

THE STATE OF ELECTORAL PROCESS IN KAZAKHSTAN AND ANALYSIS OF CRITICAL OPINIONS

(Theses of the report at the Jubilee Conference in Copenhagen,
dedicated to the 20th anniversary of the OSCE Copenhagen Document)

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According to some political parties and non-governmental organizations of the Republic of Kazakhstan, the composition of election commissions continues to cause grave concern. They believe that the law does not guarantee the equal representation of political parties in the election commissions.

Legislation provides all political parties with the opportunity to participate in the electoral commissions. However not all political parties use this opportunity.

Since 2004 the composition of election commissions is formed by maslikhats on the proposals of political parties, each of which is eligible to nominate one candidate to the relevant commission. The political parties are entitled to submit nominees, who are not members of these political parties. In the absence of proposals from political parties, maslikhats elect a commission on the proposals of other public associations and the higher election commissions.

The current system of forming electoral authorities guarantees the principle of pluralism and is based on the competitiveness between political parties, encouraging their social and political activity.

At present, representation of parties in the commissions corresponds to the level of parties' activity in the process of formation of electoral bodies.

In forming the new compositions of the territorial, district and precinct election commissions in the Republic of Kazakhstan, held in March-April 2009, 102,599 candidates, including 77,674 candidates from political parties (75.7% of total number of nominees) were nominated to 93,002 vacancies in the 13,286 election commissions. The most active were the People's Democratic Party "Nur Otan", Kazakhstan Social-Democratic Party "Aul", the Communist People's Party of Kazakhstan and the Party of Patriots of Kazakhstan, which nominated candidates in all regions of the country. However, the Democratic Party of Kazakhstan "Ak Zhol" and All-National Social Democratic Party nominated candidates only in 3 regions, and the Democratic Party of Kazakhstan "Azat" none of them. As a result, the Democratic Party of Kazakhstan "Ak Zhol" represented only in 11.6% of total number of election commissions and the National Social Democratic Party - in 4.5%.

Despite this, the electoral law (Art. 20 Clause 6 of the Election Law) provides the parties, which do not have members in the election committees, with the right to delegate their representatives with an advisory vote to the relevant election commission in the period of the preparation and conduct of the election campaign.

Some public associations of the Republic disagree with the fact that the election legislation does not provide for election of independent candidates at elections of deputies of the Mazhilis of the Parliament to be elected according to the proportional electoral system.

Non-nomination of independent candidates is typical for many countries with proportional electoral system. In a number of European countries, including those with longstanding democratic traditions, nomination of independent candidates is not established by the law. According to a special international project of the UN "ACE Project", 21 countries in the world do not have a procedure for nomination of independent candidates to the lower house of Parliament, among them there are countries like Sweden, Norway, Poland, Israel, Latvia, Ukraine. In Latvia, according to Article 9 of the Law on Elections to the Parliament of Latvia a list of candidates may be represented only by political organizations (parties) and (or) the association of political organizations (parties) registered in the manner prescribed by law.

According to some representatives of nongovernmental organizations, the legislation does not guarantee unimpeded access to all aspects of the electoral process to all accredited foreign observers.

Observers are eligible to observe the electoral process entirely, as well as to accompany the minutes of polling stations during their transportation to the higher commission. This authority is provided in Article 20-2 clause 6 sub-clause 7 of the Election Law. On the basis of Article 20-2 clause 2 of the Election Law, which is the legal basis for international observers during the election campaign in Kazakhstan, international observers had the right to require the election commission that they were ensured with unimpeded access to all aspects of the electoral process.

It should be noted that Article 146 of the Criminal Code of Kazakhstan provides for criminal responsibility (from a fine of up to 5 years imprisonment) for obstructing the exercise of voting rights, including the right to observe the elections.

Some observers at the parliamentary elections in 2007 believed that training of members of territorial and precinct election commissions was simply to read the articles of the Law on Elections.

Accelerated training of members of election commissions, especially at the grass-roots level, was one of the priorities in the CEC activities during the preparation of elections. CEC possessed all the necessary institutional, human and material resources. Particular attention was paid to the training of district and precinct election commissions. In all regions the workshops and seminars were held. In addition, 22 information-methodical brochures were issued and 12 videos and educational films, which were used in the election campaign, were released.

Several political parties of Kazakhstan considers as appropriate to reduce the percentage threshold, which each and every party must overcome in order to obtain representation in the Mazhilis, because the 7-percent barrier, in their opinion, is one of the highest among the OSCE member states.

First of all, it should be noted that all parties participating in elections, in this case, are in equal position. International experience shows that in many countries there are a variety of electoral thresholds. The figure of 7% is not unusual. In other countries there are still higher electoral threshold. For example, Turkey set a 10 percent threshold and in Liechtenstein - the 8 percent threshold. Thus, at the global background of the barriers to political parties on the way to the Parliament Kazakhstan adheres to the average balanced index. Nevertheless, on February 9, 2009 Kazakhstan adopted a law, which allows political parties which failed to overcome the 7 percent threshold to become owners of a number of seats in the Mazhilis of the Parliament of the Republic of Kazakhstan.

Some parties and NGOs insist on abolishment of the restriction of passive suffrage in respect of persons with "criminal record, which is not canceled or removed", regardless of the severity of the crime.

It should be borne in mind that a criminal offense is the ground for restriction of passive suffrage in 82 countries: for example, in Austria (Part 2 Section 2 Paragraph 22 of the Federal Law of the Republic of Austria on the election of the National Council № 471/1992), Bulgaria (art. 2, clause 3 of Act of April 9, 2001 on Election of Members of Parliament), Hungary (Article 2 clause 2 of the Act XXXIV/1989 on Election of Members of Parliament), Slovakia (Article 2 clause 2 of the Act of May 13, 2004 on elections to the National Council).

Opposition parties at the parliamentary elections in 2007 argued that the news coverage in state media clearly demonstrated a preference to the party "Nur Otan".

The Central Election Commission of the Republic of Kazakhstan from July 17 to August 18, 2007 monitored seven central television channels, 32 national print media and 11 Web sites of social and political orientation. The total number of references of political parties in the national media was 11,472, including "Nur Otan" – 3,509, ANSDP – 2,597. So there was no a clear media bias in favor of "Nur Otan". If you add up all the references in the media of the oppositional to "Nur Otan" political parties, it will be 7,963, which significantly exceeds the number of references of "Nur Otan".

Some representatives of non-governmental organizations in Kazakhstan have criticized the law on the 10-year-old voter residency requirements for candidates for Parliament (Article 51 clause 4 of the Constitution of the Republic of Kazakhstan, Articles 70 and 86 of the Election Law).

The introduction of 10-year qualification is due to the fact that Kazakhstan is developing rapidly both economically and politically. Any citizen of Kazakhstan, absent in the country for 1-2 years, on his/her return notes the dramatic change that occurred during this short period of time. And over a period of 10 years, Kazakhstan has managed to leave the socialist socio-economic system and move to a market oriented, capitalist methods of management. Therefore, a citizen who wants to be elected to the Parliament must take part in solving the most important affairs with

deep understanding of the current state. We certainly cannot allow such a person to make large and small mistakes and tests on the society and state due to his/her ignorance of existing things in the country. That is why Article 51 of the Constitution of the Republic of Kazakhstan established residency requirement of 10 years.

Residency requirement of 10 years for the candidates of the lower house of Parliament is enshrined in Norway (art. 92 of the Constitution on May 16, 1814, as last amended on February 20, 2006), Georgia (Article 92 of the Election Code number 1047 of August 2, 2001).

10-year residency requirement is consistent with OSCE commitments. The document "Existing Commitments for Democratic Elections in OSCE Participating States", Warsaw, October 2003 states that the residency requirement is quite legitimate institution of the electoral law and the process in the OSCE participating states (p. 39, 74).

Some political parties have criticized the law allowing the Assembly of Peoples of Kazakhstan, a body whose members are not elected but appointed by the President to choose nine of the 107 deputies of the Mazhilis of the Parliament of the Republic of Kazakhstan (Article 51 clause 1 of the Constitution of the Republic of Kazakhstan).

Providing the Assembly of Peoples of Kazakhstan with the right to elect 9 deputies in Mazhilis of the Parliament of the Republic of Kazakhstan is one of the special measures to ensure the voting rights of national minorities and an implementation of paragraph 31 of the OSCE Copenhagen Document of 1990 and other international acts on the representation of national minorities (see Article 18 of the Convention on Standards for Democratic Elections, Electoral Rights and Freedoms in the CIS member-states, ratified by Kazakhstan as on June 7, 2007, Lund Recommendations on the Effective Participation of National Minorities in Socio-Political Life).

Legislative quotas (from 1 to 10 seats) for representatives of national minorities in the lower house of Parliament envisaged in many countries, including Italy, Finland, Denmark, Portugal, Croatia, Romania and Slovenia. For example, in Finland, a Member of Parliament elected in a separate constituency, located on the islands of Åland and not by a popular vote (see Article 25 of the Constitution of Finland of June 11, 1999). At least two seats in the Parliament reserved for voters of island of Bornholm in Denmark, who are elected in individual electoral districts, but not at national elections (Article 10 (4) of Act 271 on the election of the Parliament of Denmark of May 13, 1987, as amended on April 10, 1991). In Slovenia, a representative from the Italian and Hungarian communities is to be elected to Parliament; these representatives are elected in special constituencies (paragraph 3 of Article 64 of the Constitution of the Republic of Slovenia of December 23, 1991, Article 8 of the Act on elections to the National Assembly of Slovenia of September 12, 1992).