



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

**REVIEW OF THE PRESIDENTIAL DECREE FOR
PILOT LOCAL ELECTIONS**



Warsaw
15 September 2001

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Republic of Kazakhstan

REVIEW OF THE PRESIDENTIAL DECREE FOR PILOT LOCAL ELECTIONS¹

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I. INTRODUCTION

This assessment reviews and comments on “Decree Number 633 of the President of the Republic of Kazakhstan On Elections of Akims of Aul (Rural) Districts, Auls (Villages), and Villages”.² This assessment is based on an unofficial English translation.

This review has taken into consideration the “Law on Elections in the Republic of Kazakhstan”,³ as Articles 10, 55, and 63 of Presidential Decree Number 633 apply certain provisions of the Law on Elections. However, this assessment is not an assessment of the Law on Elections. This assessment considers the Law on Elections only to the extent that Presidential Decree Number 633 incorporates the Law on Elections.⁴

This assessment does not warrant the accuracy of the translations reviewed. Unfortunately, mistakes do occur in translations and “shall”, on occasion, is translated as “may” and “may” is translated as “shall”. Obviously, a translation mistake results in erroneous assessment of text.

On several occasions, the review refers to the European Convention for the Protection of Human Rights and Fundamental Freedoms that is not legally binding for the Republic of Kazakhstan; however it further clarifies international law in this area.

II. EXECUTIVE SUMMARY

- Presidential Decree Number 633 provides for selective granting of the right to vote in Akim elections, and thereby violates the right of all citizens of Kazakhstan to universal suffrage and equal treatment before the law.
- Presidential Decree Number 633 violates the international standard that requires a secret ballot for voting.
- Presidential Decree Number 633 fails to adequately provide for observers in Akim elections.

¹ The OSCE/ODIHR contracted Jessie V. Pilgrim, J.D, legal expert, to conduct the review.

² Herein “Presidential Decree No. 633”. The copy provided indicates that Presidential Decree No. 633 was issued on 23 June 2001, translated from Russian, and consists of 75 articles. The elections provided for in Presidential Decree Number 633 will be referred to herein as “Akim elections”.

³ Herein “Law on Elections”. The copy provided for this assessment indicates that the Law on Elections is dated 28 June 1999 (N. 407-I) and consists of 133 articles.

⁴ Prior commentary on the Law on Elections can be found in the OSCE/ODIHR Final Report on Parliamentary Elections in the Republic of Kazakhstan on 10 and 24 October 1999, in the OSCE/ODIHR Review of the Election Legislation for Parliamentary Elections in the Republic of Kazakhstan, dated 18 January 2001, and the reviews conducted in the framework of the series of round tables on elections.

- Presidential Decree Number 633 fails to adequately ensure transparency in the counting and tabulation of the voting results in Akim elections.
- Presidential Decree Number 633 has other deficiencies that should be addressed, and specific comments on these deficiencies have accordingly been made.

III UNIVERSAL SUFFRAGE AND EQUAL TREATMENT BEFORE THE LAW

Presidential Decree Number 633 provides that the Central Election Commission (“CEC”), in agreement with Oblast Akims, will call elections in “several” administrative/territorial entities. Presidential Decree Number 633 states no objective criterion to be applied in choosing what geographical collections of citizens will be granted the right to vote in Akim elections. Further, the granting of the right to vote in these elections does not require the application of objective criterion stated in public law, but will be granted based on the subjective determination of State authorities. Thus, the possibility exists for State authorities to grant the right to vote in Akim elections to “favored” geographic collections of voters, and to deny the right to vote in Akim elections to geographic collections of voters known to be associated with certain political parties, ethnic groups, or unpopular political opinions.

The right of universal suffrage is a fundamental human right under international instruments.⁵ Paragraph 7.3 of the OSCE 1990 Copenhagen Document requires “equal suffrage”. Equal treatment before the law in the exercise of rights is a fundamental requirement under OSCE commitments and international instruments.⁶

Presidential Decree Number 633 fails to provide all citizens of Kazakhstan with universal suffrage and equal treatment before the law. The fact that these are “pilot” elections does not change the reality that some citizens of Kazakhstan will have the opportunity to vote for their Akims (through electors) and other citizens will not.

IV. OPEN VOTING FOR AKIM ELECTORS

Article 18 of Presidential Decree Number 633 provides that Akim electors are to be elected by an open vote. Article 18 violates international standards and OSCE commitments. Secrecy of the vote is a minimum standard for a democratic election. Illustrative of this minimum standard is Paragraph 7.4 of the OSCE 1990 Copenhagen Document, which requires the legal guarantee that votes are cast by secret ballot. A secret ballot in elections is also required by Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental

⁵ See, Article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 21 of the Universal Declaration of Human Rights, and Article 25 of the International Covenant on Civil and Political Rights.

⁶ See, Paragraph 13.7 of the OSCE 1989 Vienna Document, Paragraph 5.9 of the OSCE 1990 Copenhagen Document, Articles 2 and 21 of the Universal Declaration of Human Rights, Articles 2 and 25 of the International Covenant on Civil and Political Rights, and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

Freedoms, Article 21 of the Universal Declaration of Human Rights, and Article 25 of the International Covenant on Civil and Political Rights.

Appropriate measures should be taken to abrogate the open voting provision in Article 18 of Presidential Decree Number 633.

V. OBSERVERS IN AKIM ELECTIONS

Presidential Decree Number 633 does not adequately provide for observers in Akim elections.

Transparency of the electoral process is a fundamental principle required by international standards. Paragraph 8 of the OSCE 1990 Copenhagen Document recognizes the importance of the presence of observers, both foreign and domestic, to enhance the electoral process. Electoral legislation should provide for the presence of observers, domestic and foreign, and representatives of the media, political parties and candidates, to ensure the transparency of the electoral process.

Appropriate legal measures should be enacted to ensure that Akim elections are conducted in accordance with the principles stated in the following three paragraphs.

The legal measures enacted should be clear and precise concerning the procedures for registration of observers, including the dates for the start and end of registration of observers.

The legal measures should be clear and precise concerning the rights of observers. A general provision allowing observers to “observe the carrying out of elections” is insufficient. The law should provide clear and precise provisions establishing the rights of observers to inspect documents, attend meetings, and monitor election activities at all levels, and to obtain copies of protocols and tabulations at all levels. The law should also establish an expedited process for observers to obtain corrective relief when an election commission/body denies the rights of an observer, including the right to be registered as an observer.

The legal measures should be clear and precise concerning what a domestic observer may *not* do, such as interfering with voting, taking any direct part in the voting or counting processes, or attempting to determine how a voter will vote or has voted.

VI. TRANSPARENCY IN THE COUNT/TABULATION OF ELECTION RESULTS

Article 55 of Presidential Decree Number 633 provides that the “voting and determining of results” in Akim elections shall be done in accordance with the Law on Elections. Neither Article 55 nor the Law on Elections contains sufficient provisions to adequately ensure transparency in the counting and tabulation of the results of Akim elections.

A fair and honest count of the votes is a cornerstone of a democratic election. Illustrative of this minimum standard is Paragraph 7.4 of the OSCE 1990 Copenhagen Document, which requires that votes “are counted and reported honestly with the official results made public.” This requires that votes be counted and tabulated in the presence of observers, and that the entire process by which a winner is determined be fully and completely transparent.

It is recommended that appropriate legal measures be enacted to ensure that the votes in Akim elections are counted and tabulated in a fully transparent manner in the presence of observers. These measures should require that all tabulations of results be available in tables or a similar format that allows observers to trace the results of each counting location or voting locale up through all levels of aggregation to the final results. The tabulations should contain detailed information, including the number of ballots used and unused, the number of invalid ballots, and the number of votes for each electoral contestant. This degree of detail is necessary to enable observers to track results and locate specifically where fraud has occurred if the numbers are unlawfully changed during the tabulation processes. Additionally, the law should clearly specify that observers can make copies, or shall be given copies, of all protocols, tabulation and tally sheets.

VII. POTENTIAL LIMITATION ON CAMPAIGN SPEECH AND EXPRESSION

Article 44 of Presidential Decree Number 633 provides the “right to campaign”, *i.e.* the right to free speech and political expression, in Akim elections to a person who “currently” has the right to vote. Article 44 could be applied in a manner that impermissibly limits the right of a citizen of Kazakhstan to engage in free speech and political expression. The right to engage in free speech and political expression (“right to campaign”) is the right of each citizen of Kazakhstan, regardless of whether the citizen has the right to vote in a particular Akim election.

Article 19 of the Universal Declaration of Human Rights and Article 10(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms protect freedom of expression and speech. Articles 21 and 22 of the Constitution of the Republic of Kazakhstan, which protect speech and prohibit censorship, provide the same protection.

Appropriate legal measures should be enacted to ensure that Article 44 of Presidential Decree Number 633 might not be applied in a manner that impermissibly limits free speech or political expression.

VIII. ELECTORAL FORMULA FOR THE ELECTION OF AKIM ELECTORS

The electoral formula for the election of Akim electors is not clearly stated in Presidential Decree Number 633. Although the formula for the election of Akims is stated in Article 6, the formula for election of the Akim electors is not clearly stated. The language used in Articles 10(1), 15, 16, 17, and 18 suggests that more than one Akim elector could be elected in a single election “meeting” of Akim electors. If this is possible, then the electoral formula, including the electoral quotient and the process

for the transfer of excess votes from one candidate for elector to another, should be clearly stated. If the intent is that only one candidate for elector is to be elected in a single election meeting, then that intent should be clearly stated and it should be clearly stated whether a plurality or majority of the votes is required for victory.

IX. REFUSAL TO REGISTER AND DE-REGISTRATION OF A CANDIDATE

Articles 35(3) (general applicability) and 65 (applicable only to “repeat” elections) of Presidential Decree Number 633 contain broad grounds for (1) refusal to register a candidate and (2) de-registration of a candidate. In order to avoid speculations and abuse connected to candidate registration, the possibility to prevent or recall a candidate’s registration should be very narrow, allowing for a denial or revocation of registration only in cases of serious violations of the law, and pursuant to clearly defined procedures. As currently written, Articles 35(3) and 65 are too broad and are subject to abuse. Additionally, these articles do not provide clearly defined procedures necessary to protect candidates from being improperly denied the right to stand in elections. It is recommended that Articles 35(3) and 65 be either abrogated or drafted with a much narrower scope.

X. PROHIBITION ON CANDIDATE REGISTRATION IN REPEAT ELECTIONS

Article 63 of Presidential Decree Number 633 requires that “repeat” elections be conducted in accordance with the provisions of the Law on Elections. The Law on Elections contains harsh provisions that bar some candidates from standing in repeat elections. These provisions could be construed as impermissible limitations on suffrage rights. It is recommended that Article 63 of Presidential Decree Number 633 be amended to exclude reliance on the Law on Elections for regulation of “repeat” elections.

XI. RESIDENCY REQUIREMENTS FOR AKIM ELECTIONS

Different residency concepts are stated in Presidential Decree Number 633. The first is residency without any defining criterion as to the durational nature of the residency. The second is “permanent” residency. Articles 2 (voter), 14 (voter), and 27 (candidate) use the concept of residency. Article 11 (voter) uses the concept of “permanent” residency. If these differences are not due to translation errors, and as “permanent” residency is not the same as temporary or current residency, then it is recommended that appropriate legal measures be enacted so that residency requirements are consistent and to ensure that the intent of the requirement is clearly stated. Although there may be a justification for having a different residency requirement for voters than for candidates, there is no justification for having conflicting residency requirements for voters, as is the case with Articles 2, 11, and 14. Additionally, if the current legal framework does not provide clear and objective criterion for establishing the applicable residency requirement, then it is

recommended that appropriate legal measures be enacted so that the determination of residency is based on objective criterion clearly stated in public law.

XII. CONCLUSION

Presidential Decree Number 633: (1) violates the right of all citizens of Kazakhstan to universal suffrage and equal treatment before the law, (2) violates the international standard requiring a secret ballot, (3) fails to adequately provide for election observers, and (4) fails to adequately ensure transparency in the counting and tabulation of the voting results.

Presidential Decree Number 633 has other deficiencies that should be addressed, and comments on these deficiencies have accordingly been made.