



Office for Democratic Institutions and Human Rights

FINAL REPORT

**OSCE/ODIHR MISSION ON IMPLEMENTATION OF
OSCE/ODIHR RECOMMENDATIONS CONTAINED IN THE
FINAL REPORT ON PRESIDENTIAL ELECTIONS IN
ARMENIA**

JANUARY 23, 1997

Mr. A. Voskanian, Ambassador of the Delegation of Armenia to the OSCE, requested the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to provide the assistance of legal advisers to review Armenia's laws on elections and suggest necessary amendments in line with the OSCE/ODIHR recommendations contained in the ODIHR Final Report on the Armenian Presidential Election of September 22, 1996. In response to this request, a Group of Experts was constituted by the Rule of Law and Election Unit and it was composed of:

Prof. Elizabeth F. Defeis, Seton Hall University, USA;
Prof. Michel Lesage, University of Paris-1, France,
Prof. Otto Luchterhandt, University of Hamburg, Germany and
Nikolai Vulchanov, Election Adviser at the ODIHR, Warsaw.

The Group arrived in Yerevan on January 14 and 15, 1997 and, except for Prof. Luchterhandt who left after meetings on January 17, met from January 16 through January 20 with:

Mr. V. Nazarian, Head of the Legal Department at the National Assembly of Armenia;
Mr. H. Khachatrian, Member of the Constitutional Court and Rapporteur for the Constitutional Court in the case regarding the results of the Presidential Elections of September 22, 1996;
Mr. K. Bezirjian, President of the Central Election Commission;
Mr. E. Yegorian, Chairman of the Standing Committee for State & Legal Affairs;
Mr. Chr. Shields, IFES Project Manager in Yerevan;
Mr. V. Manoukian, Presidential Candidate challenging the elections of September 22, 1996;
Mr. A. Sahakian, First Vice-Chairman of the National Assembly.

These meetings were organised through the services of the protocol of the National Assembly. The Group had no contact with the OSCE Division of the Ministry of Foreign Affairs and except for the first meeting with Mr. Nazarian no appointments had been pre-arranged and all appointments were requested by the Group.

At all these meetings the Recommendations contained in the OSCE/ODIHR Final Report of the elections of September 22, 1996 were discussed and all parties agreed that each recommendation was valid and should be implemented.

The first meeting was with Mr. Nazarian who stated that in his opinion the main problems were with the voting of the military, the hospital patients and dislocated persons. He indicated that sanctions for voting violations were insufficient and that the regulations of the Central Election Committee should become part of the new Election Code. He said the President of the National Assembly asked him to request written recommendations of the OSCE/ODIHR.

In the course of three meetings with Mr. Yegorian, he informed the Group that a working group under his direction is meeting two times per week to produce a draft on a new Election Code combining the existing four laws pertaining to elections and that Mr. Christopher Shields the IFES Project Manager attends all meetings of the working group. A working document combining the four laws has been prepared and an English text of this document was supplied to the Group by Mr. Shields. A Conference under the sponsorship of IFES to discuss a subsequent draft now under preparation is scheduled for the latter part of February 1997 and it is planned that foreign experts will be invited.

Mr. Yegorian also informed the Group that there is already agreement between the members of the working group that the election commissions at all levels will be restructured and that the new structure of these commissions will not be based on party affiliations. He also said that it had been decided that there will be no additional list of voters added to the voters list on election day. When requested, Mr. Yegorian specifically addressed each separate recommendation contained in the Final Report of OSCE/ODIHR and indicated that they will be taken into account in the final draft of the Election Code submitted by his group. He also indicated that he would like the work on this draft to be as open as possible and that he would invite comments from all political parties and the public. Mr. Yegorian said that he would be interested to have the written recommendations of the OSCE/ODIHR on the final draft of the Election Code.

During our two meetings with Mr. Bezirjian he discussed in detail deficiencies of the existing Laws particularly with respect to their practical implementation both in the presidential and the local elections. It is clear that his experience will be useful and his practical expertise should be utilised in the course of the work on the new Election Code. He expressed an interest in working with the international community, OSCE/ODIHR in particular, concerning the new Code. It became obvious that he has worked closely with the IFES in Yerevan and values their assistance.

Mr. Manoukian expressed his dissatisfaction with the existing elections laws, the conduct of the elections and the decision of the Constitutional Court. He and his

group are working on recommendations on revisions of the election legislation in Armenia and proposed to send them to the OSCE/ODIHR.

On Monday, January 20 Mr. Sahakian asked to meet the Group with Mr. Nazarian and informed the Group that the Chairman of the National Assembly will appoint him to chair a group that will also be in charge of drafting a new Electoral Code that will take into consideration the OSCE/ODIHR recommendations. Mr. Nazarian also attended this meeting. He mentioned, among other things, that the CEC might be dissolved and its obligations be fulfilled by the Government. Both expressed a wish to work with the international community and hope to receive its written recommendations on their concept of a new Election Code.

The decision of the Constitutional Court was discussed in detail with Mr. Khachatrian. He indicated that this decision was issued upon evidence presented to the Court by the appellants and that the competence of the Court is limited to the examination of particular complaints. The Group was also informed that complaints concerning the irregularities in the presidential elections from September 22, 1996 were not presented to Courts of Law in Armenia and thus the procedure for resolving complaints set forth in the Election Law had not been utilised.

It should be noted that the Final Report of the OSCE/ODIHR was presented to the Constitutional Court by one of the appellants and that the Court's opinion embodied recommendations to the Armenian Parliament that coincided with the recommendations contained in this Final Report.

After examining the decision of the Constitutional Court, together with the Constitution of the Republic of Armenia which limits the competence of the Constitutional Court, the Group is of the opinion that the legal system of Armenia does not provide for a complete examination of the entire election process by the Constitutional Court.

The Group questioned the appropriate Armenian authorities specifically concerning whether any other investigations of the alleged violations that occurred during the presidential elections were currently underway or were contemplated. They responded that they consider the decision of the Constitutional Court the final resolution of the matter except that those who are found guilty of violating the election laws should be punished. Therefore a comprehensive review of the election process in Armenia has not yet been accomplished.

CONCLUSIONS AND RECOMMENDATIONS

There was full agreement that the OSCE/ODIHR recommendations have to be implemented in the new Election Code and that the assistance of OSCE/ODIHR would be well received. The Group is of the opinion that in addition to the recommendations of the OSCE/ODIHR Final Report some other issues should be raised such as rules concerning:

- withdrawal of candidates;
- processing and handling of ballots and protocols;

- complete publication of election results by the Central Electoral Commission by precincts in a reasonable period of time after election day.

This OSCE/ODIHR assistance could be rendered most effectively through legal comments on a final draft before it is presented to the National Assembly. Since IFES has an Office in Yerevan and is rendering current assistance on the drafting of the Election Code, it would be most beneficial if OSCE/ODIHR concentrated on the legal aspects of the new Code.

To assist OSCE/ODIHR to select the most effective form of assistance, there should be a mechanism established to inform OSCE/ODIHR concerning the progress in developing the drafting of the Code in a timely manner.