



Office for Democratic Institutions and Human Rights

**REPUBLIC OF ARMENIA
CONSTITUTIONAL REFERENDUM
27 November 2005**

**OSCE/ODIHR
NEEDS ASSESSMENT MISSION REPORT**

24-25 October 2005



**Warsaw
10 November 2005**

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REPUBLIC OF ARMENIA

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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

On 3 October 2005, the President of the Republic of Armenia called a popular referendum, scheduled for 27 November 2005, to ask voters whether they approve draft amendments to the Constitution adopted by the National Assembly. The Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) sent a Needs Assessment Mission (NAM) to Yerevan between 23 and 26 October 2005. The NAM was composed of Nikolai Vulchanov, Deputy Head of the OSCE/ODIHR Election Department and Konrad Olszewski, OSCE/ODIHR Election Adviser.

The purpose of the NAM was to assess the pre-referendum environment and to advise on possible observation modalities. On 24 and 25 October, the NAM held meetings with representatives of the authorities, political parties, media, civil society and international community (see annex for list of meetings).

The OSCE/ODIHR is grateful to the Armenian authorities and the OSCE Office in Yerevan for the support provided during the NAM.

II. EXECUTIVE SUMMARY

The Constitutional Referendum in the Republic of Armenia was called by the President on 3 October 2005 to approve a set of amendments to the Constitution which were adopted by the National Assembly following recommendations from the Council of Europe's Commission for Democracy through Law ("Venice Commission"). These recommendations were supported also by the OSCE/ODIHR. An earlier attempt to amend the Constitution through a referendum in 2003 failed due to insufficient voter turnout.

The Constitutional Referendum is governed by the current Constitution, the Law on Referenda and the Electoral Code. Recent amendments to the Election Code were adopted in consultations between the Venice Commission and the OSCE/ODIHR. Legislation submitted to a referendum is considered approved, provided it is approved by more than fifty percent of the votes, but not less than one third of the number of registered voters.

The Law on Referenda regulates the conduct of referenda. It was amended on 28 September 2005 in order to comply with the new provisions of the Election Code. While a comprehensive review of the Law on Referenda is not available, its provisions raise a number of concerns.

In July 2005, the government initiated a major voter registration reform tasking the police to produce a national voter register based on citizens' passport data. Although the authorities felt that there is improvement in the accuracy of the new voter lists, the opposition continues to see this as a major issue of concern in regard to forthcoming electoral events.

The Republic of Armenia has a diverse media market with many TV, radio and print media outlets, with television being the main source of information. However, it appears that, at the time of the NAM, the debate on the amendments to the Constitution was generally absent in the media. If continued, this could limit the possibility for voters to make an informed choice.

The legislative framework for referenda does not ensure access of political parties to free campaign-time on public media, and the decision to provide access to various parties rests with the management of media outlets, including public TV channels. Thus far no information has been given to political parties regarding access to free time and advertising conditions in public media during the referendum campaign. Moreover, the rules of financing referendum campaigns are unclear.

The political environment of the Republic of Armenia is marked by considerable mistrust between the authorities and the opposition. As the authorities, to date, have not held accountable perpetrators of election violations during the 2003 presidential and parliamentary elections, the overall public confidence in the election process appears to be low. Representatives of the opposition expressed concerns that previous recommendations of the international observers were not fully considered and acted upon.

Although under Paragraph 8 of the 1990 Copenhagen Document the OSCE participating States are not committed to invite international observers to referenda, the OSCE/ODIHR NAM expressed, in principle, an interest of the Office to observe the 27 November Constitutional Referendum with a view to receive first hand information on the implementation of the recently amended Election Code.

Most interlocutors welcomed a possible OSCE/ODIHR involvement in observation activities. In case an invitations is extended to the OSCE/ODIHR to observe the 27 November Constitutional Referendum, the the Office would be in position to deploy a small team of experts to follow the Referendum.

III. FINDINGS

A. POLITICAL CONTEXT

The Constitutional Referendum in the Republic of Armenia was called by the President on 3 October 2005 to approve a set of amendments to the Constitution which were adopted by the National Assembly following recommendations from the Council of Europe's Commission on Democracy Through Law ("Venice Commission"). An earlier attempt to amend the Constitution through a referendum in 2003 failed due to insufficient turnout.

To date, the ruling coalition is composed of the Republican Party led by Prime Minister Andranik Margaryan (Vice Speaker Tigran Torosyan of that party is one of the main actors in the constitutional process), Rule of Law Country led by the Speaker of the National Assembly Arthur Baghdasaryan, and the Armenian Revolutionary Federation. The opposition in the Parliament is represented by the Justice Bloc, comprising some 10 parties led by the People's Party of Armenia of Mr. Stephan Demirchyan, and the Party of National Unity led by Mr. Artashes Geghamyan.

The political environment of the Republic of Armenia continues to be marked by considerable mistrust between the authorities and the opposition. As the authorities have to date failed to hold accountable perpetrators of election violations during the 2003 presidential and parliamentary elections, the overall public confidence in the electoral process appears to be low. Representatives of the opposition expressed concerns that previous recommendations of the international observation missions were not fully considered and acted upon.

The NAM was informed by representatives of the opposition and domestic observer groups that the local elections, conducted under a rolling schedule in September and October 2005, were marked by violations including instances of vote-buying. The shortcomings in conducting these elections could potentially further undermine public confidence in a democratic election process.

The Chairman of the Coordination Council for promotion of the Constitutional Referendum (the "Yes" campaign) informed the NAM that the Council was pursuing two objectives: (a) to convince the electorate to support the amendments, and (b) to contribute to the conduct of the referendum so that it meets international standards.

Representatives of the opposition (the "No" campaign) indicated that they were sceptical that the necessary number of votes in favour of the amendments will be possible to achieve, and anticipated either failure of the referendum or a fraudulent process. One interlocutor went on to say that possible failure would be a preferred option since it would underline a need for intensive and inclusive dialogue which could contribute to creating confidence during the potential repeat referendum. Another interlocutor and a leader of the "No" campaign provided concrete reservations in regard to the amendments of the Constitution which include: (a) the possibility for dual citizenship; (b) the possibility to change state borders following a proposal of the President and (c) the high level of presidential immunity. He also expressed concern that a fraudulent conduct of the referendum would undermine the new constitutional provisions.

While a majority of opposition parties declared their intention to campaign against the proposed amendments, they failed to establish a unified and co-ordinated "No" campaign. In addition to the "Yes" and "No" campaigns, there appears to be political interests advocating for non-participation. According to the "No" campaign, non-participation could facilitate possible fraud.

B. CONSTITUTIONAL AMENDMENTS

The current amendments to the Constitution were discussed and adopted by the National Assembly between May and September 2005. The main purpose of the amendments was to improve the constitutional balance of powers between the government, the parliament and the judiciary, and to bring the constitutional framework closer to European standards. If approved in the referendum, most of the amendments will come into force in 2007-2008.

Initially, there were three draft sets of amendments prepared by: the ruling coalition, the United Labour Party and an individual opposition deputy. The one put forward by the ruling coalition was chosen by the National Assembly to be elaborated and submitted for the referendum.

The draft amendments have been consulted with the Venice Commission, which has expressed the view that they represented an improvement in the present constitutional framework. This view was shared, to varying degrees, by all interlocutors of the NAM. However, representatives of the opposition felt that the improvements did not go as far as they should go.

The key amendments will regulate the following areas:

- **Separation of powers;** the President will appoint the Prime Minister who “enjoys the confidence of the majority of the deputies” and the Prime Minister could be dismissed only by a non-confidence vote in the National Assembly. The Chair of the National Assembly will convene parliamentary sessions upon the request of 1/3 of the deputies, the government or the President. The procedure for formal application of parliament to the Constitutional Court will be simplified, requiring support of 1/5 of deputies. The President’s power to dissolve the National Assembly will be limited. The foreign policy of the Republic of Armenia is to be conducted jointly by the President and the Government.
- **Presidential immunity;** during and after the mandate, the President will be non-liaible for acts arising from his/her duties and during the mandate, he/she will enjoy the immunity from prosecution for acts not arising from his/her presidential duties.
- **Independence of the Judiciary;** the Justice Council, recommending on the appointment and dismissal of judges, should be composed of nine judges elected by a secret ballot by the General Assembly of Judges, two legal scholars appointed by the president and two legal scholars appointed by the National Assembly.
- **Ombudsperson Office;** the Ombudsperson will be an independent and non-removable office elected by a majority of 3/5 of the deputies of the National Assembly for a 6-year mandate. The Ombudsperson is granted a right to apply to the Constitutional Court.

- **Freedom of the media;** National Commission on Radio and Television, regulating the electronic media market, will be appointed for 6 years by the National Assembly (1/2 seats) and the President (1/2 seats).
- **Local self-government;** the city of Yerevan will become a local-self government unit with an elected mayor (method of the election to be decided by law). In addition, local self-government units are granted to lodge a case in the Constitutional Court.

C. LEGAL FRAMEWORK

The Constitutional Referendum is governed by the current Constitution, the Law on Referenda and the Electoral Code¹. Both latter legislative acts were amended in 2005.

The Constitution, Art.111, grants the President and the National Assembly the right to initiate referenda for popular approval of amendments to the Constitution. The President calls a referendum upon the request or the approval of the majority of Members of the National Assembly. In accordance with Art.113, legislation submitted to a referendum shall be considered approved, provided it is approved by more than fifty percent of the votes, but not less than one third of the number of registered voters.

Particularly significant changes were introduced to the Electoral Code. The OSCE/ODIHR and the Council of Europe's Venice Commission produced a number of opinions on various drafts. As a result, the legislative framework was improved in the areas of formation of election commissions, voting procedures and tabulation and publication of voting results

The Law on Referenda² regulates the remaining aspects of the conduct of referenda. The Law on Referenda was initially approved in 2001 and subsequently amended in 2003. On 28 September 2005, latest amendments were introduced to the Law on Referenda to ensure consistency with the amended Election Code.

While a comprehensive review of the Law on Referenda is not available, the law raises a number of concerns:

- It appears that the 2005 amendments (Art.28.2) removed the prohibition for members of election commissions to help voters fill their ballots, which could open the door for exercising undue influence on voters' choices.
- It appears that the amended Art.33.1 allows the Chairman and the Secretary of the Precinct Election Commissions (PECs) to correct "errors" in their respective precinct result protocols, in the premises of the of the relevant

¹ The Electoral Code regulates *inter alia* the election administration and polling procedures. The CoE Venice Commission and the OSCE/ODIHR have recently published their assessment of the amendments to the Electoral Code ([http://www.venice.coe.int/docs/2005/CDL-AD\(2005\)027-e.pdf](http://www.venice.coe.int/docs/2005/CDL-AD(2005)027-e.pdf)).

² The OSCE/ODIHR Team has worked with an unofficial translation of the Law on Referenda, before the latest amendments were inserted in the text.

Territorial Election Commission (TEC), in the absence of the rest of the PEC members.

- The campaign regulations in Art.20 fail to provide free air time for campaigning in the public media during referenda; Art.20.2 provides state guarantees for free campaigning but fails to specify how this should be implemented. Furthermore, there is no legal requirement for equitable media coverage of the various possible campaigns that could be conducted in relation to a concrete referendum by citizens, political parties and civil society groups, in accordance with Art.20.1.
- The Law on Referenda does not envisage any registration procedures for possible campaigns with the election administration.

Thus, the legal framework for referenda falls short of meeting Recommendation 1704 (29 April 2005) of the Parliamentary Assembly of the Council of Europe, point 13.i.b and c. In addition, the legislative framework for referenda appears to leave unregulated the area of campaign funding during the referenda.

D. ELECTION ADMINISTRATION

The forthcoming Constitutional Referendum will be conducted by an election administration consisting of three levels: the Central Election Commission; Territorial Election Commissions; and Precinct Election Commissions. The new election legislation improved the previously imbalanced composition of the election commissions, by decreasing the number of presidential appointees from 3 to 1, and involving one judiciary representative.

The Central Election Commission (CEC) is now composed by representatives of factions and a deputy group³ of the National Assembly, the President of the Republic and judiciary. The members of the Territorial Election Commissions (TEC) are appointed by the CEC on the principle of one member of TEC per one member of the CEC. Similarly, the Precinct Electoral Commissions are appointed by members of the respective Territorial Electoral Commissions, according to the principle of one TEC member one member of the Precinct Electoral Commission.

The CEC has a number of important duties which include the publication of the draft amendments to the Constitution in the public media and the design of the ballot paper. The latter implies the CEC will have to determine the referendum question which voters will be asked to answer on 27 November. At the time of the NAM, the draft question was formulated as: “Do you agree with the draft on making amendments to the Constitution?”⁴

³ The deputy group is composed of deputies elected through majoritarian system. The deputy groups have been entitled to nominate their representative to the election commissions temporarily - until the elections of the new parliament - after which this place will be transferred to the nominee of the Council of Court Chairmen.

⁴ Unofficial translation.

E. VOTER LISTS

Inaccuracies in voter lists were repeatedly reported by previous OSCE/ODIHR election observation missions. In July 2005, the government initiated major voter registration reform tasking the police to produce voter lists based on citizens' passport data. The NAM was informed that citizens of Armenia at the age of 16 have a legal obligation to apply for a passport, which serves both as internal identification document and a travel document. The passport is received free of charge at the first application. Therefore it would appear that the reformed system for voter registration has a sound basis. Representatives of the Police informed the NAM that the accuracy of voter lists for the local elections was better than during the 2003 elections, and the voter lists for the referendum will demonstrate further improvement.

However, representatives of the opposition and the civil society expressed concerns in the quality of the voter lists and perceived this as an outstanding issue in regard to forthcoming electoral events. Similarly, representatives of the international community in Yerevan who had observed the last local elections criticised the accuracy of voter lists. They informed the NAM that during their observations they had noted voters who were identifying themselves in the polling stations with old Soviet passports. This finding would imply that there are still citizens who were yet to meet their civil responsibilities, and that the voter list reform might face a setback depending on the scale of this practice.

In order to expedite the process of exchanging old Soviet passports, the Police recently made a decision on simplifying the procedure and lifting the state charges envisaged for this service for those applying before the referendum.

In general, the voter registration process would benefit from greater transparency. The police could consider establishing contacts with representatives of the political parties and the civil society with a view to explain the methodology of compilation of voters lists. Such an approach has the potential to raise confidence in the accuracy of future voter lists. The reform might further benefit if experience is exchanged with those local government units which developed their voter lists successfully under previous legal arrangements.

F. MEDIA

The Republic of Armenia has a diverse media market with many TV, radio and print media outlets. However, television is the medium through which most of the population receive information, with the main public TV channel H1 having the largest coverage in the country. Print media appears to have a more limited geographical access and low circulation; the five main dailies in Armenia sell altogether around 20,000-22,000 copies.

According to the NAM's interlocutors, the campaign regarding the constitutional amendments de facto has not yet begun. Although the first spots appeared on the television, the debate on the amendments to the Constitution is generally absent in the media. As a result, the public is reportedly largely unaware of the main issues that are going to be decided during the forthcoming referendum, and therefore the chance of

voters being able to make an informed choice could be limited. Moreover, the NAM was already informed about some complaints regarding the supposed one-sided nature of information on television in favor of the referendum.

Moreover, unlike in parliamentary elections, the legislative framework for referenda does not ensure access of political parties to free campaign time on public media. Apparently, the decision to give access to various parties rests with the management of media outlets, including public TV channels. However, according to the NAM interlocutors, thus far no information has been given to political parties regarding their access to free time and advertising conditions in public media during the referendum campaign.

G. DOMESTIC OBSERVERS

The forthcoming referendum will be observed by a number of domestic partisan and non-partisan observers. "It's Your Choice" group, which has observed elections in Armenia since 1996, plans to deploy observers to some 40 per cent of polling stations throughout the Republic. In addition, at least two domestic non-government organizations are going to conduct media monitoring activities during the referendum campaign.

The Parliamentary Assembly of the Council of Europe announced the deployment of thirteen international observers for the referendum. In addition, four observers will be sent by the Congress of Local and Regional Authorities of the Council of Europe.

IV. SUMMARY OF RECENT OSCE/ODIHR ACTIVITIES

The OSCE/ODIHR reports on the 2003 presidential and parliamentary elections concluded that the elections failed to meet OSCE commitments in a number of key areas, in particular the counting and tabulation of votes. A number of irregularities were reported, including instances of ballot stuffing.

It appears that according to the Law on Referendum (Art.22.1.b) international election observation of referenda is possible with accreditation of international observers regulated by a concrete act of the CEC.

During the NAM, the OSCE/ODIHR expressed its interest to observe the 27 November Constitutional Referendum with a view to receive first-hand information on the implementation of the new Election Code, as it was amended following extensive co-operation between the Armenian authorities, the Venice Commission and the OSCE/ODIHR.

OSCE participating States are not committed to invite international observers under Paragraph 8 of the 1990 Copenhagen Document. Nevertheless, the OSCE/ODIHR has received invitations to observe referenda in the recent past and has occasionally accepted such invitations.

Most interlocutors welcomed a possible OSCE/ODIHR involvement in observation activities. In case an invitations is extended to the OSCE/ODIHR to observe the 27 November Constitutional Referendum, the the Office would be in position to deploy a small team of experts to follow the Referendum.

ANNEX – List of Meetings

Armenian interlocutors

Mr. Garegin Azaryan, Chairman of the CEC,

Mr. Tigran Samuelyan, Head of Human Rights Division, Department of International Organizations, Ministry of Foreign Affairs

Mr. Mher Shahgeldyan/MP, Rule of Law Country faction and Chairman of the coordination council for promotion of constitutional referendum

Mr. Shavarsh Kocharyan, Head of National Democratic Party, MP and member of Armenian delegation to PACE

Mr. Stephan Demirchyan, Head of "Justice" Bloc and People's Party of Armenia

General Ararat Mahtesyan, Deputy Head of Police)

Mr. Mesrop Harutyunyan, "Yerevan Press Club"

Ms. Amalia Kostanyan, Transparency International

Mr. Grisha Khachatryan, Information Systems Development and Training Centre

Ms. Jemma Hasratyan, Association of Women with University Education

Ms. Hambardzum Harutyunyan, "It's Your Choice"

Mr. Artak Kirakosyan, "Civil Society Institute"

International Community:

Ambassador Stephan Dimitrov, Embassy of Bulgaria,

Ms. Karen Kendrick, Mr. Karen Andriasyan, ABA CEELI

Mr. Greg Koldys, USAID

Ms. Boyana Urumova, Council of Europe

Ms. Inna Starovibornaya, Embassy of Belarus

Mr. Sergey Sargsyan, NDI.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It coordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, and gender equality. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

Within the field of **tolerance** and **non-discrimination**, the ODIHR provides support to the participating States in implementing their OSCE commitments and in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).