

3. A delegation of the Congress of Local and Regional Authorities of the Council of Europe equally observed the referendum. The two teams decided to join in one single Council of Europe delegation, co-chaired by Mr Jirsa (PACE) and Mr O'Brien (Congress).

4. The Council of Europe delegation was the only international observation mission. No other international organisations usually involved in election monitoring, nor any specialised international NGOs such as the National Democratic Institute for International Affairs (NDI) and the International Foundation for Election Systems (IFES) received an invitation and could therefore not be accredited with the Central Election Commission (CEC).

5. The authorities explained their decision not to invite the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE by the fact that observation of referenda is not specifically mentioned in paragraph 8 of the Organisation's 1990 Copenhagen document.. The authorities were also highly critical of an OSCE/ODIHR Needs Assessment Mission to Yerevan carried out on 23-26 October 2005. However, ODIHR has already observed referenda in the past at the request of other countries. Moreover, it should be noted that ODIHR is a customary partner of the Council of Europe in election observation. It is the only international organisation with the technical ability to deploy a large-scale observation mission and provide data with a high representative character. Its absence, therefore, is to be regretted.

6. About 8 000 local observers from 10 opposition parties and 24 local NGOs were officially registered with the CEC.

7. The opposition, which was represented by 2 members in the 9-member electoral commissions¹, called on its members to withdraw, although this appeal was not followed strictly in several of the polling stations visited.

8. In this context, the delegation observers can only base their conclusions on the very limited scale of their deployment.

9. During the two days preceding the referendum, the delegation met with the authorities, representatives of the ruling coalition and the opposition, NGOs, media and the international community. The full programme is reproduced in Appendix 1.

II – Political and legal context

10. Armenia needed to reform its Constitution in order to be able to fulfil some of its most important obligations and commitments to the Council of Europe. The Council of Europe had on several occasions given its political support to the objective of bringing the Armenian Constitution in line with European standards. At an expert level, the Venice Commission had been actively involved in the preparation of the amendments. The work, however, had been protracted by the fact that key recommendations of the Venice Commission had repeatedly not been followed in different subsequent drafts, including in the version adopted in the first reading in parliament on 11 May 2005.

11. In June 2005 the Assembly held an urgent procedure debate on the constitutional reform process in Armenia and adopted Resolution 1458 (2005), in which it asked the Armenian authorities to hold the referendum no later than November 2005 and resolved to observe it.

12. The draft after the second reading received the positive assessment of the Venice Commission. The third and final reading took place on 28 September 2005. The decree calling for a referendum to be held on 27 November and opening the official referendum campaign on the Constitutional Referendum was issued by the President on 5 October 2005.

13. The referendum was regulated by the Law on Referendum and the Electoral Code, both recently amended, and the present Constitution. According to the final opinion of the Venice Commission and OSCE/ODOHR, the amendments to the Electoral Code which were adopted on 17 May 2005 improved the legal framework but there were still concerns regarding electoral administration and provisions for filing election complaints. The opinion stressed that good faith implementation remained crucial for the conduct of genuinely democratic elections. There is no legal appraisal by the Venice Commission of the Law on Referenda but the OSCE/ODIHR Needs Assessment report raised several concerns and expressed the

¹ Under the 17 May amendments to the Electoral Code, the CEC is composed of 9 members, 6 of which are representatives of the parliamentary factions, one is appointed by the President and two by the judiciary. The same composition is reflected at the level of the territorial and precinct electoral commissions.

opinion that the legal framework for referenda failed short of meeting certain points (concerning who can initiate a referendum and the organisation of a referendum campaign) of Recommendation 1704 (2005) of the Parliamentary Assembly on “referendums: towards good practices in Europe”.

14. For the constitutional amendments to be adopted, they had to be approved by more than 50% of the votes but not less than one-third of all registered voters. This exceptionally high threshold, coupled with the bad state of the electoral lists, full of “dead souls”, made it very difficult to achieve the quorum. The previous constitutional referendum, held in 2003, failed precisely for that reason. Assembly Resolution 1458 (2005) pointed out that Armenia could not afford another failure.

15. The amended Electoral Code creates a permanent national register of voters, which will be introduced as from 2006, will be available on Internet and will be constantly updated by the competent authorities. According to the authorities, some recent improvements to the electoral lists had been made in preparation for the register. Special provisions had also been made for people who could not find their names on the list allowing them to obtain a special voting authorisation even on voting day. The delegation did not observe any problems with people’s names missing from the lists. Since the real issue had been the opposite, with names in excess, it is impossible to judge whether the improvements were significant.

16. A controversial issue appeared to be the removal from the lists of those people who were still only in possession of old Soviet passports, no longer valid. Since these people had been allowed to vote in the local elections held in October 2005, there were concerns raised by local and international observers that their removal from the lists for the referendum could be a deliberate move aimed at bringing the necessary quorum down. The delegation was informed however, that Soviet passport holders, who in their majority were refugees from Nagorno Karabakh, were allowed to vote in local elections but not in a national referendum. Moreover, any Armenian citizen who had not changed his/her old Soviet passport could do so until the very day of the referendum free of charge. The delegation was told that 15 000 people had taken advantage of this possibility over the last month.

III – The awareness-raising campaign

17. International observers of the referendum in 2003, including the co-Rapporteurs of the Monitoring Committee of the Parliamentary Assembly, had pointed out that one of the reasons for its failure was that the authorities at the time had not committed themselves to a campaign in support of the reform. This time genuine efforts were made, co-ordinated by a special Council for the promotion of the Constitutional Referendum. Regretfully, time for the campaign was rather short, as officially it could only start after the third reading and the signature by the President. Several round tables, also with the participation of the Venice Commission, were organised and public television devoted a considerable amount of airtime to the referendum. The President assured us that efforts had been made to deliver the text of the proposed amended Constitution at every door.

18. However, the delegation was left with the impression that the awareness-raising campaign had sometimes rather more resembled Soviet-style propaganda in favour of the YES, than a genuine democratic debate over the pros and cons of the proposed amendments.

19. The electronic media, which are by far the main means of information for the majority of the population, are still heavily controlled by the State. All neutral observers that the delegation consulted were unanimous that the arguments against the amendments had had no place on television. Moreover, unlike presidential and parliamentary elections, political parties were not given free air time in the referendum campaign and according to the Yerevan Press Club, which had monitored media coverage from 5 to 19 November 2005, practical provisions for providing paid airtime had been unclear or missing. The opposition had refused to take part in any programmes which were not broadcast live and entailed a risk of censorship. The Yerevan Press Club concluded that television coverage had been heavily unbalanced in favour of the proponents of the YES and most of the media coverage had failed to address the substance of the reform.

20. Coverage was much more pluralist and balanced in the print media but their circulation is very low.

21. There were reports by NGOs of direct and indirect pressure by local authorities on the population and by heads of public administrations on their employees to vote YES.

22. Other factors that affected the campaign were the general distrust of the population in their political class, the ambiguous position of the President and the equally ambiguous position of the opposition.

23. The constitutional amendments reduce the powers of the President of the Republic, judged as excessive by democratic standards. The President had therefore repeatedly stated, and reiterated it in front of the delegation, that the adoption of these amendments was not in his personal interest. He was even quoted as saying that regarding the outcome of the referendum, he was in a win-win situation. Although he always added that it was necessary to adopt the amendments for the sake of the general interest of the nation and future generations, there was an impression amongst the population that the constitutional changes were something imposed by the West and not really wanted by the authorities.

24. An interesting "theory" which was in circulation during our stay was that of a Western "conspiracy": in order to increase the chances of a peaceful settlement of the Nagorno-Karabach conflict in the near future (which would open the doors to Caspian gas), the West was interested in the adoption of the constitutional amendments and would allegedly close its eyes to possible violations. Parts of the opposition were therefore almost hostile to the delegation and were accusing the Council of Europe of siding with the authorities.

25. The President stated a few days before the referendum that he would vote openly and he did so on voting day in front of the cameras. This move was much criticised because it violated the principle of secret ballot enshrined in the Constitution.

26. The opposition, for its part, had campaigned in favour of a NO vote but about two months before the referendum suddenly changed tactics and called for a boycott. The position of the opposition was determined by criticism to different aspects of subsequent versions of the proposed amendments but, most and foremost, by the fact that it still contests the outcome of the 2003 presidential and parliamentary elections, both severely criticised by the Assembly and other international observers for fraud. It therefore considers the present authorities as illegitimate and contests their right to carry out democratic constitutional reforms. A significant part of the opposition was therefore presenting the referendum as a vote of no-confidence in the authorities. Many observers noted with irony that the call for a boycott was an easy option, as it was like preaching to the converted; a large part of the population was politically apathetic and would not have gone to the ballot boxes anyway.

27. There were only a few major incidents in the run-up to the referendum, for instance an opposition leader from the "Republic party" was reported to have been beaten severely by police on 24 November after crossing a red light and had to be hospitalised. The rallies organised by the opposition were peaceful and rather low-key. Branded as a Ukrainian style orange-revolution, most of them failed to gather more than a couple of thousand participants. A major rally scheduled for the day of the referendum only attracted a very limited number of participants. The low public interest further reinforced the impression of a general apathy.

IV – The voting process

28. Voting took place in 1878 polling stations across the country and in 44 polling stations in 28 other countries. 2 301 828 names were on the voters' list for the referendum, thus the necessary quorum was of 767 276 YES votes.

29. On voting day, the joint delegation visited some 150 polling stations in Yerevan and in Ararat Marz, Armavir Marz, Kotayk Marz and Aragatsotn Marz.

30. In most of the polling stations, the voting process at the time of the visit seemed normal and generally in compliance with international standards.

31. The most serious problems, stemming from existing legislation and regulations were:

- violation of the secrecy of the vote. After having marked their choice on the ballot paper, the voters had to have it stamped. Although, in principle, the ballot paper should be folded after completion, the delegation observed many cases when voters had forgotten, or simply were not aware that they should do so. Sometimes it was difficult to identify the member of the electoral commission putting the stamp, especially when the station was crowded and observers witnessed voters who were openly showing their completed ballot paper to anybody around them in a search of the right person. In the stations where the military were voting observers also saw this very person opening the ballot paper before stamping it and checking the vote;

- polling booths. In most cases, they were not proper booths but simply small writing desks against a wall, with small cardboard barriers on both sides. Although in theory such an arrangement seemed to guarantee secrecy similar to that of a cash withdrawal machine, it did not provide the security of a polling booth. In certain cases the desks were right opposite and too close to the electoral commission which could be intimidating for the voters;

- voting for the disabled. Mobile boxes were not allowed by legislation. Most polling stations visited had no access for disabled people, thus disenfranchising this part of the population.

32. Another problem was the voting of the military. They were brought to polling stations and taken back by command. Although their commanders were vaguely aware of the right of every voter to abstain, it did not seem as if this right could be exercised in practice. Polling stations where the military had voted and which were revisited by our observers confirmed that impression, since the military turnout had been 100%.

33. All these problems were serious, but alone would not cast doubt over the credibility of the vote as a whole. The most blatant and unacceptable abuse that was witnessed by the delegation concerned the securing of a high turnout.

34. In some polling stations in the province there was a reasonable amount of voters at the time of the visit. In some villages voting was linked to celebrations "for the new Constitution", organised by local authorities. It is difficult to judge to what extent the high activity was spontaneous and whether there was not an element of old Soviet mentality of people doing what is expected.

35. However, several polling stations in the province and practically all polling stations in Yerevan were strikingly empty, regardless of the time of the day when they were visited (the only exception being while the military were voting). The pattern was too repetitive throughout the day to allow us to believe that the high turnout that the heads of electoral commissions were announcing to us had somehow always been reached at the time when we were not there. Whenever the observers had the possibility to have a glance at the voters' registers, in particular by mid-afternoon, there were barely any signatures on them.

36. By contrast, opposition observers who were counting the number of persons casting their ballots often registered numbers two to four times lower than those announced by the chair of the polling station.

37. In the later hours, delegation members observed voters' registers with a large number of almost identical clearly forged signatures. They witnessed people voting with multiple passports or casting several ballots. In one polling station the seal on the urn was broken and the amount of ballot papers inside significantly exceeded what one could reasonably expect from the turnout figures provided by the electoral commission. In another polling station it was the head of the village who dictated the work of the polling station rather than the Chair.

38. It is worth mentioning the experience of the Chairman of the delegation in polling station N 06/01 in Yerevan. On arrival, at 18:15, out of 1868 registered voters, around 800, according to the Head of the electoral commission, and 278, according to the opposition observer, had voted. Through the semi-transparent wall of the ballot box, one could clearly identify a large batch of stuffed ballot papers. The voters' register had only a few signatures by page. While we were making calls to the CEC to report the violation, the voters' register was changed with a new one, full of signatures. The Head of the electoral commission did not allow us to count them. For about two hours, no more than 20 people came to vote and they were all diverted to the sister polling station next door, where their names were registered on a separate list. Before opening the ballot box, the members of the electoral commission shook it thoroughly, so that the batch of ballot papers could not be seen anymore. However, on opening it, we found inside not just one but several similar batches.

V – Outcome and aftermath

39. On 29 November 2005, the CEC announced that 1 514 545 people (65,4% of all registered voters) had participated and that 1 411 711 (93.2%) had been in favour of the amendments, while 82 018 (5,4%) had voted against. In a statement on 29 November the President congratulated the citizens of Armenia on the positive outcome.

40. Some opposition parties organised protest rallies on 28 and 29 November, which attracted up to 3000 participants. Neither the police nor the organisers announced any arrests or use of force.

41. During the protest rally on 29 November, opposition representatives demanded that the CEC annul the official results within 72 hours.

42. The CEC answered that only the Constitutional Court had the competence of invalidating the results of the Referendum on the basis of relevant documents and complaints. According to information received, no application for the revision of the results had been submitted within the one-week deadline for applying to the Constitutional Court. The Courts, Central and Precinct Electoral Commissions have not received any applications also regarding the voting results in the polling stations.

VI - Conclusions

43. There is no doubt that the overwhelming majority of those who went to the polling stations and cast their ballots were in favour of the constitutional amendments and that by voting, they expressed their free will.

44. The question, however, is how many they were and whether the quorum was reached.

45. The small scale of our observation mission does not allow us to make general conclusions in one way or another. It is impossible to estimate the real scale of the fraud that was observed and by how much it has affected the final result.

46. This issue remains the most controversial aspect of the constitutional referendum. Unless the authorities take decisive measures to immediately investigate the instances of fraud observed, the adoption of a new Constitution, which is supposed to bring Armenia closer to European values and principles, will remain forever stained by a doubtful credibility. No reform is truly democratic when it is achieved through undemocratic means.

47. An electoral official, who came on the spot to see the violations, confessed: "Some people wanted to do well and overdid it".

48. There is no justification of "overdoing", even in the name of a higher interest, such as in this case of Armenia abiding by one of its major obligations to the Council of Europe. The fact that the Organisation has been actively advocating the constitutional reform does not mean that it is ready to accept it at any price.

49. In reality, the observed practise indicates a lack of respect for the values the Council of Europe stands for. It would have been much more in the interest of the country to have invited a large-scale international observation mission, rather than making a 14-member delegation the only international eyewitness of the violations that took place in front of their eyes.

50. The delegation also regrets the attitude of the opposition, which with its boycott of the electoral commissions only further hampered the transparency of the voting process. It is equally regrettable that no complaints were sent to the CEC and to the relevant courts. In a democracy, disagreements cannot be solved by total rejection and "laissez faire"; even when the democratic process is imperfect or even flawed, all the legal means have to be used to their full potential.

51. The delegation insists that the fraud be investigated in the most independent and impartial manner by the competent authorities and that Parliament also addresses the issue of violations committed during the referendum. All those responsible, regardless of the level in the State hierarchy, must be brought to justice (see the press release issued by the delegation in Appendix 2).

52. The delegation notes that the Prosecutor General of Armenia has established a Commission for detecting the abuses and infringements and punishing the perpetrators and that he has made an appeal, including to the mass media, to be supplied with information on infringements. As there are no complaints for the moment, the Commission will have a heavy task. The Prosecutor General should fully use his investigating powers. All inquiries should be done in full transparency and in respect of human rights and the rule of law and guarantees have to be provided that no individuals would be chosen as scapegoats.

53. Beyond the search for individual responsibility, there is also a question of the political responsibility of the Armenian political class in general. As much as the constitutional reform is important for the fulfilment of the commitments and obligations of Armenia to the Council of Europe, the country, like all other members, is equally committed to holding free and fair ballots. Yet not a single election in Armenia since its accession to the Council of Europe has been considered as free and fair. The authorities still need to demonstrate that their commitment to democracy is translated into deeds.

VII – Recommendations for improving polling procedure

54. In future polls it would be advisable, in particular, to stamp the ballot paper before handing it over to the voter. Once the voter has marked his/her choice, the ballot paper should go straight to the ballot box, without anyone else having the possibility to see or manipulate it.

55. The procedure for the voting of the military and the disabled has to be revised, along the lines of the observations in paragraphs 31 and 32.

56. We also hope that the National Voters Register would be introduced as planned and that the state of the voters' lists would be improved significantly.

APPENDIX 1

PROGRAMME

Friday, 25 November 2005

- 14:00-14:20 Meeting with the Representative of the SG of the Council of Europe, (Hotel)
- 14:30-15:30 Meeting with CoE Member-States Ambassadors (Hotel)
- 15:35-16:15 Meeting with the OSCE Ambassador (Hotel)
- 16:35-17:35 Meeting with Media NGOs, (Hotel)
- 17:40 -18:25 Meeting with HR NGOs (Hotel)
- 19:00-19:40 Meeting with NDI, IFES, It's your choice NGO (hotel)

Saturday, 26 November 2005

- 09:15-10:00 Meeting with Mr. Garegin Azaryan, Chairman of the Central Election Commission
(venue: CEC)
- 10:10-10:50 Meeting with Mrs. Alvina Zakaryan, Head of the Passport and Visa Department, Police Service
- 11:00-11:45 Meeting with Mr. Robert Kocharyan, President of the Republic of Armenia (venue: President's Palace)
- 12:00-12:50 Joint meeting with representatives of opposition factions ("National Unity" Faction and "Justice" faction)

- 14:15-15:15 Meeting with Coalition Factions of the National Assembly
- 15:20-16:10 Meeting with Mr. Arthur Baghdasaryan, President of the National Assembly of Armenia
(venue: the Parliament)
- 16:15-17:15 Meeting with National Assembly Delegation to the PACE
(venue: the Parliament)

Sunday, 27 November

Referendum day (deployment of PACE teams + Congress teams)

Monday, 28 November

- 9.00 Debriefing of the ad hoc Committee (Hotel)
- 14:00 Press-Conference (Marriott Hotel)

APPENDIX 2

PRESS RELEASE

Constitutional Referendum in Armenia: general compliance marred by incidents of serious abuse

Yerevan, 28.11.2005 - The Council of Europe observers to the Constitutional Referendum held on 27 November 2005 in Armenia regret the decision taken by the authorities which precluded the attendance of any other international observers. The transparency of the referendum was further hampered by the decision of the parliamentary opposition to call on their members to withdraw from the electoral commissions. It is also regrettable that political pluralism inside polling stations was not better assisted by a greater number of domestic observers.

The 14-member delegation from the Parliamentary Assembly and the Congress of Local and Regional Authorities noted that the Referendum generally reflected the free will of those who voted. However, on voting day the observers witnessed serious abuse in several polling stations which cast a shadow over the credibility of the officially announced turn-out.

On 25 and 26 November the delegation had meetings with the authorities, opposition members, NGOs, media representatives and the international community. The observers' impression was that during the campaign leading to the Referendum there was not equal access to the media. This was to the disadvantage of the opposition to the constitutional changes and hampered genuine democratic debate.

The Council of Europe observers visited around 150 polling stations in the capital and across the country on voting day. The general atmosphere was calm and no incidents of public disorder were witnessed. In the majority of the polling stations visited the conduct of the poll was in compliance with international standards.

However, in a significant number of polling stations in Yerevan and other regions this was not so. The extremely low voting activity did not correspond to the high figures provided by the electoral commissions. There were also clear instances of forged additional signatures on the voters register and of ballot stuffing. The electoral regulations, requiring the stamping of the ballot after completion, created numerous situations where the secrecy of the vote was not respected. Military voting appeared to lack the voluntarism which is the hallmark of democratic participation.

In conclusion, the delegation considers that the abuses that marred the referendum were against the intent and interest of the Armenian people. It expects that the Central Electoral Commission investigate thoroughly all the allegations brought to its attention and that all the necessary measures will be taken against those responsible for fraud.

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The delegation, co-headed by Tomas Jirsa (Czech Republic, EDG, Parliamentary Assembly) and Sean O'Brien (Ireland, SOC, Congress), included:

Parliamentary Assembly

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Lord Tomlinson (United Kingdom, SOC)
Georges Colombier (France, EPP/CD)
Jan Rzymek (Poland, EPP/CD)
Klaus-Jürgen Hedrich (Germany, EPP/CD)
Gábor Szalay (Hungary, ALDE)
Nigel Evans (United Kingdom, EDG)

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