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## CONSTITUTIONAL LIBERTIES IN THE REPUBLIC OF KAZAKHSTAN\*

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### I. INTRODUCTION

Kazakhstan is a constitutional republic with a strong presidency. In March, 1995, following a Constitutional Court decision that found the 1994 March parliamentary elections unconstitutional, the Parliament was dissolved. Governing by decree in the absence of parliament, President Nursultaah Nazarbayev called a referendum in April to extend his term of office to the year 2000 without a contested presidential election. (According to the constitution then in force, this presidential election should have been held in 1996).

There was no legislature after Parliament was dissolved in March until elections took place in December for a new bicameral legislature, which took office in January, 1996. The lower house (the Majilis) consisting of sixty-seven members, was elected directly. The upper house (the Senate), with forty-seven members, was elected indirectly, by members of oblast and city parliaments, with seven of its members appointed directly by the President. The election law required candidates for both houses to meet minimum age and education requirements and to pay a nonrefundable fee of 30,000 tonge (fifty times the minimum monthly wage or about \$500). The new election law did not require Majilis candidates to collect a certain number of signatures in order to be placed on the ballot. However, Senate candidates were required to obtain signatures from 10 percent of the members of their local assemblies in order to be placed on the ballot. The Central Election Commission registered forty-nine candidates for the Senate and 285 candidates for the Majilis. Some activists considered the election requirements to be a barrier to participation.

Prior to the election, the Central Election Commission accepted for-

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eign technical electoral assistance, welcomed international monitors, and agreed to modify the election law to allow nonpartisan domestic observers to serve as monitors. Observers noted that some technical improvements had been made since the March 1994 parliamentary elections. In many districts, officials and citizens made sincere and conscientious efforts to carry out fair and transparent elections. Observers, nonetheless, pointed to flaws in the conduct of the December ninth election. Concern was expressed about possible inflation of official voter turnout figures (achieved by "family voting" which is the illegal practice of one individual casting multiple ballots on behalf of family members), and isolated problems of access for observers.

Unless the Parliament can become an active, autonomous institution in Kazakhstani politics, the elections will have formed a national legislature that exercises only limited meaningful power. The Constitution does not empower the legislature to control the budget, initiate changes in the Constitution, or exercise oversight of the executive branch. For instance, should the Parliament fail to pass within 30 days, an urgent bill brought by the President, the President may issue the bill by decree. Furthermore, while the President has broad powers to dissolve the Parliament, Parliament can only remove the president for disability or high treason. This removal must also be with the consent of the Constitutional Council, which is largely controlled by the President.

The Constitution also significantly constrains the independence of the judiciary. The old Constitutional Court has been abolished, and replaced by a Constitutional Council. The President directly appoints three of its seven members, including the chairman. A two-thirds majority of the Council is required to overrule a presidential veto of its decisions. The governors of the oblasts (the Aking) are selected by the Prime Minister but serve at the discretion of the President, who may also annul their decisions. All male and female adult citizens have the right to vote. Membership in political parties or trade unions is forbidden to members of the military, employees of national security and law enforcement organizations and judges. While there are no legal restrictions on the participation of women in politics, the persistence of traditional attitudes has resulted in few women holding high offices or playing active parts in political life. Of forty-five Senate members, only three are women, and of sixty-seven majlis members, only nine are women.

The Government permitted international and foreign non-governmental organizations (NGO's) dealing with human rights issues to visit Kazakstan and meet with local human rights groups as well as government officials. However, the Constitution forbids the financing of political parties and trade unions by foreign legal entities and citizens, foreign states and international organizations. Although a civil code introduced in 1995 allowed the registration of NGO's, requirements for

registration were burdensome and changed frequently. As a result, few NGO's were registered, leaving most of them without legal standing.

## II. HUMAN RIGHTS

The government has generally respected the human rights of its citizens. In its six years of independence, despite a number of challenges, Kazakhstan has in place important elements of participatory democracy. Citizens enjoy basic rights of freedom of religion, speech and assembly. Nonetheless, the establishment of democratic institutions has suffered a number of setbacks. The legal structure, including the Constitution adopted in August, 1995, does not fully safeguard human rights. The judiciary remains under the control of the President and the executive branch, and the corruption is deeply rooted. Members of the security forces sometimes beat or otherwise abuse detainees. Prison conditions are harsh and continue to deteriorate. The government generally respects freedom of speech and the press, although the media has practiced self-censorship and the government has maintained control of printing facilities and supplies. Freedom of association and religion, while generally respected, are sometimes hindered by complicated registration requirements for organizations and political parties. Freedom of assembly may also occasionally be restricted. The authorities sometimes infringe citizens upon right to privacy.

The constitution states that "no one must be subject to torture, violence, or other treatment or punishment that is cruel or humiliating to human dignity." However, there are credible reports that police beat or treat detainees abusively to obtain confessions. Training standards for police are also very low, and individual law enforcement officials are often poorly supervised. Even President Nazarbayev noted in a speech to the government anti-crime task force that in people's minds, the word "police" is associated with cruelty, arbitrariness, and bribery.

Prison conditions are harsh and continue to deteriorate due to diminishing resources and an increase in the number of persons imprisoned. The Kazakhstan-American Human Rights Bureau, (an independent human rights group sponsored by American organizations but locally staffed), estimated that there were 92,000 prisoners in facilities designed for 60,000. This overcrowding combined with an inadequate prison diet and a lack of medical supplies and personnel, contributes to the outbreak of tuberculosis, hepatitis, and other diseases. Eleven thousand prisoners are believed to suffer from major illnesses. There are press reports about the death of several prisoners in the north of Kazakhstan due to extreme summer heat. Prison guards, who are poorly paid, steal food and medicines intended for prisoners. Violent crime among prisoners is also routine. Prisoners are allowed only one visit every six months, but addi-

tional visits may be granted in emergency situations. Juveniles are kept in separate facilities. The government permits monitoring of prison conditions by local media and human rights groups. The government was in the process of reforming the legal system throughout 1995.

Much of the old Soviet legal system remained in force while new laws were being prepared to bring the legal system into accord with the constitution adopted in August of that year. The law sanctions pretrial detention. Pursuant to the constitution, police may hold a detainee for seventy-two hours before bringing charges. After seventy-two hours, police may continue to hold the detainee for ten days with the approval of a prosecutor. In practice, police routinely hold detainees, with the sanction of a prosecutor, for weeks or even months, without bringing charges.

There is no legal provision for bail and defendants remain in detention until trial. The maximum length of pretrial detention is one year. According to the constitution, persons detained, arrested or accused of committing a crime have the right to the assistance of a defense lawyer from the moment of detention, arrest or accusation. This right is generally respected in practice. Detainees may also appeal the legality of detention or arrest to the prosecutor before trial. If defendants cannot afford an attorney, the constitution stipulates that the State will provide one free of charge.

Government interference and pressure compromised the court system's independence throughout 1995, a situation codified in the new constitution's creation of a judiciary under the control of the President and the executive branch. At year's end, the judicial system was in the process of being restructured to bring it into line with provisions of the Constitution. In December, the President issued a decree, with the force of constitutional law, "On Courts and the Status of Judges in the Republic of Kazakhstan." There are three levels in the court system: the local level, the oblast (provincial level), and the Supreme Court. According to the Constitution, the President proposes to the upper house of Parliament (the Senate) nominees for the Supreme Court. These individuals are recommended by the "Highest Judicial Council" (a body chaired by the President which includes the chairperson of the Supreme Court, the Procurator General, the Minister of Justice, senators, judges and other persons appointed by the President). The President appoints oblast judges (nominated by the Highest Judicial Council) and local level judges from a list presented by the Ministry of Justice. The list is created based upon recommendations from the "Qualification Collegium of Justice," an autonomous institution made up of deputies from the lower house of Parliament (the Majilis), judges, public prosecutors and others appointed by the President. Judges are appointed for ten-year terms.

The Constitution abolished the Constitutional Court and replaced it with a Constitutional Council with three of its seven members, including

the chairman, being directly appointed by the President. The council rules on election and referendum challenges, interprets the Constitution, and determines the constitutionality of laws adopted by Parliament.

Local courts try less serious crimes, such as petty theft and vandalism. Oblast courts handle more serious crimes such as murder, grand theft, and organized criminal activities. The oblast courts may also handle cases in rural areas where no local courts are organized. Judgements of the local courts may be appealed to the oblast level courts, while those of the oblast courts may be appealed to the Supreme Court. A special Arbitration Court handles disputes between state enterprises. There is also the Military Court. According to the December decree, specialized and extraordinary courts can also be created. For example, economic, taxation, family, juvenile and administrative courts, which have the status of oblast and local courts. The Constitution and existing law establish the necessary procedures for a fair trial. Trials are public with the exception of instances in which an open hearing could result in state security secrets being divulged or when the private life or personal family secrets of a citizen have to be protected.

According to the Constitution, defendants have the right to be present, the right to counsel (at public expense if needed), and the right to be heard in court and call witnesses for the defense. Defendants enjoy a presumption of innocence, are protected from self-incrimination, and have the right to appeal a decision to a higher court. In accordance with the December decree, legal proceedings are to be conducted in Kazakh, the state language. Also, Russian can be used officially in the courts. Proceedings can be held in the language of the majority of the population in a particular area.

The Constitution guarantees that everyone has the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph, and other messages. Limitation of this right is allowed only in certain cases and must be in accordance with the procedure directly established by law. However, the Committee for National Security (CNS) and the Ministry of Internal Affairs, with the concurrence of the procuracy, can and do, arbitrarily interfere with privacy, family, home, and correspondence. The law requires criminal police, who remain part of the internal security structure, to obtain a search warrant from a prosecutor before conducting a search. However, they sometimes search without a warrant. The CNS has the right to monitor telephone calls and mail, but under the law it must inform the procuracy within 24 hours of such activity.

The Constitution provides for peaceful assembly and association, but there are significant restrictions. According to a law issued by the President in March, organizations must apply to the local authorities for a permit to hold a demonstration or public meeting at least ten days in ad-

vance or the activity will be considered illegal. In August, on the grounds that it was an illegal assembly, Almaty authorities broke up a demonstration organized to oppose adoption of a new constitution by referendum. Nineteen participants were arrested and fined for demonstrating without a proper permit. In most cases, local officials routinely issued necessary permits. However, human rights activists complained that complicated procedures and the ten-day notice period have made it more difficult to organize public meetings. There have been complaints that local authorities have insisted on approving the slogans on banners before allowing demonstrations to take place. In addition, one human rights activist complained that local authorities agreed to issue a permit for a demonstration only if the activity was held in a remote location, far from the center of town.

To participate in elections, a political party must register with the Government. There were no major changes regarding the registration of political parties in a new electoral code issued prior to the December, 1995 parliamentary elections. A party must submit a list of at least 3,000 members from a minimum of eleven (out of seventeen) oblasts. The list must provide personal information about the members, including date and place of birth, address, and place of employment. For many citizens, submitting such personal data inhibits them from joining parties. The nationalist Hlash party and the Social Democratic Party have refused to register on the principle that they should not have to submit personal information about their members to the Government. Under current law, members of organizations or movements that conduct public activities, hold public meetings, participate in conferences, or have bank accounts must also register with the government. Registration on the local level requires a minimum of ten members and on the national level, a minimum of ten members in each of at least eleven oblasts. In addition, a fee is required which many groups consider a deterrent to registration. Parties established on a religious basis are prohibited by the Constitution. Government decisions not to register ethnic based parties have been premised on the ground that their activities could spark ethnic violence.

The Constitution bans public associations including political parties, whose goals or actions are directed at a violent change of the constitutional system, violation of the integrity of the Republic, undermining of the security of the State and fanning of social, racial, national, religious, class and tribal enmity. Unregistered parties and governments are, nonetheless, able to hold meetings and publish newspapers. However, in October, 1996, the Prosecutor General took steps against an unregistered ethnic Uigyr organization for illegal organizational and publishing activity. All of the major religious and ethnic groups in Kazakhstan have independent functioning cultural centers. The constitution prohibits foreign political parties and foreign trade unions from operating in Kazakhstan. In

addition, the Constitution prohibits the financing of political parties and trade unions by foreign legal entities and citizens, foreign states, or international organizations.

The Constitution provides for freedom of religion and the Government respects this right in practice. Various denominations worship without government interference. However, the constitution also requires that the appointment by foreign religious centers of the heads of religious associations must be carried out in coordination with the Government as must the activities of foreign religious associations. Foreign missionaries, unwelcome to some Orthodox and Muslim Kazakstanis, have complained of occasional harassment by low-level government bureaucrats. In April, 1994, the main Orthodox church in Almaty, during Soviet times a museum of atheism, was returned to the Russian Orthodox Church and again held regular services. The Islamic Mufti and the Russian Orthodox Archbishop have appeared together publicly to promote religious and ethnic harmony.

The new Constitution provides for the right to emigrate and the right of repatriation. Both are respected in practice. Kazakstanis have the right to change their citizenship but are not permitted to hold dual citizenship. According to the Constitution, everyone who is legally present on the territory of the Republic of Kazakhstan has the right to move freely on its territory and freely choose a place of residence except in cases stipulated by law. This provision formally abolishes the "propiska" system of residence permits, a holdover from the Soviet era. However, in the absence of a law to bring legal practice into line with the Constitution, citizens were still required to have a "propiska" in order to prove legal residence and obtain city services. Obtaining a "propiska" for most of the country was generally routine. Although, according to human rights activists, a bribery market in "propiskas" to live in Almaty continued to exist because of Almaty's greater affluence.

In January 1995, Kazakhstan and Russia initiated agreements that established broad legal rights for the citizens of one country living on the territory of the other. They also provided for expeditious naturalization for citizens of one country who moved to the other. These agreements still require ratification by both governments.

According to human rights groups, there is considerable domestic violence against women. Police are often reluctant to intervene in cases of spousal abuse, considering it to be the family's business, unless they believe the abuse is life threatening. The maximum sentence for wife beating is three years, but few such cases are prosecuted. The government has not specifically addressed the problem. Law enforcement authorities reported 5,829 cases of rape in 1995, which constitutes approximately nine percent of all crimes reported. The punishment for rape can range from four to fifteen years. There is very little coverage of rape



in the press, and it is generally believed that rapes often go unreported. While there is no legal discrimination against women, they are severely under represented in higher positions in state enterprises and over represented in low paying and some menial jobs. Women generally have unrestricted access to higher education.

The government is committed in principle to children's rights, but as in many other areas, budget constraints and other priorities severely limit its effectiveness in dealing with children's issues. Although the law provides for free education and medical care for children, the lack of government resources means that many do not receive adequate medical care. Furthermore, educational institutes do not have the money needed to pay teacher salaries and obtain necessary supplies. There is no established pattern of governmental or societal abuse against children. Rural children normally work during harvests.

Most of the population speaks Russian. In fact, only about half of ethnic Kazaks speak Kazak fluently. The Constitution adopted in August states that the Kazak language is the state language of the Republic. According to the Constitution, the Russian language is officially used on a basis equal with that of the Kazak language in organizations and bodies of local self-administration. This slight increase in the status of the Russian language (from its previous status as the Republic's "language of interethnic communication") did not satisfy some ethnic Russian Kazakstans who had hoped that the Russian language would be designated as a second state language. An Article in the first draft of the Constitution (which was later dropped) prohibited limiting the rights and freedoms of citizens on account of not knowing the state or any other language. The government is encouraging more education of children in the Kazak language but has done little to provide Kazak language education for adults.

### III. RIGHTS OF LABOR

The Constitution and the current Labor Code (the Ministry of Labor is drafting a new labor code with input from labor) provide for basic workers' rights, including the right to organize and the right to strike. Kazakstan joined the International Labor Organization (ILO) in 1993. Most workers remained members of state sponsored trade unions established during the Soviet period. Membership was obligatory. In most enterprises, the state sponsored unions continued to deduct one percent of each worker's wages as dues. In addition, the government pension fund withholds 30.2 percent of each worker's wages, and the state unions, which have the authority to allocate funds for disability and sick pay, housing and the use of vacation retreats, take 7.3 percent. The state unions under the Communist system were, and for the most part, remain, organs of the government. The unions work with management to enforce

labor discipline and to discourage workers from forming or joining independent unions. The law gives workers the right to join or form unions of their own choosing and to stop the automatic dues deductions for the state unions. In practice, enterprises often continue to withhold dues for the state sponsored union in spite of requests from individual workers to stop the deduction. The Independent Trade Union Center of Kazakhstan claims membership of about 500,000 out of a total work force of about 5,600,000; however, the actual number of Independent Trade Union members is estimated to be closer to 70,000. To obtain legal status, an independent union must apply for registration with the local judicial authority at the oblast level and with the Ministry of Justice. Registration is generally lengthy, difficult and expensive. The decision to register a union appears to be arbitrary with no published criteria. Judicial authorities and the Minister of Justice have the authority to cancel a union's registration.

The law does not provide mechanisms to protect workers who join independent unions from threats or harassment by enterprise management or state run unions. Members of the independent unions have been dismissed, transferred to lower paying or lower status jobs, threatened and intimidated. According to union leaders, state unions work closely with management to ensure that independent trade union members are the first fired in times of economic down turn. In one factory, management allegedly fostered the creation of a state union to challenge an independent union, which had organized the majority of the work force. A tripartite agreement between labor, management and the government was concluded in May of 1995 but has had little success in resolving labor problems. Within a few months of signing the tripartite agreement, management representatives no longer attended the meetings of the tripartite commission. Union and individual workers exercised their right to strike in 1995, primarily in an effort to recover back wages owed to workers. Miners' strikes in the coal mining region of Kerzanda continued throughout the year.

Many enterprises continued to pay wages in scrip rather than in cash, a practice at odds with Article 3 of ILO Convention 95 on the protection of wages other than in the legal currency without the express consent of the workers. Enterprise directors claimed that the enterprises were not being paid in cash by their traditional trading partners in other parts of the former Soviet Union, which were also experiencing cash flow difficulties as a result of the general economic crisis. The scrip was often not accepted at stores or was accepted only at devalued levels.

By law, unions may freely join federations or confederations and affiliate with international bodies. Most independent trade unions in Kazakhstan belong to the Independent Trade Union Center, headquartered in Almaty. The Independent Miners Federation of Kazakhstan, along with

the State Miners Union of Karagonda, are members of the Miners International Federation. The unions belonging to the ITUC are not members of international federations, but do maintain contacts with European and U.S. trade union federations. Independent unions were particularly concerned about a provision in the Constitution which forbids the financing of trade unions by foreign legal entities and citizens, foreign states, and international organizations.

The minimum age for employment is sixteen. A child under age sixteen may work only with the permission of the local administration and the trade union in the enterprise in which the child would work. Although child labor is routinely used in agricultural areas, especially during harvest season, such permission is rarely granted, thus child labor is generally not a problem. The official minimum wage was set by the government at approximately \$50.00 (3000 tenge) per month. This is far from sufficient to provide a decent living for a worker and family. The legal maximum workweek is forty-eight hours although most enterprises maintain a forty hour workweek, with at least a twenty-four hour rest period. The Constitution states that labor agreements will stipulate the length of working time, vacation days, holidays, and paid annual leave for each worker.

In the field of cooperation of Kazakhstan and developed industrial countries, it is desirable for our state to stress not only the aid and investments of state character, but also the expansion of mutually advantageous economic relations within the framework of private sector and state support of private investments. In this area, useful contributions can be made by numerous organizations of business enterprises.