

# **ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process**

**Participating/Partner State: Kazakhstan**

**UPR Session and Date of Review: 34th Session, 2019**

## **Background**

Kazakhstan has been a participating State in the former Conference for Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1992 and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.<sup>1</sup> The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in 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 in Kazakhstan.

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States to assist them in implementing their human dimension commitments. 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.

Upon request by authorities of a participating State, and OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension. 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](http://www.legislationline.org).

## **Legislation reviewed by ODIHR**

In 2014-2018, following legal reviews (on topics other than elections), where concerns still remain, were issued on legislation or draft legislation of Kazakhstan:

***ODIHR Opinion on the draft Law on Access to Information of the Republic of Kazakhstan and on related Amendments to other Legislative Acts (Opinion Nr: FOI-KAZ/268/2015), issued on 29 May 2015<sup>2</sup>***

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<sup>1</sup> Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

<sup>2</sup> ODIHR Opinion on the draft Law on Access to Information of the Republic of Kazakhstan and on related Amendments to other Legislative Acts, 29 May 2015 (available at: <http://www.legislationline.org/documents/id/19829>)

In its Opinion ODIHR welcomed the new Draft Law, which constitutes an improvement to earlier draft versions. At the same time emphasised that there was a need for greater clarity on the balance between the free access to information on the one hand and legitimate and necessary restrictions on the other. At the time of this submission, the Draft Law has not been adopted.

The Draft Law still relies on the assumption that there are certain types of information which are *per se* restricted, and other types of information which are accessible.

Based on the above, ODIHR recommended to remove the differentiation between restricted and non-restricted information throughout the draft Law, and replace it with a system whereby public information is *a priori* accessible to the public, unless there are serious and weighty reasons for non-disclosure as well as to introduce an independent Information Commissioner into the draft Law

***ODIHR Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan (Opinion Nr: TERR-KAZ/296/2016), issued on 6 October 2016<sup>3</sup>***

The Preliminary Opinion noted that the legal definition of “terrorism” and “extremism”-related offences in the Criminal Code of Kazakhstan needs further clarification in order to comply with the principles of legal certainty, foreseeability and specificity of criminal law, and to ensure that only “violent extremism” is criminalized.<sup>4</sup> The Opinion also concluded that certain provisions may unduly restrict the freedom of movement and the freedom to choose one’s residence, the right to freedom of expression – particularly in terms of access to the Internet and other communication tools, as well as the right to freedom of religion or belief.

In light of the above, the Preliminary Opinion recommended to reconsider the criminalization of “extremism”, or, at a minimum, to amend, and more strictly circumscribe, the definition of “extremism” and “extremist activities” to ensure that legislation criminalizes only those acts that are connected to violence or acts clearly defined by criminal legislation.

***ODIHR Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan (Opinion Nr: JUD-KAZ/337/2018), issued on 27 December 2018<sup>5</sup>***

ODIHR provided a legal review of the Commentary prepared by the Supreme Court of Kazakhstan on the National Code of Judicial Ethics and analysed the compliance of both the Commentary and underlying Code with international human rights standards and OSCE commitments.

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<sup>3</sup> ODIHR Preliminary Opinion on the Draft Amendments to the Legal Framework "On Countering Extremism and Terrorism" in the Republic of Kazakhstan 6 October 2016 (available at: <http://www.legislationline.org/documents/id/20060>)

<sup>4</sup> Amendments were adopted on 22 December 2016, with almost no modification of the substance of the text. Hence, the concerns raised by the OSCE/ODIHR in its Preliminary Opinion remain.

<sup>5</sup> ODIHR Comments on the Commentary on the Code of Judicial Ethics of Kazakhstan, 27 December 2018 (available at <https://www.legislationline.org/documents/id/22298>)

ODIHR emphasized that the Commentary is an important document and its adoption *per se* would be very welcome as it aims to clarify, and thus provide further guidance to judges in Kazakhstan on how to interpret the provisions of the Code of Judicial Ethics, and deal with potentially difficult matters of judicial ethics on a daily basis.

In addition, the Opinion highlighted concerns regarding vague and/or overbroad provisions, including the degree judges may exercise their right to freedom of religion or belief. Moreover, relevant legislation outlining disciplinary procedures against judges in Kazakhstan merely refers to judicial ethics, without stating which potential misconduct will lead to which sanctions.

In order to ensure compliance of the Commentary and Code of Judicial Ethics with international standards on judicial ethics and good practices, ODIHR made the following recommendations:

- to consider proceeding with adoption of the Commentary through an inclusive and pluralist process, involving judges;
- to clarify that conduct which may conflict with the provisions and interpretations provided in the Commentary or the Code of Judicial Ethics may not by itself lead to disciplinary sanctions and limit disciplinary liability to gross and repeated violations of the norms of judicial ethics.

## **Gender Equality in Politics**

Kazakhstan demonstrates good advances in terms of gender equality in elected office; still, strengthened efforts are needed to translate women's representation into substantive power and active influence of women in the political life in Kazakhstan. With 27.1 per cent women in the current parliament, Kazakhstan has the highest women's representation in parliaments of Central Asia, almost reaching the OSCE average of 28 per cent and the UN Economic and Social Council target of 30 per cent of women's participation in parliaments.

ODIHR appreciated the collaboration and commitment of Kazakh political parties in advancing gender equality in their structures. In 2017, upon request received from three parliamentary parties in Kazakhstan (Nur Otan, Ak Zhol and Communist People's Party of Kazakhstan), ODIHR conducted a gender audit of these parties, identifying discriminatory practices that can perpetuate gender inequality and hinder women's participation in politics. These findings were recorded in individual and confidential gender audit reports of political parties. Each party report included more than twenty recommendations related to their processes, procedures, structures, culture and activities from a gender perspective. In early 2018, the reports were used as a foundation to develop three individual gender action plans for the involved parties for the period of 2018-2020.

## **Election-related activities**

ODIHR observed the 20 March 2016 early parliamentary elections.<sup>6</sup> The Election Observation Mission's (EOM) final report concluded that the elections "were efficiently

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<sup>6</sup> See ODIHR Election Observation Mission [final report](#) on the 20 March 2016 early parliamentary elections in Kazakhstan.

organized, with some progress noted, but indicate that Kazakhstan still has a considerable way to go in meeting its OSCE commitments for democratic elections. The legal framework restricts fundamental civil and political rights, and comprehensive reform is required. In a positive development, candidate registration was inclusive and six parties contested the elections, but genuine political choice is still lacking. While the campaign was low-key, candidates were generally able to campaign freely. State-funded media made efforts to meet requirements for equal access, but analysis and political debate were largely absent, and the blurring of the distinction with the State benefited the ruling party. On election day, serious procedural errors and irregularities were noted during voting, counting and tabulation. It is hoped that the anticipated 2017 reform process will result in significant improvements. The authorities invited international observers in an open and unrestricted manner.”

The report includes contains 24 recommendations, including 9 priority recommendations. The priority recommendations focus on the need for inclusive and comprehensive reform of election law, to amend the law to ensure that all seats in at least one chamber of the parliament are freely contested in a popular vote, to amend and clarify the law to effectively guarantee equitable representation of contesting political parties in election commissions, to consider creating a centralized and streamlined voter registration system, to adopt temporary special measures to enhance participation of women, to allow for independent candidates to stand for parliamentary elections, to amend the law to allow broadcasters to decide on the format and conditions of election-related programming to protect editorial independence, to guarantee citizen observers the right to observe the entire electoral process, to ensure access to an effective remedy for all participants in the process, and to take effective measures to prevent serious violations during the voting, counting and tabulation processes.