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## Parliamentary Reform in the Republic of Kazakhstan

Kazakhstan, having chosen its own path of development, is confidently paving its way to the future. Every year, its standing in the international arena grows. In the short time since attaining independence, Kazakhstan has laid down stable foundations for its further economic, social, and political development. In the words of President Nursultan Nazarbayev:

We laid down the foundation for a completely new economic system, a democratic constitutional state, strengthened modern social institutions, and significantly changed the quality and standards of living.

We maintained internal stability, ensured a sustainable social basis for development, and built the best economy in the region. Kazakhstan has become a full-fledged and responsible member of the international community fulfilling important functions of maintaining geopolitical stability and international security in our region.<sup>1</sup>

As the President concluded in his address, the process of complex economic and political modernization “must take place in the interests and with the direct participation of all our people, of all strata and institutions of our society”.<sup>2</sup>

### *The Expansion of Parliament*

In his address to the deputies of both chambers of Parliament on 16 May 2007, President Nazarbayev announced amendments to the constitution that, while retaining the presidential system, would substantially extend Parliament's powers, a reform that would almost entirely change the system of government from presidential to presidential-parliamentary.<sup>3</sup>

The major aim of political reform is “movement toward such a modern democratic executive system which will be able to provide effective man-

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1 *Address by the President of the Republic of Kazakhstan Mr. Nursultan Nazarbayev to the People of Kazakhstan, 2007*, at: [http://www.regulator.kz/page.php?lang=2&page\\_id=216](http://www.regulator.kz/page.php?lang=2&page_id=216).

2 Ibid.

3 Cf. *A new stage in the democratization of Kazakhstan – the expedited development of a free democratic society*, Address by N.A. Nazarbayev, President of the Republic of Kazakhstan, to the joint meeting/session of the chambers of the Parliament of the Republic of Kazakhstan, Astana, 16 May 2007, at: <http://www.kazakhstanembassy.org.uk/cgi-bin/index/284>.

agement of the society and the country, while at the same time preserving political stability in the country and maintaining all constitutional rights and freedoms of our citizens.”<sup>4</sup>

The reforms were outlined in the President’s address to the nation of 28 February 2007 and further elaborated in a speech given by the President at a joint session of both chambers of the Parliament on 16 May 2007. Parliamentary reform is being carried out in the context of a programme of general political reform in Kazakhstan, the key elements of which are as follows: keeping the presidential system, phased introduction of reforms, creating balance in decision making, national dialogue, and consolidation of major political forces.

The modernization programme was formalized in the “Law on Amendments and Addenda to the Constitution of the Republic of Kazakhstan”<sup>5</sup> of 21 May 2007. One element of the parliamentary reform was to increase the number of deputies in the Parliament. Paragraphs 2 and 3 of Article 50 in the constitution of the Republic of Kazakhstan have consolidated this number: “Fifteen members of the Senate [author’s note: the upper chamber of Parliament] are appointed by the President of the Republic, taking into account the need to guarantee the representation of the interests of the various national cultures and other significant societal interests in the Senate. [...] The *Majilis* [author’s note: the lower chamber of Parliament] consists of 107 deputies, elected in accordance with the procedure defined in the constitutional law.”<sup>6</sup> Paragraph 1 of Article 51 defines more concretely the composition of the *Majilis*: “Ninety-eight of the 107 deputies of the *Majilis* shall be elected by universal, equal, direct, and secret ballot. Nine deputies are elected by the Assembly of the People of Kazakhstan.”<sup>7</sup> The reform also increased the number of senators, with the presidential quota rising from seven to 15 deputies, some of whom are appointed after consultations with the Assembly of the People of Kazakhstan.

The reform has raised the number of deputies in the lower chamber of Parliament from 77 to 107. Of this number, 98 are elected by proportional representation, and nine represent the Assembly of the People of Kazakhstan, who are elected according to the relevant law. This ensures that the interests of the large ethnic groups that constitute the core of Kazakh society are taken into account. The total number of deputies in Parliament now stands at 154, which means that 38 additional seats were created by the reform (formerly

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4 *Address by the President of the Republic of Kazakhstan Mr. Nursultan Nazarbayev to the People of Kazakhstan*, cited above (Note 1).

5 O vnesenii izmenenii i dopolnenii v Konstitutsiyu Respubliki Kazakhstan. Zakon Respubliki Kazakhstan ot 21 maya 2007 goda N 254 [Law on Amendments and Addenda to the Constitution of the Republic of Kazakhstan. Law of the Republic of Kazakhstan of 21 May 2007, no. 254], in: *Kazakhstanskaya Pravda*, No. 76 (25321), 22 May 2007, pp. 1-2; available online at: <http://ru.government.kz/docs/z070254.htm> (all quotations from this source translated by the author).

6 *Ibid.*

7 *Ibid.*

there were 116 deputies). The enlarged Parliament can be seen as approaching the ideal size for a population of 15 million. In terms of international comparison, the Georgian parliament has 150 deputies (for a population of nearly five million), in Hungary, with nearly ten million inhabitants, there are 386, and in the Netherlands, whose population of 16.5 million is similar to Kazakhstan's, there are also 150. The number of citizens represented by one parliamentary deputy in various democracies varies from 557,757 (in the US, but without taking into account the state legislatures) to 43,484 persons (in the UK). In Germany, there are 120,967 citizens per member of parliament, in France 67,817, in Italy 62,222, and in Canada 77,966. Taking into account the ratios of deputies to citizens in other states, the law makers decided on the figure of 98,701 as optimal for Kazakhstan.

A related area concerns the relative representation of women and men in the Senate and the *Majilis*. The number of women candidates in the 2004 *Majilis* elections was higher than during the previous elections in 1999. A total of 24 women (22 per cent) were nominated on the party lists of the eight parties and two blocks, and 87 women (17 per cent) were nominated in a single member constituency. Compared to the 1999 *Majilis* elections, the number of women candidates more than doubled.<sup>8</sup> While this represents an improvement, much work remains to be done to increase the number of women in the *Majilis* and the Senate. Measures need to be taken to encourage women to become more involved in politics, and especially in political parties, to teach female candidates electioneering techniques, to increase the number of woman senators appointed by the President, and to increase the number of women on the party lists for election to the *Majilis*.

#### *Proportional Electoral System and Political Parties in Parliament*

The key aspect of the parliamentary reform was to strengthen the role of the political parties in the process of parliamentary elections and in the work of the Parliament in general. This was achieved above all via the introduction of a proportional electoral system. Proportional representation electoral systems are used by more than 60 countries worldwide, including the vast majority of democracies. In adopting a proportional electoral system, Kazakhstan has built upon the experience of democratic countries around the world.

In order to guarantee the equal representation of political parties on the election commissions, a proposal was made to give each party not represented on the election commissions the right to appoint its own representative with the right to voice advisory opinions. This applies to election commissions at all levels and at any stage of the electoral period.

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8 Cf. OSCE Office for Democratic Institutions and Human Rights, *Republic of Kazakhstan, Parliamentary Elections, 19 September and 3 October 2004, OSCE/ODIHR Election Observation Mission Report*, Warsaw, 15 December 2004, p. 17.

During the September/October 2004 elections to the *Majilis*, a system was used that combined first-past-the-post ballots to single-member constituencies with a proportional representation system using party lists. However, the lists made up only a small proportion of the total number of seats, and it was decided to use proportional representation to elect the vast majority of members in the next elections to the *Majilis*.

During the discussions of the problems of political modernization, the state committee established for the development and concretization of the democratic reform programme for Kazakhstan, taking into consideration a range of views that were expressed by representatives of the public, the Parliament, political parties, and various government ministries and departments, suggested electing half of the deputies according to the majority voting system and half on the basis of proportional representation. But during the joint session of both chambers of Parliament, it was decided to reject this proposed compromise. Reflecting on the experience of other countries, it was eventually decided to elect all the *Majilis* deputies using proportional representation. This type of system was chosen because it best represents the real will of the people while also taking into account the country's special features. Furthermore, by increasing the role of political parties, proportional representation can help to encourage the division of power among Kazakhstan's political forces.

There are currently ten political parties active in the Republic of Kazakhstan. Seven of them will participate in the August 2007 elections of deputies to the *Majilis*, which will be based on proportional representation.

- Nur-Otan (Fatherland's Ray of Light)
- Village Social Democratic Party (*Auyl Sotsial-Demokratyalyk Partiya*)
- Rukhaniyat
- The Party of Patriots
- The Democratic Party Adilet
- The Democratic Party of Kazakhstan Ak Zhol
- The Communist Party of Kazakhstan
- The People's Communist Party of Kazakhstan
- The Nationwide Social-Democratic Party (NSDP)
- Naghyz Ak Zhol (True Bright Path)

The last four or five parties position themselves in opposition to the ruling Otan party.

While it would be possible to make the political parties larger, reducing their number to two or three, it would also be possible to enlarge the party space by creating a larger number of small and middle-sized parties. Ultimately, the best option would be to create a number of large parties.

Strengthening the role of Parliament also depends on the deputies and thus on the political parties that support them. These parties have developed

their own policies and have their own personnel, who could join the government. In the future, the leadership of Kazakhstan plans to consult with the parties on how to best solve the country's problems. This element of the reform programme is a major step forwards for Kazakhstan. There can be no one party with a monopoly on power such as the Soviet Communist Party had.

Legislation has been put in place to enhance the role of the party fractions in the *Majilis*, and these are to become the basic instrument for the realization of political goals. The powers of the fractions have been enhanced. It is planned to finance political parties from the state budget. It should be noted that fractions can only be established in the *Majilis* but not in the Senate. After taking into account the opinion of the state committee for the development and concretization of the democratic reform programme and the views of the opposition, the President will appoint the Prime Minister, following consultations with the fractions and with the consent of the majority in the *Majilis*.

The introduction of proportional representation for the election of deputies to the *Majilis* as a constitutional norm is a historic step in the direction of increasing the role of political parties in the area of elections. This reform means that the Prime Minister will represent the party that controls a parliamentary majority, enhancing the role of political parties in the formation of the government. Moreover, the party that controls a parliamentary majority will be responsible for the formation and further actions of the government, which will have to implement the programme of the party that has won the election.

In connection with the state financing of political parties, the question arises as to whether all registered parties will receive this money or only parties that have members elected to Parliament. I believe that the prevailing practice worldwide is correct: The state should only finance parties that have had members elected to Parliament, because they have won the trust of the electorate and gained legitimation. By assisting these parties, we support the majority of the electorate. We think that the volume of financial aid should depend on the percentage of the votes received by each party.

#### *The Assembly of the People of Kazakhstan and the Parliament*

The political modernization of our multiethnic state is possible only if public stability is ensured and harmony and friendship among the peoples of Kazakhstan are maintained.

This important task is fulfilled by the Assembly of the People of Kazakhstan, which was created in 1995 and has become a unique means of implementing the state's national policy. Its work is based on the principle of

equality of opportunity for all citizens of the country, independent of their national and religious affiliation.

According to the constitution, the Assembly of the People of Kazakhstan has the role of providing representation of Kazakhstan's various ethnic groups in social and political life. The representation of the Assembly of the People of Kazakhstan in the *Majilis* enhances the role of this body and increase its authority, while contributing to the further consolidation of peaceful relations and harmony between national groups. As mentioned above, nine *Majilis* deputies are elected by the Assembly of the People of Kazakhstan.

Because Kazakhstan is a multinational country, it is necessary to represent the interests of all the ethnic groups, and particularly the largest, in the political decision-making process. The Assembly of the People was the obvious means by which this could be achieved, and it was granted the right to delegate representatives to Parliament. This is why the number of deputies was increased to the benefit of the Assembly in the Parliament. The precise mechanisms for the delegation of Assembly representatives is defined in detail in the relevant legislation. The delegates are elected by secret ballot during the session of the Assembly on the basis of recommendations received from the Assembly's regional offices.

According to President Nazarbayev, the political parties should take into account the multi-ethnic composition of the Kazakh people when making their lists, thereby ensuring that the country's various ethnic groups are represented in both *maslikhats* (local councils) and in Parliament. Their voices have to be heard when important decisions are made.

#### *Ownership of the Mandate of Deputies and Possible Recall of Deputies from the Parliament*

Article 51, paragraph 4, of the Kazakh constitution defines the requirements a citizen must meet in order to have the right to stand as a parliamentary candidate: "A deputy of the Parliament may be a citizen of the Republic of Kazakhstan who has been a permanent resident in its territory during the last ten years. A deputy of the Senate may be a person who has reached thirty years of age, has a higher education and has been in work not less than five years, and has been a permanent resident for not less than three years in the territory of the respective oblast, major city or the capital of the Republic. A deputy of the *Majilis* may be a citizen of the Republic of Kazakhstan who has reached twenty-five years of age."<sup>9</sup>

While Parliament is in session, the question may arise of whether a deputy's mandate belongs to the deputy him- or herself or to the political party

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9 Law on Amendments and Addenda to the Constitution of the Republic of Kazakhstan, cited above (Note 5).

for which he or she stood. It is our view that voters give their votes not to an individual candidate, who is included in the party list, but to the political party that nominated him or her. Consequently, if a deputy changes his or her political views and leaves this party, this deputy is no longer able to represent the voters who voted for this party. It would thus be an infringement of the will of the voters if the mandate belonged to the candidate and not to the political party, and the mandate therefore cannot belong to the deputy.

Moreover, the fact that a deputy's mandate belongs to the political party that placed the candidate on its list has been determined by the Constitutional Council. Accordingly, a deputy's mandate is withdrawn if the party on whose list the deputy was elected ceases to exist or the deputy ceases to be a member of this party. This is reaffirmed by the new version of Article 52, paragraph 5, of the Constitution of the Republic of Kazakhstan: "A deputy of the *Majilis* shall be deprived of his or her mandate 1) if the deputy leaves or is excluded from the political party, as a member of which he or she was elected, in accordance with the constitutional law; 2) if the political party, as a member of which the deputy was elected, in accordance with the constitutional law, ceases to exist."<sup>10</sup>

Previously, the constitution did not bind deputies by an imperative mandate, i.e. the requirement to vote along party lines. This no longer applies. The introduction of the imperative mandate, whose breach results in the recall of a deputy, guarantees that the party maintains a common position during parliamentary voting. This is also the logic of the proportional representation system according to which the deputies of the *Majilis* are elected. In addition to losing their mandate if their party ceases to exist or if they leave the party, deputies shall also be deprived of their mandate in cases of resignation, death, being declared legally incapable, missing, or dead, or in other cases provided by the constitution or other law. Furthermore, a parliamentary deputy (of the Senate or the *Majilis*) shall be deprived of his mandate in case of 1) establishing permanent residency beyond the boundaries of the Republic of Kazakhstan, 2) being duly convicted in a court of law, or 3) denaturalization.<sup>11</sup> Moreover, the powers of the appointed deputies in the Senate may be terminated before their terms have expired on the decision of the President of the Republic. The powers of the *Majilis* are also terminated in case of its dissolution.<sup>12</sup> This does not apply to the Senate.

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10 Ibid.

11 Cf. *ibid.*

12 Cf. *ibid.*

### *Extension of Powers of the Parliament*

The core of the parliamentary reform was to give important additional powers to the Parliament. These were granted in the Law on Amendments and Addenda to the Constitution of the Republic of Kazakhstan of 21 May 2007.

Before the additional powers were affirmed in law, there were lively discussions, which produced several proposals on how Parliament's powers and responsibilities could be extended. The aim was to find the most effective ways of carrying out the tasks that need to be performed within the scope of the next stage of the development of the Republic of Kazakhstan.

The Senate has received new powers that allow it to carry out the *Majilis*'s lawmaking function if the latter is dissolved before the appointed time.

The Senate also has the right to approve the appointment of the Chairperson of the National Bank (a new power), the Prosecutor General, and the Chairperson of the National Security Committee of the Republic of Kazakhstan. These appointments will not take place without parliamentary consent.

As noted above, the government of the Republic of Kazakhstan is formed and functions on the basis of a parliamentary majority. The *Majilis* plays the key role in approving the Prime Minister and the whole government.

The parliamentary fractions shall meet to discuss candidates for the post of Prime Minister. The deputies vote in the *Majilis* according to party lines, and after consultations among all fractions of the parties represented in the *Majilis*, a majority vote approves the nomination of a candidate to the position of Prime Minister of the republic.

Another goal of the reform is to strengthen Parliament's powers to execute effective control over the work of the government. The government is not only accountable to the President, but must also answer to Parliament. The aim here is to raise the quality of the work performed by the executive and the state services it provides, and to guarantee the accountability and transparency of its activities. The *Majilis* now only requires a simple majority to express a vote of no-confidence in the government rather than the two-thirds majority that used to be necessary. Because the government represents the interests of the parliamentary majority, there is no need for a qualified majority to pass a vote of no-confidence.

The constitution defines two cases where a vote of no-confidence in the government can be held by the Parliament. The first is if the Parliament rejects the government's report on the implementation of the budget, and the second is if the Prime Minister himself calls for a vote of no-confidence after a government-proposed draft law has been rejected. A further means of strengthening of the role of Parliament has been the adoption of a simplified procedure for holding a vote of no-confidence in an individual minister. Both chambers of Parliament possess this right.



Two thirds of the Constitutional Council and the Accounts Committee are appointed by the Parliament, which has dramatically increased the role of the legislature. The composition of the Constitutional Council is now more democratic, with the equal participation of the two chambers of the Parliament.

Article 53 (paragraph 2) of the constitution defines important supervisory functions held by the two chambers of the Parliament with respect to the government and the Accounts Committee: "Parliament at a joint session of the Chambers shall [...] approve the reports of the Government and the Accounts Committee on the implementation of the republican budget."<sup>13</sup> The amended constitution also observes that "if the Parliament does not approve the report of the Government on the implementation of the republican budget, the Parliament shall be considered to have expressed a vote of no-confidence in the Government."<sup>14</sup>

The strengthening of Parliament's position with regard to the central executive power is also founded in Article 56, paragraph 2, of the constitution, which now states: "The Majilis by a majority of votes of the total number of deputies of the Majilis on the initiative of no less than one fifth of the total number of deputies of the Majilis has the right to express a vote of no-confidence to the Government."<sup>15</sup>

A further measure to strengthen Parliament and extend its powers can be found in paragraph 6 of Article 57 of the constitution: Parliament "has the right to hear reports of the members of the Government of the Republic on their activities on the initiative of no less than one-third of the total number of the deputies of the Chamber, and, as a result of this hearing, adopt an appeal by a majority of votes of the total number of the deputies of the Chamber to the President of the Republic of Kazakhstan to discharge a member of the Government from office in the case of non-observance of the laws of the Republic; if the President of the Republic refuses such an appeal, then the deputies, by a majority of votes of the total number of the deputies of the Chamber, shall possess the right, six months after the first appeal, to request the President once again to discharge the member in question. In this case, the President of the Republic shall release the member in question from a position in the Government."<sup>16</sup>

Relations between Parliament and the government are being put on a new foundation. An example of the changing relationship is contained in Article 61, paragraph 7, of the constitution: "When a draft law submitted by the Government is not adopted, the Prime Minister shall have the right to raise a motion of confidence in the Government at a joint session of the Chambers. A vote on this motion shall be held no less than forty-eight hours from the

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13 Ibid.

14 Ibid.

15 Ibid.

16 Ibid.

moment a vote of confidence is called for. If the call for a vote of no-confidence does not receive the majority of votes of the total number of the deputies of each of the Chambers, the draft law shall be deemed adopted without voting. However, the Government may not use this right more than twice a year.”<sup>17</sup>

The new constitution, in Article 57, paragraph 1, further grants the *Majilis* the right to “appoint [...] two members of the Constitutional Council, two members of the Central Election Commission for a five-year term, [and] three members of the Accounts Committee for a five-year term to control implementation of the republican budget.”<sup>18</sup> Paragraph 3 of Article 71 also concerns the powers of the Senate and the *Majilis*: “Two members of the Constitutional Council shall be appointed by the President of the Republic, and two members each shall be appointed by the Senate and the *Majilis*.”<sup>19</sup>

Joint sessions are now only to take place when very important issues are to be considered.

The overall result has been to grant real powers to both chambers of Parliament, thus creating a balance between them. We proceed from the assumption that the division of powers between the President and the Parliament has to be reasonably balanced. This increases the chances that democratic solutions will be found to the political questions that the country faces.

The political modernization of Kazakhstan is a significant step down the road of political transformation. The serious efforts made by the state and the people helped Kazakhstan to secure a favourable decision on Kazakhstan’s bid to assume the Chairmanship of the OSCE in 2010.

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17 Ibid.  
18 Ibid.  
19 Ibid.