

(December 5, 2005)

I. Executive Summary

The European Network of Election Monitoring Organizations (ENEMO) is in Kazakhstan to observe the presidential election under the auspices of the National Democratic Institute's election-related activities. ENEMO has concluded that the election of the president of Kazakhstan was not in conformity with a number of international standards for free and fair elections. Violations during the pre-election period and on Election Day, as well as problems with accreditation of international observation missions, and journalists, make it impossible to conclude that the election process in the Republic of Kazakhstan was open and transparent. The main problems in the pre-election period were: limitations on the rights and freedoms of voters; interference by the General Prosecutor, the Ministry of Foreign Affairs and the immigration police and other governmental institutions in the election process; and the unequal treatment of presidential candidates in Kazakhstan's press. On Election Day, transparency was enhanced by an informative CEC Web site and the election commissions at all levels quickly addressed concerns brought to them by observers on election day. Voting was, however, marred by problems with electronic voting, and instances of coercing students to vote. ENEMO is still collecting information about the vote count.

Thirty short-term ENEMO monitors observed the voting and tabulation at more than 310 polling stations. Ten long-term ENEMO observers monitored the pre-election campaign period from November 19 to December 3, 2005, in six oblasts of the Republic of Kazakhstan: (Mangistau oblast (Aktau), South Kazakhstan oblast (Shimkent, Taraz), North Kazakhstan oblast (Petropavlovsk), Kostanai oblast (Kostanai), Akmolinsk oblast (Astana), Almaty oblast (Almaty). The duration of ENEMO's long-term observation mission was reduced as a result of difficulties encountered in obtaining accreditation, which is described below.

ENEMO is a network of 18 nongovernmental organizations from 16 countries of the former Soviet Union and Eastern Europe, which have conducted large-scale observation missions in their own countries for many years. In general, the organizations participating in ENEMO have observed more than 140 election campaigns at the national level, have taken part in more than 40 international missions, and have trained more than 100,000 observers. ENEMO seeks to advance democratic processes through unbiased observation of electoral campaigns, and of compliance of electoral processes with relevant national legislation and international standards for democratic elections

Representatives of 10 member organizations of ENEMO from nine countries – "Society for Democratic Culture" (Albania), "Committee of Voters of Ukraine" (Ukraine), "It's Your Choice" (Armenia), "Viasna" and "Partnership" (Belarus), "Election Monitoring Center" (Azerbaijan), "International Society for Fair Elections and Democracy" (Georgia), "Coalition for Democracy and Civil Society" (Kyrgyzstan), "Pro-Democracy Association" (Romania), and "Voice" (Russia), are in Kazakhstan to observe the elections..

On October 27, 2005, ENEMO, together with 20 other leading intergovernmental and international organizations endorsed a set of Principles for International Election Observation, in New York at the United Nations. Other signatories included the OSCE, the European Commission, the Parliamentary Assembly of the Council of Europe, the UN Election Assistance Division and NDI.

ENEMO will distribute a final report with recommendations on improvements to the electoral process to the media, government agencies, the Central Electoral Commission, political parties and public organizations, missions of international organizations and embassies.

II. PRELIMINARY FINDINGS REGARDING THE ELECTION LAW AND THE PRE-ELECTION PERIOD

1. Observers have identified a number of inconsistencies between Kazakhstan's electoral legislation, processes and international standards for open and democratic elections.

The Ministry of Foreign Affairs of the Republic of Kazakhstan refused to submit to the Central Election Commission for requests for accreditation from a number of international missions in violation of international standards. These include ENEMO and another NGO called "Elections and Democracy." The annulment of accreditation of the non-governmental Election Observation Mission of the Commonwealth of Independent States (CIS-EMO) on November 18 two weeks after it received accreditation also constitutes a violation.

This action contravenes international commitments undertaken by the Republic of Kazakhstan; in particular paragraph 8 of the "1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE." The Copenhagen document recognizes private, non-governmental organizations and establishes a commitment among OSCE member states to invite them to observe elections. Observers agree to refrain from interfering in the electoral process.

However, on November 7, 2005 the MFA refused to present ENEMO international observers' credentials for accreditation to the Central Electoral Commission. On November 16 took a similar action with regard to "Elections and Democracy" mission.

The immigration police subsequently attempted to force individuals who might have sought ENEMO accreditation to leave Kazakhstan entirely without clear legal grounds. The immigration police temporarily expelled 12 such individuals. (Of all international observers and journalists expelled from Kazakhstan in this way, only the case of three Ukrainian journalists was considered in court and the court ordered them held for five days and then deported.)

It is troubling that law enforcement agencies and the MFA have played such central roles in determining the fitness of potential election observers, to some extent filling roles more traditionally filled by election commissions and courts. Moreover the MFA's stated legal reason for denying ENEMO accreditation is without foundation. According to a letter from the Deputy Minister of Foreign Affairs, V. Zverkov, the CEC's refusal to accredit the ENEMO mission was primarily based on Subparagraph 7 of Article 1 of the Law of the Republic of Kazakhstan of May 30, 2005 "On international agreements of the Republic of Kazakhstan." The government claimed that ENEMO does not fall under the definition of an international organization. However, in fact ENEMO is not the type of organization covered by this law, which is meant for signatories to international agreements with the government of Kazakhstan. In addition, ENEMO clearly does qualify as an international organization under paragraph 8 of the Copenhagen document.

Formation of Election Commissions

Based on initial observations in the campaign period, ENEMO notes concerns about the manner of formation of election commissions, potentially raising questions as to the ability of the commissions to

remain impartial. ENEMO regrets that it was not able to track the entire process of formation of commissions because its monitoring of the campaign period was disrupted, as described above.

2. ENEMO international observers, identify the following primary violations of the Constitution.

A. Restrictions of Rights and Freedoms of Voters

A restriction of the rights and freedoms of voters is found in paragraph 6 of Article 44 of the Constitutional Law "On Elections in the Republic of Kazakhstan", which states that "from the moment of termination of election agitation and until official publication of election results any forms of expressing public, group or personal interests, or protest contributing to pressure on voters or members of election commissions, are prohibited". This restriction also contradicts Article 32 of the Constitution of the Republic of Kazakhstan, according to which "Citizens of the Republic of Kazakhstan have the right peacefully and without weapons to gather, conduct meetings, demonstrations and processions and pickets", as well as with Paragraph 1 of Article 12 of the Constitution of the Republic of Kazakhstan. It states that "In the Republic of Kazakhstan human rights and freedoms are respected and guaranteed in accordance with the Constitution".

B. Unequal (quantitative and qualitative) representation of information about the presidential candidates in the mass media deprives voters of the ability to obtain objective information about candidates and the course of election campaign.

ENEMO conducted a review of the media, including four central TV channels (KTK, Habar, Kazakhstan, Channel 31), nine national newspapers (Panorama, Zhas Alash, Kazakhstanskaya Pravda, Vremya, Egemen Kazakhstan, Svoboda slova, Zhuma Times, Zhetesu, Express K) and 15 regional periodicals (Almaty Akshamy, Vechernyaya Astana, Akmolinskaya Pravda, Kostanaiskie novosti, Yuzhny Kazakhstan, Yuzhny Express, Zhambyl-Taraz, Ogni Mangistau, Tumba, Magnolia, Zhetesu, Lada TV plus, Dobry vecher, Nasha gazeta, and Novy region).

This analysis indicated that a disproportionate amount of coverage was provided to President Nazarbaev and that this coverage was overwhelmingly positive.

III. PRELIMINARY ELECTION DAY FINDINGS

Summary of Findings - Election Day December 4th 2005

ENEMO observed the organization of the voting process at 310 polling stations in Astana and Almaty, as well as in Akmolinskaya, South Kazakhstan, Mangistau, Kostanai and North Kazakhstan oblasts.

Observers noted a generally high standard of organization of the voting process during election day. For example transparency was enhanced by an informative CEC Web site and the election commissions at all levels quickly addressed concerns brought to them by observers on election day. Among other positive features of the voting process, ENEMO wishes to emphasize the opportunity to observe elections afforded local non-partisan public organizations, particularly the Republican Network of Independent Observers (RNIM). RNIM was able to field about two thousand observers on election day. Denial of access for observers to polling stations was usually temporary and was immediately corrected upon intervention of higher level electoral commissions

Unfortunately, in spite of these achievements, election day was marked by a number of serious violations of the standards of free and fair elections, such as intimidation of voters, forced voting, violation of the secrecy of voting, as well as inaccurate compliance with voting procedure.

ORGANIZED PRESSURE ON VOTERS

Local government authorities in several oblasts organized compulsory attendance of voters. ENEMO observed this in districts throughout Kazakhstan. Observers were particularly concerned about the mass voting of students, and clearly organized control over their voting. The leadership of educational institutions forced students to use the electronic system of voting and then collected codes identifying voters, thus severely breaching secrecy of voting. Examples of the violation of the principles of secrecy and voluntary participation of students in voting were observed practically everywhere at polling stations organized on the territory of educational institutions.

- At the polling station #186 of Almaty City (Kazakh State University) observers noted chaos provoked by the mass concentration of students near the entrance to the polling station. When students entered the polling station, they had to report to the administrators of departments. Then they were directed to vote only through electronic voting. Upon leaving the polling station voters were forced to submit to unidentified persons pieces of paper with their personal code written down, which could be used to check how and for whom this person voted. At polling station 172 (Almaty) voting of students continued after 20.00.
- A similar situation occurred at the polling station # 110 Shimkent, where the administration of a higher educational institution brought students to the polling station in an organized way. Administrators kept lists of students who voted. These lists were seen by the observers, who also informed the oblast electoral commission.
- At polling station #295 more than half of those who participated in voting, i.e. 677 voters-students, were added to voters' lists on election day. Although they were not registered at this polling station they were allowed to vote. Moreover, the Chairman of the Precinct Election Commission failed to produce for observers the nearly 700 applications from students that should have been on file allowing students to vote in that polling place.

VIOLATION OF VOTING PROCEDURES

During election day electoral commissions committed procedural violations that hampered the smooth organization of voting. Although such violations do not always directly impact the results of voting, the frequency and distribution of violations of legislation regulating voting procedures were sufficient to diminish public trust in election results. For instance, observers identified the following common violations:

- Main violations identified in all regions where observation took place: at more than 15 polling stations ballot-boxes were not sealed. (##54, 534 – Akmolinskaya oblast, ##108, 361, 368, 273,281,346,282,295, - Almaty, ##49,5,45,55 – Kostanai, polling station #593 Shimkent, 15 in Aktau.
- Police officers and other strangers were present at the voting sites. Observed at polling stations 334, 377, 249 – Almaty, #10 – Astana, №№ 991, 94, 25, 81, 222 – Shimkent.
- Cases of campaigning during the election day were observed. Such cases were confirmed at polling stations 25, 485, 94, 660, 656 of Shimkent, №63 of Almaty

- Posted examples demonstrating how to fill out ballots were absent in many polling stations. Polling stations # 214, 172, 190, 820, 192, 660 – Akmolinskaya region, # 61, 62, 63, 151, 7 – Astana, # 60, 59, 312, 311, 317, 159, 168, 161, 274, 272, 108, 361, 389, 385, 273, 279, 280, 310, 301, 302, 349, 346, 13, 12, 63, 4, 72, 35, 255, 245, 282, 295, 261, 201, 172, 186 – Almaty, # 52, 153, 560, 5, 572, 556, 548 – Kostanai, # 518, 228, 221, 227, 991, 222, 588, 589, 642, 846, 861, 521, 122, 186, 177, 523, 485, 449, 456, 910, 911, 912, 356, 94, 614, 625, 251, 219, 205, 187, 808, 182, 188, 536, 861, 81, 239, 356, 344, 656 – Shimkent.
- Practically everywhere there were cases of filling in protocols on opening of polling stations in pencil. Such cases were identified at the polling stations 74, 25 of Shimkent, for example. At polling stations 34, 377, 249 – Almaty, 518 Shimkent the protocol of the polling station opening was not filled in at all.
- Significant violations were identified during issuance of absentee ballots. For example, at polling station 377 – Almaty, 25, 518 Shimkent, information about issuance of absentee certificates to the voters was not included into lists of voters. At polling stations 65- Kostanai, 343,249 – Almaty, 74 – Petropavlovsk, 15 Aktau the data on the number of absentee certificates received by the polling station was not available.
- Most polling stations had problems with list of voters. Voters’ lists were not marked to indicate that someone requested mobile voting. This occurred at polling station # 190 Kokshetau, 108, 361 – Almaty, 49, 150, 153, 572 – Kostanai.

ELECTRONIC VOTING SYSTEM “SAILAU”

ENEMO observers noted the lack of transparency of the electronic voting system “Sailau.”. This method of voting and tallying remains non-transparent and poorly understood by many participants in the electoral process. Lack of transparency also means the electronic voting system enjoys little trust. Voters do not perceive a rational basis for choosing paper or electronic ballots and lack enough information to make an informed choice.

Electronic voting can also facilitate abuses, for instance, when pressure is inflicted upon such vulnerable groups as students and employees of government organizations, as noted above or because voters experience difficulties and often can not vote without help from outside (often from members of local electoral commissions). Such situations were documented at polling stations 272, 389 – Almaty, 15,16 332 – Kostanai because voters experience difficulties and often cannot vote without help from outside (often from local election commissions).

Also, poor understanding of the technical aspects of the system among both local electoral commissions and voters, led at several polling stations to failures in the process of voting and transmission of the data of electronic protocol, which therefore undermined trust in the integrity of electoral process.

IV. RECOMMENDATIONS

To improve the election legislation and administration of the electoral process of the Republic of Kazakhstan observers of ENEMO in Kazakhstan under the auspices of the National Democratic Institute’s election-related activities recommend:

Bring all legal standards and election laws in line with international standards; particularly with those of the “1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE”,

which met from June 5 – 29 1990. This includes continuing the dialogue between the government of Kazakhstan and the Office of Democratic Institutions and Human Rights of the OSCE over improvements to the election law.

1. Abolish the provisions in paragraph 6 of Article 44 of the Constitutional Law “On Elections” prohibiting any public expressions of group or personal interests, or protests aimed to influence voters or members of election commissions. Any restrictions on the rights of citizens (voters) to participate in peaceful gatherings and meetings after election day until the announcement of the election results are unacceptable. The expression of peaceful protest or support of results of elections according to Article 32 of the Constitution is a fundamental human right. Such restrictions also contradict Kazakhstan’s commitments to international standards in the sphere of human rights.
2. Legislate the preferred usage of paper ballots due to the concerns mentioned above in the report. The existence of two types of voting, electronic and paper, cannot be considered to be equal voting procedures consistent with the procedures set forth in the “1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE”.
3. Restrict the use of absentee ballots, which are cause for serious concern, as their usage cannot be observed or controlled. The Constitutional Law (“On Elections”) does not specify guarantees against violations related to absentee ballot voting. Such guarantees and restrictions on absentee ballots should be introduced.