



Office for Democratic Institutions and Human Rights

# REPUBLIC OF ARMENIA

## PRESIDENTIAL ELECTION

18 February 2013

### OSCE/ODIHR Election Observation Mission Final Report



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**REPUBLIC OF ARMENIA  
PRESIDENTIAL ELECTION  
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**OSCE/ODIHR Election Observation Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

Following an invitation from the Prime Minister of the Republic of Armenia, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 10 January 2013 deployed an Election Observation Mission (EOM) for the 18 February 2013 presidential election in Armenia. The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other international standards for democratic elections, as well as national legislation. For election day, the EOM joined forces with delegations of the Parliamentary Assembly of the Council of Europe and the European Parliament to form an International Election Observation Mission (IEOM).

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 19 February 2013 concluded that the election “was generally well-administered and was characterized by a respect for fundamental freedoms. Contestants were able to campaign freely. Media fulfilled their legal obligation to provide balanced coverage, and all contestants made use of their free airtime. At the same time, a lack of impartiality of the public administration, misuse of administrative resources, and cases of pressure on voters were of concern. While election day was calm and orderly, it was marked by undue interference in the process, mainly by proxies representing the incumbent, and some serious violations were observed.”

The electoral legal framework is comprehensive and conducive overall to the conduct of democratic elections, if implemented properly. On several occasions, the state authorities declared their intention to hold elections in line with international standards and OSCE and Council of Europe commitments. At the same time, shortcomings in the electoral process were mostly caused by a lack of will to implement the provisions effectively and impartially. Public trust in the election process remains low.

A working group composed of government and other state officials was established by presidential decree to explore the recommendations offered in the OSCE/ODIHR final report on the 2012 parliamentary elections and by other organizations, and to put forward an action plan for their implementation. The results of the group’s work were presented to the OSCE/ODIHR in October 2012, which recommended that fundamental aspects of the legal framework should not be amended so close to the upcoming election, in line with good electoral practice.

The election administration, headed by the Central Election Commission (CEC), administered the election in an overall professional manner and within legal deadlines. The CEC worked in an open and transparent manner, approving the main procedural rules, standard forms and instructions well in advance of election day, and making them available on its website. Campaign-financing rules have been strengthened in the new Electoral Code; the CEC, however, provided unsound interpretations of some campaign-financing regulations. The CEC accredited over 6,200 citizen observers from 26 non-governmental organizations, in an inclusive process.

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<sup>1</sup> The English version of this report is the only official document. An unofficial translation is available in Armenian.

The quality of the voter register and voter lists benefitted from various measures taken by the authorities, including a pilot project to provide for better information exchange between various government agencies. Despite serious efforts to technically improve the voter register, the authorities did not manage to diffuse the overall mistrust in the integrity of voter registration. Several presidential candidates voiced their concerns regarding the voter lists, alleging that the number of registered voters was highly inflated and could be used for impersonation of voters residing abroad on election day, yet they did not provide evidence to support their claims.

Candidate registration was inclusive, with all eight candidates who submitted complete documentation and paid the required deposit registered by the CEC (one candidate subsequently withdrew). However, the ten-year citizenship and residency requirements for candidate registration appear disproportionate.

Campaign activities were of limited scope, with the campaign of incumbent President Serzh Sargsyan being, in contrast, most visible. The campaign took place against the backdrop of several parliamentary parties deciding not to nominate or support any candidate and of several prominent personalities deciding not to stand. One candidate was shot and injured; despite this incident, the campaign remained peaceful.

While fundamental freedoms were generally respected and all contestants could campaign without hindrance, the campaign regulations allowed for abuse of administrative resources. Instances of intimidation and pressure on voters were also observed by the OSCE/ODIHR EOM. This did not create a level playing field among contestants nor conditions for voters to make an informed choice and cast their vote without fear of retribution, as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.

A lack of impartiality of the public administration and abuse of administrative resources were observed by the OSCE/ODIHR EOM during the campaign. These included a high number of state and local officials campaigning, which blurred the line between state and political party as well as between the performance of official and campaign duties. In addition, several campaign offices were located in buildings occupied or owned by state or local government. Such occurrences were at odds with paragraph 5.4 of the 1990 OSCE Copenhagen Document, which calls for a separation of State and party.

Public television and radio met their legal obligation to provide the candidates with free and paid airtime. All candidates used their free airtime. The media gave wide attention to political and election-related information, and the media outlets monitored by the OSCE/ODIHR EOM regularly covered all candidates. However, most monitored broadcast media offered viewers formal news coverage, focusing predominantly on campaign events rather than providing analytical commentary of candidates' campaign messages or addressing the performance of the incumbent in office. Among the candidates, the incumbent and Raffi Hovannisyan received the highest amounts of coverage, which reflected the fact that they conducted the most active campaigns. No debates were organized between the candidates, depriving voters of the opportunity to see meaningful dialogue that could address contestants' platforms or the incumbent's performance in office.

The right to file election-related complaints is unduly restricted, and court decisions on electoral rights may not be appealed. The CEC and the courts received a limited number of complaints before election day, all of which were denied consideration or rejected. The adjudication of complaints by the CEC revealed a persistent application of an overly formalistic approach, whereby all complaints were either considered inadmissible or rejected. The adjudication of electoral disputes failed to provide for effective redress and to ensure legal integrity and thus fell short of meeting the requirements of paragraph 5.10 of the 1990 OSCE Copenhagen Document.

Election day was calm and peaceful overall. The voting process was well organized in the majority of polling stations visited by IEOM observers. However, it was assessed negatively in five per cent of observations, mainly reflecting undue interference in the process, most often by proxies representing the incumbent, tension or unrest, large groups outside and overcrowding inside stations, as well as a number of serious violations during voting hours. The ink for stamping voters' passports, an extra safeguard against multiple voting, proved to be easily removable, despite prior testing by the CEC. The vote counts observed by IEOM observers were mostly conducted in line with procedures and assessed positively, although observers reported cases of procedural violations and irregularities and counts which lacked transparency.

The tabulation of results by Territorial Election Commissions (TECs) was assessed overall positively and described as effective and well-organized. However, IEOM observers noted cases of inappropriate TEC premises and overcrowding, as well as procedural errors. In some one third of TECs, IEOM observers could not adequately observe the entry of election results into the computer system. An OSCE/ODIHR EOM analysis of final results as published by the CEC shows a tendency of considerably better results for the incumbent in the majority of stations with above-average turnout. This indicates possible serious problems with voting and counting and raises concerns about the integrity of the electoral process.

Following election day, Mr. Hovannisyan disputed the preliminary election results, organized protest rallies in Yerevan and visited several cities outside the capital. He demanded that all election-related violations be prosecuted and that a second round of the presidential election be held, or, alternatively, the resignation of the government and holding of early parliamentary elections. The main broadcast media, including public *HI*, showed a selective approach in their coverage of post-election events, with a noticeable tendency to limit views critical of the conduct of the election. They often presented only general, and at times marginal, coverage of the protests.

Requests to invalidate 120 polling station results, as well as 20 recount requests, were filed after election day, almost all by proxies of Mr. Hovannisyan. All recount requests filed by proxies were rejected by the election commissions, as they did not consider the applicants authorized to file them. All invalidation requests were either considered inadmissible because they had been filed past the legal deadline, or rejected as unsubstantiated. A complaint by Mr. Hovannisyan requesting de-registration of the incumbent for allegedly exceeding the campaign spending ceiling was rejected by the CEC, and subsequently on appeal by the Administrative Court.

The CEC announced the final results on 25 February, with Mr. Sargsyan winning the election. Mr. Hovannisyan and another candidate, Mr. Andrias Ghukasyan, applied to the Constitutional Court, requesting the invalidation of the election on the basis of alleged large scale violations. Mr. Hovannisyan also requested that the Court declare his victory in the election. On 14 March, the Court confirmed the CEC decision to declare the re-election of incumbent, on the grounds that most of the evidence presented was unsubstantiated and not sufficient to influence the election results.

## **II. INTRODUCTION AND ACKNOWLEDGMENTS**

Following an invitation from the Prime Minister, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on 10 January 2013 deployed an Election Observation Mission (EOM) for the 18 February 2013 presidential election in Armenia. The EOM was headed by Ambassador Heidi Tagliavini and consisted of 16 experts and 24 long-term observers (LTOs), who were based in Yerevan and 10 locations across the country. Members of the EOM were drawn from 21 OSCE participating States.

For election day, the OSCE/ODIHR EOM joined forces with delegations of the Parliamentary Assembly of the Council of Europe and the European Parliament to form an International Election Observation Mission (IEOM). Overall, 283 short-term observers were deployed on election day, drawn from 36 OSCE participating States and one OSCE Partner for Co-operation.

The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other standards for democratic elections, and national legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference on 19 February 2013, and a post-election interim report.<sup>2</sup>

The OSCE/ODIHR EOM wishes to thank the Government of the Republic of Armenia for the invitation to observe the election, the Central Election Commission (CEC) for its co-operation and for accreditation documents, and the Ministry of Foreign Affairs for its co-operation and assistance. The EOM also wishes to express appreciation to other national and local state institutions, election authorities, candidates, political parties and civil society organizations for their co-operation, and to the OSCE Office in Yerevan, embassies of OSCE participating States and Partners for Co-operation, and international organizations accredited in Armenia for their support.

### III. BACKGROUND AND POLITICAL CONTEXT

The last presidential election of 19 February 2008 was won by Mr. Serzh Sargsyan of the Republican Party of Armenia (RPA) with 52.8 per cent of the vote. His main competitor, former President Levon Ter-Petrosyan, received 21.5 per cent. The election results were challenged and Mr. Ter-Petrosyan's supporters staged a series of protests. Following clashes between the police and protesters, 10 people lost their lives and some 200 were injured.

The most recent parliamentary elections were held in May 2012. The ruling RPA won 69 of the 131 seats in parliament. Other parties represented in the parliament are Prosperous Armenia (PA, with 37 seats), Rule of Law (RoL, with 6 seats), the Armenian Revolutionary Federation – *Dashnaksutyun* (ARF, with 6 seats), Heritage (with 5 seats), and the Armenian National Congress bloc (ANC, with 7 seats). The current government is a coalition of RPA and Rule of Law (RoL).

### IV. THE ELECTION SYSTEM AND LEGAL FRAMEWORK

The president is directly elected by popular vote for a five-year term. To be elected in the first round, a candidate must win an absolute majority of votes cast. Otherwise, a second round is held two weeks later, between the first and second-placed candidates. The candidate who receives the higher number of votes in the second round is elected. The same person may not serve more than two consecutive terms.

This election was the first presidential election to be held under the new Electoral Code adopted in May 2011.<sup>3</sup> The new Code addresses a number of previous recommendations offered by the OSCE/ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission) and has been assessed as comprehensive and providing a sound framework for

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<sup>2</sup> These reports, together with all previous OSCE/ODIHR reports on Armenia, are available at: <http://www.osce.org/odihr/elections/armenia>.

<sup>3</sup> Other relevant legislation includes the Constitution (last amended in 2005), the Law on Political Parties (last amended in 2012), and the Law on Freedom of Assemblies (2011). The Administrative Offences Code and the Criminal Code were both amended in 2011, increasing fines and prison terms for electoral offences and establishing additional election-related offences.

the conduct of democratic elections.<sup>4</sup> Areas of improvement include the accessibility of voter lists, the introduction of a gender quota for election commissions, and greater campaign finance transparency, among other things. At the same time, certain shortcomings remain, such as insufficient separation of state and party structures, the possibility to easily de-register candidates, unnecessary obstacles for citizen observers' accreditation and an ineffective complaints and appeals procedure.<sup>5</sup>

Most notably, the campaign regulations were not always interpreted or implemented properly by the authorities and contestants, especially with regard to campaign-finance provisions. This proved to allow for abuse of administrative resources and did not provide for a level playing field among candidates or protect voters from undue influence. In addition, the Criminal Code does not include specific offenses for abuse of office and state resources in an election campaign. These factors contributed to an undue advantage of the incumbent during the campaign.

The electoral legal framework is supplemented by CEC decisions and clarifications of legal provisions. At times, the CEC provided too narrow interpretations of legal provisions or failed to provide clarifications.

*Election commissions, law enforcement bodies, and courts should interpret, implement and enforce the electoral legal framework taking into consideration the spirit and intent of the law, with the aim to ensure an equal playing field for contestants, the free expression of the will of the voters, and the integrity of the electoral process.*

The Constitution guarantees the fundamental rights and freedoms necessary for democratic elections. The 10-year citizenship and residency requirements for candidates and the electoral deposit that candidates must submit in order to be registered appear disproportionate.<sup>6</sup> The deprivation of voting rights of all prisoners, regardless of the severity of the crime committed, is at odds with the principle of universal suffrage and with case law of the European Court of Human Rights on this issue.<sup>7</sup>

*The Electoral Code provision that disenfranchises all prisoners, regardless of the severity of the crime for which they have been sentenced, should be amended.*

Following the 2012 parliamentary elections, a working group composed of government and other state officials was established by presidential decree to explore the recommendations offered in the

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<sup>4</sup> At the request of the National Assembly, the OSCE/ODIHR and the Venice Commission issued a Joint Opinion on the 2011 Electoral Code, which is available at: <http://www.osce.org/odihr/elections/84269>.

<sup>5</sup> See the OSCE/ODIHR and Venice Commission Joint Opinion on the Electoral Code and the OSCE/ODIHR EOM Final Report on the 2012 parliamentary elections, available at: <http://www.osce.org/odihr/91643>.

<sup>6</sup> See the Venice Commission's Code of Good Practice in Electoral Matters, 1.1.c available at: [http://www.venice.coe.int/webforms/documents/CDL-AD\(2002\)023rev-e.aspx](http://www.venice.coe.int/webforms/documents/CDL-AD(2002)023rev-e.aspx), and the OSCE/ODIHR and Venice Commission Joint Opinion on the 2011 Electoral Code, part 37. See also paragraphs 36 and 37 of the OSCE/ODIHR and Venice Commission Joint Opinion on the 2011 Electoral Code, which states that "the amount of an electoral deposit must be considered carefully since every citizen should be provided a meaningful opportunity to stand as a candidate."

<sup>7</sup> Paragraph 7.3 of the 1990 OSCE Copenhagen Document states that the participating States will "guarantee universal and equal suffrage to adult citizens," while paragraph 24 provides that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law." Paragraph 14 of General Comment 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee states that grounds for the deprivation of voting rights should be "objective and reasonable"; see at: <http://www.unhcr.ch/tbs/doc.nsf/%28Symbol%29/bb722416a295f264c12563ed0049dfbd?Opendocument>. The Venice Commission's Code of Good Practice in Electoral Matters recommends that the deprivation of suffrage rights must be based on a "criminal conviction for a serious offence" and recommends that the "withdrawal of political rights should only be carried out by express decision of a court of law." See also the European Court of Human Rights, *Hirst v. United Kingdom*, No. 74025/01 (6 October 2005), available at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-70442>.

OSCE/ODIHR EOM Final Report and by other observer organizations, and to put forward an action plan for their implementation. The results of the group's work were presented to the OSCE/ODIHR in October 2012, which recommended that fundamental aspects of the legal framework should not be amended so close to the upcoming election, in line with good electoral practice.<sup>8</sup>

*The authorities are encouraged to proceed with preparing the necessary legislative amendments, in order to address previous and present recommendations, in a public consultative and inclusive process with the participation of all relevant stakeholders, including political parties and civil society.*

## V. ELECTION ADMINISTRATION

The election was administered by a three-tiered system of election commissions, comprising the CEC, 41 Territorial Election Commissions (TECs), and 1,988 Precinct Election Commissions (PECs).<sup>9</sup>

The seven members of the current CEC were appointed by the president in July 2011, upon nominations by the Human Rights Defender (three members) and the Chairpersons of the Court of Cassation and the Chamber of Advocates of Armenia (two members each).

TECs are permanent bodies whose members were appointed in August 2011 by the CEC, from among citizens nominating themselves for these positions. The Electoral Code establishes gender quotas for the composition of the CEC and TECs, requiring that at least two members of the CEC and each TEC are of the less represented gender. Three of the current CEC members are women, as are 33.5 per cent of all TEC members and 10 per cent of TEC chairpersons.

The chairpersons, deputy chairpersons and secretaries of the CEC and TECs were elected by commission members from among themselves. TECs and PECs were generally well-equipped, although OSCE/ODIHR EOM LTOs reported that in some cases their premises were too small or otherwise unsuitable at the time of their visits.<sup>10</sup>

All PECs were formed by 24 January, as required by the Electoral Code. TECs appointed two members of each PEC under their jurisdiction. Each of the five political parties and the one electoral bloc represented in parliament were entitled to appoint one member to each PEC. The RPA, PA and RoL nominated members for all PECs, while the ANC, Heritage and ARF did not fill their seats in 457, 65 and 51 PECs, respectively.<sup>11</sup> The vacancies, including some 70 that appeared after failure of political parties to replace PEC members who had resigned, were filled by the corresponding TEC chairpersons, in line with legal provisions. The positions of PEC chairpersons and secretaries were distributed by the CEC on 15 January among the party and bloc appointees, proportionally to the number of seats the nominating parties and bloc held in parliament. Women represented 48 per cent of PEC members, and chaired 32 per cent of polling stations visited by IEOM observers.

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<sup>8</sup> See the Venice Commission's Code of Good Practice in Electoral Matters, II.2.b, which provides that "[the] fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law".

<sup>9</sup> A precinct can have up to 2,000 voters.

<sup>10</sup> IEOM observers reported that the small premises of TECs 14, 16, 21, 33 and 39 caused problems during the tabulation of election results.

<sup>11</sup> Parties that did not fill their quota for all PECs cited lack of interest, since they did not nominate a candidate, lack of resources and party supporters living in some communities, as well as the wish not to participate in what they considered an "unfair election", as reasons.

The CEC worked in an open and transparent manner, granting information and access to its sessions to candidates and their proxies, observers and media representatives. Starting from 1 February, CEC sessions were also streamed live on its website. With the support of the International Foundation for Electoral Systems (IFES), USAID and the OSCE Office in Yerevan, the CEC launched voter education spots on television and also produced information materials on various aspects of the electoral process, including for voters with disabilities.

The CEC and TECs carried out the administrative preparations in a professional manner and within legal deadlines. The CEC approved the main procedural rules, standard forms and instructions, including on stamping of voters' passports on election day, and made them available on its website well in advance of election day.<sup>12</sup> The question whether candidates could provide free transport services to voters on election day remained unaddressed by the CEC, but this issue did not surface on election day. The CEC also did not clarify the rules under which candidates who withdraw from the election would compensate the free airtime expenses provided by the state for their campaign.<sup>13</sup> Voting via internet was organized by the CEC for diplomatic service staff posted abroad and their family members.<sup>14</sup>

*Mechanisms providing for the uniform implementation of election-related legislation should be strengthened. This includes enhancing the authority of the CEC to adopt in a timely manner necessary decisions and clarifications, the implementation of which would be compulsory for all other stakeholders. The CEC should ensure that it issues all required decisions and clarifications, and that they are in line with the letter and intent of the law.*

The CEC, in co-operation with IFES and the OSCE Office in Yerevan, provided training for all TEC and PEC members, including on complaints procedures. PEC training sessions were organized in each province; OSCE/ODIHR EOM LTOs assessed positively the trainings attended.

*The CEC should continue to provide training for election commission members, including on election procedures, with a particular focus on counting and tabulation procedures.*

## VI. VOTER REGISTRATION

Voter registration is passive and based on the state population register. The Passport and Visa Department of the police (PVD) is responsible for the permanent maintenance of a nationwide, electronic voter register.<sup>15</sup> In an effort to contribute to transparency and build public confidence regarding voter registration, a searchable digital version of the register was posted on the CEC website on 8 January, as required by law. The CEC introduced a new feature in the searchable register that allows voters to check their personal record as well as the records of voters registered at the same address.

Voter lists are extracted from the voter register and compiled for each precinct, according to citizens' place of residence. Provisional voter lists by polling station were posted in a downloadable version on the PVD website as well as at the respective polling stations. Citizens could apply to 61 PVD offices across the country for correction of discrepancies in the voter list (including in other voters' records).

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<sup>12</sup> The passports of voters were stamped with special ink to provide an extra safeguard against multiple voting, and the stamp should have remained visible for at least 12 hours.

<sup>13</sup> Article 87.5 of the Electoral Code obliges candidates who withdraw from the election to reimburse any state funds spent for their campaign; however, it does not define the procedure or the terms for the reimbursement.

<sup>14</sup> Some 228 of the 243 voters falling under this category voted electronically.

<sup>15</sup> The PVD updates the voter register in June and November each year, and submits it to the CEC.

Final voter lists in both versions were posted on 16 February. According to the CEC, 2,529,016 voters were eligible to vote on election day.

Voters who wished to vote in a different community than their place of residence could request the PVD to temporarily transfer their record to the respective voter list, but not later than seven days before election day. Within the same deadline, non-registered citizens could request to be included in an additional voter list as per their place of stay in Armenia. Special voter lists were compiled for military units, pre-trial detention centres, and police and National Security Service personnel stationed outside their place of residence.

The police launched a telephone hotline for voters, and together with the CEC conducted voter education through the media. Voter education posters regarding corrections to the voter lists were posted in most polling stations visited by OSCE/ODIHR EOM LTOs. The police organized door-to-door visits to check addresses with high numbers of registered voters, incorrect addresses and demolished buildings where citizens were still registered.<sup>16</sup> The PVD published monthly updates regarding its activities and raised voters' awareness regarding data verification in the state population register. The various measures undertaken improved the quality of the state population register and of the voter lists.

Despite serious efforts to technically improve the voter register, the authorities could not diffuse the overall mistrust in the integrity of the voter registration process. In the run-up to the election, several candidates voiced their concerns through media regarding the voter lists. They alleged that the number of registered voters was highly inflated and could be used for impersonation of voters residing abroad on election day, although they did not provide evidence of this.<sup>17</sup>

*In order to increase public trust in the integrity of the voter registration process, national stakeholders, including representatives of the authorities, political parties, candidates and civil society, should engage in a public discussion and inclusive decision-making process to address specific and contentious aspects of voter registration (among others, registration of voters residing abroad, signed voter lists being made public or otherwise accessible).*

Registration of voters on election day is possible, based on a PVD statement or court decision. A total of 215 voters used this possibility. In addition, on election day IEOM observers reported 29 cases of voters being refused the right to vote since their names could not be found on the respective voter lists.<sup>18</sup>

A pilot electronic, intranet-based system has been introduced for the Yerevan Civil Status Registry Office, automatically transferring data updates to the state population and voter registers. The PVD informed the OSCE/ODIHR EOM that while the system needs further technical improvements, it provided for an improved notification and data exchange mechanism.

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<sup>16</sup> The police informed the OSCE/ODIHR EOM that it is no longer possible to register citizens at inadequate premises or demolished buildings. According to the police, the issue of people being registered at incorrect addresses should be addressed by a new property registration system. To register a property, including its address, citizens need to obtain prior permission from the National Cadaster Office, which checks the property before registering it (following amendments to Government Decree 1231N).

<sup>17</sup> Some political parties (ANC and National Self-Determination Union [NSDU]) also voiced their concerns regarding the accuracy and possible manipulation of voter lists to the OSCE/ODIHR EOM.

<sup>18</sup> Citizen observer organizations *It's Your Choice* and *Capacity and Development for Civil Society* also reported such cases.

*Efforts to improve the accuracy of voter lists should continue. An effective notification system between different public authorities could be introduced at national level, to facilitate data exchange and enable timely correction of records in the voter register and voter lists.*

## VII. CANDIDATE REGISTRATION

To be eligible to run for president, citizens must have voting rights, be 35 years or older, not hold the citizenship of another country, and have been a citizen of and have permanently resided in Armenia for the preceding 10 years.

Candidates can be nominated by political parties or through self-nomination. The nomination took place from 25 December 2012 to 4 January 2013, and was followed by a ten-day period for candidate registration. Prospective candidates had to submit an application<sup>19</sup> to the CEC containing personal data and pay a deposit of AMD 8 million (some EUR 14,700).<sup>20</sup> Prospective candidates have additional 48 hours to supplement their documentation, upon request of the CEC.<sup>21</sup> The law allows for a candidate's registration to be revoked by a court decision upon application of the CEC for campaign or campaign finance violations.

*The Electoral Code should be amended to allow for candidate de-registration only in extraordinary circumstances, which should be clearly and exhaustively defined in the Electoral Code.*

Candidate registration was inclusive. A total of 15 nominations were submitted to the CEC within the legal deadline. One nominee announced his withdrawal and six were not registered for failure to pay the deposit, including the only woman among the prospective candidates. The CEC registered all eight nominees who had submitted complete documentation and paid the electoral deposit.<sup>22</sup> One of the candidates, Mr. Aram Harutyunyan, withdrew on 8 February, expressing his hope that all other candidates except the incumbent would also withdraw, and thereby de-legitimize the election.

Three prospective nominees were not issued the required residency certificate by the PVD. The Electoral Code does not define how the ten-year residency is calculated. The PVD informed the OSCE/ODIHR EOM that it issued the certificate only to citizens who had not been residing outside Armenia for a period of more than 6 months continuously over the last 10 years. This was based on Article 7 of the Law on State Registration,<sup>23</sup> which appears to be overly restrictive as it runs against international standards and good electoral practice.<sup>24</sup>

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<sup>19</sup> In addition to the application, nominees had to submit the following supportive documentation: a decision of the party congress or the party's permanent executive body on nomination as a candidate, the party's statute, written consent to be nominated by party, copy of ID, proof of residence and citizenship for the last ten years, and personal details of the candidate's authorized representative. The first three documents had to be submitted by party-nominees only.

<sup>20</sup> The deposit is non-refundable to candidates who received less than five per cent of the votes cast.

<sup>21</sup> By law, registration may be refused if the documents submitted are incomplete or have been falsified.

<sup>22</sup> The registered candidates were Messrs. Hrant Bagratyan, Andrias Ghukasyan, Aram Harutyunyan, Paruyr Hayrikyan, Raffi Hovannisyanyan, Arman Melikyan, Serzh Sargsyan and Vardan Sedrakyan.

<sup>23</sup> Article 7.2 of the Law on State Registration provides that: "Armenian citizens leaving to a foreign country for residence of more than 6 months or residing in a foreign country for more than 6 months are required to notify in writing the appropriate embassy or consular office of the Republic of Armenia".

<sup>24</sup> Article 25 of the International Covenant on Civil and Political Rights (ICCPR) states that grounds for the deprivation of voting rights should be "objective and reasonable"; see also Article 15 of ICCPR. The Code of Good Practice in Electoral Matters of the Venice Commission (1.1.c.ii and iv) states that "the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities" and "residence in this case means habitual residence".

*The requirement of ten-year citizenship and residency for candidates is disproportionate and should be addressed. At a minimum, the law should clarify the residency requirement so that it means habitual residence, in line with good practice, and establish transparent and objective procedures for determining whether it is met. Determination of the residency requirement should not be overly restrictive.*

## VIII. THE ELECTION CAMPAIGN AND CAMPAIGN FINANCE

The official election campaign period started one week after the end of candidate registration (21 January) and ended at midnight two days before election day (16 February). The Electoral Code allows campaign activities to be conducted before the official start of the campaign. However, campaign provisions aimed at creating a level playing field for all candidates only apply during the official campaign period, i.e. not during the week following the end of candidate registration.

*The Electoral Code should be amended to stipulate that the pre-election campaign period officially starts at the latest on the day following the deadline of candidate registration so that campaign regulations are applicable.*

The election campaign took place against the backdrop of decisions of PA, ANC and ARF to not nominate or support any candidate.<sup>25</sup> Out of the eight candidates, only the incumbent was nominated by a parliamentary party.<sup>26</sup>

In the period before and during the campaign, contestants actively campaigned through online media and social networks, in particular Facebook. The campaign was otherwise low-key. The incumbent's campaign was, in contrast, most visible and included a number of rallies and indoor events throughout the country.<sup>27</sup> Four of the candidates had campaign activities in the regions. Candidate Andrias Ghukasyan was on a hunger strike throughout the campaign period, demanding de-registration of the incumbent.<sup>28</sup> On 31 January, candidate Paruyr Hayrikyan was shot and injured. On 7 February, two suspects were arrested, and on 5 March, candidate Vardan Sedrakyan was also detained on suspicion of being implicated in the shooting.<sup>29</sup> Although Mr. Hayrikyan stated publicly on 5 February that he would not apply to the Constitutional Court to have the election postponed, he subsequently filed an application on 10 February, but withdrew it the following day.

With the exception of the incumbent, all candidates and several civic initiatives raised concerns about the integrity of the electoral process and misuse of administrative resources.<sup>30</sup> Although the Electoral Code establishes rules aimed at ensuring equal opportunities for candidates, some campaign regulations and their implementation proved not to provide sufficient protection against the misuse of administrative resources.

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<sup>25</sup> ANC did not nominate a candidate after the announcement of Mr. Ter-Petrosyan that he would not run in the election due to his age, lack of financial resources and of trust in the electoral process.

<sup>26</sup> The other party-nominated candidate was Mr. Bagratyan (Freedom Party). Messrs. Hovannisyan (Heritage) and Hayrikyan (NSDU) are the leaders of their respective parties but were self-nominated. The other four candidates were also self-nominated.

<sup>27</sup> Out of 57 rallies observed by OSCE/ODIHR EOM LTOs, 36 were held in support of the incumbent. An estimated 40 per cent of attendants at the rallies were women.

<sup>28</sup> Mr. Ghukasyan also sent a letter to the other candidates calling on them to jointly withdraw from the election.

<sup>29</sup> Mr. Sedrakyan at a press conference on 12 February expressed concerns that possible charges connected with the shooting might be laid against him after election day, denying any connection to the attack on Mr. Hayrikyan.

<sup>30</sup> After election day, 19 NGOs expressed mistrust in the election process and demanded that the signed voter lists be published. Student protests in Yerevan and Gyumri were held for several days after the final results were declared. Messrs. Bagratyan, Hayrikyan and Hovannisyan released a joint public statement on 28 January, calling for the creation of fair and equal conditions for all candidates and urging citizens to participate in the election in the highest possible number.

The fundamental freedoms were generally respected and all contestants campaigned without hindrance, but the OSCE/ODIHR EOM noted a lack of impartiality of the public administration and abuse of administrative resources in favour of the incumbent.<sup>31</sup> This calls into question the separation of State and political party, as called for in paragraph 5.4 of the 1990 OSCE Copenhagen Document.<sup>32</sup>

*The authorities should ensure that safeguards are developed and implemented in order to ensure a clear separation between the State and party, as required by paragraph 5.4 of the 1990 OSCE Copenhagen Document.*

Instances of intimidation and pressure of voters, including pressure on public workers by superiors to attend campaign events and vote for the incumbent, were observed by OSCE/ODIHR EOM LTOs.<sup>33</sup> Such undue influence, in particular on public sector employees, can have consequences for individual livelihoods and questions the ability of citizens to hold and express opinions without fear of retribution, as provided by paragraph 7.7 of the 1990 OSCE Copenhagen Document.<sup>34</sup>

*Public officials should refrain from abuse of administrative resources, including abuse of office towards their employees and the public. Effective efforts should be undertaken to ensure the impartiality of the public administration, including of state and local government officials. They should refrain from putting pressure on voters, both during the campaign and on election day. The Criminal Code should be amended to include offenses for abuse of official position and of administrative resources for campaigning.*

*The authorities should undertake measures to increase public trust in the integrity of the election process by demonstrating more respect for the right of citizens to express their fundamental civil and political preferences as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.*

A high number of state and local administration officials, who according to the Electoral Code are not allowed to campaign during their official duties, circumvented the law by taking leave in order to actively campaign for the incumbent.<sup>35</sup> This contributed to a blurring of the line between state and political party, as well as between the performance of official and campaign functions. OSCE/ODIHR EOM LTOs also noted several violations of the Electoral Code by regional or municipal officials who

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<sup>31</sup> OSCE/ODIHR EOM LTOs verified instances of misuse of administrative resources in Yerevan and in eight of the ten provinces. In a village in Ararat province, the head of the community used the community administration building as the campaign office. In a village in Aragatsotn province, communal employees were using facilities in the community office for campaign purposes, and in a town in the same province a campaign office was supplied with facilities from the mayor's office. The municipality of Kapan used its resources for campaigning. A village head in Shirak province used the office car for campaigning. Heads of villages in Lori province were campaigning from the village administration office. In a village in Kotayk province, the administration building was used as a distribution point for campaign material, and in another administration building facilities were used for campaigning.

<sup>32</sup> Paragraph 5.4 provides for "a clear separation between the State and political parties; in particular, political parties will not be merged with the State".

<sup>33</sup> In the cities of Yerevan, Kapan and Vanadzor, teachers were instructed to attend campaign events and were required to submit their passport numbers to the school director. In Shirak province, several directors of state institutions assembled their employees and encouraged them to vote for the incumbent. In Vanadzor, medical staff of four different institutions was compelled to attend a rally. In Yerevan, two public employees informed OSCE/ODIHR EOM LTOs that they had been pressured to join RPA.

<sup>34</sup> Paragraph 7.7 provides that the participating States will "ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution."

<sup>35</sup> Nine out of 10 governors took leave in order to campaign for the incumbent. Mr. Sargsyan, in an interview for Radio Free Europe/Radio Liberty from 20 January, stated: "[...] why shouldn't they use their leadership — I mean their prestige — for their political party or for ensuring the victory of their party's leader?"; see at: <http://www.rferl.org/content/armenia-president-serzh-sarkisian-interview/24878387.html>.

campaigns while performing their official duties.<sup>36</sup> The lack of impartiality of the public administration went against paragraphs 5.4 and 7.7 of the 1990 OSCE Copenhagen Document. The OSCE/ODIHR EOM is also aware of two public officials from communities where Mr. Hovannisyan won the majority of votes, who tendered their resignations after the election.<sup>37</sup>

According to the Electoral Code, campaign offices may not be located in buildings occupied by election commissions or by state or local government bodies, with the exception of premises within such buildings that do not belong to state or local government bodies. This exception was widely used by the incumbent who had an extensive network of campaign offices or RPA offices that were also used for his campaign.<sup>38</sup> OSCE/ODIHR EOM LTOs reported several cases where campaign offices of the incumbent or of RPA were located in buildings that were either co-located with the election commissions;<sup>39</sup> occupied by state or local government bodies;<sup>40</sup> or owned by the state or the local government.<sup>41</sup>

*Party and campaign offices should not be located in buildings occupied or owned by state or local government bodies.*

The Electoral Code could be effective in ensuring the integrity and increasing the transparency of campaign financing, if implemented properly.<sup>42</sup> By law, candidates have to conduct all election-related financial transactions through a special bank account with the Central Bank of Armenia. Whereas the Electoral Code lists rental of premises as campaign expenditure, the CEC issued a decision excluding the rental of campaign offices from expenditures that have to be included in the financial declarations of candidates.<sup>43</sup> Rental of locations for holding campaign events were also not declared. Other expenses such as payment of individuals employed by campaign offices are also not listed in the law among the categories of campaign expenditures and were not reported by candidates.<sup>44</sup>

All candidates submitted their declarations of incomes and assets after registration, but the Oversight and Audit Service of the CEC (OAS) does not have jurisdiction to assess the validity of the data

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<sup>36</sup> Some examples include: the Aragatsotn acting governor, who had not taken leave, was present in the RPA office during working hours. The head of the Qanaqer-Zeytun district administration in Yerevan, while officially on leave in order to campaign, was present in his public office. In villages in Armavir province, campaign events took place during working hours and were attended by public employees who were not on leave. In Shirak province, five village heads and two deputy heads were involved in campaign activities during their working hours. In three villages in Vayots Dzor province, heads were campaigning while not having taken leave.

<sup>37</sup> The governor of Shirak and the RPA-nominated mayor of Armavir tendered their resignations.

<sup>38</sup> According to RPA information provided to the OSCE/ODIHR EOM, the countrywide number of campaign offices of the incumbent (excluding Yerevan) was 1,186. The other candidates either had no campaign offices or had a limited number of such offices in larger cities.

<sup>39</sup> Four such cases were observed during the time of visits in the provinces of Aragatsotn and Armavir.

<sup>40</sup> A total of 13 such instances were observed in Yerevan and the provinces of Aragatsotn, Armavir, Lori, Shirak and Syunik.

<sup>41</sup> As observed in the provinces of: Armavir (in a chess school, a museum and a hotel owned by the municipality), Syunik (village clinic), Vayots Dzor, and Yerevan (in public libraries), Aragatsotn, Kotayk and Syunik (in five Houses of Culture); and Kotayk, Lori and Shirak (in three buildings owned by a school or in the school itself).

<sup>42</sup> Campaigns may be financed by candidates' own funds (up to AMD 5 million, or EUR 9,250), and by voluntary contributions from voters (up to AMD 100,000, or EUR 185 per voter). Party-nominated candidates may also receive up to AMD 25 million (EUR 46,300) from the respective party. Contributions from anonymous sources, foreign citizens and legal entities are not allowed. The maximum amount a presidential candidate is allowed to spend on his or her campaign is AMD 100 million (EUR 188,700).

<sup>43</sup> CEC Decision No. 33 of 16 February 2012 on Official Clarification for the Purpose of Excluding the Controversial Perception of Article 26 of the Electoral Code.

<sup>44</sup> The campaign declarations contained detailed expenditure on campaign materials for distribution, media advertisements and posters. No expenditures for office space, transportation, telecommunications, equipment or staff were included.

declared. Mr. Melikyan did not open a campaign account and did not submit financial declarations, but he was not sanctioned as no sanctions are stipulated for such cases.<sup>45</sup> The Central Bank submitted to the OAS reports on campaign funds of the candidates every three working days. However, these reports appeared incomplete as they only contained information on the total income and expenditure and not on the sources of funding, the amount of each contribution or each type of expenditure. After reviewing the reports of candidates and banks and their presentation at the CEC, all reports were published on the CEC website, together with the OAS's statements of findings.<sup>46</sup> Overall the monitoring of campaign finance was insufficient and formalistic.<sup>47</sup>

*In order to enhance transparency, accountability, and public confidence in the integrity of the campaign finance regime, and the electoral process in general, the authorities should clarify certain legislative measures or introduce clear procedures that would make such a regime consistent and operable.*

## IX. THE MEDIA

### A. MEDIA LANDSCAPE

There are 44 terrestrial television stations,<sup>48</sup> including 6 with nationwide coverage, 20 radio stations, some 90 print publications and numerous online media operating in Armenia. Television is the most important source of information, especially outside Yerevan. Public television *HI*, with nationwide coverage, is considered one of the most influential media. While print media struggle with declining impact, the readership of online media, including a number of politics-oriented portals, is rapidly growing. OSCE/ODIHR EOM interlocutors welcomed a freer pre-election media environment and the variety of information available, especially on the internet. However, they also pointed out persisting problems, including self-censorship and media ownership affecting diversity of opinions and editorial independence.

The National Commission for Television and Radio (NCTR) is the body empowered to oversee the broadcast media. The public broadcaster, comprising public television and public radio, is managed by the Public Television and Radio Council (the Council). One half of the NCTR's members are elected by parliament and the other half is appointed by the president. The Council comprises five members who are appointed by the president.

Libel and insult were decriminalized in May 2010, and in November 2011 the Constitutional Court ruled that media cannot be held liable for "critical assessment of facts" and "evaluation judgments". This decision significantly limited the previously high fines on media outlets in civil defamation lawsuits.<sup>49</sup> Nevertheless, on 12 February 2013, 12 NGOs issued a statement condemning recent lawsuits against media outlets and calling upon "business tycoons to seek off-court solutions, courts

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<sup>45</sup> The CEC opined that this was not necessary as he was not incurring any incomes or expenditure.

<sup>46</sup> See at: <http://www.elections.am/audit/>. According to the declared and published information as of 18 February, Mr. Sargsyan and Mr. Hovannisyan received AMD 102 and 91 million (EUR 188,679 and 166,000), respectively, and spent AMD 99.843 and 91 million (EUR 188,400 and 166,000), respectively. The other candidates received a combined total of AMD 19 million (EUR 35,000) and spent a total of AMD 16 million (EUR 29,500).

<sup>47</sup> The OSCE/ODIHR EOM added up the amounts of income and expenditure presented in some declarations published on the CEC website and found that the presented balance is inaccurate.

<sup>48</sup> According to data provided by the National Commission for Television and Radio (NCTR), there are additionally 52 channels broadcasting via cable networks.

<sup>49</sup> This decision was welcomed by the OSCE Representative on Freedom of the Media; see the Regular Report to the OSCE Permanent Council, 24 November 2011, available at: <http://www.osce.org/fom/85336>.

[to have a] more balanced approach and legislative change in order to clarify respective provisions of the Civil Code”.<sup>50</sup>

## B. LEGAL FRAMEWORK FOR THE MEDIA

The Constitution provides for freedom of speech and freedom of information. While the Law on Television and Radio Broadcasting forbids censorship and sets a number of rules for campaign coverage in the broadcast media, the Electoral Code remains the main legal basis for conducting an election campaign in the broadcast media. It provides that news programs on both public and private media are required to present impartial and unbiased information about contestants’ election campaigns and to ensure equal and fair conditions. Campaign broadcasts on television and radio have to be explicitly identified as such.

Each candidate was entitled to receive a maximum of 60 and 120 minutes of free airtime on public television and public radio, respectively;<sup>51</sup> both broadcasters complied with their legal obligation. The schedule of free and paid airtime was established by the CEC the day after the end of candidate registration period, as provided for by the Electoral Code. All candidates utilized their free airtime.<sup>52</sup> *HI* aired free campaign spots starting from 18:00, which is before high primetime and potentially limited viewership.

The NCTR was obliged to oversee media compliance with legal provisions, including through its own media monitoring. It monitored 12 media outlets on a daily basis during the campaign period, including 5 national channels.<sup>53</sup> The methodology focused only on a quantitative analysis, omitting an assessment of the tone of the broadcast. Additionally, coverage data of other licensed television and radio channels was provided by the broadcasters themselves and was only randomly scrutinized by the NCTR. Continuing a positive practice established during the 2012 parliamentary elections, the NCTR published two relatively detailed monitoring reports before election day, and a final report shortly after election day. According to the NCTR, there were no media-related complaints. The NCTR did not conduct media monitoring of candidates’ activities before the beginning of the official campaign period.<sup>54</sup>

*Consideration could be given to enhancing the capacities and resources needed by the NCTR for conducting its media monitoring fully and independently, instead of tasking broadcasters to provide*

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<sup>50</sup> The statement is available at: <http://www.ypc.am/bulletin/t/45608/ln/en/#45610>.

<sup>51</sup> In addition, each candidate could purchase up to 120 and 180 minutes of paid airtime on public television and public radio, respectively. In total, 22 media outlets offered paid airtime to candidates. As required by the law, the prices were announced two months prior to election day, with all major broadcasters setting the amounts equal to those charged during the 2012 parliamentary elections: public television – AMD 80,000/minute (EUR 148), and public radio – AMD 3,600 (EUR 7), whereas the most expensive were private *Shant TV* – AMD 120,000 (EUR 222) and *Armenia TV* – AMD 110,000 (EUR 203). Messrs. Harutyunyan, Melikyan and Sedrakyan did not purchase airtime.

<sup>52</sup> Mr. Ghukasyan offered his free airtime to various representatives of civil society organizations, who criticized the state of the country with regard to numerous public-policy segments. After the first 10 days of the campaign, Mr. Sedrakyan also offered his free airtime to civil society organizations on several occasions.

<sup>53</sup> The NCTR monitored both public broadcasters on a daily basis. The other 10 monitored media outlets included 4 television channels with nationwide coverage, 3 whose license is limited to Yerevan and surroundings; and 3 radio stations. These 7 TV channels and 3 radio stations were selected from the list of the 14 most significant television and 19 radio stations, respectively.

<sup>54</sup> A report of Yerevan Press Club noted that while the media covered candidates’ activities in a balanced manner during the official campaign period, during the last week preceding the campaign period (14–20 January), the extensive coverage of the incumbent in his official capacity gave him a significant advantage against his competitors. The report concluded that such contrasts between the period directly before the pre-election campaign and the campaign itself proved the necessity for regulation and monitoring of a lengthier period than the official election campaign. See: [www.ypc.am/bulletin/t/45616/ln/en](http://www.ypc.am/bulletin/t/45616/ln/en).

*broadcasting data themselves. Moreover, consideration could be given to enhancing the methodology so as to allow the NCTR to monitor and assess the tone of coverage. Additionally, it could be considered that the NCTR implements its oversight role by conducting random media monitoring outside the campaign period.*

### C. OSCE/ODIHR EOM MEDIA MONITORING



On 11 January, the OSCE/ODIHR EOM commenced its media monitoring, based on a qualitative and quantitative analysis of the election-related coverage of six television channels, two radio stations, two online media and three newspapers.<sup>55</sup>

OSCE/ODIHR EOM media monitoring results showed that the media paid significant attention to political and election-related information. The amount of information increased with the start of the official campaign period, through news, numerous interviews and advertisements. However, most monitored broadcast media (except *ArmNews*, *Yerkir Media* and *Radio Azatutyun*) offered viewers formal news coverage, focused predominantly on campaign events rather than on concrete political platforms, and thus did not provide analytical commentary on the campaign messages. By contrast, online and print media offered some critical commentary and analysis.

The Electoral Code requires presenting impartial and unbiased information about contestants. The NCTR did provide unofficial and somewhat unclear guidance on how to interpret the law. Media outlets also interpreted these provisions cautiously and appeared to be concerned that analytical information could be perceived as bias.

*The Electoral Code could be amended to provide for generally applicable guidelines for election-related coverage by the broadcast media. Such provisions could be based on the existing requirement of impartiality and balance, while at the same allowing for independent editorial coverage of campaign events.*

The Yerevan Press Club and other civil society organizations called upon broadcasters, primarily public television, to organize debates.<sup>56</sup> While some private stations offered to do so, no debates were organized after the incumbent declined to participate. The other candidates also decided not to avail themselves of this option. As a result, voters were not given the opportunity to see meaningful dialogue that could address the contestants' platforms or the incumbent's performance in office. This was compounded by non-participation of the incumbent in any of the numerous face-to-face interviews organized by television channels and by the general absence of critical media addressing such matters in their reporting.<sup>57</sup>

The monitored media regularly covered all candidates. At the same time, it covered Messrs. Sargsyan and Hovannisyan more extensively, with the incumbent being the most frequently presented candidate in seven and Mr. Hovannisyan in four monitored media outlets. Mr. Sargsyan received the biggest share of political coverage in the two most popular private channels, *Armenia TV* and *Shant TV*, with 32 and 30 per cent of almost exclusively positive and neutral coverage, respectively. Mr. Hovannisyan received the highest amount of coverage in *H2* and *Kentron*, with 29 and 26 per cent, respectively. The media also extensively covered the attack on Mr. Hayrikyan and subsequent developments.<sup>58</sup>

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<sup>55</sup> The monitored media included: *H1* (public TV), *H2*, *Armenia TV*, *Shant*, *Kentron* and *Yerkir Media* (nationwide private TV channels); Public Radio and *Radio Azatutyun* (radio stations); *Hayastani Hanrapetutyun* (state-funded newspaper), *Aravot* and *Haykakan Zhamanak* (private newspapers); and [www.news.am](http://www.news.am) and [www.lin.am](http://www.lin.am) (online media).

<sup>56</sup> Statement from 25 January 2013, available at <http://www.ypc.am/expert/ln/en>.

<sup>57</sup> Mr. Sargsyan only presented his views in an interview for Radio Azatutyun on 20 January 2013.

<sup>58</sup> As a result, Mr. Hayrikyan was the most presented candidate on public radio and on [www.news.am](http://www.news.am).

Coverage of the contestants by public television *HI* and public radio reflected the different levels of activity of the various candidates. *HI* dedicated most coverage to Messrs. Sargsyan and Hovannisyan, who received 20 and 18 per cent, respectively, of almost exclusively positive or neutral information. At the same time, *HI* showed bias against opposition parties and against some candidates in its analytical program ‘Viewpoint’, hosted by the channel’s editor-in-chief.

Most of the monitored television channels devoted a relatively modest share of their political news coverage to the authorities, including the incumbent. Media reporting on the activities of Mr. Sargsyan, including openings of or visits to various public venues, did not always clearly distinguish whether these activities were conducted in parallel to or as part of his election campaign. This underscored the importance and the necessity of distinguishing between the performance of his official duties and his campaign activities.

The online media, including the websites of existing traditional media, offered a broad diversity of viewpoints, and often substituted for the lack of in-depth analysis and critical reporting in the broadcast media.<sup>59</sup> Both monitored online media offered its readers extensive and, in the case of [www.lin.am](http://www.lin.am), also more analytical coverage of campaign events, with significant coverage of the attack on Mr. Hayrikyan. He was the most presented candidate on [www.news.am](http://www.news.am), with 33 per cent, and almost on the same level with Mr. Sargsyan on [www.lin.am](http://www.lin.am) (25 and 26 per cent, respectively).

The state-funded newspaper *Hayastani Hanrapetutyun* showed a preference for Mr. Sargsyan by granting him around 21 per cent of the space devoted to candidates, with a generally positive tone. Additionally, the newspaper devoted another 36 per cent to the authorities, the highest amount of all monitored media. On the other hand, the private newspaper *Haykakan Zhamanak* showed a clear bias against Mr. Sargsyan, giving him 39 per cent of very critical coverage. Messrs. Hovannisyan and Bagratyan were presented in a rather balanced way by *Haykakan Zhamanak*. The campaign-related coverage of *Aravot* daily newspaper was balanced.

## X. CITIZEN AND INTERNATIONAL OBSERVERS

The Electoral Code provides for international and citizen election observation. Candidates were entitled to appoint a total of three proxies per PEC, who enjoyed rights similar to observers. Citizen observers could be nominated by public associations engaged in issues related to protection of democracy and human rights. Individuals had to pass a CEC-administered test to qualify as citizen observers, in which case they received a certificate valid for a three-year period.

In an inclusive process, the CEC accredited 6,251 citizen observers from 26 NGOs, 572 observers from 10 international organizations, 34 observers from diplomatic representations in Armenia, and 25 representatives of foreign election-management bodies. Only 10 citizen observer organizations produced post-election statements or reports, as of 6 March.

*The mandatory testing and certification of citizen observers should be reconsidered. Any training of observers should be the responsibility of the observer organization itself. The CEC could consider offering optional training.*

Article 30.5 of the Electoral Code empowers the CEC to withdraw an organization’s accreditation in case one of its observers supports an electoral contestant. The CEC informed the OSCE/ODIHR EOM

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<sup>59</sup> Websites of [www.civilnet.am](http://www.civilnet.am), [www.azatutyun.am](http://www.azatutyun.am), and [www.galatv.am](http://www.galatv.am).

that it would not enforce this provision, but rather withdraw the accreditation of an individual observer who violates the Electoral Code.

*The Electoral Code could be amended as to avoid the possibility of arbitrary withdrawal of the accreditation of an entire citizen observer organization in case of violations by one of its observers.*

## **XI. COMPLAINTS AND APPEALS**

The complaints and appeals process is regulated by the Electoral Code, the Administrative Procedures Code, the Law on Fundamentals of Administration and Administrative Proceedings and the Law on the Constitutional Court. Under the Electoral Code, decisions, actions and inactions of election commissions can be appealed to the superior commission, while all complaints against the CEC are under the jurisdiction of the Administrative Court. The CEC can forward any complaints it receives on media-related issues to either the NCTR or the Administrative Court.

General administrative laws allow complainants to choose to file complaints directly to the Administrative Court, creating an overlapping jurisdiction with superior commissions.<sup>60</sup> Proceedings in an election commission are suspended if the case is already under consideration by a court. Complaints filed by candidates against the election results and on declaring obstacles for campaigning as insurmountable are solely under the Constitutional Court's purview. On other election-related issues, citizens may challenge the constitutionality of legal provisions only after exhausting all judicial means. The timeframe for consideration of such cases can amount to ten months, which does not provide for effective redress within the electoral timeframe, as provided by paragraph 5.10 of the 1990 OSCE Copenhagen Document.<sup>61</sup>

*The legal framework should be amended to eliminate dual jurisdiction and simplify the election-related complaints and appeals process by establishing a singular, hierarchical process. All relevant complaints and appeals provisions in various laws should be consolidated or referenced in the Electoral Code. The timeframe for consideration of election-related cases should provide for prompt adjudication.*

The Electoral Code limits the right to file complaints to those whose personal electoral rights are at stake, essentially restricting the right of voters and observers to seek judicial remedy for breach of electoral rights. Court decisions on electoral rights may not be appealed. The absence of a possibility to appeal against court decisions on electoral matters limits the access to effective legal redress.

*The Electoral Code should be amended to permit citizens (or groups of citizens), accredited citizen observers, and civil society groups to file complaints against decisions and actions of election commissions, including on unlawful conduct in campaigning, and against the election results.*

Election commissions and courts in general took an overly formalistic approach to handling election complaints. Draft decisions on complaints, which had been prepared before the hearing of the respective cases, remained unchanged regardless of the arguments put forward, which raises concerns about the transparency and integrity of the process. Almost all complaints were considered inadmissible or rejected on technical grounds, most of them without due consideration of the evidence and facts presented. One complaint was forwarded to the police for further action.

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<sup>60</sup> Furthermore, under general administrative laws, complainants can choose to file complaints first to the administrative body which made the decision, action or inaction that is being challenged.

<sup>61</sup> Paragraph 5.10 of the 1990 OSCE Copenhagen Document establishes the right of everyone to seek "effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity."

The manner in which election commissions and courts dealt with complaints often did not provide complainants with effective remedy, nor did it enhance public confidence in the impartiality of the election administration. This raises concerns about the commitment of the election administration and the courts to fulfil their legal obligations to ensure the protection of citizens' electoral rights and to comply with paragraph 5.10 of the 1990 OSCE Copenhagen Document.

A relatively small number of official complaints were filed, despite the high number of informal complaints voiced. Various stakeholders expressed to the OSCE/ODIHR EOM a lack of trust in the election administration, courts and law enforcement bodies to impartially and effectively handle electoral complaints.

*Election commissions and courts should refrain from denying consideration of complaints and appeals. They should duly consider the substance of all claims and impartially and thoroughly consider all relevant evidence. Election commissions should take a proactive role in gathering evidence to substantiate complaints and co-operate more closely with law enforcement agencies in this respect.*

Prior to election day, the CEC received five complaints. Two complaints concerned the issue of the electoral deposit and were rejected on the grounds that the amount of the deposit is established by the Electoral Code and thus outside of the CEC's competence. The other three cases were rejected on substance.<sup>62</sup> The Administrative Court received five complaints.<sup>63</sup> All complaints were either denied consideration due to lack of jurisdiction or rejected on substance.

The Constitutional Court informed the OSCE/ODIHR EOM that it received two complaints from presidential nominees on the issue of the electoral deposit, requesting the court to consider it as an insurmountable obstacle for campaigning and therefore to postpone the election. These complaints were considered inadmissible. The EOM was informed that another nominee filed a third complaint as a citizen on the constitutionality of the requirement of an electoral deposit. The Constitutional Court rejected the application on 5 March and declared the challenged articles as being in compliance with the Constitution.<sup>64</sup>

## CRIMINAL CASES

The legislation does not provide for shortened timeframes for election-related criminal offences, and regular criminal proceedings are applicable. However, the competent bodies assured the OSCE/ODIHR EOM that their reaction would be immediate and most cases were closed within two weeks following the election.

*Short timeframes should be stipulated in the Code of Criminal Proceedings for the investigation and prosecution of electoral offences, within the election timeframe.*

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<sup>62</sup> Mr. Ghukasyan in one case claimed that the candidacy of Mr. Sargsyan puts into question the legitimacy of the election and requested his deregistration; in another case he requested to have his appearance removed from one of Mr. Sargsyan's campaign spots. Presidential nominee Ruben Ayvazyan requested to prohibit CEC members from allegedly conducting negative campaigning after the CEC Chairperson said that he does not know who Mr. Ayvazyan is.

<sup>63</sup> Two complaints challenged CEC decisions on candidate registration, over the issue of the electoral deposit. In two other cases, the complainants claimed that the PVD had improperly denied them issuance of the ten-year permanent residence certificate. Mr. Ayvazyan challenged the CEC decision on the issue of prohibiting negative campaign by CEC members.

<sup>64</sup> The Constitutional Court stated that a combination of both electoral deposit and signature collection can be effective in the candidate registration process. It also indicated that the amount of the electoral deposit should not be excessive and should be subject to further consideration by the National Assembly.

The Prosecutor General's office, the police and the Special Investigative Service investigated some 400 election-related criminal and administrative offences. Most of them were initiated based on information published in the media, including internet and social networks, whereas a small number was brought to their attention by campaign offices of candidates. Most cases concerned vote buying, intimidation of voters by representatives of the RPA, hindrance of campaign and proxy or multiple voting.

The police and the prosecutor initiated criminal proceedings in 13 cases, including five cases of proxy or multiple voting and one case of vote buying.<sup>65</sup> Most cases were closed after preliminary investigation, due to lack of evidence, as the authorities explained. Three criminal cases with five accused persons were sent to the court.

On the other hand, several OSCE/ODIHR EOM interlocutors stated that there is a lack of trust in the election administration and the judiciary, and that public reluctance to report electoral offenses can be explained by fear of repercussions.<sup>66</sup> In an effort to increase transparency, the police and the Prosecutor General's office publicized information about the cases investigated on their websites. However, in some cases, the names, telephone numbers and addresses of individuals reporting vote buying or intimidation by officials were published, which raises concerns about personal data protection.<sup>67</sup> The police informed the EOM that they videotaped entire investigations, including citizens interviewed about electoral offences. The police also informed that plain-cloth police officers were filming meetings and assemblies. Such practices raise concern about due process, have a potentially intimidating effect on citizens, and may deter reports on electoral offences.<sup>68</sup>

On its weekly programme on *Armenia TV*, the police on 24 February announced that most reported electoral violations were, as they anticipated, unsubstantiated allegations and were meant to disrupt the work of the authorities. Such announcement appears to have the aim to discredit reports of electoral offenses rather than to ensure that violations are uncovered and violators held accountable.<sup>69</sup>

*The police, the prosecutor and the Special Investigative Service are encouraged to conduct an effective and impartial investigation of electoral offenses in an expedient and meaningful manner, and should ensure that all perpetrators are promptly brought to justice. It should be ensured that the investigation of electoral offences respects due process, is not conducted in an intimidating manner and does not have a deterrent effect for citizens reporting electoral offences.*

Complaints about voter intimidation by officials, the voter lists and the electoral deposit were also addressed via the hotline to the Human Rights Defender, who referred some cases to the police and

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<sup>65</sup> In the proxy or multiple voting cases, charges were brought against voters who committed or attempted to commit proxy voting, as well as against one PEC member. In the vote buying case, the head of Varagavan community (Tavush province) was charged for allegedly inviting a voter to his office in the community and offering AMD 5,000 (EUR 9). A member of parliament was charged with hindering the work of an election commission.

<sup>66</sup> Reportedly, citizens feared being subject to retribution and undue pressure.

<sup>67</sup> See Council of Europe, Recommendation No. R (97) 13 concerning Intimidation of Witnesses and the Rights of the Defence (1997), at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=566782&SecMode=1&DocId=574856&Usage=2> ; and Recommendation No. R (87) 15 on Use of Personal Data in the Police Sector, at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2196553&SecMode=1&DocId=694350&Usage=2>.

<sup>68</sup> See Guidebook for Democratic Policing by the Senior Police Adviser to the OSCE Secretary General, paragraphs 50 and 53, at <http://polis.osce.org/library/f/2658/2639/OSCE-AUS-SPM-2658-EN-2639>.

<sup>69</sup> The police also published some announcements on their official website describing reported electoral offences, particularly vote buying, as rumors; see at: <http://www.police.am/>.

the Prosecutor General. After election day, the Human Rights Defender declined to meet with the OSCE/ODIHR EOM and to provide relevant information.

## **XII. ELECTION DAY**

Election day was calm and peaceful overall. The CEC announced a final voter turnout of 60.2 per cent, with notable regional variations from 48 per cent in TEC 28 (Kotayk province) to 74 per cent in the three TECs of Ararat province. On election day, IEOM observers observed the opening of 75 polling stations, voting in 853 polling stations (IEOM observers paid a total of 970 visits to polling stations, visiting some of them more than once), and the vote count in 106 polling stations. The tabulation of results was observed in all 41 TECs.

Candidate proxies (mainly representing Messrs. Bagratyan, Hovannisyan and Sargsyan) were present in 42 per cent of polling stations visited during opening procedures, at 88 per cent of observations during the day, in 95 per cent stations where the count was observed, and at 55 per cent of TEC observations. Citizen non-party observers were present in a large number of polling stations visited, particularly during voting and counting.

OSCE/ODIHR EOM LTOs reported cases of pressure on certain categories of voters before election day. On election day, IEOM observers reported cases of RPA activists directing voters to vote, tension in and outside polling stations, undue interference in the election process, as well as cases of vote buying.<sup>70</sup> Such irregularities, which were also reported by other international observers and by citizen observers, may have impacted negatively on the ability of voters to cast their votes freely, as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.

The OSCE/ODIHR EOM was informed by the CEC of eight formal complaints registered by election commissions on election day that cited grave irregularities such as ballot box stuffing, multiple voting, voting by unauthorized persons, and interference and pressure by executive officials. All complaints filed by citizen observers were considered inadmissible. Some 40 cases of irregularities were registered by citizen observers and candidate proxies in PEC journals. In addition, the OSCE/ODIHR EOM was informed that candidate proxies and accredited observers had attempted to file a number of additional complaints but had encountered obstruction from PECs, including refusal to record irregularities in their journals or to receive an official complaint.

### **A. OPENING AND VOTING**

IEOM observers assessed opening procedures positively in all but 2 of the 75 observed polling stations, although noting some procedural problems. In particular, observers reported that in nine stations the seal of the safe where the election material was kept overnight was not intact; in three

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<sup>70</sup> In Vanadzor, a person working in a public company stated to OSCE/ODIHR EOM LTOs that she was offering AMD 30,000 (EUR 55) to those who “get involved in the list”, with at least two other family members, if they all vote for the incumbent. In Tavush province, LTOs were informed by several sources that they were offered AMD 5,000 (EUR 9) to vote for the incumbent. In Gyumri, LTOs were informed that lists of families who agreed to take part in the election were being compiled in a new RoL office and that each family would allegedly receive AMD 30,000 to go and vote. In other similar instances, LTOs were informed that AMD 5,000 was being distributed to voters in Shirak and Tavush provinces. A PEC chairperson in Syunik province, when asked about the high turnout, commented to observers that “it should be, as we paid them”, then corrected himself to add “just to come to vote, not who to vote for.” The head of *Asparez* newspaper (Shirak province) informed that the RPA asked mayors to ensure high voter turnout and to start distributing between AMD 5,000 and 10,000 (EUR 9–18) per voter. In the days prior to election day, Gyumri-based Gala TV broadcast and posted online numerous investigative reports about various schemes and aspects of vote buying organized by supporters of the incumbent – see at: <http://www.galatv.am>.

cases the stationary ballot box and in two cases the mobile ballot box were not properly sealed. In three stations, people other than PEC members were directing or interfering in the process.

While the voting process was orderly and well organized in the majority of the 970 observations, IEOM observers assessed it negatively in 5 per cent of cases, mainly because of undue interference in the process, tension or unrest, large groups outside and overcrowding inside polling stations, as well as a number of serious violations during voting hours.

Almost everywhere, the necessary election and information materials were present, and voter lists were displayed for public scrutiny, but premises were reported to be inadequate for voting purposes in 24 cases. Some 500 polling stations observed (55 per cent) were not readily accessible for people with disabilities, while the interior layout of some 219 stations was also not suitable for people with disabilities. In 3 per cent of stations observed, lack of organization or disputes between PEC members and proxies or observers negatively affected the voting process. IEOM observers reported overcrowding inside 51 stations observed (5 per cent), large groups of voters waiting outside 77 stations (8 per cent), and tension or unrest at 18 stations (2 per cent). They also reported 64 cases (7 per cent of observations) where unauthorized people, mostly proxies, interfered in or directed the work of the PECs. Observers reported 9 cases of people inside stations attempting to influence voters who to vote for, as well as 30 cases of pressure on or intimidation of voters outside stations.

*Further steps should be taken to address the persistent problem of interference in the electoral process by unauthorized people. Overcrowding of polling stations and TECs should be addressed, for example by identifying sufficiently large premises and by more efficient control over who is inside these premises. More attention should be given to identifying polling station premises that are suitable for disabled voters.*

IEOM observers reported from the majority of polling stations observed that the main voting procedures were being complied with, including checking voters' documents, registration of voters, and stamping of ballot envelopes and of voters' passports. Although the special ink for stamping voters' passports, which is one of the safeguards against multiple voting, should have remained visible for at least 12 hours, it proved to be easily removable, despite prior testing by the CEC. In 6 per cent of stations observed, not all voters were marking their ballot in secret, and in 12 per cent, they did not always put it in the envelope before leaving the voting booth.

IEOM observers noted a number of serious violations on election day, including group voting and ballot boxes not properly sealed (5 per cent each), series of seemingly identical signatures on voter lists and proxy voting (3 per cent each) and multiple voting (2 per cent). IEOM observers also reported eight cases of indications of ballot box stuffing. In 7 per cent of polling stations observed, one or more voters were turned away, in most cases because their names were not on the voter list of that particular station. Observers noted several indications of vote buying and observed two cases directly.

*The authorities should provide effective safeguards, including special mechanisms, against multiple voting and for ensuring secrecy of the vote, and implement them adequately and consistently. The authorities should also enhance voter education and training of election commissioners and police for effective prevention and/or redress of such irregularities.*

## **B. COUNTING AND TABULATION**

The 106 vote counts observed by IEOM observers were mostly conducted in line with procedures, and all but 9 were assessed positively. Some observers reported cases of procedural errors, including failure to begin the count process immediately after closing the polls (11 cases) and to perform basic reconciliation procedures required by law, such as counting the numbers of voters and voters'

signatures on the voter lists (7 and 9 cases, respectively). A few observers noted that safeguards against possible irregularities, such as packing voter lists, unused ballots and envelopes before opening the ballot boxes, were skipped by the PECs.

In 10 counts observed, PECs performed the count in a non-transparent manner, disregarding the requirement of showing all envelopes and ballots so that all present could see who they had been marked for. Such practices, together with unreasonable or inconsistent determination of ballot validity, which was observed in six cases, could cast a shadow over the impartiality of some election commissions and decrease the level of trust in the reported election results.<sup>71</sup> PECs had problems completing the results protocol in 11 of the observed counts, and in 7 counts the protocol form had been pre-signed. IEOM observers reported that unauthorized persons interfered in or directed the counting process in 10 cases, while non-PEC members participated in 14 counts. Such undue involvement of unauthorized people is of concern as it undermines the principle of an independent election administration (see recommendation above).

The tabulation process was assessed overall positively, efficient and well-organized. Only one of the 41 TECs was negatively assessed, while in another 3 TECs, certain stages of the process were assessed negatively. In most TECs, the tabulation was characterized as transparent, but 12 TEC premises were inadequate, and overcrowding negatively affected their receiving and processing of PEC protocols. IEOM observers reported that not all PEC protocols had been completely filled in upon arrival at the respective TEC (36 reports). They also noted cases where PECs (in accordance with the law) had to correct arithmetical errors (19 reports), while protocol errors were corrected by the TEC members in 5 cases (not permitted by the law). In 12 TECs, IEOM observers were not able to adequately observe the entry of results into the computer system. On a positive note, the CEC started posting preliminary election results by polling stations on its website at around midnight, which contributed to the transparency of the tabulation process.

### C. ANNOUNCEMENT OF RESULTS

After releasing preliminary election results on 19 February, the CEC announced the final results on 25 February, with Mr. Sargsyan being re-elected.<sup>72</sup> The results protocol was signed by all seven CEC members.

An OSCE/ODIHR EOM analysis of final results as published by the CEC shows a close correlation between the voter turnout and the number of votes for the incumbent, with PECs with above-average turnout also having a higher share of votes for the incumbent. Out of the 1,988 polling stations, 1,746 have 300 or more registered voters.<sup>73</sup> In 144 of those, voter turnout exceeded 80 per cent, which seems implausibly high; the incumbent received above 80 per cent of the votes cast in 115 of these stations. In 198 out of the 303 stations where turnout was between 70 and 80 per cent, the incumbent received more than 70 per cent of the votes. Among 249 stations where turnout was below 50 per cent, the incumbent received more than 50 per cent in 40, and Mr. Hovannisyanyan received more than 50 per cent in 155. The tendency of higher results for the incumbent observed at the majority of stations with high turnout indicates possible serious problems with voting and counting. This raises concerns about the integrity of the electoral process.

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<sup>71</sup> Ballot validity should be determined in line with legal provisions (i.e. reasonable) and using the same criteria regardless of who a ballot was cast for (i.e. consistent).

<sup>72</sup> According to the official CEC final results protocol, Mr. Sargsyan received 58.64 per cent of valid votes, Mr. Hovannisyanyan 36.74 per cent, Mr. Bagratyan 2.15 per cent, Mr. Hayrikyan 1.23 per cent, Mr. Ghukasyan 0.57 per cent, Mr. Sedrakyan 0.42 per cent, and Mr. Melikyan 0.24 per cent. See: <http://res.elections.am/images/doc/18.02.13v.pdf>.

<sup>73</sup> All but one of these stations are regular, i.e. not established in long-term pre-trial detention centers or medical facilities.

According to the final results as published by the CEC, there were 50,976 invalid ballots (3.4 per cent of all votes cast). Their number varied widely, from 7.9 per cent in TEC 8 and 7.3 per cent in TEC 7, to 1.5 per cent in TECs 18, 20 and 24.<sup>74</sup> The number of ballots declared invalid in some PECs raises concern, exceeding 20 per cent of all ballots cast.<sup>75</sup>

The OSCE/ODIHR EOM was able to compare 55 certified PEC protocols obtained by IEOM observers against the official results posted on the CEC website. No serious discrepancies were found, although there were 12 cases of minor technical mistakes related to the numbers of registered voters in these polling stations.

### XIII. POST-ELECTION DAY DEVELOPMENTS

After the CEC announced the preliminary results, Mr. Hovannisyan disputed the election results, organized protest rallies in Yerevan and visited several cities outside the capital. He demanded that all election-related violations be prosecuted and that a second round of the presidential election be held. Alternatively, he demanded the resignation of the government and the holding of early parliamentary elections. The police announced through media that these rallies were illegal and could imply administrative liability.<sup>76</sup> Among the political parties in opposition, the ARF formally supported the protests, as did several prominent ANC politicians. Mr. Hovannisyan went on hunger strike from 10 to 31 March, continuing his protest rallies.

The main broadcast media, including public *HI*, showed a selective approach in their coverage of post-election events, with a noticeable tendency to limit views critical of the conduct of the election. All media monitored by OSCE/ODIHR EOM regularly covered gatherings and rallies organized by Mr. Hovannisyan; however, the major channels often presented only general, and at times superficial and marginal, coverage of the protests, with *Armenia TV* showing a biased and negative portrayal of the protests. At the same time, these channels repeatedly stated that the rallies were not authorized, airing a statement by the police to this effect.

The coverage of the IEOM's Statement of Preliminary Findings and Conclusions by the major television channels, including *HI*, raised questions over the genuineness of their efforts to provide an objective and independent portrayal of the election. Most channels (except *Yerkir Media* and *Kentron TV*) presented mainly the positive aspects and generally omitted critical remarks and shortcomings highlighted in the report.<sup>77</sup> A number of online media as well as *Radio Azatutyun* and public radio offered diverse views and more balanced reporting.

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<sup>74</sup> This high number of invalid ballots may have been potentially influenced by the ANC calling on its supporters to invalidate their ballots.

<sup>75</sup> For example in PECs 19/1, 19/5, 8/8, 7/9, 19/21, 12/22, 28/26 and 34/29.

<sup>76</sup> According to the Law on Peaceful Assembly of the Republic of Armenia, an assembly conducted 'with the aim of reacting to an event' qualifies as a spontaneous or urgent assembly. In such cases, the seven-day notification requirement cannot be met but immediate notification of the police is required. The police stated that Mr. Hovannisyan informed them about the assemblies on a daily basis. See ECtHR judgment on *Bukta and others v. Hungary*, at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81728#>, paragraphs 36: "the Court reiterates that, "where demonstrators do not engage in acts of violence, it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 of the Convention is not to be deprived of all substance" (see *Oya Ataman v. Turkey*, no. 74552/01, §§ 41-42, ECHR 2006-XIV)".

<sup>77</sup> The OSCE/ODIHR EOM's post-election interim report was issued on 2 March. However, neither of the major channels (public *HI*, *Armenia TV* and *Shant TV*) informed in their news programs about the report prior to the EOM's closure on 4 March.

Proxies of Mr. Hovannisyan filed applications for recounts in 16 PECs and for invalidation of results in 120 PECs. One application for a recount was filed by a proxy of Mr. Sargsyan. All recount requests were rejected as the applicants were considered not authorized to file them.<sup>78</sup> Three recount requests initiated by PECs and TECs were upheld and revealed minor discrepancies.<sup>79</sup>

The OSCE/ODIHR EOM was informed by the CEC of over 80 complaints registered by TECs after election day, mostly requesting recounts or invalidation of a total of 140 PEC results. The Electoral Code limits the right to file complaints to those whose personal electoral rights are at stake, essentially restricting the right of voters, accredited observers, and civil society groups to seek judicial remedy for breach of electoral rights. Requests for invalidation of the results in 73 polling stations were considered inadmissible because they had been filed past the legal deadline, and for 47 stations were rejected as unsubstantiated.<sup>80</sup> All complaints filed by observers were considered inadmissible as they have no right to file complaints that do not concern direct hindrance of their rights as observers. Complaints filed by candidate proxies were also considered inadmissible on the grounds that they were not present in the stations concerned. The information on complaints provided by the CEC to the EOM was at times conflicting and incomplete.<sup>81</sup>

After the election, the CEC received four complaints. One complaint from Mr. Hovannisyan requested the CEC to apply to the Administrative Court for the de-registration of Mr. Sargsyan for allegedly exceeding the campaign expenditure ceiling by 10 per cent. The CEC rejected the complaint on substance, stating that the expenses mentioned in the complaint, such as rent of campaign offices and expenses for campaign posters placed on these offices, should not be considered as campaign expenditure.<sup>82</sup> The CEC decision was upheld on appeal to the Administrative Court.

In another case, an appeal was lodged against the decision of TEC 25, which rejected the request for recounts of results from six polling stations on the grounds that Mr. Hovannisyan's representative had no right to file such an application. The TEC decision was upheld by the CEC, which puts into question the institute of legal representation. Furthermore, according to the CEC interpretation of Article 48.1 of

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<sup>78</sup> The Electoral Code provides for recounts of polling station-level results if requested by a candidate or a candidate proxy, in case the proxy was present at the station during the vote count, upon the request of a PEC member, in case the member entered his or her dissenting opinion in the PEC protocol, or on the initiative of the superior TEC. The TEC decides for a recount if the person requesting it provided the TEC with substantial proof of violations committed during the vote count, or in case significant mistakes which may affect the results were identified by the TEC.

<sup>79</sup> The recount of the results for polling station 03/33, requested by its chairperson, found one additional vote for two candidates. Two recounts were initiated by the superior TEC, and resulted in one vote invalidated (PEC 02/03), and three previously invalidated ballots assigned to one candidate, and one vote swapped between two others, while the number of voters decreased by 11 (at PEC 02/05).

<sup>80</sup> The CEC informed the OSCE/ODIHR EOM that “given the political sensitivity of the issue and claims of the runner-up candidate, the Situation Analysis Centre of the CEC has carried out a modeling of the impact of the invalidation, in case the claims of Mr. Hovannisyan were upheld.” According to this modeling, “the incumbent would still have a convincing victory in the first round”, even if all votes cast for Mr. Sargsyan in the 120 stations for which invalidation was requested would be counted in favour of Mr. Hovannisyan.

<sup>81</sup> The CEC provided the OSCE/ODIHR EOM with inconsistent information, e.g. on the number of complaints received, the number of violations recorded in PEC journals and the number of applications for recounts of PEC results. The Helsinki Citizens’ Assembly Vanadzor Office provided the EOM with copies of official complaints referred to the CEC that were not included in the information provided by the CEC.

<sup>82</sup> As provided by CEC Decision No. 33 of 16 February 2012 on Official Clarification for the Purpose of Excluding the Controversial Perception of Article 26 of the Electoral Code. According to the information published as of 18 February, the campaign expenditure of the incumbent amounted to AMD 99.8 million (EUR 188,400), under the limit of AMD 100 million (around EUR 188,700).

the Electoral Code, a presidential candidate should be present in a given polling station during the process of counting of ballots in order to be eligible to apply for a recount of its results.<sup>83</sup>

*As the current provisions for requesting recounts of polling station results are at odds with the right to effective legal remedy, consideration should be given to amending the Electoral Code to allow any interested stakeholder to file such an appeal.*

On 4 March, Messrs. Hovannisyan and Ghukasyan filed applications with the Constitutional Court to invalidate the election results. Mr. Hovannisyan argued that violations during campaign and on election day were of a scale to invalidate the overall election results. He also requested the Constitutional Court to declare his victory in the election. Mr. Ghukasyan requested the court to invalidate the election, presenting as main evidence an open letter that Mr. Sargsyan wrote to an American Armenian artist on the election.<sup>84</sup>

The Court considered the two cases jointly on 11–13 March. Mr. Sargsyan was invited as a third party to the proceedings but was represented by the Minister of Justice and the co-ordinator of his campaign.<sup>85</sup> Mr. Ghukasyan opined that the presence of Minister of Justice can influence the decision of the Court.

On 14 March, the Court confirmed the CEC decision to declare the re-election of incumbent. The Court stated that most of the evidence presented by the applicants was unsubstantiated and not sufficient to influence the election results. It also stated that the opportunity provided by the legislation to address possible violations on election day such as to record the dissenting opinion in the PEC protocol was not seized by the interested parties. However, upon consideration of evidence provided regarding violations in PEC 17/05, the Court assessed the results in this PEC as untrustworthy and referred the case to the Prosecutor's Office for further investigation. The CEC opined that the results in this polling station did not affect the outcome of the election, and no official actions were taken to invalidate them. The Constitutional Court highlighted that legal reforms are necessary and should be conducted as a result of a peaceful dialogue of all stakeholders. The Court in its decision did not mention which specific areas of the law needed to be reformed.

#### **XIV. RECOMMENDATIONS**

The following recommendations are offered for consideration by the authorities, political parties and civil society of Armenia, in further support of their efforts to conduct elections in line with OSCE commitments and other standards for democratic elections. These recommendations should be read in conjunction with other recommendations offered previously by the OSCE/ODIHR, in particular in its final report on the 2012 parliamentary elections, and with the recommendations contained in the joint opinion on the Electoral Code of the OSCE/ODIHR and the Venice Commission. The OSCE/ODIHR stands ready to assist the authorities and civil society of Armenia to further improve the electoral process.

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<sup>83</sup> Article 48.1 provides that: "The candidate, the proxy, where they have been present at the process of summarising the voting results in the electoral precinct, as well as the member of the precinct electoral commission who attached a dissenting opinion concerning the procedure of summarising the voting results to the protocol on the voting results in the electoral precinct — shall have the right to appeal, in the manner and within the time limits specified by the Code, against the results of voting in the electoral precinct concerned, by submitting an application for recount of the results of voting in the electoral precinct ... to the territorial electoral commission."

<sup>84</sup> See the letter at <http://www.panorama.am/en/society/2013/02/26/sargsyan-tankyan/>.

<sup>85</sup> The Minister of Justice stated that he is representing Mr. Sargsyan as a citizen and is currently on a short-term leave from his official position.

## **A. PRIORITY RECOMMENDATIONS**

1. The authorities should undertake measures to increase public trust in the integrity of the election process by demonstrating more respect for the right of citizens to express their fundamental civil and political preferences as required by paragraph 7.7 of the 1990 OSCE Copenhagen Document.
2. Public officials should refrain from abuse of administrative resources, including abuse of office towards their employees and the public. Effective efforts should be undertaken to ensure the impartiality of the public administration, including of state and local government officials. They should refrain from putting pressure on voters, both during the campaign and on election day. The Criminal Code should be amended to include offenses for abuse of official position and of administrative resources for campaigning.
3. Election commissions, law enforcement bodies, and courts should interpret, implement and enforce the electoral legal framework taking into consideration the spirit and intent of the law, with the aim to ensure an equal playing field for contestants, the free expression of the will of the voters, and the integrity of the electoral process.
4. The authorities should ensure that safeguards are developed and implemented in order to ensure a clear separation between the State and party, as required by paragraph 5.4 of the 1990 OSCE Copenhagen Document.
5. In order to increase public trust in the integrity of the voter registration process, national stakeholders, including representatives of the authorities, political parties, candidates and civil society, should engage in a public discussion and inclusive decision-making process to address specific and contentious aspects of voter registration (among others, registration of voters residing abroad, signed voter lists being made public or otherwise accessible).
6. The authorities are encouraged to proceed with preparing the necessary legislative amendments, in order to address previous and present recommendations, in a public consultative and inclusive process with the participation of all relevant stakeholders, including political parties and civil society.

## **B. OTHER RECOMMENDATIONS**

### **LEGAL FRAMEWORK**

7. The Electoral Code provision that disenfranchises all prisoners, regardless of the severity of the crime for which they have been sentenced, should be amended.

### **ELECTION ADMINISTRATION**

8. Mechanisms providing for the uniform implementation of election-related legislation should be strengthened. This includes enhancing the authority of the CEC to adopt in a timely manner necessary decisions and clarifications, the implementation of which would be compulsory for all other stakeholders. The CEC should ensure that it issues all required decisions and clarifications, and that they are in line with the letter and intent of the law.
9. The CEC should continue to provide training for election commission members, including on election procedures, with a particular focus on counting and tabulation procedures

## **VOTER REGISTRATION**

10. Efforts to improve the accuracy of voter lists should continue. An effective notification system between different public authorities could be introduced at national level, to facilitate data exchange and enable timely correction of records in the voter register and voter lists.

## **CANDIDATE REGISTRATION**

11. The Electoral Code should be amended to allow for candidate de-registration only in extraordinary circumstances, which should be clearly and exhaustively defined in the Electoral Code.
12. The requirement of ten-year citizenship and residency for candidates is disproportionate and should be addressed. At a minimum, the law should clarify the residency requirement so that it means habitual residence, in line with good practice, and establish transparent and objective procedures for determining whether it is met. Determination of the residency requirement should not be overly restrictive.

## **ELECTION CAMPAIGN**

13. The Electoral Code should be amended to stipulate that the pre-election campaign period officially starts at the latest on the day following the deadline of candidate registration so that campaign regulations are applicable
14. Party and campaign offices should not be located in buildings occupied or owned by state or local government bodies.

## **CAMPAIGN FINANCE**

15. In order to enhance transparency, accountability, and public confidence in the integrity of the campaign finance regime, and the electoral process in general, the authorities should clarify certain legislative measures or introduce clear procedures that would make such a regime consistent and operable.

## **MEDIA**

16. Consideration could be given to enhancing the capacities and resources needed by the NCTR for conducting its media monitoring fully and independently, instead of tasking broadcasters to provide broadcasting data themselves. Moreover, consideration could be given to enhancing the methodology so as to allow the NCTR to monitor and assess the tone of coverage. Additionally, it could be considered that the NCTR implements its oversight role by conducting random media monitoring outside the campaign period.
17. The Electoral Code could be amended to provide for generally applicable guidelines for election-related coverage by the broadcast media. Such provisions could be based on the existing requirement of impartiality and balance, while at the same allowing for independent editorial coverage of campaign events.

## **ADJUDICATION OF ELECTION DISPUTES**

18. The legal framework should be amended to eliminate dual jurisdiction and simplify the election-related complaints and appeals process by establishing a singular, hierarchical process. All relevant complaints and appeals provisions in various laws should be consolidated or referenced in the Electoral Code. The timeframe for consideration of election-related cases should provide for prompt adjudication.
19. The Electoral Code should be amended to permit citizens (or groups of citizens), accredited citizen observers, and civil society groups to file complaints against decisions and actions of election commissions, including on unlawful conduct in campaigning, and against the election results.
20. Election commissions and courts should refrain from denying consideration of complaints and appeals. They should duly consider the substance of all claims and impartially and thoroughly consider all relevant evidence. Election commissions should take a proactive role in gathering evidence to substantiate complaints and co-operate more closely with law enforcement agencies in this respect.
21. Short timeframes should be stipulated in the Code of Criminal Proceedings for the investigation and prosecution of electoral offences, within the election timeframe.
22. The police, the prosecutor and the Special Investigative Service are encouraged to conduct an effective and impartial investigation of electoral offenses in an expedient and meaningful manner, and should ensure that all perpetrators are promptly brought to justice. It should be ensured that the investigation of electoral offences respects due process, is not conducted in an intimidating manner and does not have a deterrent effect for citizens reporting electoral offences.

## **CITIZEN OBSERVERS**

23. The mandatory testing and certification of citizen observers should be reconsidered. Any training of observers should be the responsibility of the observer organization itself. The CEC could consider offering optional training.
24. The Electoral Code could be amended as to avoid the possibility of arbitrary withdrawal of the accreditation of an entire citizen observer organization in case of violations by one of its observers.

## **ELECTION DAY**

25. Further steps should be taken to address the persistent problem of interference in the electoral process by unauthorized people. Overcrowding of polling stations and TECs should be addressed, for example by identifying sufficiently large premises and by more efficient control over who is inside these premises. More attention should be given to identifying polling station premises that are suitable for disabled voters.
26. The authorities should provide effective safeguards, including special mechanisms, against multiple voting and for ensuring secrecy of the vote, and implement them adequately and consistently. The authorities should also enhance voter education and training of election commissioners and police for effective prevention and/or redress of such irregularities.

27. As the current provisions for requesting recounts of polling station results are at odds with the right to effective legal remedy, consideration should be given to amending the Electoral Code to allow any interested stakeholder to file such an appeal.

**ANNEX – ELECTION RESULTS**

<b>Field of the Protocol</b>	<b>Value</b>	
Number of voters in the main voter list	2,509,434	
Number of voters in the additional voter lists compiled on election day	215	
Number of voters in the additional voter lists voting according to the place of stay	14,300	
Number of voters without registration	508	
Number of police officers in additional voter lists	1,733	
Number of voters in additional voter lists in medical facilities	1,629	
Number of voters in additional voter lists in facilities for holding arrestees	3	
Number of voters in additional voter lists for electronic voting	228	
Total number of voters in all voter lists	2,528,050	
Total number of voters who participated in voting	1,521,489	
Number of unused ballots cancelled at PECs	1,057,779	
Number of invalid ballots	50,976	
Number of inaccuracies	702	
<b>Name of the Candidate</b>	<b>Number of Votes</b>	<b>Percentage</b>
Bagratyan Hrant	31,643	2.15
Hayrikyan Paruyr	18,096	1.23
Hovannisyan Raffi	539,693	36.74
Ghukasyan Andrias	8,329	0.57
Melikyan Arman	3,520	0.24
Sargsyan Serzh	861,373	58.64
Sedrakyan Vardan	6,210	0.42

[Source: CEC website, <http://www.elections.am>]

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/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 Summit Document). This is referred to as the OSCE human dimension.

The OSCE/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 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/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 OSCE/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.

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](http://www.osce.org/odihr)).