



OSCE/ODIHR Submission of Information for the Universal Periodic Review Process

Kazakhstan, 20th Session, (Oct-Nov 2014)

Background

Kazakhstan is a participating State in the Organization for Security and Co-operation in Europe (OSCE) and has thus undertaken and reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹ The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) has been mandated by OSCE participating States, including Kazakhstan to assist them in implementing their human dimension commitments. OSCE/ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area. The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation Kazakhstan and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms.

Overview of this Submission

This submission contains references to the findings and recommendations issued from: the Electoral Observation Mission reports on the 3 April 2011 early presidential election and the 15 January 2012 early elections to the Majilis; recommendations contained in reports on legislative reviews conducted by ODIHR; and the Annual Hate Crime Report compiled by ODIHR. Links to the full reports/reviews/opinions are provided in footnotes

Election-related activities

Following an invitation from the Ministry of Foreign Affairs of the Republic of Kazakhstan, the OSCE/ODIHR on 1 March 2011 deployed an Election Observation Mission (EOM) for the 3 April early presidential election. The OSCE/ODIHR EOM was headed by Ambassador Daan Everts and consisted of 16 analysts and 28 long-term observers (LTOs) from 27 OSCE participating States, who were based in Astana and 13 regional centers. For election day, the OSCE/ODIHR EOM joined efforts with a delegation of the OSCE PA. In total, there were 380 STOs, including over 260 seconded by 43 OSCE participating States. The final report concluded that “*needed reforms for holding genuine democratic elections still have to*

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2

materialize as this election revealed shortcomings similar to those in previous elections. While the election was technically well-administered, the absence of opposition candidates and of a vibrant political discourse resulted in a non-competitive environment.” The full final report including all recommendations is annexed.²

In response to an invitation from the Ministry of Foreign Affairs of the Republic of Kazakhstan, ODIHR deployed an Election Observation Mission (EOM) on 11 December 2011 to observe the 15 January 2012 early elections to the Majilis (parliament). The OSCE/ODIHR EOM was led by Miklós Haraszti and consisted of a 21-member core team based in Astana and 28 long-term observers deployed in 13 regions of the country. On election day, some 361 short-term observers from 41 OSCE participating States were deployed, including 44 members from the OSCE PA delegation and 15 from the PACE. As stated in the mission’s final report *“notwithstanding the government’s stated ambition to strengthen Kazakhstan’s democratic processes and to conduct elections in line with international standards, the 15 January early parliamentary elections still did not meet fundamental principles of democratic elections. The preparations were technically well administered and certain legal changes were passed, aimed at introducing at least a second party into the parliament; yet, the necessary conditions for the conduct of genuinely pluralistic elections, which are a prerequisite for functioning democratic institutions, were not provided for by the authorities.”* The full report, together with its recommendations, is annexed.³

Legislation reviewed by ODIHR

Upon request by authorities of a participating State, a OSCE field operation or another OSCE institution, the OSCE/ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org. In 2010-2013, the following legal were issued on legislation or draft legislation of Kazakhstan:

- *Comments on the Draft Law on the Parliamentary Opposition of the Republic of Kazakhstan (Opinion-Nr.: POLIT-KAZ/225/2013 [MA], issued on 18 March 2013).*
- *Comments on the Draft Law on Amendments and Addenda to the Law on the Judicial System and Status of Judges of the Republic of Kazakhstan (Opinion-Nr.: JUD - KAZ/240/2013 [LH], issued on 16 December 2013).*
- *Note on the Regulatory Resolution of the Supreme Court of Kazakhstan on the Application of Criminal Legislation on Human Trafficking by Courts (Opinion-Nr.: TRAFF-KAZ/216/2012 (AT), issued on 28 November, 2012).*
- *Opinion on the Calculation of Time Limits in the Constitution of the Republic of Kazakhstan (Opinion-Nr.: CONST-KAZ/202/2012, issued on 14 March 2012).*
- *Opinion on the Draft Laws on Access to Information of the Republic of Kazakhstan (Opinion-Nr.: FOI – KAZ/204/2012 (AT), issued on 18 April 2012)*
- *Opinion on the Draft Law of the Republic of Kazakhstan on Access to Public Information (Opinion-Nr.: FOI – KAZ/164/2010 (AT), issued on 16 November 2010).*

² <http://www.osce.org/odihr/elections/78714>

³ <http://www.osce.org/odihr/elections/89401>

- *Joint ODIHR-Venice Commission Opinion on the Constitutional Law on the Judicial System and Status of Judges (Opinion No. 629 / 2011 / ODIHR Opinion Nr.: JUD–KAZ/186/2011 adopted at the 87th plenary session of the Venice Commission on 17 June 2011).*
- *Opinion on the draft Law of the Republic of Kazakhstan on the Regulation of Migration Processes (Opinion Nr. MIG – KAZ/183/2011 (AT), issued on 11 April 2011).*
- *OSCE ODIHR Opinion on the draft Law of the Republic of Kazakhstan on Administrative Procedures (Opinion-Nr.: GEN – KAZ/170/2010 (AT), issued on 29 December 2010).*
- *Comments on Article 99 of the Criminal Execution Code of the Republic of Kazakhstan (Opinion-Nr.: GEN– KAZ/157/2010 [AT], issued on 2 June 2010).*

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and the OSCE/ODIHR supports states in their implementation of those commitments. In this context, the OSCE/ODIHR produces an annual report on hate crime – *Incidents and Responses* – to highlight the prevalence of hate crimes and good practices that participating States, inter-governmental organizations and civil society have adopted to tackle them. It also helps participating States to design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating States’ criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

The report relies mainly on information and statistics provided by governments, since such data collection is primarily the responsibility of states, as is the responsibility to respond to hate crimes. As of 2012, 55 of the 57 OSCE participating States had appointed National Points of Contact on Combating Hate Crimes, to support ODIHR in its task of serving “as a collection point for information and statistics collected by participating States”. The bulk of information for the report was gathered through the completion of an online questionnaire by National Points of Contact. The questionnaire for 2012 contained questions about the following areas: data-collection methods; legislation; reported hate crime data; and policies and initiatives.

For the 2012 report⁴, the National Point of Contact from Kazakhstan submitted a completed questionnaire, and provided figures (58 hate crimes recorded by the police). Additionally, ODIHR sent requests for information on hate crime incidents in Kazakhstan to inter-governmental organizations and to international and local non-governmental organizations. For the 2012 report, none responded to the request.

Roma and Sinti issues

N/A

⁴ <http://tandis.odihr.pl/hcr2012/>

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

In 2010-2011 and 2013 ODIHR supported Kazakhstan by providing support in the development of effective national migration management systems, in particular on issues related to labour migration policies and migrant integration in line with OSCE commitments. To this effect, several training sessions aimed at building the capacity of Kazakh authorities in the area of labour migration (such as gender-sensitive approach to migration policy and integration of migrants) were conducted, in partnership with the Office of the Coordinator of OSCE Economic and Environmental Activities (OCEEA) and the OSCE Centre in Astana.

ODIHR assisted Kazakhstan in further reforming its criminal justice system in compliance with international norms. This assistance coincided with Kazakhstan's reform agenda which included the ongoing preparation of a new criminal code and criminal procedure code.

ODIHR organized the Expert Forum on Criminal Justice for Central Asia in 2010 in Kyrgyzstan⁵ and in 2012 in Kazakhstan⁶ with the aim of providing a regional platform for exchange of good practices and discussion on international standards and OSCE commitments in the area of criminal justice reform. Key reform issues for Kazakhstan such as the role of the judge, the prosecutor and investigator in the criminal process, the need for judicial authorization of pre-trial detention and the introduction of jury trials were debated at both Forums. Kazakh judiciary, prosecutorial offices, ministry of justice and interior, lawyers, academics and civil society participated in these regional events and shared their experience with counterparts from the region. As a follow-up to the 2012 Criminal Justice Forum, ODIHR conducted a regional roundtable on legal aid in criminal proceedings in May 2013 in Bishkek, highlighting the ongoing necessity in the region to offer professional and effective legal assistance to vulnerable defendants. Kazakh Ministry of Justice representatives, judges and civil society were present at the event.⁷

To better identify the areas of priority for its assistance, ODIHR prepared an analytical report in 2011 on Judicial Authorization of Pre-trial Detention in the Republic of Kazakhstan,⁸ on the basis of review of court decisions, observation of detention authorization hearings, interviews of judges, prosecutors and defence lawyers throughout 12 regions of Kazakhstan. The report concludes that despite judicial authorization of pre-trial detention being introduced in Kazakhstan, additional safeguards need to be put in place to ensure that defendants are entitled to judicial review of the legality of their arrest, as required under Kazakhstan's international obligations. In addition, the report found that additional reforms are needed to make pre-trial detention an exception rather than a rule as it was the case then.

Gender Equality and Democratic Governance

In Kazakhstan, ODIHR provided policy advice and assistance in building the capacities of democratic institutions to help them become more responsive, responsible to and representative of their citizens. ODIHR implemented activities in the following areas:

⁵ http://www.osce.org/odihr/criminal_justice

⁶ <http://www.osce.org/odihr/96743>

⁷ See <http://www.osce.org/odihr/101578>.

⁸ See report on following page: http://www.osce.org/odihr/criminal_justice

- In November 2012 in Astana, 70 women politicians representing parliamentary parties and the opposition in Kazakhstan participated in a roundtable-training event aimed at building their political leadership skills. Organized within the framework of ODIHR's "Women in Political Parties" project, the event highlighted ongoing challenges to women's political advancement within the country and the role of political parties in enhancing gender equality in political processes.
- ODIHR organized a follow-up Regional Workshop on Women's Political Leadership in November 2013 in Bishkek, Kyrgyzstan, which brought together 25 women leaders from Kazakhstan, Kyrgyzstan and Tajikistan to share good practices in supporting women's political leadership and enhance cross-party co-operation on gender equality issues; eight women politicians from Kazakhstan, including one MP, participated.
- The Head of the National Human Rights Centre of the Ombudsman of the Republic of Kazakhstan and the Senior Inspector of Almaty Akimat, Secretary of the Commission on Women and Family-Demographic Policy participated in the "Regional Expert Workshop for National Human Rights Institutions (NHRIs) on Gender Equality," held in June 2012 in Almaty. The event brought together 25 NHRI experts from Central Asia, the South Caucasus and Eastern Europe to discuss institutional efforts to protect and promote women's rights and gender equality, and share good practices as contained in ODIHR's *Handbook for National Human Rights Institutions on Women's Rights and Gender Equality* (available at: <http://www.osce.org/odihr/97756>). The Office of the Ombudsman of the Republic of Kazakhstan also contributed to the development of the above study, by submitting a detailed survey response and contributing to a Workshop for NHRIs on Gender Equality, held in Prague in March 2011.

Other assessments and recommendations contained in ODIHR reports on thematic human issues

N/A