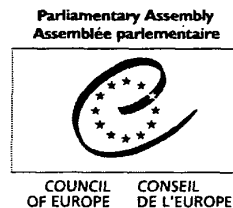


Parliamentary Assembly
Assemblée parlementaire



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**Ad hoc Committee to observe parliamentary elections in
Kazakhstan (19 september 2004)**

Report
Bureau of the Assembly
Rapporteur: Mrs Tana de Zulueta, Italy, Socialist Group

I. Introduction

1. On 27 April 2004 the Parliamentary Assembly of the Council of Europe and the Parliament of the Republic of Kazakhstan signed a co-operation agreement to establish a political dialogue with a view to promoting the principles of parliamentary democracy, the rule of law and respect for human rights and fundamental freedoms in Kazakhstan. Therefore, following an invitation by the Chairperson of the Central Election Commission of Kazakhstan, the Bureau of the Assembly decided on 7 September 2004 to set up an ad hoc Committee of up to 10 members to observe the parliamentary elections in Kazakhstan which took place on 19 September 2004 and appointed Mrs. Tana de Zulueta (SOC, Italy) Chairperson and Rapporteur of the ad hoc Committee.

2. Based on proposals by the political groups in the Assembly, the ad hoc Committee was composed as follows:

Socialist Group (SOC)

Mr Tadeusz IWINSKI
M. Jean-Marie LE GUEN
Mrs Tana de ZULUETA

Poland
France
Italy

Group of the European People's Party (EPP/CD)

Mr József ÉKES

Hungary

Liberal, Democratic and Reformers' Group (LDR)

Mr Zekeria AKÇAM
Mr Didier RAMOUDT

Turkey
Belgium

European Democratic Group (EDG)

Mr André KVAKKESTAD
Mr Aydin MIRZAZADE

Norway
Azerbaijan

Secretariat

Mr Vladimir DRONOV, Head of Secretariat, Interparliamentary Cooperation Unit
Mr Bas KLEIN, Deputy to the Head of Secretariat
Ms Farida JAMAL, Administrative Assistant

3. The ad hoc Committee acted as a part of the International Election Observation Mission (IEOM) which also included the election observation mission of the Parliamentary Assembly of the OSCE, and the election observation mission of the Organisation for Cooperation and Security in Europe's Office for Democratic institutions and Human Rights (OSCE/ODIHR).

4. Due to the specific situation in Kazakhstan, where the Parliament and Presidential Administration are based in the new capital Astana, but where several governmental services as well as foreign Embassies remain in Almaty, the ad hoc committee was split into two delegations to observe the elections in both Almaty and Astana. In total 2 teams observed the elections in and around Almaty and 3 teams in and around Astana. The ad hoc committee appointed Mr Zekeria AKÇAM (Turkey, LDR) as the spokesperson for the delegation that stayed in Almaty.

5.. From 17 to 20 September, in Almaty, the ad hoc committee met inter alia, with representatives of political parties competing in these elections, the Central Election Commission (CEC), the Media and local NGOs observing these elections, Ambassadors from Council of Europe member states, as well as the Head of the OSCE/ODIHR Election Observation Mission. In addition, in Astana the ad hoc committee delegation met, inter alia, with the President of the Republic of Kazakhstan, the Chairwoman of the CEC and the Speakers of the Majilis and Senate of Kazakhstan. The programme of the ad hoc committee meetings appears in Appendix 1.

6. In the opinion of the Committee, shared by the observers from the partner institutions in the IEOM the election progress in Kazakhstan was slowed due to lack of transparency and the elections fell short of OSCE and Council of Europe democratic standards in many aspects. The press release issued by the IEOM after the elections appears in Appendix 2.

7. The ad hoc Committee wishes to thank the OSCE/ODIHR Election Observation Mission in Kazakhstan and the Kazakh authorities for the co-operation and logistical support provided.

II. Political and legal context

8. Kazakhstan has a bi-cameral parliament, which under the 1995 Constitution – as amended in 1998 - has few powers beyond accepting or rejecting laws proposed by the President of the Republic. The lower house or Majilis of the parliament consists of 77 members elected for a 5 year term. Of these 77 members 67 are elected in single mandate constituencies and 10 are elected via a proportional system on the basis of party lists. The 39 member Senate is not directly elected; 32 of its members are elected by the 14 regional councils and the councils of the cities of Almaty and Astana while the 7 remaining members are appointed by the President of Kazakhstan.

9. The 19 September 2004 Elections were governed by the Constitutional Law on Elections in the Republic of Kazakhstan which was amended in 2004 as a result from a dialogue with the OSCE that started with the organisation of a series of round tables between 2000 and 2002 to address the shortcomings in the election law observed during the 1999 Parliamentary elections in Kazakhstan. In addition, several aspects of these elections were governed by other laws and legal acts such as the Law on Mass Media, Law on Political Parties and regulations of the Central Election Commission.

10. The 2004 amendments made several improvements to the election law such as a mechanism for political consultation in order to determine the composition of election commissions, equal opportunities for election contestants including equal media access during the campaign period, access for observers to the entire election process and the legal prohibition of undue interference in the work of election commissions by the authorities. However many areas of concern remain to be addressed such as guarantees for a balanced and pluralistic composition of election commissions, limitations on the right to be elected, the introduction of electronic voting, limitations on free speech and association, disproportionate sanctions leading to deregistration and the lack of a transparent and effective mechanism to deal with election complaints.

11. If implemented, the amended election law could have provided a basis for a more transparent and democratic election process. However the ad hoc committee notes with regret the apparent lack of political will on behalf of the authorities and election administration to implement the election law in an effective and impartial manner, resulting in elections that lacked transparency and which fell well short of internationally accepted democratic standards in many aspects.

12. The amendments on the election law allowed for the introduction of electronic voting (e-voting), which proved to be one of the controversial aspects of these elections. Many people, including President Nazarbayev and leaders of both pro-government and opposition parties, called for a cautious approach and only gradual introduction as not to undermine public confidence in the election process. However the State Commission responsible for making the decision to establish e-voting was not formed until five days before the elections and the decision on the scope of the e-voting, including the polling stations in which the system would be used, was only made on 16 September, which left some polling stations ill prepared.

13. The e-voting system, partially developed in Belarus, was designed to manage the electronic voter register through electronic voter registration, enable electronic balloting, report periodical voter turnout to the CEC and enable fast tabulation of the election results, as well as completion of the protocols, at polling station level. The ad hoc committee regrets that the electronic voting system was not independently certified which would have increased voter confidence in the system. The system was reviewed by a group of experts invited by the CEC but the ODIHR EOM e-voting expert was not allowed access on the grounds of confidentiality. Although there were no grounds to suspect irregularities in the system designed, two main shortcomings were identified by international observers:

- (a) the system does not produce a "paper trail" – a printed copy of the electronic ballot which is then put in a ballot box by the voter - and therefore lacked a manual audit capacity or the possibility for a recount;
- (b) on request the system generated a personal PIN code, which could be used by the voter to check the final protocols. However if given to a candidate, party or employer, this PIN code could also be used to demonstrate how the voter had voted, infringing on the secrecy of the vote and creating a possibility for intimidation.

14. Two days before the vote the CEC decided to add paper based voting as an option in those polling stations that had been selected for electronic voting, thus providing the voter a choice between two options. However the voters' lists for the paper ballot and the e-voting system were not integrated and therefore allowed for confusion and the possibility of multiple voting.

III. Election Administration

15. The election administration in the Republic of Kazakhstan operates on four levels. The first level is the Central Election Commission; the second level is the 16 Regional Election Commissions (REC); the third level consists of 67 Constituency Election Commissions (ConEC) for the majoritarian elections and 159 District Election Commissions for the proportional elections; and the fourth level for both elections consist of 9.480 Precinct Election Commissions (PEC).

16. All election commissions consist of 7 members. The members of the CEC are appointed by the Majilis, based on the proposal of the President of the Republic. All other election commissions are elected by the corresponding Maslikhats (Regional Councils), based on proposals by political parties. However the resulting composition of the election commissions on all levels was strongly biased in favour of the pro-presidential parties and thus did not meet the requirement of an impartial and pluralistic election administration which was an issue of concern for the ad hoc committee.

17. The CEC functioned in a non-transparent manner and took arbitrary and selective decisions. To best of our knowledge the CEC did not meet in an open session with the legally required quorum since the beginning of the campaign period but made several far reaching decisions behind closed doors without quorum.

18. The ad hoc committee regretted the apparent reluctance of the election commissions on all levels to take adequate decisions on official complaints filed with them, instead referring these complaints to other authorities. Often complaints were referred to a Public Council; composed of representatives of the parties, government and election administration, but which has only the power to make recommendations. The ad hoc committee in this respect was glad to note the active role of the Prosecutors Office in filling the gaps in the complaint process, although their involvement provides for a less transparent and independent method of dealing with complaints than would be the case in the courts and election commissions.

19. The IEOM welcomed the extensive voter information and education programme that was organised by the CEC around the country as well as the efforts by the CEC to improve the voters' lists

in comparison to previous elections. Contrary to the CEC, the lower level election commissions operated in a more open and transparent manner.

IV. Pre-election period

20. In total 12 political parties, four of which had formed two political blocs, participated in these elections, giving the voters a real choice on Election Day. In total 104 candidates were registered on the party lists and 623 candidates, among them a several independent candidates, registered for the majoritarian races. Of the 12 parties 3 describe themselves as opposition: the Democratic Choice of Kazakhstan (DCK) which formed an election bloc with the Communist Party of Kazakhstan, and the Ak Zhol Party which split off from the DCK and which includes many former associates of President Nazarbayev. The two most active pro-presidential parties are OTAN, of which the President is an honorary Chair, and Asar, which is led by the President's daughter Diriga Nazarbayeva. Two other pro-presidential parties, the Agrarian Party and the Civic Party formed an election bloc called AIST, while the remainder of the parties seemed to have relatively little public support.

21. Two prominent opposition leaders, Galymzhan Zhakiyanov of the DCK and Bulat Abilov of Ak Zhol, were refused registration as candidates due to convictions that are widely viewed as politically motivated. Moreover, both parties faced a pattern of interference in their election campaigns, including the detention by the police of party activists and the interference of local authorities in the organisation of campaign events.

22. The IEOM received numerous allegations of bias in the decisions of local authorities as well as the use of administrative resources in favour of the pro-presidential parties. Moreover, considerable pressure, mounting to intimidation, was placed on voters, especially by local government officials and supervisors in the workplace. The ad hoc committee would like to stress that, in its opinion; such issues have no place in a democratic society.

23. In total 32 candidates were deregistered for these elections. The ad hoc committee regrets that some of the decisions to de-register candidates were made on questionable grounds and some very close to Election Day, leaving no time for an effective appeal process.

24. The number of registered voters varies greatly between the different Majilis constituencies, which infringes on the principle of equal representation.

25. An issue of concern in Kazakhstan is the structure of ownership and control of the electronic mass media which is firmly in the hands of people belonging to, or close to, the President's family. Not surprisingly therefore the electronic media showed a strong bias in favour of the pro-presidential parties, in contravention of the media regulations that were adopted by the Kazakh authorities. In the last week of the campaign, on the basis of a CEC *recommendation* television broadcasters discontinued the broadcast of a paid television spot of the DCK that figured the imprisoned DCK leader Galymzhan Zhakiyanov. The speed, with which these ads were pulled off the air, as well as the questionable legal basis for doing so, raises questions about the impartial implementation of the media regulations that governed these elections.

26. The IEOM welcomed the organisation by the CEC of 7 debates on central television between all contesting parties and blocs. While restrictive in format these debates offered the opportunity to the public to be informed about different political alternatives in making their choice on Election Day.

27. The printed media offered a more divers coverage of the campaign, although most publications showed an editorial bias in favour of one party or the other.

V. Election day -Vote count and tabulation

28. The proceedings on election day were marred by the introduction of electronic voting and the late decision to also allow paper based balloting in those polling stations selected for electronic voting, which increased confusion among voters. The electronic voting system increased the opportunity for proxy voting – voters were registered by scanning a bar-code on their IDs which often were not checked against the person – and the use of two voters registers allowed for the possibility of multiple voting.

29. In many polling stations where electronic voting was introduced international observers noted that voters had problems to complete voting procedure without help from members of the election commission. In several places this help was extended to telling the voter how to vote.

30. The ad hoc committee is concerned about the presence of members of the police and secret service inside a large number of polling stations, at times assisting the election commissions in their work. Especially the open presence of members of the secret services can intimidate voters casting their vote.

31. The IEOM noted that the paper and electronic voter lists did not correlate and that a significant number of voters were not on either lists. Many were added to the voters list, but also many were turned away. The arbitrary manner in which voters were added to the voters' list increased the non-transparent nature of the election process and disfranchised a number of voters.

32. Observers noted a large presence of party observers in all polling stations. However, in some occasions party observers did not seem to recall the party they were representing, raising doubts about the objectivity of their role as observers. Independent domestic observers were present in a number of polling stations.

33. The counting and tabulation processes were problematic, partly due to the parallel processes for the electronic and paper based vote. Moreover observers noted the presence of unauthorised people, lack of control over the ballots and failure to post the results protocols in a large number of polling stations.

V. Conclusions and recommendations

34. The 19 September 2004 Parliamentary Elections in the republic of Kazakhstan did not meet Council of Europe, OSCE and other internationally accepted standards for democratic elections.

35. The Election Law as amended in 2004, although a step forward in comparison to previous elections, is clearly not a satisfactory basis for the conduct of democratic elections. The ad hoc committee calls upon the Kazakh authorities to further amend the election law, and other laws and legal acts governing elections in Kazakhstan, in line with the recommendations made by the IEOM and this ad hoc committee. The requested changes to the election law should be finalised well in time before the presidential elections that are foreseen to take place in 2006

36. The improvement of the election process in the Republic of Kazakhstan should be a main topic in the political dialogue as foreseen in the co-operation agreement signed between the Parliamentary Assembly and the Parliament of Kazakhstan. Furthermore, the Parliament of Kazakhstan should request the opinion of the Council of Europe's Venice Commission on any changes to laws governing elections, as it is invited to do in the co-operation agreement.

37. The co-operation agreement further stipulates that the Kazakh Parliament will report every year to the Bureau of the Assembly on the progress achieved on the principles laid out in paragraph 1 of the agreement as well as on the issue of the death penalty. The ad hoc Committee would like to suggest to the Bureau that it specifically asks the Kazakh parliament to include in its report the progress achieved on the recommendations made by both the IEOM and the ad hoc committee. Furthermore it would suggest to the Bureau that it includes the report of the Kazakh Parliament on the agenda of the summer 2005 part session as part of its progress report to the Assembly.

38. Clearly, an improved election law will only bring the election process in Kazakhstan closer to internationally accepted democratic standards if it is implemented consistently and impartially. The political will of the Kazakh authorities to improve the election law before, and implement it consistently during, the next presidential elections should be a key factor in evaluating the co-operation agreement between the Kazakh Parliament and the Parliamentary Assembly.

39. Electronic voting can increase the efficiency of the election process and increase the public confidence in elections as it reduces the possibilities for human error and manipulation during the vote count and tabulation. However the shortcomings of the electronic voting system in Kazakhstan as mentioned in this report, most notably the absence of a paper trail and independent certification of the system, undermine the advantages that the system could bring. The ad hoc committee therefore calls upon the Kazakh authorities to build into the electronic voting system the functionality of generating a

paper trail; create a provision in the election law for the manual recount in randomly selected polling stations and allow for the certification of the voting system by experts of the OSCE/ODIHR in time before the forthcoming Presidential elections.

40. Your rapporteur noted the presence of two members of the European Parliament who were observing these elections in their personal capacity, outside the framework of the IEOM; thus creating the impression of contrasting views between the three parliamentary partners. To preclude any such activities in the future, it would be useful to address this issue at a forthcoming meeting with the European Parliament in order to ensure better cooperation and to allow for an effective election observation.

41. The ad hoc committee strongly recommends that the Assembly will also observe the forthcoming Presidential Elections in 2006.

APPENDIX 1

**AD HOC COMMITTEE FOR THE OBSERVATION OF
PARLIAMENTARY ELECTIONS IN KAZAKHSTAN
(19 SEPTEMBER 2004)**

**COMMISSION AD HOC SUR L'OBSERVATION DES
ELECTIONS PARLEMENTAIRES EN KAZAKHSTAN
(19 SEPTEMBRE 2004)**

**HOTEL: REGENT
ZHELTOKSAN STREET
ALMATY
TEL + 7 3272 505 000
FAX + 7 3272 582 100**

**PROGRAMMES
17 -20 September 2004**

Almaty

Friday, 17 September (15:00-19:00)

Time	Event	Locations
10:00	PACE Breakfast meeting	Regent Ankara
15:00-16:00	Meeting with OSCE/ODIHR EOM	Regent Ankara, "Abai" Meeting Room
16:00-16:15	Coffee Break	Regent Ankara, Abai Room foyer
16:15-17:00	<u>Meeting with CEC/Almaty Commission:</u> Daulet Baideldinov, Chairman of Almaty City Election Commission Margarita Kukharevskaya, Representative of CEC	Regent Ankara, "Abai" Meeting Room
17:00-18:00	<u>Meeting with embassies</u> 1) Mr. John Penny, Deputy Head of Mission, Mr. Alessandro Liamine, Political Officer 2) Ambassador Vladimir Babichev, Embassy of Russian Federation 3) Mrs. Deborah Minnuti, Chief of Political Section, Mr. Zach Thomas, Political Officer, Mr. Rysbek Kasymbala, Political Section 4) Mrs. Chirstina Petrova, Charge d'Affaires, Embassy of Bulgaria 5) Ambassador Peter van Leeuwen, Embassy of Netherlands or Mr. Geoffrey van Leeuwen, Deputy Head of Mission	Regent Ankara, "Abai" Meeting Room
10:00-10:30	Raushan Sarsenbayeva, Republican Party "Asar"	Regent Ankara Hotel, Abai Room
10:30-11:00	Alikhan Baimenov, Chairman, Democratic Party of Kazakhstan "Ak Zhol"	
11:00-11:30	Azat Peruashev, Chairman, Electoral Bloc "AIST" (Agrarian and Civic Party)	
11:30-12:00	Asyibek Kozhakhmetov, Chairman, Democratic Choice of Kazakhstan Serikbolsyn Abdidin, Chairman, Communists Party of Kazakhstan	
12:00-12:15	Coffee Break	
12:15-12:45	Amangeldy Yermegiyayev – Chairman, Republican Party "OTAN"	

12:45-13:30	<u>Meeting with media representatives:</u> 1) Gulzhan Yergaliyeva – Soz Newspaper 2) Sergey Duvanov – Journalist, International Bureau for Human Rights 3) Nail Ishmukhamedo, Editor in Chief Interfax Kazakhstan 4) Erlan Akchalov, Editor, “Sobstvennoje Mnenije”, program 31 Channel 5) Abdildina Zhanar – Khabar Agency 6) Sergei Vlassenko – Centre for the Support of the Media (ABA/CEELI) 7) Yuriy Mizinov – Navigator Internet Newspaper (TBC)	
13:30-14:15	Pavel Lobachev – President, Elections and Democracy Network Dosym Kushim – President, Republican Network of Independent Monitors	Regent Ankara Hotel, Abai Room
14:15– 14:30	Briefing by LTOs	Regent Ankara Hotel, Abai Room

Sunday 19 September 2004
Deployment and Election observation

Monday 20 September 2004
Debriefing

ASTANA*Saturday 18 September 2004***HOTEL CASPIY****ASTANA****TEL : +7 3172 22 43 54****FAX : + 7 3172 22 99 85***Saturday 18 September 2004***Meetings in Astana:**

09:15	Meeting with the acting Minister of Information, Mr O. Riabchenko
11:00	Meeting with the Chairman of the Constitutional Council, Mr I. Rogov
12:00	Meeting with the President of the Republic of Kazakhstan, Mr N. Nazarbayev
15:00	Meeting with the Chairman of the Senate of Parliament, Mr N. Abykayev
17:00	Meeting with the Chairman of the Central Electoral Commission, Mrs Z. Baliyeva
17:45	Meeting with the Chairman of the Majilis of Parliament, Mr Zh. Tuyakbai

Evening: Meeting of the Heads of the PACE (Mme Zulueta) and OSCE PA delegation-- Mr Ibor OSTACH

Sunday 19 September 2004

Deployment and Election observation

Monday 20 September 2004

Debriefing

Press Conference

Departure for Almaty

APPENDIX 2

PRESS RELEASE

**Election progress in Kazakhstan slowed due to lack of transparency,
observers report**

ASTANA, 20 September 2004 – The 19 September parliamentary elections in Kazakhstan fell short of OSCE and Council of Europe standards in many respects. Of particular concern were the failure to fully implement improved election legislation and the manner in which electronic voting was introduced, which did not contribute to the confidence of the electorate in the election process, concludes the International Election Observation Mission (IEOM) in a statement, issued today. Over 300 international observers from 33 countries monitored the voting and counting on behalf of the OSCE and Council of Europe.

"It is disappointing that the improved election legislation did not result in a more transparent election than we witnessed yesterday," said Ihor Ostash, Vice-President of the OSCE Parliamentary Assembly, appointed by the OSCE Chairman in Office as the Special Co-ordinator for the Short-term observers. "However, we did note some improvements from previous elections and we stand ready to continue the work with the election authorities to strengthen both the legislation and the process."

Tana de Zulueta, Head of the Parliamentary Delegation of the Council of Europe, whose Parliamentary Assembly recently signed a co-operation accord with the Parliament of Kazakhstan, added: "The voters had a real choice with 10 parties and blocks registered, including an opposition party that had been refused registration in previous elections. However, the seemingly politically motivated convictions of two prominent opposition leaders and lack of political balance in the composition of election commissions were worrisome, as well as evident media bias in favour of the pro-presidential parties."

Ambassador Robert L. Barry, Head of the Long-term Observation Mission, deployed by the OSCE Office for Democratic Institutions and Human Rights, concluded: "Our observers reported confusion and inconsistency on election day. The lack of transparency in the work of the Central Election Commission throughout the process, and last-minute decisions on parallel electronic and paper voting created confusion in many polling stations, during voting and counting. The discrepancy between the number of names on the paper and the electronic voter lists is of concern."

Despite the shortcomings in the election process, the IEOM recognized improvements regarding media and registration. Domestic observers were given more legal rights which provided them with greater access to the process. Seven TV debates, albeit restrictive in format, gave the respective parties opportunities to inform the public of their views. There were no cases of media outlets being shut down or journalists being prosecuted. Official voter education efforts were carried out professionally and effectively.

Election day proceeded calmly, but the closing, counting and tabulation were problematic. Over 50 per cent of observers reported unauthorized persons in polling stations during counting and widespread failure to post result protocols. The accuracy of the voter register was compromised due to voters being added to the list, voters being turned away at the polling station, and the significant discrepancy between paper and electronic voter lists. Many cases of group voting and of domestic observers being denied full access to polling station procedures, in spite of new legislation which allows them access, were reported.

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