by billboards, banners, posters and leaflets. During the last two weeks of the campaign, several rallies were organised and some parties engaged in door-to-door campaigning. Campaign materials for Nur Otan were by far the most visible. Official announcements of the elections and materials for the independence anniversary were almost identical to Nur Otan's campaign materials, which blurred the distinction between the State and the party.

25. The violent clashes in Zhanaozen, on 16 December 2011, in which 16 persons died, were an issue of a certain importance as they occurred less than one month before the election day and had obvious effects upon the electoral process. A state of emergency was declared in the city from 17 December 2011 to 5 January 2012 and was subsequently extended, without further explanation, until the end of January 2012. The Constitutional Council considered, rightfully so, that elections could not be held in Zhanaozen. The President of Kazakhstan overruled that opinion and the CEC rescinded its cancellation of the elections in Zhanaozen.

26. Prompted by Andrej Hunko, member of our ad hoc committee, who questioned whether we should accept to observe an election that excluded a whole region, I, as Chairperson of the ad hoc committee, and after having consulted some members, had contacted the Kazakhstan Ambassador in Brussels and asked him to convey to his Minister of Foreign Affairs our concerns about observing a situation which was unacceptable by all democratic standards. Today, we believe that our intervention was one of the factors that prompted the President of Kazakhstan to veto the CEC's decision.

27. The media coverage of the campaign was dominated by reports of campaign events and paid advertising. Interviews were conspicuous by their absence. All contesting parties participated in one televised debate, two days prior to the election day. In general terms, the media failed to provide an open exchange of opinions about matters of public concern and about political alternatives. Since a significant amount of coverage, in particular on the State-owned television stations, was devoted to the achievements of 20 years of independence of the country, the ruling Nur Otan party gained an important advantage over the other parties running in the elections.

28. Criminal penalties for defamation and the special protection afforded to the President and public officials have the effect of limiting the constitutional guarantee of freedom of speech. Censorship is prohibited by law but the exorbitant damages that may be claimed for defamation contribute to a climate of self-censorship.

5. Complaints and appeals

29. Complaints were addressed to the CEC or the Prosecutor General's office, or simultaneously to both. Before the election day, the CEC had received 52 complaints in connection with the elections, three of which were reviewed collegially in an open session. In cases where further investigation was deemed necessary, the CEC referred complaints to prosecutors' offices or other relevant bodies to determine the facts. In some instances, the CEC referred the complaints to lower-level election commissions for the latter to take decisions in accordance with their competence. All other complaints were reviewed by CEC legal staff in the absence of the interested parties; responses were issued in the form of letters.

30. A total of 64 complaints on violations of the electoral legislation were filed with prosecutors' offices throughout the country, 22 of which were referred to the Prosecutor General's office, which mainly issued warnings.

31. According to ODIHR, the consideration of the complaints submitted to the CEC and prosecutors' offices often exceeded the legal timeframes for their review. This was categorically denied by the authorities concerned.

32. Certain complaints and appeals related to the elections were filed with courts of law. These related to cancellation of party list registration, violations of campaign provisions, the right to be elected, and the de-registration of candidates.

6. Election day

33. On election day, voting took place in a calm and relaxed atmosphere.

34. Opening and voting procedures were duly followed in most of the polling stations visited.

35. However, members of the ad hoc committee witnessed cases of fraudulent practices such as ballot box stuffing and duplication of signatures on the voters' lists. This happened in a polling station where, at 1.30 p.m., an observer team was told that all 369 voters on the lists had already voted. Another team was denied access to a polling station organised in a detention centre, the reason given being that such an observation required special credentials. Yet another team noticed, in a polling station, the presence of a person claiming to represent the mayor and who was supervising the voting process. In another polling station, an unusually high number of ballot papers were declared invalid during the counting.

36. During the counting, ad hoc committee members also observed some skipping of essential procedural steps as well as ballot papers in packs that could point to ballot box stuffing.

37. However, all the above could not influence the result of the elections.

38. On 16 January 2012, the CEC announced the final results of the elections. The Nur Otan Party obtained 80.99%, Ak Zhol 7.47%, the Communist People's Party of Kazakhstan (CPPK) 7.19%, the All-National Social Democratic Party (ASDP) 1.68%, Auly 1.19%, the Party of Patriots 0.83%, and Adilet 0.66% of the votes. The turnout was 75.1%.

7. Conclusions

39. The parliamentary elections in Kazakhstan, although well administered, did not fully meet key democratic principles. However, although there were shortcomings, these elections should be considered as representing a decisive move in the right direction.

40. 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 all the shortcomings detected. It notes that, while legal changes were introduced aiming to ensure the representation of two parties, the voters' will brought three parties into parliament. This is not, however, proof of genuinely pluralistic elections. Issues such as restrictions on candidate eligibility, the prohibition for independent candidates to stand and for parties to form electoral blocks need to be addressed. Furthermore, the 7% threshold should be lowered.

41. The ad hoc committee welcomes the overall professionalism and dedication of electoral administrators, but calls for further improvements in this area. In particular, the ad hoc committee considers that fraudulent practices (even if they were not instigated by the authorities but were performed by over-zealous members of the electoral committees), such as ballot box stuffing and falsification of voters' signatures, should not happen again in the future and steps should be taken towards creating and embedding a culture of electoral honesty in the consciousness of the people.

42. The ad hoc committee calls on the authorities of Kazakhstan to implement concrete measures with a view to improving the electoral process for all concerned as soon as possible.

43. The ad hoc committee, which on many occasions called for a higher participation of women (including by proposing this to President Nazerbayev), welcomes the election of 28 women amongst the 107 members of the new Majilis (there were 17 women in the previous one). We now call for more initiatives to advance the status of women in all sectors of public, political, social and economic life.

Appendix 1 – Programme, Astana 13-16 January 2012

Friday, 13 January 2012

- 10:00 Meeting of the ad hoc committee:
- Welcome address by Ms Elsa Papadimitriou, Head of the Delegation
 - Recent developments in the field of election legislation, by Mr Aivars Endzins, Member of the Venice Commission
 - Practical and logistical arrangements, Secretariat
- 12:00 Mr João Soares, Special Co-ordinator to lead the short-term OSCE observer mission
- Ms Elsa Papadimitriou, Head of the PACE Delegation
- 12:10 Mr Stefan Buchmayer, Human Dimension Officer, OSCE Centre in Astana
- 12.30 Briefing by the OSCE/ODIHR Election Observation Mission in Kazakhstan:
- Mr Miklós Haraszti, Head of OSCE/ODIHR Election Observation Mission
 - Mr Armen Mazmanyán, Legal Analyst
 - Mr Jarek Domański, Political Analyst
 - Ms Elma Šehalić, Media Analyst
 - Mr Steven Martin, Election Analyst
 - Mr Anders Eriksson, Statistics Analyst
- 14:00 Mr Marat Sarsembayev, member of the Central Election Commission

Political parties contesting these elections

- 15:00 Mr Erlan Karin, Secretary of the National Democratic Party of Kazakhstan “Nur Otan”
- 15:15 Mr Bulat Beisembayev, Head of the Election Headquarters, Candidate, Party of Patriots of Kazakhstan
- 15:45 Mr Serikbai Alibayev, Member of the main board, Chairperson of Astana branch, All-National Social Democratic Party
- 16:00 Mr Zhambyl Akhmetbekov, Secretary of the Central Committee, Candidate, Communist People’s Party of Kazakhstan

Meeting with political parties and movements

- 16:15 Mr Vladimir Kozlov, Chairperson of the Coordination Committee, “Alga!” People’s Party
- 16:35 Ms Taty Yelubayeva, First Secretary of the City Committee, Communist Party
- 16:55 Mr Ulan Shamshet, Co-ordinator of the Work with Public Organisations, Rukhaniyat Party
- 17:15 Round table with media and NGO representatives
- Ms Bakhyt Tumenova, President, Public Fund “Aman-saulyk”
 - Ms Zauresh Battalova, President, Public Fund “Fund for Development of Parliamentarism in Kazakhstan”

Saturday 14 January 2012

- 10:00 Technical arrangements and deployment of teams staying in the Astana region
- Distribution of regional briefing packs
 - Area specific briefings conducted by OSCE/ODIHR long-term observers for teams deployed in Astana and Akmola Oblast
 - Meeting with interpreters and drivers

Almaty:

- 16:40 Mr João Soares, Special Co-ordinator to lead the short-term OSCE observer mission

16.45 Ms Elissavet Karagiannidou, Liaison Officer in Almaty OSCE/ODIHR

17:00 Round table with media and NGO representatives

- Mr Ramazan Yesergepov, Association of Journalists in Distress
- Mr Pavel Lobachev, NGO “ECHO”
- Ms Bakhytzhan Toregozhina, Public fund “Arrukhkak”
- Ms Olessya Khalabuzar, Society of Young Professionals of Kazakhstan
- Mr Vyacheslav Abramov, Freedom House
- Ms Irina Mednikova, Public fund “Youth information Service of Kazakhstan”

18:00 Briefing by OSCE/ODIHR long term observers, technical arrangements for the deployment of teams in the Almaty region

Mr Andrew McEntee and Mr Elgun Taghiyev, long-term observers in Almaty

Meeting with interpreters and drivers

Sunday 15 January 2012

All day Observation of opening, voting, closing and counting procedures

Monday 16 January 2012

08:30 Debriefing meeting of the ad hoc committee

15:00 Joint press conference

Appendix 2 – Joint press release of the OSCE/ODIHR, OSCE-PA and PACE

Kazakhstan's parliamentary vote, though well administered, did not meet key democratic principles

ASTANA, 16.01.2012 – Notwithstanding the government's stated ambition to strengthen Kazakhstan's democratic processes and conduct elections in line with international standards, yesterday's early parliamentary vote still did not meet fundamental principles of democratic elections, the international observers concluded in a statement issued today.

The elections were well administered at the technical level and the observers noted legal changes aimed at ensuring representation of at least a second party in parliament, but the authorities did not provide the necessary conditions for the conduct of genuinely pluralistic elections. Several political parties were blocked from standing and a number of candidates were de-registered without due process.

On election day, voting was assessed positively by the observers, but the counting process significantly lacked transparency and respect for procedures, with cases of fraud noted. In many cases, it was not possible for observers to determine whether voters' choices were honestly reflected.

The legal framework continues to include major inconsistencies with OSCE commitments and other international standards, as it disproportionately restricts freedom of assembly, the free flow of information and freedom of association. The law also includes excessive restrictions on candidate eligibility and the prohibition for independent candidates to stand. It lacks guarantees for the pluralistic composition of election commissions.

There was limited public debate and the media operated in an environment characterised by self-censorship. The political parties that were permitted to compete in the election could campaign largely without interference by the authorities.

The violent clashes in Zhanaozen in December and ensuing emergency measures in the town became a campaign issue. While the limitations to citizen's rights under the emergency rule were prolonged, the authorities decided to hold elections in Zhanaozen on the day.

"If Kazakhstan is serious about their stated goals of increasing the number of parties in parliament, then the country should have allowed more genuine opposition parties to participate in this election," said Special Co-ordinator João Soares who leads the short-term OSCE observer mission and heads the Delegation of the OSCE Parliamentary Assembly.

"These elections proved to be a move in the right direction," said Elsa Papadimitriou, the Head of the Delegation of the Council of Europe's Parliamentary Assembly.

"This election took place in a tightly controlled environment, with serious restrictions on citizens' electoral rights. Genuine pluralism does not need the orchestration we have seen – respect for fundamental freedoms will bring it about by itself," said Miklós Haraszti, the head of the Election Observation Mission of the OSCE Office for Democratic Institutions and Human Rights (ODIHR).