

Kazakhstan: A new stage of political modernisation of the country

During the last two months significant changes occurred in the socio-political development of the Republic of Kazakhstan, which marked a new stage of political modernisation of the country.

On May 16th 2007 at the joint session of both chambers of the Parliament President N.Nazarbaev put forward draft constitutional amendments to the existing Constitution of the Republic of Kazakhstan, to be reviewed by the members of the Parliament.

On May 18th the Parliament adopted the law **“On introduction of amendments and addenda to the Constitution of the Republic of Kazakhstan”**, which entered into force on May 21st.

The spirit and the direction of the constitutional reform is to be found in the context of the recommendations of the State Committee for the development and making more concrete the democratic reform program, which were accumulated at a later stage by a working group made up of respected Kazakhstan lawyers dealing with the development of amendments and addenda to the main law of the country.

Overall 80% of constitutional amendments consist of suggestions, put forward during the two years of work of the mentioned State Committee, which Committee represented the whole political spectrum in the Republic.

After the adoption of the constitutional amendments the Parliament adopted a **package of constitutional laws**: “On the President of the Republic of Kazakhstan”, “On the Parliament of the Republic of Kazakhstan and the status of its members”, “On the government of the Republic of Kazakhstan”, “On the elections in the Republic of Kazakhstan”, which laws are the legislative base of the socio-political system of the country.

The constitutional reform involved the many legal norms of pieces of legislation and regulatory norms, concerning constitutional legitimacy, including functioning of political parties and NGOs and the protection of human rights and freedoms.

The main provisions of the constitutional reform can be summarised as follows.

Firstly, a more effective and balanced system of checks and balances is being formed, in the form of powers and responsibility between the branches of power alongside the strengthening of the Parliament role.

Part of the Presidential powers is being transferred to the Parliament, which Parliament is given the opportunity to form the Government, two thirds of the Constitutional Council, the Central Election Committee, the Vote counting committee, and to control their work.

The role and the status of the Senate are being strengthened, which Senate is now given the powers of the whole Parliament when the Majilis is absent.

Starting with 2012 the presidential term will decrease from 7 to 5 years.

The norm, which restricted the right of the President to carry out activity in a political party during his term in office has been excluded.

According to a unanimous decision of all the MPs, the first President of the Republic of Kazakhstan and the all-nation leader N.Nazarbaev is given an exclusive right and an opportunity to run for president for the third time, in addition to the legislatively prescribed two terms, naturally, alongside other candidates.

The powers of the President have been clarified vis-à-vis the Parliament, the Government, the Supreme Court, the Central Election Committee, the National bank and the akims – i.e the heads of the local executive bodies.

For example, the President now decrees not only the overall parliamentary elections to be held, but the elections to both its chambers separately. To guarantee the representation of national-cultural and other significant societal interests in the Senate, the head of state now approves 15 members instead of the usual 7.

The President is given the right of legislative initiative and the right to dissolve the Majlis only instead of the whole Parliament.

The head of the republic now appoints the prime minister with the agreement of the lower chamber of the Parliament only, and foreign, interior, justice, defence ministers, the chairman and the two members of the Central Election Committee are appointed by him independently. The President needs the approval of the Senate to confirm the chairman of the National bank.

The Maslikhats will have to give the President their agreement to appoint the akims of the regions/oblasts, the akims of large cities and the capital.

The lower chamber of the Parliament gains a bigger influence on the fate of the executive branch.

From now on the Prime-minister must apply for a vote of confidence to the newly elected Majlis, and it is now sufficient to have a simple majority for a vote of no confidence.

The introduction of the responsibility of the Government before the whole Parliament and not just before the President in effect means the beginning of the transition from the presidential to the presidential-parliamentary form of rule.

The number of MPs will increase from the current 116 to 154.

The norm that an MP must not bound by any imperative mandate is excluded.

Secondly, a wider participation on the part of the society in the management process is guaranteed through the strengthening of the political parties' role.

A proportional representation system for election into Majlis is introduced.

Concurrently, to foster further development of the societal consensus and to ensure ethnic groups representation in the highest legislative body of the country and further consolidation of the pluriethnic society, the Assembly of the People of Kazakhstan gained the status of the constitutional body together with the fixed quota of seats - 9 mandates in the lower chamber of the Parliament.

The transition to the procedure by which the Government is formed by the parliamentary majority party has been completed, which party shall be responsible for the activity of the Cabinet.

Depending on the outcome of the elections, partial state funding of political parties is introduced.

Thirdly, new opportunities to form democratic institutions and the new democratic culture are created.

From now on the maslikhats become the basis of local self-government, which maslikhats may be delegated state powers, according to the special law. Amongst those state powers are the participation in the appointment of the akims, the right to give a vote of no confidence by a simple majority.

To ensure the stability of local government the term for the maslikhats is extended from 4 to 5 years.

Fourthly, the independence and effectiveness of the judiciary is strengthened, the volume of guarantees to protect constitutional human rights and freedoms is widened.

The role of the High Judicial Council is strengthened, which council will now perform the functions of the now redundant qualification board of justice. The very same independent body will select the judges from a number of candidates, and will exercise other powers to perfect the judiciary.

The sanctioning of arrests by courts is introduced.

The article of the Constitution according to which inquest and preliminary investigation were separate from the courts and the procurator's office has been excluded from the text of the Constitution.

The amendment to Article 15 of the Constitution, which guarantees the right to life effectively cancels this type of punishment in Kazakhstan, as according to it, death penalty is by law the exceptional form of punishment only for grievous crimes committed in war time and terrorist offences, which caused loss of life, and the convicted have the right to petition for reprieve.

Therefore the constitutional reform became a concrete step towards the real democratisation of Kazakhstan.

These political transformations got a positive reception by both the international community and in Kazakhstan.

However the new constitutional reality was restricted by the legitimate term of the third Majlis – the lower chamber of the Parliament – until 2009.

The occurred political-legal conundrum was viewed by the society as a stumbling block in the way of political modernisation, and that is why on June 19th 61 MPs of the Majlis (80% of the lower chamber) came up with an initiative to appeal to the President to dissolve the third Majlis and to call early parliamentary elections.

In accordance with the revised Constitution, President N.Nazarbaev held the necessary consultations with the chairmen of the parliamentary chambers and with the Prime-minister, the parliamentary majority faction, which expressed

solidarity with the MPs position, and the President took a decision to dissolve the Majlis and to call new elections by party list to be held on August 18th of this year.

The election of the Majlis MPs, elected from the Assembly of the People of Kazakhstan – a unique representation of the various ethnic groups of the country - are to be held on August 20th 2007.

In doing so the elections to the Parliament will be combined with the elections to the local representative bodies – the maslikhats.

During the absence of Majlis the law-making activity will be carried out by the Senate of the Parliament, which is envisaged in the norms of the revised Constitution.

The nomination of MPs started on June 22nd. Local election committees have been set up and they are functioning now, and with the creation of such committees legal guarantees of representation were given to the officially registered political parties of Kazakhstan.

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During recent years purposeful activity to perfect the election law, has been carried out in Kazakhstan, and a number of ODIHR recommendations and suggestions have been implemented, from the ODIHR/OSCE Final reports on observing the Majlis elections in 2004, Presidential elections in 2005 and the Evaluation by the Constitutional Law Bureau of the Republic of Kazakhstan, “On the elections in the Republic of Kazakhstan”.

For example in April of 2004 a change was introduced to the Law on elections (article 89), which concerned the removal of the provision to cancel the candidate registration at the last moment (two days prior to voting).

In order to make the counting of votes easier and to assist partially sighted people the “Sailau” system has undergone changes, in particular the voting terminal has been equipped with sensor technology with larger script and a more user-friendly interface for partially sighted voters.

In April of 2005 the Law on elections (articles 60, 74, 90 and 119) was changed in relation to the last dates for removing nominations, as their absence makes managing the elections more difficult and can have a significant negative influence on the vote counting and on collating them in a table.

The decree of the Central Election Committee dated September 16th 2005, which introduces measures to increase the transparency and to improve the work of the election bodies, including the introduction and gradual use of the electronic voting system, open sessions of the Central Election Committee, the practice of publishing its decisions and the results of voting by polling stations on the official website of the Central Election Committee was welcomed by the ODIHR/OSCE mission.

In accordance with the recommendations of the ODIHR/OSCE, the Constitutional law of the Republic of Kazakhstan dated December 29th 2006 removed the norm of the law regarding the elections, which set restrictions in relation to any form of expressing interests and protests, from the moment of expiration of the term of pre-election campaign to the official publication of the election results.

On June 21st 2007 the renewed Constitutional law “On elections in the Republic of Kazakhstan” entered into force.

The amendments to the law are aimed both at the realisation of the constitutional reform and at the perfecting of the election law.

In accordance with the introduced changes to the Constitution, **a new procedure for the Majlis formation is set.**

It is decreed, that 98 out of 107 Majlis members are elected by party list by one national constituency on the basis of proportional representation system, and 9 members will be elected by the Assembly of the People of Kazakhstan.

In this connection a number of amendments have been introduced to the Law on elections, and overall they concern all stages of the election process.

Now **the right to nominate candidates for the Majlis by party list will rest with the political parties**, and in relation to the candidates elected by the Assembly of the People of Kazakhstan this right will rest with the Assembly’s Council.

The party list of Majlis candidates will be compiled by the majority of votes of the overall number of members of the supreme party body.

The party list must be alphabetical and it must be in the state/official language. The list must not exceed 127 candidates.

According to the law, those who went through the 7% barrier at the parliamentary party elections at their own congresses, can determine, after the elections, who exactly from the list will get a mandate in Majlis.

In accordance with the law, **there is a ban on forming parties into party blocs during elections.**

The law sets out **the term for nominating candidates for Majlis.** For example, the nomination for Majlis from political parties will start 2 months before and will finish 40 days before the elections and the nomination of candidates elected from the Assembly of the People of Kazakhstan will start 15 days before and will finish 10 days before the elections.

The article of the law on elections relating to the regulation of the election contributions has been reviewed as well. Now the election contribution is not paid by the political party if this party got 7 or over 7 % of votes during the previous election. The political party, which got 5 to 7 % of votes during the previous elections, will pay 50%, and the political party which got 3 to 5 % of votes will pay up to 70% of the election contribution amount. The amount of the election contribution remains unchanged.

According to the law, **Central election committee now has the power to determine the procedure of production and issuing of absentee ballots for the right to vote.**

Article 20 of the law on elections has received a new treatment as well, according to which article MPs, members of maslikhats, members of other bodies of local self-government, presidential candidates, authorised persons of candidates, judges and other officials can not be members of the election committees.

In addition, the introduced amendments **clarify the status and powers of local observers and foreign observers, international organisations, foreign mass media representatives** as well as the **powers of the authorised persons of nominated MPs.**

The Constitutional law “On elections in the Republic of Kazakhstan” took the following suggestions of the ODIHR/OSCE into account:

- **Political parties which have no representatives in the election committees, now have the right to second their representative which will have the right of deliberative vote for the period of preparation and implementation of the election campaign. The representative of the political party with the right of deliberative vote has the right to make a speech at a session of the election committee, introduce suggestions in relation to the issues which are part of the election committee remit, and have the right to appeal against the action (or inaction) of the election committee to the superior election committee or to the court of law (article 20, para 6).**

The procedure of production and issuing of absentee ballots for the right to vote has been detailed.

The powers of the Central Election Committee have been widened in that it now “determines the procedure of production and issuing of absentee ballots for the right to vote” (article 12, sub-para 6-1).

Para 6-1 of article 41 has been supplemented by parts two and three of the following content: “The absentee ballot is not issued to the voters willing to vote in a different constituency or polling station within the confines of one and the same territorial unit. The issuance of absentee ballots must stop at 1800 local time on the day, preceding the voting day”.

On June 25th 2007 the Central Election Committee of the Republic of Kazakhstan approved the Instruction on the procedure of production and issuing absentee ballots for the right to vote, which details the procedure of the production and issuing of the absentee ballots, and contains the provisions, aimed at the increasing the responsibility of the election committees, which issue the absentee ballots, and at the ensuring the effective control and accountability.

- **The law details the procedure of complaints during the period of preparation and carrying out the elections, against the superior election committee and through the court of law (article 20, para 9; article 20-1, sub-para 2-6 and 2-12; article 89, sub-para 6-5; article 89, para 7).**

- **The suggestion of ODIHR/OSCE to detail the procedure and the conditions of pre-election campaigns has been taken into account.**

On June 25th 2007 the Central Election Committee of the Republic of Kazakhstan has adopted “The rules of carrying out pre-election campaign through mass media and on the informational provisions for the elections”.

According to the Rules, the pre-election campaign for the party list Majlis candidates is to be carried out purely with the funds of the election fund of the political parties they are members of. At the same time, the state grants them the right to “participate in the television debates broadcast by one television channel only, which will be broadcast to the whole of the Republic, according to the choice of the Central Election Committee”. The candidates to be elected to the maslikhats are guaranteed, by the state, the minimum of 15 minutes of TV broadcast and 10 minutes of radio broadcast, as well as the publication of two articles in the printed media. They are also allowed to campaign using the financial resources of their own election fund.

We think that the renewal of the legislative base of the Republic of Kazakhstan in the context of the ODIHR/OSCE recommendations and the suggestions of the civil society institutions of the Republic of Kazakhstan will aid further democratisation of the country and the successful elections.

Kazakhstan is ready for mutually beneficial and productive cooperation with the international institutes in the sphere of democratisation and human rights protection.