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Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

**THE LAW ON POLITICAL PARTIES
ADOPTED ON 15 JULY**

OSCE/ODIHR REVIEW



**Warsaw
23 July 2002**

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Republic of Kazakhstan

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I. INTRODUCTION

The Law on Political Parties was adopted by the Parliament of Kazakhstan on 26 June and was submitted to the President for signature on 2 July. On 11 July, the Constitutional Court of Kazakhstan declared the Law in conformity with the Constitution of the Republic. The Law entered into force on 15 July following the President's signature. According to the new Law, all existing political parties must re-register before 17 January 2003.

This brief review will address the law of the Republic of Kazakhstan on political parties. This assessment is based on an unofficial English translation. It will attempt to analyze the law in the context of international norms for party regulations in pluralistic democratic States.

II. EXECUTIVE SUMMARY

The law on political parties of the Republic of Kazakhstan, in particular Articles 6 and 10, raises serious concerns about the formation and registration of political parties. The obligation to organize an initial conference of 1,000 persons representing two-thirds of the regions of Kazakhstan and to have not less than 50,000 members representing all regions and the major cities of the country limits political parties to those capable of establishing a nation-wide presence. This restriction imposes a substantial restriction on the freedom of association and on the rights of citizens to establish political parties.

The stringent requirements set in these articles will have a chilling effect on the development of political pluralism in Kazakhstan since this provision clearly renders the formation of political parties more difficult. Consequently, the Law will also restrict the participation of citizens in the political and democratic processes.

These articles may also seriously limit the choice of the electorate in future elections by preventing existing parties to re-register. These requirements on the formation of political parties are contrary to the commitment of OSCE participating States to "respect the right of individuals and groups to establish in full freedom their own political parties or other political organizations." In a democratic society, the legal framework should promote a vibrant and multiparty political landscape.

¹ Mark Braden, legal expert, prepared this review for OSCE/ODIHR.

III. CHAPTER 1 - GENERAL PROVISIONS

This chapter consists of articles one through five, which generally define the voluntary association nature of political parties in Kazakhstan. It places parties under the laws of the State. These general provisions have language defining the role of political parties, providing for an organization structure based upon territory, limiting political parties' operations to inside the republic and prohibiting party involvement in military or educational activities. Citizens are recognized as having the right to join or to refuse to join a political party. These provisions regarding political parties are similar to those found in the laws of many democratic States.

IV. CHAPTER 2 - FOUNDATION, REORGANIZATION OR LIQUIDATION OF POLITICAL PARTIES

This chapter consists of articles six through twelve. This chapter contains a number of provisions (Art. 7, 8 and 9) which are unlikely to engender significant controversy and are similar to those in many democratic States. **Article 7** provides for the names and symbol of a party. This provision prohibits ethnic, religious, or gender based parties. **Article 8** provides for membership of political parties. It prohibits non-citizen, military personnel, national security personnel and judges from membership. **Article 9** requires that parties adopt a formal organizational charter.

Article 6 provides for the founding of political parties. It is significantly different in its probable effect on political activity than Articles 7, 8 and 9. This Article places burdens on party formation and development which are likely to significantly impair the reinforcement of a robust democratic system. Totally unrestricted party registration might result in an explosion of a number of parties, some of which might be frivolous or lacking substantial popular supports. Unrestricted choices could result in voter confusion as well as substantive administrative and election costs.

However, highly restricted party registration will unduly limit choices of the citizens of the country by precluding parties which represent important fractions of public opinion. The challenge in drafting such legislation is to define a fair and reasonable set of criteria or procedures by which the parties can form and function without unwarranted restraints. Although the State has some legitimate interests in limiting access to party status, the high threshold in this law will chill the development of a pluralistic democratic State.

The requirement that there must be an initial conference of 1,000 persons representing two-thirds of the regions of Kazakhstan imposes a substantial impediment on the development of new political parties or even the continuing existence of Kazakhstan's present parties. The organizational and travel expenses of such an event is likely to limit participation to only a very small segment of the Kazakhstan society.

Even more daunting than the founding conference requirement is the registration requirement of **Article 10**. The registration of a political party under this article requires not less than

50,000 members representing all regions and the major cities of Kazakhstan. Each of the 14 oblasts and two cities with republican status must have no less than 700 party members. The previous Law required only 3,000 members nation-wide to register a political party.

One of the consequences of this rule is that it will prevent the formation of local or regional parties at a time when Kazakhstan is slowly moving towards local democracy through the direct election of bodies of local government. It raises questions on whether party politics will have any role in local and regional politics. This requirement imposes a significant restriction on the freedom of association.²

Article 10 also requires payment of a fee to the State for registration. A registration fee of a nominal sum to ensure seriousness of purposes is found in many democratic States, but large registration sums can limit party development or restrict it solely to the wealthiest segments of society. Registration or filing fees are unspecified in amount and thus could easily be used as a device to discriminate against unfavored party organizations.

In sum, the stringent requirements established in Article 10 of the Law will have a chilling effect on the development of political pluralism in Kazakhstan since this provision clearly renders the formation of political parties more difficult. It may also seriously limit the choice of the electorate in future elections in preventing existing parties to re-register. These requirements on the formation on political parties are contrary to the commitment of OSCE participating States to “respect the right of individuals and groups to establish in full freedom their own political parties or other political organizations.”³

Article 11 should allow political parties to resubmit registration documents after having made necessary corrections when registration was refused on basis of defects in the registration documents.

Article 12 appears to provide for or contemplate some form of taxation of political party organizations. This would raise serious questions as to maintaining independence from the State.

Article 14 provides for the reorganization or liquidation of political parties. Subdivisions 1 through 4 are standard organizational provisions. Subsection 5 provides for party liquidation under court decision. Of particular interest is the loss of political status if the parties receive less than 3% of the votes during the Majilis elections or fail to participate twice in parliamentary elections. While a level of electoral support is not an unusual provision for party status recognition, a 3% level is a high standard in the context of newly evolving democratic State with newly emerging party organizations. Article 14 point 8 stipulating that

² Freedom of association is a universal right guaranteed in all major international human rights documents: Article 20 of the Universal Declaration of Human Rights, Articles 7.6, 9.3, 10.3 of the OSCE Copenhagen Document, Article 22 of the International Covenant for Civil and Political Rights, and Article 11 of the European Convention on Human Rights.

³ Article 7.6 of the 1990 OSCE Copenhagen Document.

a political party shall be liquidated “as otherwise envisaged by the legislation of the Republic of Kazakhstan” is broadly and vaguely defined. This could lead to abuses.

Article 15 sets forth the rights and obligations of a political party and **Article 16** provides for the structure of parties with the obligation to hold a congress or conference at least every four years. **Article 18** provides for the sources of funding of political parties, principally envisioning donations and membership dues. Foreign contributions, government agencies, legislative organizations and anonymous donors are not permitted. Funds are restricted solely to political or charitable uses. They may not be converted to personal use. Articles 15 and 18 provide for regulating political parties in a manner similar in form to many democratic countries.

V. CONCLUSION

The burden that the law on political parties of the Republic of Kazakhstan places upon the creation of new political party organizations or the continuation of existing smaller party organizations is greater than most democratic States would consider justified.

The financial and logistical burdens required of such a new political organization is likely to inhibit the development of vibrant political parties in Kazakhstan. Such a burdensome registration requirement may push party activity outside this regulatory structure to the detriment of civil political and electoral process. It is clear that pluralistic democratic States cannot exist without functioning political parties. The registration requirements of this law make their full development in all sectors of Kazakhstan society doubtful.

In a democratic society, the legal framework must promote a vibrant and multiparty political landscape and enhance the political participation of citizens. The electorate should be responsible for deciding through their votes which parties should participate in the political life and which should represent them in the institutions. The State should play a minimal role in these decisions.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created in 1990 as the Office for Free Elections under the Charter of Paris. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election** observation. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR **monitors** participating States' compliance with OSCE human dimension commitments. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

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