



## OSCE Election Observation Mission to Kazakhstan



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**OSCE ELECTION OBSERVATION MISSION  
REPUBLIC OF KAZAKHSTAN  
10 October 1999  
ELECTION OF DEPUTIES TO THE MAJILIS OF THE PARLIAMENT**

### **PRELIMINARY STATEMENT**

**Almaty, 11 October 1999** – The Organization for Security and Co-operation in Europe (OSCE) Election Observation Mission (EOM) for the 10 October 1999 election of Deputies to the Majilis of the Parliament of the Republic of Kazakhstan issues this statement of preliminary findings. The EOM will issue a comprehensive report on the Majilis election within a month.

The OSCE Election Observation Mission wishes to express appreciation to the Ministry of Foreign Affairs and the Central Election Commission of the Republic of Kazakhstan for their assistance and cooperation during the course of the observation.

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### **Preliminary Conclusions**

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The 10 October 1999 election of Deputies to the Majilis of the Parliament of the Republic of Kazakhstan marks a tentative step in the country's transition to democracy. If Kazakhstan is to make further progress in this transition, interference by executive authorities in the broader electoral process must be halted, and their resistance to international standards must be overcome.

The OSCE Election Observation Mission has reached the following preliminary conclusions:

- The legislative and regulatory framework for this election were significantly improved, though important concerns remain, in particular, the independence of election commissions. In response to concerns raised by the OSCE and other international organizations, the authorities of Kazakhstan enacted a new Constitutional Law on Elections that improved the legislative framework, but still fell short of OSCE commitments. In the end, the Central Election Commission adopted an extensive set of regulations, further improving the legislative framework and created the potential to meet OSCE commitments.
- However, the improved legislative and regulatory framework was severely undermined by: (1) illegal interference by executive authorities; (2) unfair campaign practices by parties most closely associated with the existing power structures; (3) bias by lower level election commissions for candidates and parties favored by regional and local officials; and (4) intimidation and obstruction of the electoral campaign of opposition parties and candidates.
- The registration of 10 political parties for the party-list election and some 550 candidates for the single-mandate constituencies contributed to a pluralist political environment. Though many candidates have associations with power structures, a greater choice was nonetheless offered on the ballot.
- Despite the improvements, illegal interference by authorities and doubts about the registration of some candidates contributed to a widespread expectation that the election results would be falsified and that nothing would change as a result of the election.

- Illegal interference also dominated the media environment. Independent media remained constrained by confusing and conflicting laws that inhibited free and open reporting. Self-censorship was a common response to threats of bureaucratic, administrative, and judicial measures jeopardizing media operations.
- Notwithstanding these impediments, the media devoted extensive coverage to the electoral campaign. In general, State media adhered to legal guarantees for free airtime and space for Majilis candidates. A televised debate involving all parties competing on the party list ballot broadened the campaign coverage. However, bias in favor of pro-government parties and candidates was significant.
- On the course of election day, nearly 70% of the polling stations visited by EOM observers were rated “above average” or “excellent” in their organization and the conduct of polling.
- The presence of party and candidate observers in 90% of the polling stations and non-partisan observers in 76% is significant. However, reluctance by polling station officials to fully respect the right of domestic observers to have an unhindered view of activities was reported in 25% of sites visited. The recent CEC response to violations of observer rights during the 17 September Senate elections proved insufficient in addressing the needs of observers for the Majilis election.
- However, the general performance of officials during the vote count was rated somewhat lower. Although observers were often made to stay at a distance that hindered their view of the ballots, protocols were made available for observer viewing in 84% of sites visited. In a large district of Almaty City, observers uncovered multiple protocols with different results that the Chairman of the District Election Commission could not explain.
- The electoral complaints and appeal procedures remain weak and ineffective. Few citizens aggrieved took advantage of these procedures. In the end, the procedures may prove inadequate for addressing the violations.

Accordingly, the efforts of the CEC improved the legislative and regulatory framework for the 10 October Majilis election to mark progress towards meeting the OSCE commitments formulated in the 1990 Copenhagen Document. But widespread and pervasive implementation failures during the pre-election period and concerns on election-day marred chances for the election to meet those standards.

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## **Preliminary Findings**

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### **Legislative and Regulatory Framework**

Following the January 1999 Presidential election in Kazakhstan that the ODIHR characterized as “far short” of OSCE standards, a new Constitutional Law on Elections was enacted by the Parliament of Kazakhstan in May and amended in June. However, the law failed to address significant shortcomings, among others, regarding: (1) the independence of election administration bodies; (2) the transparency of the electoral process; (3) the vote count and tabulation of results; (4) equal access to the media; (5) the registration of political parties and candidates; and (6) the abuse of “administrative penalties” to disqualify opposition candidates.

The Central Election Commission (CEC) attempted to remedy these shortcomings by promulgating a series of regulations and instructions. Provisions intended to safeguard the rights of domestic observers, the transparency of the vote count and tabulation of results, the process at polling stations, and the opportunities for a pluralistic participation in the process were significantly improved.

Nonetheless, equally significant flaws remain in the legislative and regulatory framework. Those include the composition of election commissions, administrative penalties potentially subject to abuse, and laws unduly restricting the freedoms of association, assembly, expression and information.

### **Election Commissions**

The neutrality of election administration commissions has remained a primary concern of political parties and candidates as well as the international community. Although the CEC initiated the positive step to allow representatives of political parties to hold one seat to be drawn by lottery where vacancies occurred or new commissions were created, only about 25% of the commissions benefited. In general, the system served to mask the affiliation of many election commission members with OTAN, the party identified with current power structures. This imbalance and the resulting bias promoted distrust and a lack of confidence among those who had no voice on the commissions. Widespread cynicism and doubt about the impartiality of those entrusted to maintain a level playing field was damaging not only to the election campaign, but also to public confidence in the outcome of the election.

In spite of a legal framework that places the Central Election Commission at the head of a “unified system of elections commissions,” Territorial, District and Precinct Commissions were influenced and directed by regional and local government authorities. Their composition was controlled by the Akims (governors), and their members were most frequently individuals who are dependent on the favor of regional and local authorities for their livelihood.

### **Interference by Executive Authorities**

During the pre-electoral period, voters, political parties and candidates raised a number of serious concerns about illegal interference that undermined the fairness of the election environment. The EOM received documented reports from several regions regarding: (1) illegal interference by local authorities in the election process with the intent to influence the outcome; and (2) the abuse of power to obstruct the independent media and the campaigns of opposition parties and candidates. These reports include a significant number of complaints that voters were threatened with job loss for their support of opposition candidates. Reports were also received regarding: (1) campaigning by local government officials for “favored” candidates; (2) comingling of official election activities with distribution of campaign materials for the OTAN party; and (3) conduct of pro-government party meetings in government offices. Moreover, there were reports of intimidation against opposition parties, candidates, their supporters and the media by tax inspectors and officers of the Committee for National Security (KNB).

### **Participation in the Electoral Campaign**

The combination of favoritism and intimidation by authorities resulted in a widespread expectation by political parties, non-governmental organizations, and voters that the election results would be falsified. Yet, over 550 candidates were registered for the Majilis races in the 67 single-mandate constituencies. Moreover, the adoption of a law on political parties – albeit unduly restrictive, and the introduction of a party-list system, provided for the registration of 10 political parties in the electoral process. These represent important steps in the development of political pluralism for the parliamentary election.

However, Mr. Akezhan Kazhegeldin, leader of the opposition Republican People’s Party of Kazakhstan (RPPK), was disqualified from his party list. This was due to a deficient court appeal for a contempt of court conviction based on an earlier administrative penalty that was later dropped from the list of penalties barring the registration of candidates. In addition, one day after the disqualification, Mr. Kazhegeldin was detained in Moscow, based on an unrelated arrest warrant issued by Kazakh authorities. Notwithstanding Mr. Kazhegeldin’s subsequent release, these developments had an unfortunate chilling affect on the election campaign. Following these developments, the RPPK withdrew from the party list election, alleging that 13 firms, some of which under State control, had refused to print their campaign material.

### **The Media**

The Law on Mass Media was improved prior to the electoral period. For instance, provisions that formerly allowed a general prosecutor to unilaterally close down a media outlet were repealed. The amended law requires that such decisions be made only in a court of law. However, these improvements have been undermined by references to the laws on national security and “state secrets”. These provisions are ill-defined and subject to arbitrary interpretation, thus, severely debilitating the freedom of the media.

The mass media commonly engages in “self-censorship” as a result of fears that they may “cross a line” that is often blurred and subject to “selective enforcement.” With regard to regional media, the EOM received reports that authorities often made “recommendations” on which candidates and parties were to be covered. Also, the media were severely impeded by implicit threats regarding suspension, legal actions encumbering media enterprises with legal fees and substantial fines, tax audits, and loss of employment. Printing houses, many of which are State controlled, often refused to print campaign materials for certain candidates or parties. This was ostensibly done in order to avoid falling out of favor with authorities who maintain leverage over their existence.

Despite such restrictions and illegal practices, the media coverage of the parliamentary election was substantial. Two media events are especially noteworthy for their innovation and overall success. On 6 October, the CEC organized a multi-party debate that provided for the first time a two-and-a-half hour live forum on national television for the nine registered parties remaining on the party-list ballot. The program that aired on *Khabar*, the major state-owned television station, allowed party representatives to express their views, to question their opponents, and allowed questions from the audience and telephone callers. The CEC also arranged for extensive space in *Kazakhstanskaya Pravda*, the largest State newspaper, in which each party was given equal space to answer three questions. Their answers were published side by side in one issue.

During the fifteen days prior to the election, *Khabar* TV dedicated more than 30 hours to electoral issues. The election law guarantees Majilis candidates a single 15-minute address on state television. *Khabar* TV gave 50.4% of its coverage to self-nominated candidates out of the total airtime given to candidates for the election.

Among the party lists, however, the pro-government OTAN and Civic Party received the most coverage. In overall news content, pro-governmental parties fared better in terms of “positive coverage” than opposition parties. Of the private channels monitored by the EOM, KTK (Commercial Television Channel) demonstrated a distinct bias toward OTAN which enjoyed nearly 60% of the coverage given to all parties. OTAN also monopolized the market with 65.7% of paid political advertisements.

### **Electoral Complaints and Appeals**

The election law provides for electoral complaints and appeals by candidates, parties, and voters. However, such complaints and appeals can be pursued through a confusing maze of channels, either through the hierarchy of election commissions, the general prosecutor’s offices, or the courts. In addition, decisions reached by one body may be appealed in another or “protested” by the general prosecutor. More significantly, complainants found little reason for confidence that their cases would result in a fair resolution. Often, potential complainants were reluctant to pursue remedies for fear of retribution by the authorities. Whether such concerns were real or perceived, they reflect a lack of faith in the effectiveness and fairness of the judicial system and other channels of redress.

Articles 96 and 110 of the election law further undermine the electoral complaints and appeals process. If an election is deemed invalid for any reason, and must be repeated, no candidate appearing on the ballot in the nullified election may stand in the repeated election. These provisions can disenfranchise candidates even if an election was invalidated as a result of violations or falsifications by an election commission.

In mid-September, the CEC attempted to ameliorate these shortcomings by establishing its own Media and Campaign Finance Sub-commissions. Laudable in intent, their success was limited by time constraints, insufficient capacity to adequately investigate and adjudicate their case load, and lack of legal authority to impose meaningful sanctions.

At the time this preliminary statement was issued, the number of electoral complaints filed with the authorities and their disposition were not available.

### **Election Day**

The general performance of election officials was considered good in 70% of the sites visited by international observers. However, election officials were rated significantly lower in a number of specific areas. In over half of the sites visited, mobile ballot boxes could not be observed during periods when they were not in use. Nonetheless, except in occasional instances, where the number of voters making use of the mobile ballot box

were disproportionately high, procedures were generally found to be in compliance with more restrictive regulations introduced for these elections.

Proxy voting, while reduced, was still observed in 22% of the polling stations visited by observers.

Accountability for ballot usage partially depends on polling station officials signing each ballot at the time of issued to each voter. In 51% of the polling sites visited, ballots were pre-signed or not signed at all, thus diminishing the effectiveness of this safeguard. Inconsistencies were also noted in adherence to rules for processing of voters, especially related to the use of the additional list for voters not found on the voter register. Only on rare occasions, were voters required to present their Certificate of Right to Vote in order to be added to the list. The adequacy and accuracy of voter lists also seemed to vary. The numbers of voters on some lists appeared to be inconsistent with the number of voters recorded at the District level.

The accreditation of over 2,500 non-partisan domestic observers by District Election Commissions throughout Kazakhstan represented a significant development in citizen ownership of the electoral process. However, international observers tended to have more liberal access to the proceedings, than their Kazakhstani counterparts. Respect for the role domestic observers play, and positive and open-minded responsiveness to their findings by appropriate authorities, will ultimately be the measure of the overall success of this important advancement.

### **Vote Count**

The CEC promulgated new regulations designed to promote the accurate reporting of results. Requirements calling for multiple copies of each protocol to be prepared immediately upon completion of the counting of votes, and the display of these protocols at the polling station – both instrumental to reduce opportunities for falsification – were not followed uniformly.

EOM observers tried to distinguish between procedural infractions of a technical nature, and those violations that undermine the integrity of the results. In less than half of the polling stations visited, counting procedures were rated “high”. Among procedural infractions of a technical nature, in 27% of locations observed, officials failed to count and cancel unused ballots before the ballot boxes were opened. In over half of the locations, ballots from mobile boxes were commingled with other ballots before checking against the number of applications received. Although counting protocols were presented to observers for review, in nearly half of the polling stations, the protocols were not posted at the polling stations as required by the regulations.

In some locations, serious violations did occur that were egregious and deserve full investigation. In particular, one known case occurred in plain view of international observers in Almaty, where forged protocols were uncovered reflecting different results for the same polling station. Since this extraordinary event took place in one of Kazakhstan’s largest constituencies, the case raises serious questions about the magnitude of the problem, and the reliability of results recorded for this constituency. This incident was brought to the attention of authorities at the highest level.

As for the result of this election, although our vote tabulation sampling is insufficient to predict with certainty, there is a possibility that at least four and possibly five parties may pass the threshold for participation in the allocation of seats based on the party list ballot.

### **End Notes**

The Election Observation Mission is a joint effort between the OSCE Office of Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly and includes observers seconded by participating States. Mr. Ihor Ostash, Vice-President of the OSCE Parliamentary Assembly and Member of the Ukrainian Parliament, was appointed to lead the EOM as Special Representative of the OSCE Chairman-in-Office, Mr. Knut Vollebaek. The ODIHR appointed Ms. Linda Edgeworth as Head of the long-term Election Observation Mission.

The preliminary statement is based on the findings of the ODIHR Election Observation Mission established on 1 September 1999 in Almaty and six regions throughout Kazakhstan, with 20 core staff and long-term observers. Their findings include the pre-election preparations, the election campaign, and the media. The statement is also based on the election-day findings of the EOM’s 118 short-term observers, including 18 parliamentarians from

the OSCE Parliamentary Assembly, who visited some 500 polling stations with some one million voters (about 13% of the total of eight million eligible voters) across Kazakhstan.

The ODIHR and the OSCE Parliamentary Assembly stand ready to continue the dialogue with the authorities, the Majilis, and the Senate of Kazakhstan, to address the concerns and the recommendations that will be detailed in the final election report.

For further information, please contact Ms. Linda Edgeworth, Head of the ODIHR EOM in Almaty (+7.3272.506204) until 15 October, Mr. Anders Karlsen, ODIHR Election Advisor in Warsaw (+48.22.520.0600), or Mr. Jan Jooren, Press Counselor of the OSCE Parliamentary Assembly in Copenhagen (45.3332.9400).