

OSCE/ODIHR
Election Observation Mission
Republic of Armenia
Parliamentary Elections 2007

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POST-ELECTION INTERIM REPORT No. 1
13 – 22 May 2007

I. EXECUTIVE SUMMARY

- Following the 12 May elections to the National Assembly and the Statement of Preliminary Findings and Conclusions by the International Election Observation Mission (IEOM) on 13 May, the OSCE/ODIHR Election Observation Mission (EOM) continued to observe the vote tabulation, the announcement of results and the handling of complaints and appeals.
- During these last stages of the election process, the OSCE/ODIHR EOM observed certain inconsistencies with established regulations and departures from best electoral practice which do not contribute to strengthening public confidence in the election process.
- The vote count and tabulation were protracted but completed generally within legal deadlines. However, delay by the Central Election Commission (CEC) in posting tabulated results from the Yerevan constituencies on its website compromised transparency measures put in place for these elections.
- Several Territorial Election Commissions (TECs) were observed ordering corrections to Precinct Election Commission (PEC) protocols, including adjustments to “initial data” (for example, number of voters according to the voter lists, number of ballots received), contrary to the Election Code.
- The OSCE/ODIHR EOM observed discrepancies, some of them significant, between certified polling station protocol copies and preliminary disaggregated results tabulated by TECs and submitted electronically mainly via a networked computer system. While such mistakes may not have been deliberate, they included numbers swapped between lines, incorrect calculations and discrepancies in initial data.
- Three of the nine CEC members refused to sign the protocol of the nationwide preliminary proportional contest results, citing reports of violations that called into question the accuracy of the results. They refused also to sign the final results protocol.
- Recounts of results were initially requested in twelve constituencies, and took place to completion in five. These were conducted in accordance with the law and revealed no major results discrepancies with the preliminary results.
- At least 20 complaints and appeals relating to election day were received and adjudicated by the CEC and TECs.
- The president and the prime minister have stated that criminal responsibility for electoral violations is to be pursued. Some criminal cases have been initiated related to falsification of results, bribery and fraud involving the voter list. The OSCE/ODIHR welcomes these steps and emphasizes the importance of the thorough and impartial investigation of all alleged irregularities.

II. INTRODUCTION

For the 12 May election day observation, the OSCE/ODIHR EOM joined efforts with the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE) and the European Parliament (EP) to form the International Election Observation Mission (IEOM). On the day after the elections to the National Assembly, the IEOM issued a joint Statement of Preliminary Findings and Conclusions.¹ The statement reflected developments in the pre-election period, election day and the vote counting overnight. As noted in the Statement, a final assessment of the election also depends on the conduct of the remaining stages of the election process, including the vote tabulation, announcement of final results and the handling of post-election complaints and appeals. The OSCE/ODIHR EOM will continue to follow developments; this interim report covers developments for the period from 13 to 22 May. The OSCE/ODIHR will issue a comprehensive final report including recommendations approximately two months after completion of the election process.

III. ELECTION ADMINISTRATION

A. VOTE TABULATION AT TECs

The IEOM observed the vote counting and completion of results protocols at 108 PECs, and tabulation of results at 39 out of the 41 TECs. Vote counting observed at PEC level was protracted, although in only four observed instances did it extend beyond the legal deadline for completion (10 hours after the close of voting). In PEC 17/38 the proportional counting and results protocol was completed at around 05:30 hours, and consequently the PEC did not conduct a proper majoritarian results count before filling out the majoritarian protocol in time for the 06:00 hours deadline.²

In 35 per cent of the polling stations where counting was observed, the PEC members had difficulties completing the results protocols, and in 11 cases the PEC was observed taking the prohibited action of changing protocol “initial data” (number of voters according to the voter lists, number of ballots and envelopes received, number of cancelled and unused ballot papers, number of ballot paper coupons).³ The implications of the observed difficulties with completion of results protocols at PECs became more evident at the point of transfer of results for tabulation at the TECs: many results protocols had been filled out incompletely or incorrectly by the PECs.

Consequently, the completion or correction of protocols at TECs was widely observed – 17 percent of TECs ordered corrections – and completely new PEC protocols were observed being compiled at TECs 13, 16 and 37. This appeared to contribute to disorganisation at TECs, with IEOM observers reporting procedural errors in 31 per cent of TECs. These included lapses in a number of procedures relating to the security of electoral materials and transparency.⁴ Overall, IEOM observers assessed the conduct of the tabulation as bad or very bad in 35 per cent of TECs.

Actions prohibited in the Election Code were also observed: 14 TECs were observed changing or ordering changes to “initial data” on PEC protocols; and in seven TECs bags containing ballot papers were delivered from PECs unsealed, or had clearly been sealed and reopened.⁵ At TEC 19 IEOM

¹ See Statement of Preliminary Findings and Conclusions:
http://www.osce.org/documents/odihr/2007/05/24424_en.pdf

² Of the 131 seats in the National Assembly, 90 are elected by a proportional list system and 41 through majoritarian contests.

³ Election Code, Art. 63.1.

⁴ Checking of the PEC seal by the TEC was not done consistently in 12 per cent of TECs observed; receipts for protocols were not issued to PECs in 13 per cent, and TEC certification of the PEC protocol was omitted in 18 per cent.

⁵ TECs 13, 19, 24, 26, 31, 33 and 36.

observers saw unsealed bags of ballot papers being taken downstairs to a campaign office of the Republican Party and then brought back up to the TEC premises sealed. TECs 4, 36 and 40 were observed to have continued tabulation of results beyond the deadline of 14:00 hours on 13 May.

The CEC had made considerable efforts to establish a transparent reporting system of results, with results disaggregated by PEC displayed on its website. Results were slow to appear on the website on 12-13 May. Most results from the 13 Yerevan TECs were not posted until after midday on 13 May, which cannot be explained by the slow rate of the counting and tabulation. Although results appeared within the deadline for the CEC to announce preliminary results (i.e. by 20:00 hours on 13 May), a significant lapse in the promised transparency of recording election results appears to have occurred, as the vote counting and completion of results protocols in Yerevan was reported by IEOM observers to have been completed by almost all Yerevan PECs before 06:00 hours on 13 May.

The networked computer system linking the CEC to the TECs was not used for the delivery of results in Yerevan. By a decision of the CEC from February,⁶ the tabulated results data from the Yerevan TECs were to be delivered to the CEC premises and entered into the computer there, by CEC staff. The formal decision on this was apparently not widely understood, and appeared to be contradicted by information given closer to the election day, including in the CEC chairman's presentation of the system to the mass media on 12 April (see OSCE/ODIHR EOM Interim Report No.2).

B. ANNOUNCEMENT OF RESULTS

The CEC announced preliminary results for the proportional contest at 16:10 hours on 13 May. However, three of the nine CEC members – representing the former Justice Alliance, Orinats Yerkir and the National Unity Party – refused to sign the results protocol, on the grounds that the extent of electoral violations reported to them called into question the accuracy of the announced election outcome.⁷

Since 13 May the OSCE/ODIHR EOM has been able to compare 94 certified PEC “protocol extracts” obtained by IEOM observers (from 35 constituencies) with the disaggregated preliminary results of the proportional contest posted on the CEC website. Discrepancies in 187 individual items of data entry were found. While such mistakes may not have been deliberate, they included numbers swapped between lines and incorrect calculations. However, significant discrepancies were also found in the so-called initial data. According to the Election Code, this data should not have been altered after initially being recorded.

On 16 May OSCE/ODIHR EOM observers at the CEC premises in Yerevan witnessed CEC staff, in the presence of TEC representatives, re-entering PEC protocol data for the proportional contest into the computerized tabulation system. It was explained to the OSCE/ODIHR EOM that original protocols brought to Yerevan by the TECs were being used for the data re-entry, and that final election results would be established on this basis.

On 19 May the CEC held its session on establishing and announcing final results of the proportional election and approving the results of the majoritarian contest. The final results as announced included minor changes in tabulated figures as compared to the preliminary results; however these did not appear to affect the election outcome as calculated in the preliminary results. The same three CEC members who had refused to sign the preliminary results protocol refused to sign the final results protocol.

⁶ Decision No.39-N.

⁷ According to the preliminary results, both the Armenian People's Party (the principal partner in the former Justice Alliance) and the National Unity Party did not pass the 5 per cent threshold to retain parliamentary representation, and although Orinats Yerkir passed the threshold, its result was substantially lower than in 2003.

While the TEC protocols disaggregated by PEC for the proportional contest are required by law to be publicly posted, the posting of the majoritarian contest results as disaggregated by PEC is not stipulated in the Election Code. Consequently, proxies, observers and other interested parties had no possibility to check the correctness of certified PEC protocol copies against a TEC protocol for the majoritarian contest. Moreover, the period for which result protocols (proportional and majoritarian) should be on display at PEC and TEC premises is not stipulated. In many places the OSCE/ODIHR EOM observed that protocols were taken down shortly after election day. On 18 May, the OSCE/ODIHR EOM noted that all TEC protocol data on majoritarian contest results had been removed from the CEC website.

The extent of problems and irregularities arising during the counting, tabulation and publication of results, and deficiencies in transparency, are not conducive to strengthening public confidence in the administration of crucial election procedures. The authorities have begun to take corrective steps, including launching a criminal investigation of all nine members of PEC 15/16 for falsification of election results, and initiating criminal cases also for bribery and for fraud involving the voter list. President Robert Kocharyan and Prime Minister Serge Sargsyan have stated that criminal responsibility for electoral violations is being pursued (see also below).

C. RECOUNTS

The Election Code provides that candidates, proxies or PEC members have the right to appeal the results of the voting in a particular precinct by submitting a recount request to the respective TEC. Although in the event of a high number of such requests the TEC's capacity to complete its work within proscribed deadlines can be challenged, the Election Code allows flexibility for TECs to extend their working hours to accommodate such an eventuality,⁸ and there are no provisions in the law stipulating any reasons why a TEC may refuse to conduct a recount if correctly requested. In cases where TECs rejected requests for recounts, the decision to do so was made on procedural grounds and in accordance with the law.⁹

The OSCE/ODIHR EOM was made aware of more than 30 requests for recounts affecting more than 200 polling stations in 12 constituencies; mainly these related to majoritarian contests. A number of these were subsequently withdrawn by the complainant. In two cases known to the OSCE/ODIHR EOM (in TECs 15 and 25) the complainants withdrew their requests for a recount after it had commenced, because they allegedly did not trust the TEC recount process. The recount at TEC 15 was affected by a demonstration outside the premises on 16-17 May and delays in reaching a quorum.

In the five places where recounts took place to completion, they were reported to have been carried out in a calm atmosphere and in accordance with procedures. TEC 33 did not meet the deadline for summarization of the recounts, but reportedly was given a deadline extension by the CEC. Recounts observed by the OSCE/ODIHR EOM did not produce significantly different results from those recorded in the original protocols.

D. LEGAL CHALLENGES TO THE RESULTS

Election results can only be challenged in the Constitutional Court. Court officials informed the OSCE/ODIHR EOM, that, guided by the Law on the Constitutional Court, it will receive complaints for both the proportional and majoritarian contest on the seventh day after the announcement of final results, i.e. 26 May for the proportional contest, and generally on 24 May for the majoritarian contests¹⁰ (the Election Code says within seven days, but the Constitutional Court officials said that the different

⁸ Election Code, Art. 40².7.

⁹ Election Code, Art. 40².

¹⁰ Most TECs announced final results on 17 May, but at least one announced final results earlier.

wording in the Law on the Constitutional Court takes precedence). The Constitutional Court has fifteen days to render a final decision on the proportional results after their announcement,¹¹ while one month is granted for deciding on majoritarian disputes. Moreover, the Constitutional Court may decide to prolong the deadline for a decision in the majoritarian contest for up to 50 days.

At this writing one complaint has been received by the Constitutional Court, from majoritarian candidate Heghine Bisharyan (Orinats Yerkir), disputing the majoritarian election results in TEC 11.

IV. OTHER POST-ELECTION COMPLAINTS AND APPEALS

The OSCE/ODIHR EOM was informed of seven complaints (on behalf of various political parties and the CEC member from Orinats Yerkir) filed with the CEC, and around twice that number filed with TECs alleging irregularities on election day, mainly about procedural violations, vote buying, ballot stuffing, military voting, the presence of unauthorized persons and election day campaigning.

The CEC demonstrated genuine efforts to handle disputes by responding to all of the complaints in a timely manner. Most of the complaints it received were rejected on jurisdictional grounds or as being without substance (in one case of the latter, concerning alleged vote buying and ballot stuffing, the CEC consulted with the relevant TEC before making its determination).

TECs have been handling complaints in a transparent manner, but some issues raised concern. In particular, on election day, TEC 17 refused to review four complaints submitted by a candidate. The complaints were erroneously addressed to individual PECs and not the TEC, and the TEC refused the complaints while it could instead have encouraged the applicant to correct the formal error.¹²

The OSCE/ODIHR EOM was also informed of ten applications received by the Office of the Prosecutor General concerning election day irregularities possibly constituting criminal offences. As noted above, some criminal cases have already been initiated.

The OSCE/ODIHR EOM will continue to follow the complaints and appeals process. It appreciates the continued co-operation with the authorities of the Republic of Armenia.

¹¹ Law on Constitutional Court, Article 74

¹² Election Code, Article 40^{1.3}