



Statement by the public in Kazakhstan, including independent observers and nongovernmental organizations

We are independent observers and non-governmental organizations of Kazakhstan - oppose legislative initiatives on the introduction of changes to the election legislation aimed at restricting independent observation, against the background of the announced course towards building a new type of state, a "second republic".

The electoral process is one of the key elements of a democratic state. Open and independent election observation is socially useful and meaningful from the point of view of monitoring the legitimacy and transparency of the process.

Unfortunately, in practice we note a trend towards further deterioration of the situation in terms of the legal status of public organizations independent from the current authorities openly working on the subject of election monitoring.

In particular, the draft law "On amendments and addenda to some Constitutional Laws of the Republic of Kazakhstan on issues of implementation of the address of the Head of State of March 16, 2022" is available at the portal of public legal acts at the link <https://legalacts.egov.kz/npa/view?id=14147928>.

The submitted draft law in particular proposes amendments to the Constitutional Law of the Republic of Kazakhstan "On Elections in the Republic of Kazakhstan".

One of the key additions to the existing legislation regulating the organization and carrying out of elections is the expansion of powers of the Central Election Commission and corresponding territorial election commissions in terms of another legislatively outlined restriction on the activity of Kazakh non-governmental organizations working in the sphere of monitoring of election processes in the country.

For example, the draft law assumes that the Central Election Commission will be given the following powers:

- Develops and approves the accreditation procedure for public associations and non-commercial organizations, the statutory activities of which include election observation activities.
- Accreditation of republican public associations and non-profit organizations, the statutory activities which include election observation activities.

The list of documents mentioned in the draft law for accreditation will include information on its financing by international organizations and international public associations, foreign state bodies, foreign legal entities and citizens, as well as stateless persons for the last year.

The legislator specifically notes that by submitting an application for accreditation, the applicant agrees to disclose information constituting banking and other secrets protected by law.

The Draft Law stipulates that one of the grounds for denial of accreditation would be **funding from international organizations and international public associations, foreign state bodies, foreign legal entities and citizens, as well as stateless persons for the past year.**

Please note that the draft law is discriminatory and restricts the rights of public associations and non-commercial organizations only and does not apply to political parties, mass media and other actors involved in direct or indirect monitoring.

For our part, we are forced to note that we are not inclined to believe that the accreditation process by the Central Election Commission, as well as the relevant territorial election commissions will be transparent and independent of the executive authorities.

We believe that the draft law is essentially the highest legally substantiated point in a series of systemic efforts to actually ban "independent" observation in the country.

In this regard, the proposed draft law in terms of arbitrary restriction of constitutional rights of Kazakhstani public associations and non-profit organizations in terms of observing election processes in the country must be repealed and/or substantially revised, for the following reasons:

- **The draft law envisages denial of accreditation** for public associations and non-commercial organizations on the basis of receipt of **any** international funding regardless of the purpose of receiving such funding.

- The requirement to provide information on international funding regardless of the purpose of receiving such funding is redundant and cannot influence the possibility or impossibility for such public association and non-profit organization to send their observers to polling stations on the voting day.

- The requirement to disclose banking secrecy to the Central Election Commission contradicts the relevant legislation on banks and banking activities of Kazakhstan in terms of disclosure of banking secrecy to third parties.

- The draft law assumes the necessity to introduce certain changes to the statutory activity of public associations and non-commercial organizations in order to be able to monitor the election processes, which contradicts the principle of openness and achievement of maximum inclusiveness in the process of organization and holding of elections in the country.

- The draft law contains discriminatory norms in relation to the public associations and non-commercial organizations which have received, are receiving or intend to receive international funding. Especially taking into account the fact that receipt of foreign funding in the territory of Kazakhstan is legal and fully complies with the tax and other relevant legislation.

Thus, the bill creates additional barriers and essentially discriminates against public associations and non-profit organizations, for many years engaged in the training of independent observers during electoral cycles in the country.

Making the conclusion, we believe that the draft law, in violation of paragraph 2 of Article 5 of the Constitution of the Republic of Kazakhstan and Article 4 of the Law of the Republic of Kazakhstan "On Public Associations", has allowed illegal interference in the affairs of public associations, in order to restrict the participation of the latter and their observers during the electoral cycles.

We also believe that prior to the preparation and publication of draft laws introducing provisions establishing arbitrary discriminatory barriers for public organizations working in the field of election observation must necessarily pass an expert opinion on the compliance of the draft law with the European Commission for Democracy through Law (Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights on the exclusion of discriminatory norms.

Thus, we, public associations engaged in independent election observation demand:

1. Careful review of the draft law for its inconsistency with the Constitution, the relevant national legislation, as well as international standards in the implementation of the right to manage state affairs, with further broad public discussion, before the draft law is submitted to the Majilis of the Parliament of the Republic of Kazakhstan.
2. To exclude from the draft law norms related to the accreditation procedure for public associations and non-profit organizations.
3. Send the draft law to the European Commission for Democracy through Law (Venice Commission) and to the OSCE ODIHR for expert review of compliance with international standards.