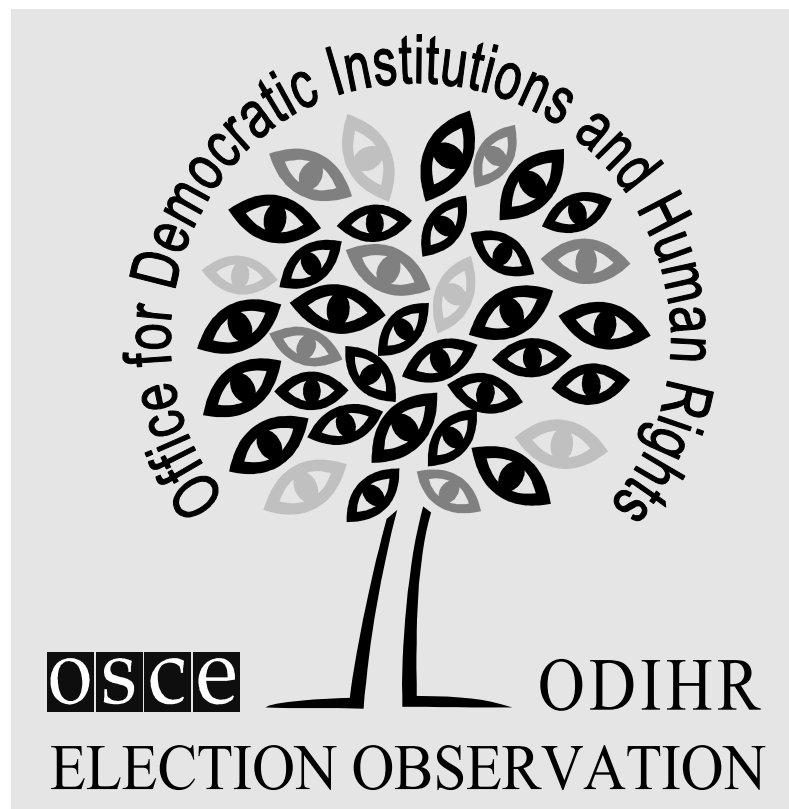




Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

REVIEW OF THE ELECTION LEGISLATION FOR  
PARLIAMENTARY ELECTIONS



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# **REVIEW OF THE ELECTION LEGISLATION FOR PARLIAMENTARY ELECTIONS**

## **I. BACKGROUND NOTE**

The legal framework of elections in Kazakhstan has been the subject of consultations between the authorities of Kazakhstan and OSCE/ODIHR. In the course of these consultations, OSCE/ODIHR presented recommendations on the electoral law prior to the October 1999 parliamentary elections. Additional comments were contained in the needs assessment mission report (25 August 1999) and in the final report (20 January 2000).

The authorities of Kazakhstan accepted to continue consultations on the election law, based on the OSCE/ODIHR recommendations. On 2 September 2000, during the first round table discussion on elections, the parties agreed on a timetable for further round tables in 2001. The following recommendations will focus on the issues to be discussed in January 2001, such as the independence and formation of election commissions, and election procedures, including the transparency of the vote count and tabulation procedures.

The following comments on the legal framework of elections in Kazakhstan are based on the Constitutional Law of the Republic of Kazakhstan “On Elections in the Republic of Kazakhstan” signed by the President on 28 June 1999. Some additional comments are provided on the instructions issued by the Central Election Commission (CEC) through the latter part of 1999.

A number of the recommendations suggest the incorporation into law of new provisions, the rephrasing of existing provisions, and the codification of provisions from CEC regulations. In most cases a specific phrasing of new regulations is avoided, merely suggesting the concept or the direction.

## **II. SUMMARY OF CONCLUSIONS**

The election law of the Republic of Kazakhstan adopted in June 1999 is a further confirmation of the country’s continuing efforts to create an adequate legal framework that meets international standards for democratic elections.

However, as reflected in OSCE/ODIHR reports, there is still room for significant improvements in the legislative framework that should be addressed before future elections. The most critical issues that need to be addressed are as follows:

- Broadening the representation of political parties in election commissions at all levels;
- Reducing the 7 percent threshold for political parties;

- Narrowing the possibility to bar candidates who have been subject to administrative offences from taking part in elections;
- Improving provisions prohibiting interference in the work of election commissions, and provisions on the rights of proxies, observers and representatives of the media; and
- Introducing provisions on increasing transparency in the process of tallying results.

In the months prior to the October 1999 elections, the CEC introduced several changes to the instructions regulating the elections in an attempt to remedy some of the shortcomings in the legal framework. With the amendments indicated in the following chapters, it is recommended that a number of these CEC regulations be codified into the law, including provisions on:

- Representation of political parties in election commissions;
- Prohibition of interference with the work of election commissions;
- Access to the electoral process by observers and the media;
- Mobile voting;
- Counting procedures; and
- Tallying of results.

Beyond these legislative issues, serious consideration should be given to increasing the number of seats in the lower house of the Parliament elected on the basis of party lists. This would encourage the development of effective political parties and increase pluralism in the Parliament.

### **III. FORMATION OF ELECTION COMMISSIONS**

The independence of election commissions raised concerns prior to the October 1999 parliamentary elections. In an attempt to address this issue and to enhance the integrity of the work of election commissions, two separate regulatory improvements were introduced.

Firstly, the election law introduced changes to the procedure for appointing members to election commissions below the level of the Central Election Commission. The Akims (head of local administration) at the respective levels no longer appoint commission members, as it was the case under the previous law. Instead, territorial, district and precinct election commissions are now appointed by the superior election commission upon the suggestion of the respective Akims.

Secondly, on 8 July 1999, the CEC adopted a new regulation under which political parties are granted the right to suggest candidates when new election commissions are appointed at territorial and precinct levels. According to this regulation, one representative of a political party will be included in the respective commission based on a system of lottery. This system improves on the possibility of opposition participation on election commissions but is still weak and could be subject to abuses. Greater

opportunities for political party representation on commissions should be developed and be implemented in a timely, open and transparent manner.

Both changes represent steps in the right direction in the efforts to make the election administration more independent from governmental structures, and partly meet the OSCE/ODIHR recommendations on this issue. The amendments do not, however, ensure a sufficient degree of independence of election commissions. The representation by different political parties remains weak, and the appointing bodies are nominated by or closely linked to governmental structures.

It is strongly recommended that the legislature further elaborate these provisions. In order to restore public confidence in the electoral process it will be necessary to substantially broaden the representation of political parties on election commissions and to codify these regulations into the election law. The law must also be amended so as to allow a broad representation of political parties in the CEC itself.

In order to secure the desired effect of the suggested changes, practical consequences of the five-year term of election commissions at all levels (election law article 10.3) must be noted. The optimal solution would be to make the changes in the law a part of a comprehensive reform of the election commission structure and to implement the changes in commission membership promptly, as part of this reform. The authorities must take into consideration that general confidence in such a legal reform depends on its implementation prior to future elections.

#### **IV. THE SYSTEM FOR PARLIAMENTARY ELECTIONS**

Political parties play a key role in the election process in any democratic society and the development of viable political parties is regarded as an integral element for the success of a democratisation process. Thus, it is important to take the role of political parties into consideration and choose solutions that stimulate their development when designing the election system.

There are no binding principles of international law regulating the design of the electoral system. States are free to decide, for example, to which extent deputies of the parliament are elected through party list on a proportional system or in single mandate constituencies. However, most developing democracies tend to adopt a system where large parts of the legislature are elected by party list because of its stimulating effect on the development of political parties.

In this context, Kazakhstan has taken steps to encourage a more pluralistic political environment by introducing a quota of 10 deputies out of the 77-member lower house elected on party lists through proportional representation. However, it is too little to have any significant effect on the development of political parties. In connection with future reforms, the possibility of further increasing the number of representatives elected on party lists should be carefully considered.

Furthermore, when reviewing the election system, it is essential that the threshold for a political party to gain access to the legislature, is not set too high. Although a threshold is necessary in order to avoid the fragmentation of the Parliament, a high threshold can hinder the development of political parties. A threshold of five percent is normally sufficient and would be in line with common practice among OSCE States. Article 97 no 1 which sets the threshold at 7% in the election law should be amended accordingly.

## **V REGISTRATION OF CANDIDATES AND PARTIES**

The election law should impose few restrictions on the right of candidates and political parties to register and to participate in the elections. In addition, once registered, only serious violations of law should lead to the subsequent withdrawal of registration. In addition, the list of requirements for registration must be clear and not open to partisan or arbitrary interpretation.

A point of particular concern in the election law is the potential disqualification, according to article 4 in the law, of candidates who have been the subject of administrative sanctions for an "intentional offence" during the year before registration. The OSCE/ODIHR has been highly critical of this provision. Although the right to bar persons who have seriously violated national legislation from taking public office is relevant, this provision can be abused and lead to potential infringement on the right to stand as a candidate.

The authorities of Kazakhstan responded to this concern by repealing the provision in the Administrative Code (188-2) sanctioning participation in the activity of unregistered public organisations, and thus, signalled a different legislative approach to the problem. Instead of repealing article 4 (4.2), it is possible to amend the Administrative Code to such an extent that the provisions in the Code to which article 4 in the election law applies are narrowed, leaving only serious criminal offences.

This approach is fully acceptable if it is followed by further and sufficient amendments to the Administrative Code in order to remove the concerns raised by the OSCE/ODIHR in prior reports.

Finally, the election law includes a provision that bars the same candidates from participating in repeat elections if the initial election is deemed invalid. This is a rather unique provision with potentially dramatic consequences, for which it is hard to see any proper reasoning. The repeal of these provisions (articles 64.1, 80.4, 96.4-5, 110.4 and 124.4) should be considered in future reforms of the election law.

## **VI. EXTERNAL INTERFERENCE IN THE ELECTION PROCESS**

Both the election law and instructions from the Central Election Commission regulate the issue of authorised personnel in polling stations on the election day. Both documents provide for the presence of representatives of candidates, journalists, domestic and

international observers, in addition to members of electoral commission and voters themselves.

Furthermore, the instruction of the CEC (9 August 1999) “On the order of voting and counting at the polling station” (article 7), and the recommendation by the CEC (9 August 1999) “On the organisation and order of voting” (article 2), establish that the Chairman of the polling station election commission is in charge of order at the polling station. According to these regulations representatives of the Ministry of Interior can only enter the polling station upon the chairman’s request and should leave as soon as order is restored. The above regulations must be seen as an interpretation of article 39 (3) of the law, giving the “responsibility for insurance of the order in the premises for voting” to the “bodies of internal affairs”.

The law and regulations include a relatively comprehensive regulation of the independence of the work of polling station election commissions. However, this issue should be fully regulated directly in the law. The prohibition of interference with the work of election commissions should be applicable to election commissions at all levels throughout the entire election process.

The importance of the integrity of election commissions and its implementation at all stages of the election process, suggest that a general clause be included in one of the first two chapters of the law regarding the general principles regulating the election process. Such a provision should highlight that election commissions are in charge of all stages of the electoral process and that any involvement or interference, obstruction, or other attempts to influence the work of election commissions, is prohibited.

Furthermore, CEC instructions should include procedural regulations that serves to guarantee the integrity of election commissions including voting, counting, and the aggregation of results.

Interference in the work of election commissions must be regarded as a serious offence and should be subject to sanctions. This applies especially to representatives of State organs who obviously have a special responsibility in refraining from interfering with the democratic process. These principles should be more clearly reflected in article 50 of the law and in legislation imposing sanctions.

## **VII. ACCESS TO THE ELECTORAL PROCESS BY OBSERVERS AND THE MEDIA**

Both the election law (articles 40, 42 and 43) and the CEC instruction “On the order of voting and counting of votes at the polling station” (articles 1 and 43) contain regulations on the right of candidates’ proxies, observers, and representatives of the media, to be present at the polling station during voting and counting. These regulations provide a sufficient basis for the activities of these groups of observers. However, the importance of these provisions to the transparency of the elections calls for a more comprehensive legislative approach to this issue. This might include two regulatory improvements:

Firstly, the existing regulations in law and instruction should be conjoined in a general clause on the issue, and included in the general provisions of the law. Such a provision should clearly state the right of the various groups of observers to be present at all stages of the election process, including the tallying of results. This would then be the only provision needed in the law itself. Secondly, in order to secure the implementation of the provision in the law, CEC instructions should safeguard this right when addressing the different stages of the process, from the opening of voting to the tallying of results, including the aggregation of results at all levels.

### **VIII. BALLOT PAPER**

Neither the law nor CEC instructions contain any regulation of the number of ballot papers to be received by each polling station. Normally, the number of ballot papers will only slightly exceed the number of registered voters at the polling station. A provision should be introduced in the law, regulating the number of ballot paper to be received by each polling station. In this regard, a written confirmation should be provided by the polling station election commission to be signed as proof of the exact number of ballot papers received. This document should then be available to observers before the vote count.

### **IX. MOBILE VOTING**

Under the election law, voters who are unable to attend the polling station for reasons of health *or any other reason*, will be given the possibility of mobile voting (article 41.6). Furthermore, there is no requirement that a request for a mobile box be made in writing prior to polling day. An oral statement on polling day is sufficient. The provision in the law is interpreted in the CEC instruction “On the order of voting and counting of votes at the polling station” (article 19) to mean that the basis for the application for mobile voting has to be “reasons of health or sickness of a family member or child”.

It is important that mobile ballot boxes are used only in the cases where it is the only possibility to cast ballot. The procedures for voting in ordinary polling stations have a considerably higher degree of control over secrecy and transparency, and should be used in all normal cases. It is therefore desirable to limit the right to vote by mobile ballot boxes to voters who are unable to vote at all and request in writing and in advance mobile voting.

The interpretation of the law reflected in the CEC instruction represents a step forward in order to limit the possibility of mobile voting, and thus increase the level of transparency in the election process. It would be desirable to incorporate the CEC instruction, restricting mobile voting to health reasons only, in article 41.6 of the law. In order to secure a sufficient degree of control the law should be amended in order to permit only written application for voting by mobile ballot box.



The article 24 of the CEC instruction “On the order of voting and counting of votes at the polling station” indicates that the number of ballots cast into mobile ballot boxes should be equal to the number of written requests. Furthermore, the CEC “Recommendations on the Organisation and Conducting of Voting” include a provision disqualifying mobile votes if the numbers do not match. The same regulations also apply to advance voting.

The mentioned provisions regulating the validity of mobile and advance votes should be incorporated into the law.

## **X. THE COUNT**

The CEC instruction “On the order of voting and counting of votes at the polling station” (articles 42-51) introduces major improvements on the procedures for the counting of votes. In combination with the CEC instruction (7 August 1999) “On the drawing up of protocols by Polling Station, District and Territorial Electoral Commissions”, CEC regulations now contain a satisfactory legal framework for the counting process if implemented. It is desirable that part of these regulations be incorporated in the election law, such as time limits (12 hours) to complete counting, packing away and cancelling unused ballot before starting the count and immediate dispatching of protocols to the upper election commission.

## **XI. TALLYING OF RESULTS**

The CEC instruction “On the drawing up of protocols by Polling Station, District and Territorial Electoral Commissions” introduces appropriate safeguards to parts of the process of the tallying of results. However, the process of tallying results should be further regulated in the legal framework. There is room for significant improvement in order to increase the level of transparency.

Apart from incorporating the main provisions in the above instruction on protocols, there is a need to introduce into the law a regulation of the work, especially time limits on tallying results at District and Territorial Election Commissions.

As already above-mentioned, CEC instructions must include procedures to ensure that the provisions in the law regulating non-interference with the work of election commissions and the right of proxies, observers and the media to be present at all stages of the election process, including the aggregation of results, are implemented properly.

Furthermore, public confidence in the election process is dependent on the prompt publication of election results. In order to enhance the level of transparency in the elections, the CEC should be required, within a very short time limit, say 48 hours, to publish the official results in the form of tables with all relevant details, which will enable all interested parties to audit the outcome of the elections from polling stations, through intermediate levels, to the CEC level.