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Observation of the Presidential Election in Armenia (19 February 2008)

Report¹

Ad hoc Committee of the Bureau of the Assembly

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The Presidential election in Armenia, on 19 February 2008, was administered mostly in line with Council of Europe standards. The authorities made improvements to the legal framework, but did not demonstrate commensurate political will to ensure its full implementation. The Ad Hoc Committee urges the authorities to address the shortcomings and challenges outlined in this report, especially with regard to the lack of public trust in the electoral system and its outcome.

I. Introduction, by Mr John Prescott, Head of Delegation

1. Following an invitation by the Speaker of the National Assembly of Armenia, the Bureau of the Assembly decided to set up an Ad Hoc Committee to observe the Presidential election in Armenia, scheduled for 19 February 2008, and appointed me as the Chairman and Rapporteur of the Ad Hoc Committee.

2. On 4 October 2004, a co-operation agreement was signed between the Parliamentary Assembly and the European Commission for Democracy through Law (“Venice Commission”). In conformity with Article 15 of the agreement, “*When the Bureau of the Assembly decides to observe an election in a country in which electoral legislation was previously examined by the Venice Commission, one of the rapporteurs of the Venice Commission on this issue may be invited to join the Assembly’s election observation mission as legal adviser*”, the Bureau of the Assembly invited an expert from the Venice Commission to join the Ad Hoc Committee as advisor.

¹ Approved by the Bureau at its meeting on 14 April 2008.

3. Based on the proposals by the political groups in the Assembly, the Ad Hoc Committee was composed as follows:

Socialist Group (SOC)

Mr John Prescott	United Kingdom
Mr Vidar Bjørnstad	Norway
Mr Michael Hagberg	Sweden
Ms Sinikka Hurskainen	Finland
Mr Reijo Kallio	Finland
Mr Neven Mimica	Croatia
Mr René Rouquet	France

Group of the European People's Party (EPP/CD)

Mr Jean-Guy Branger	France
Mr Georges Colombier	France
Ms Danuta Jazłowiecka	Poland
Ms Corien Jonker	Netherlands
Mr Eduard Lintner	Germany
Mr Dariusz Lipiński	Poland
Ms Marietta de Pourbaix-Lundin	Sweden
Mr François Rochebloine	France
Mr Egidijus Vareikis	Lithuania

Alliance of Liberals and Democrats for Europe (ALDE)

Ms Aneliya Atanasova	Bulgaria
Lord Russell Johnston	United Kingdom
Ms Nursuna Memecan	Turkey
Mr Andrea Rigoni	Italy
Mr Frans Weekers	Netherlands

European Democrat Group (EDG)

Mr Nigel Evans	United Kingdom
Mr Igor Chernyshenko	Russia
Ms Aldona Staponkienė	Lithuania

Group of the Unified European Left (UEL)

Mr Bjørn Jacobsen	Norway
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Venice Commission

Mr Owen Masters	United Kingdom
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Secretariat

Mr Bas Klein, Deputy Head, Interparliamentary co-operation and election observation
Mrs Daniele Gastl, Assistant, Interparliamentary co-operation and election observation
Mrs Nathalie Bargellini, Press Officer

4. The Ad Hoc Committee acted as part of the International Election Observation Mission (IEOM), which also included delegations of the OSCE Parliamentary Assembly (OSCE-PA), the European Parliament (EP) and the Election Observation Mission of the Organisation for Co-operation and Security in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR).

5. The Ad Hoc Committee met in Yerevan from 18 to 20 February 2008 and held meetings with, *inter alia*, candidates competing in these elections, the Chairman of the Central Election Commission (CEC), the Head of the Election Observation Mission of the OSCE/ODIHR and his staff, as well as

representatives of civil society and the mass media. The programme of the meetings of the Ad Hoc Committee appears in Appendix 1.

6. On Election Day, the Ad Hoc Committee was split into 15 teams which observed the elections in and around Ararat, Artashat, Ashtarak, Masis, Sevan, Yeghvard and Yerevan

7. In order to draw up an assessment of the electoral campaign, as well as the political climate in the run-up to the elections, the Bureau sent a pre-electoral mission to Armenia from 29 to 31 January 2008. The cross-party pre-electoral delegation consisted of Mr John Prescott (United Kingdom, SOC), Chairman of the Ad Hoc Committee and Head of Delegation, Lord Russell-Johnston (United Kingdom, ALDE) and Mr Bjørn Jacobsen (Norway, UEL). Unfortunately the EPP/CD and EDG groups could not identify a member available for the dates of the visit. In Yerevan, the pre-electoral delegation met with, *inter alia*, the President of Armenia, the Chairman of the National Assembly of Armenia, the Armenian delegation to PACE, the Chairman of the Central Election Commission (CEC), the Presidential candidates, the Minister of Foreign Affairs, the Chairman of the Constitutional Court, the Head of the Police, the international community in Armenia, as well as representatives of the mass media and civil society. The statement issued by the pre-electoral delegation at the end of their visit appears in Appendix 2.

8. In its statement of preliminary findings and conclusions delivered the day after the elections, when the tabulation process was yet to be completed, the IEOM concluded that "The Presidential Election in Armenia, on 19 February 2008, was administered mostly in line with OSCE and Council of Europe commitments and standards [...] However, further improvements and commensurate political will are required to address remaining challenges such as: the absence of a clear separation between State and party functions, the lack of public confidence in the electoral process and ensuring equal treatment among election contestants". The joint IEOM press release appears in Appendix 3.

9. The Ad Hoc Committee wishes to thank the National Assembly of Armenia, the OSCE/ODIHR Election Observation Mission and the Special Representative of the Secretary General of the Council of Europe in Yerevan for their co-operation and the support provided to the Ad Hoc Committee and its pre-electoral mission.

II. Political and legal context

10. The conduct of elections in Armenia has long been a point of concern for the Assembly. The Parliamentary and Presidential Elections in 2003 were assessed as not complying with Council of Europe commitments and standards for democratic elections. However, in a development welcomed by the Assembly, the last Parliamentary Elections, held on 12 May 2007, demonstrated improvements and were largely in line with Council of Europe commitments and standards, although a number of important issues remained unaddressed. In the run-up to the Presidential election the authorities frequently stated their firm intention to further improve the electoral process and to conduct a Presidential election that would be fully in line with international standards. The election was therefore an important indicator of the political will and ability of the authorities to organise genuinely democratic elections and to consolidate democratic progress in Armenia.

11. The Presidential election was also an important indicator regarding the future political direction of the country as the incumbent President, Robert Kocharyan, could not stand for re-election as a result of the Constitutional two-term limit for a President.

12. While a presidential election should in principle be a race between individual candidates, the election was a *de facto* contest between a government supported candidate and a number of candidates nominated by opposition parties and forces. The parties in the government coalition supported the candidature of Prime Minister Serzh Sargsyan. The opposition parties, while joined in their opposition to his candidature, failed to agree on a unified opposition candidate. This underlines the fragmented nature of the opposition in Armenia.

13. The dynamics of the election changed with the unexpected candidature of former President Levon Ter-Petrosyan, who was the first President of Armenia from 1991 to 1998. His candidature considerably increased the competitive nature of the election, and substantially hardened the campaign rhetoric in the run-up to the election, not the least by the authorities.

14. The election took place in the context of a very low level of public confidence and trust in the electoral process and in the legitimacy of its outcome. This was underscored by persistent rumours and allegations in the pre-electoral period that electoral fraud and misconduct, such as vote buying, would take place and that the results would be stolen. However, it should be noted that these allegations were also partly the result of the campaign tactics of some of the candidates. Similarly, there seemed to be little trust in the independence of the judiciary and election administration as impartial arbiters in the case of election disputes. This point was repeatedly made by election contestants and other interlocutors when the pre-election delegation asked why, despite the many allegations, so few formal complaints had been filed with the CEC and courts. More worrisome, a number of different interlocutors mentioned that the lack of formal complaints may also have been caused by a fear of reprisal from the authorities. A high public confidence in the electoral system and its administration is essential for the conduct of genuinely democratic elections. The pre-electoral mission therefore urged the authorities to take all necessary measures to ensure the highest possible public confidence in the electoral process and its outcome.

15. Under the provisions in the Constitution of Armenia, the President is elected by direct election for a five-year term by absolute majority of votes cast. If no candidate receives an absolute majority, a second round is organised, two weeks after the first round, between the two candidates who received the highest number of votes. In the second round the winner is decided by simple majority.

16. In the opinion of the Venice Commission of the Council of Europe, the Election Code of Armenia forms in general an adequate basis for the conduct of democratic elections, if implemented in good faith. Since the 2007 Parliamentary elections, the Election Code has been amended twice, on 16 November and 18 December 2007. While the Venice Commission was not directly consulted and has not yet been able to adopt an opinion on the recent amendments to the Electoral Code, the changes seem mostly to address previous recommendations and shortcomings noted during the last Parliamentary Elections in 2007. However, it should be noted that adopting amendments to the Election Code so shortly before an election and after the election has been called – the December amendments were adopted after candidate registration had been finalised – runs counter to Council of Europe standards for democratic elections, which demand a stable legal framework for elections after they have been called.

17. The amendments adopted on 16 November 2007, *inter alia*, abolish the need for supporting signatures for presidential candidates, introduced the possibility for self-nomination by presidential candidates, abolished the possibility for nomination of presidential candidates by civic initiatives or coalitions, and allows voters to vote in their actual place of residence if that is different from their legal place of residence. Other amendments aim at simplifying the vote count and tabulation procedures. The 18 December amendments provide for the newly established Administrative Courts, instead of the Courts of First Instance, to have jurisdiction over election related appeals and clarify campaign expenditure rules.

18. Regrettably, the amendments to the Election Code did not introduce the inking of voters' fingers as a mechanism to prevent multiple voting, introducing instead the stamping of the voters identity papers when voting for the same purpose. While welcoming the willingness of the authorities to address the issue of multiple voting, the inking of voters fingers would clearly be a more secure mechanism than the stamping of identity papers. Moreover, as noted at other elections, the stamping of the identity papers of voters provides for a public, long-term, record of who voted and who did not, which undermines the secrecy of participation and which could be misused by third parties who would otherwise not have had access to such information.

19. In February 2007, the Election Code was amended as a result of the abolition of the prohibition of dual citizenship in the Armenian Constitution. The amendments give full active voting rights to Armenians who have a dual citizenship, but prohibits them from standing in legislative or presidential elections. These restrictions on the principle of universal suffrage run counter to Council of Europe standards for democratic elections.

20. The February 2007 amendments also abolished out-of-country voting. Armenian citizens who reside abroad and who wish to participate in an election now need to have a registered address and return to Armenia in order to vote. Taking into account the size of the Armenian Diaspora, this *de facto* disenfranchises a sizeable part of the Armenian electorate, which is regretted by the Ad Hoc Committee.

21. Complaints against decisions, actions or inactions of subordinate election commissions can be filed with the CEC and Territorial Election Commissions (TECs). In addition, under the amended Election Code, decisions, actions and inactions of the CEC and TECs can be appealed at the newly formed Administrative Courts. The Prosecutor General is responsible for election offences under the Criminal Code. Appeals against the result of the elections fall under the jurisdiction of the Constitutional Court. However, the Election Code lacks clarity with respect to which election offences constitute criminal offences and which constitute administrative offences, and therefore which court has the jurisdiction to adjudicate.

III. Election Administration

22. The Presidential election in Armenia was administered by a three-tiered election administration consisting of the Central Election Commission (CEC), 41 Territorial Election Commissions (TECs) and 1.923 Precinct Election Commissions (PECs).

23. The CEC and TECs are permanent bodies, while the PECs are constituted for each election. In order to ensure the quality of the election administration, the Election Code stipulates that all members on the election commissions must have undergone training and have received a certificate of qualification.

24. The CEC is composed of 8 members. One is nominated by the President of Armenia, 5 are nominated by the 5 political factions in the National Assembly and 2 are nominated by the Council of the Republic of Armenia Courts. The members of the subordinate election commissions are appointed via the so-called nomination chain, whereby each CEC member nominates a member on each of the 41 TECs, who, in turn, each nominate a member on each of the PECs belonging to that TEC.

25. The chairperson, deputy chairperson and secretary of the election commissions, the so-called leadership troikas, are elected by the members of the election commissions from amongst their midst. However, by a very large majority, these positions on all commissions were filled by representatives from the parties that supported the candidature of the Prime Minister, or from the President, who also openly supported his candidature. This raises serious concerns about the control over the election commissions by one political interest, and seriously undermined the confidence of the public and election contestants in the impartiality of the election administration.

26. All candidates are allowed to have a proxy on the election commissions. The Election Code provides substantial rights to these proxies, including the right to make comments and suggestions to the chairperson of a commission regarding the commission's work.

27. Generally, the CEC administered the technical preparations for these elections in an open and transparent manner. However, the CEC and TECs held very few formal sessions, instead opting for informal arrangements to administer the elections. This undermined the transparency of the administration of the election.

28. The Ad Hoc Committee welcomes the measures taken by the CEC to increase the transparency of the tabulation process, such as the direct publication, also online, of the election results in the PECs. A special computer system was in place that allowed the TECs to directly publish the PEC results on the CEC website, without intervention of the CEC itself. However, this system does not apply for the TECs in Yerevan, where approximately half of the electorate resides. For these TECs, the PEC results were to be entered into the computer system by the CEC itself, which limited, to an extent, the effectiveness of this system as a tool to increase the transparency and, as a result, the public confidence in the tabulation process.

29. As a measure to increase the transparency of the count and tabulation process, the Election Code mandates that the PECs publicly post their results protocols. However, the Election Code does not set a minimum timeframe during which these protocols need to be posted on the PECs. During the 2007 Parliamentary elections, it was noted that, in the majority of cases, these protocols were removed just a few hours after they were posted, thereby limiting the possibility for public scrutiny. Taking into account the stated goal of having a tabulation process which is as transparent as possible, the pre-electoral mission was unpleasantly surprised by the categorical rejection by the CEC of its recommendation that the CEC should determine a minimum duration for the publication of the results protocols on the PECs.

30. The Election Code does not specify that election commissions must make a formal decision on complaints received by them. As a result, the CEC did not consider most of the complaints filed with it in a formal session. In addition, on 17 February 2008, the CEC convened an extraordinary session at short notice in which it dismissed, in a single decision, 25 complaints against alleged violations of campaign procedures. This decision was reached with little attention to the merits of the complaints and in the absence of the complainants, who could not be present due to the short notice in which this meeting was called. This is an issue of serious concern for the Ad Hoc Committee. Even if most of the complaints were filed on behalf of one candidate, the manner in which the CEC dealt with these election complaints seriously undermined the trust in the complaints procedure at the CEC, and raises questions about the effectiveness of legal remedies for electoral stakeholders who feel that their rights have been infringed upon.

IV. Candidate and Voter Registration

31. In order to stand in the Presidential election, prospective candidates needed to be at least 35 years of age, be a citizen of Armenia and been residing in Armenia for at least the 10 years preceding the election. As already mentioned, and contrary to Council of Europe standards, dual citizens can not seek election as President. Candidates may be nominated by a party or be self-nominated and have to make a deposit of 8 million AMD (Approximately € 17 000).

32. The deadline for candidate nominations expired on 6 December 2007. The candidate registration process was open, inclusive and non-discriminatory. In total 9 candidates were registered for these elections: Arthur Baghdasaryan, (former Speaker of Parliament and leader of Orinats Yerkir – Rule of Law Party); Artashes Geghamyan (leader of the National Unity Party); Tigran Karapetyan (leader of the People's Party); Aram Harutiunyan (leader of the National Accord Party); Vahan Hovhannisyan (Vice-speaker of Parliament and candidate of Armenian Revolutionary Federation Dashnaktsutiun); Vazgen Manukyan (former Prime Minister and leader of the National Democratic Union); Arman Melikyan (self-nominated candidate); Serzh Sargsyan (incumbent Prime Minister and candidate of the ruling Republican Party); and Levon Ter-Petrossyan (former President, and self-nominated candidate).

33. The wide range of candidates created a highly competitive election environment and provided the voters with a genuine choice on Election Day.

34. Armenia has a centralised computerised voters' list, which is unique in the region. The maintenance of the voters' register, which is updated on a continuous basis, is the responsibility of the Passport and Visa Department (OVIR) of the national police. In total, 2 328 320 voters were registered to vote in the election. The Ad Hoc Committee welcomes the efforts of the authorities to ensure the accuracy of the voters' lists, including door-to-door verification by the police, publication of the voters' lists on the CEC website and a hot line for voters to check, and if necessary correct, their inclusion on the list. In line with legal provisions, the voters' lists were also posted on the PECs for public inspection.

35. The amended Election Code allows voters to vote in their place of actual residence if this is different from the place where they are registered on the voters' lists (legal residence). According to information provided by the OVIR and CEC, in total 19 024 persons requested to vote at their place of actual residence and were added to the corresponding voters' lists, while being removed from the lists in their place of legal residence.

36. In line with legal provisions, Armenian citizens who live abroad, but who have a registered residence in Armenia, continue to be registered on the voters' list. This led to some allegations that their entries on the voters' lists could be used to facilitate multiple voting.

V. Pre-election period and the Media

37. The official campaign period started on 21 January 2008. During the official campaign period, the election campaign is regulated by the provisions in the Election Code that provide for equal campaign conditions, including equal media access and equitable media coverage, for all candidates. However, the deadline for nomination of candidates expired on 6 December 2007, which in reality

constituted the *de facto* start of the campaign period. As a result, a large part of the *de facto* campaign period was not covered by the relevant provisions in the Election Code. In addition, the Election Code does not provide a clear definition of what constitute campaign activities.

38. Most candidates conducted an active election campaign. Campaign activities generally took place unimpeded and freedom of assembly and expression were mostly respected. Regrettably, observers noted a number of occasions where citizens were unduly impeded to attend campaign events of Mr Levon Ter-Petrosyan and Mr Arthur Baghdasaryan. Notwithstanding this, candidates were able to convey their campaign messages to the electorate without interference.

39. The campaign was dominated by strong rhetoric, which grew increasingly more rancorous as the campaign developed, between the campaign of Mr Levon Ter-Petrosyan and the campaign of Mr Serzh Sargsyan and his governmental supporters, including President Kocharyan. This led to an increasingly tense campaign atmosphere, exacerbated by, albeit isolated, instances of violence against campaign supporters and attacks on campaign offices of the three leading candidates, Mr Levon Ter-Petrosyan, Mr Arthur Baghdasaryan and Mr Serzh Sargsyan.

40. A main point of controversy in the campaign was the decision of Mr Serzh Sargsyan to maintain his position as Prime Minister, while running as a candidate in these elections. Although he was allowed to do so by law, his decision gave him an unfair campaign advantage and blurred the line between State and party functions. This was compounded by the favourable treatment given to, and active involvement in, the campaign of the Prime Minister by local government officials, which created *de facto* unequal campaign conditions in the pre-electoral period.

41. The Ad Hoc Committee is concerned by reports of pressure on public employees to attend campaign events of, or vote for, the candidate supported by the authorities. These reports seem to be corroborated by the participation of large numbers of local government and state employees, often during working hours, in the campaign activities of the Prime Minister.

42. Armenia has a large number of broadcasters, several of which have nation-wide coverage. However, media pluralism and the structure of control and ownership over media in Armenia has been a point of concern. Despite significant improvements in the legislation, the Secretary General of the Council of Europe pointed out, in December 2007, that the current situation of the Armenian media in general does not meet the Standards of the Council of Europe. The print media are more diverse and independent, but, due to low circulation, only reach a limited number of people. Television is therefore, by far, the most important source of information in Armenia.

43. During the official campaign period, the public media adhered to the legal provisions for equal access to free airtime for candidates participating in these elections. However, Public TV, in agreement with the CEC, broadcasted the free campaign spots and paid advertising in a programme window that started each day on 17:15, far outside prime time and at a time when most of the population is commuting home from work. Public and private media also adhered to the legal provisions for equal conditions for paid political advertising in the official campaign period, although prices for political advertising remained high.

44. The Public broadcaster provided overall equitable news coverage of the different campaigns. However, the coverage of Mr Ter-Petrosyan's campaign was selective, distorted and mostly negative in tone. Monitoring by the OSCE/ODIHR EOM revealed, overall, strong imbalance of media coverage in favour of Serzh Sargsyan in the private broadcast media. Similar to what happened on Public TV, the news coverage of Mr Levon Ter-Petrosyan's campaign by private media was mostly negative in tone. Overall, the media did not live up to their legal obligation to provide impartial information on the election campaign to the Armenian public.

VI. Election Day – Vote count and tabulation – and election complaints

45. On Election Day, the conduct of the vote took place in a relatively calm atmosphere. Regrettably, in a number of isolated cases, serious problems were noted, including instances of violence against proxies, attempts to influence and intimidate voters, as well as vote buying.

46. Unfortunately, the situation deteriorated during the vote count, with serious procedural errors, such as non-transparent counting procedures and inconsistencies in determining the validity of votes,

being reported in a significant number of polling stations. In addition, in several cases, the signing of blank results protocols, or uncompleted results protocols, by the members of the PEC was noted. In a welcome development, as a result of the changes in the Election Code, far fewer PECs had problems with the completion of the results protocol than during the Parliamentary Elections in 2007.

47. The Ad Hoc Committee was astounded by the constant use of mobile phones by commission members during the vote count, which apparently were used to transmit the ongoing results to the party headquarters. This constant use of mobile phones raises questions about possible outside interference in the counting procedures.

48. The Ad Hoc Committee is especially concerned about the deliberate falsification of the results of the count that were noted in a number of polling stations, including one case that was directly observed by a team from our Assembly.

49. In contravention of the law, a considerable number of PECs did not display the results protocols at the polling stations for public inspection.

50. The tabulation process was followed by observers at all 41 TECs. The main concern was the lack of transparency of the tabulation process. In addition, a number of shortcomings were noted such as election materials arriving in unsealed packages, or PEC members leaving the TECs with election materials in their position, in contravention of the law.

51. On 20 February, the CEC announced the preliminary results of the elections which showed that, with a turnout of approximately 70 %, Serzh Sargsyan had won 52.9 % of the vote, indicating that a second round of elections was unnecessary.

52. The preliminary findings of the IEOM were published the day after the elections, before the tabulation process was finalised. The tabulation process, as well as recounts and the handling of the election complaints and appeals after Election Day, was observed for the IEOM by the OSCE/ODIHR Election Observation Mission.

53. The Election Code provides that candidate proxies, who register at a PEC, can request a recount for that PEC at the corresponding TEC. The deadline for requesting a recount is 14:00 hours on the day after the vote took place. TECs have a legal deadline of 5 days to conduct the recounts. Recounts were requested in 25 TECs for a total of 159 PECs. TECs refused recounts in 34 cases on the grounds that they were “baseless”. A number of complaints were filed with the CEC stating that TECs obstructed the submission of requests for recounts, or that requests could not be made because the TECs were not functioning continuously in the period before the legal deadline for submitting such a request.

54. A significant number of recounts showed serious discrepancies with the results of the original count, which raises questions about the impartiality of the PECs and/or TECs. In addition, shortcomings during the recount process were noted in a number of TECs. The recounts in 24 PECs were not conducted, due to the expiry of the legal deadline for the finalisation of the recount processes.

55. Despite many allegations of electoral fraud, very few official complaints were filed with the PECs on Election Day. However, Mr Ter-Petrosyan’s campaign alleged that many PECs, as well as the CEC, had refused to accept a large number of complaints filed by Mr Ter-Petrosyan’s proxies. In some cases this was confirmed by reports of IEOM observers on Election Day.

56. The CEC received 19 complaints after Election Day. Regrettably, despite the strong criticism of international observers in this regard, the problems with the handling of election complaints and appeals by the CEC, as noted during the campaign period, continued unabated after Election Day. The 19 complaints were not heard in a formal session of the CEC and no consideration was given to the substance of the complaints. This did not give complainants access to an effective legal remedy and undermined public confidence in the impartiality of the election administration.

57. The Election Code is ambiguous with regard to the avenues for legal appeal against decisions by the election commissions. This resulted in a number of appeals being rejected because they were not addressed to the newly established Administrative Courts. Possibly as a result of this legal

ambiguity, no complaints were filed with the Administrative Courts, whose role in the election process therefore remained untested.

58. On 24 February, the CEC announced the final results of the Presidential election. According to the final results, Mr Serzh Sargsyan won the elections with 51.6 % of the vote, making a second round unnecessary. Mr Levon Ter-Petrosyan gained 21.5 % of the vote, Mr Artur Baghdasaryan 16.7 % of the vote and Mr Vahan Hovhannisyan 6.1 % of the vote. All other candidates received less than 2 % of the vote each. The CEC protocol on the final results was signed by six of the 8 CEC members, with the representatives of the Orinats Yerkir and Heritage parties refusing to sign the protocol. According to the information on the CEC website, a number of polling stations had implausibly high voter turnouts of close to, or over, 100 %, often combined with an equally implausible result of close to 100% of votes cast in favour of Mr Serzh Sargsyan.

59. Following the announcement of the official results, Mr Tigran Karapetyan and Mr Levon Ter-Petrosyan filed an appeal against the results with the Constitutional Court on 27 and 29 February 2008 respectively. In line with legal provisions, these two cases were joined by the Constitutional Court, which then had up to 10 days to deliver a decision. The Constitutional court issued a decision in which it confirmed the results announced by the CEC, and rejected the appeals, on Saturday 9 March.

60. The CEC reported that it has referred 23 cases of electoral violations to the General Prosecutor for investigation. On 1 March the General Prosecutor announced that it had opened a total of 35 cases for electoral violations, as well as violent incidents, on Election Day.

VII. Post-election developments

61. A comprehensive analysis and discussion of the developments after Election Day, culminating in the tragic events on 1 March 2008 and the Declaration of the State of Emergency in Yerevan by President Kocharyan, falls outside the mandate of the Ad Hoc Committee and scope of this report. However, this report would not be complete without a short outline of the political developments following Election Day.

62. Immediately after the announcement of the preliminary results on 20 February 2008, Mr Ter-Petrosyan claimed that the elections were marred by “widespread falsification and violations” and claimed that in reality he had won the election. In addition, Mr Artur Baghdasaryan challenged the legitimacy of the election as a result of alleged violations and Mr Vahan Hovhannisyan, who came in fourth in the election, resigned from his post as Deputy Speaker of the National Assembly as a result of the irregularities he alleged had occurred during the elections.

63. Mr Levon Ter-Petrosyan, who had already declared the election fraudulent before it took place, changed his planned victory rally, on 20 February 2008, into a protest rally and called on his supporters to join him to denounce the election results. Subsequently, daily protest rallies and marches were organised in central Yerevan during which the protesters called for the annulment of the results and a repetition of the election. In addition, a permanent tent camp was set up by Ter-Petrosyan supporters on Freedom Square in Yerevan.

64. The protest rallies and marches were initially tolerated by the authorities. However, on 23 February, President Kocharyan hardened the official discourse when he classified the protests as an “illegal attempt to take power”.

65. The Ter-Petrosyan camp received a boost in support when a number of high-level State officials publicly denounced the election as fraudulent and announced their support for Mr Levon Ter-Petrosyan. These officials were subsequently dismissed from their positions and a number of them, as well as several Ter-Petrosyan activists, were arrested on seemingly artificial charges, which left the impression that their prosecution was politically motivated. According to the Helsinki Association, a total of 13 persons were arrested and placed under investigation in the period from 20 to 29 February 2008

66. On 26 February, Prime Minister, and President Elect, Serzh Sargsyan extended an offer of co-operation to the other Presidential candidates. On 29 February 2008, this offer was accepted by Artur Baghdasaryan after reaching an agreement on political co-operation.

67. In the early morning on 1 March 2008, the Police attempted a search of the tent camp on Freedom Square. After they met with resistance from the protesters, the police took the decision to clear the tent camp. During this action, 31 persons were injured – according to official information – and Mr Levon Ter-Petrossyan was placed under a *de facto* house arrest.

68. The protesters reconvened later in the afternoon in another part of Yerevan, which led to clashes between the police and protesters. In the evening of 1 March, the situation had deteriorated to such an extent – with 7 protesters and 1 policeman dead (according to official figures) – that President Kocharyan decided that the situation was affecting the stability of the country and declared a State of Emergency in Yerevan.

69. In the days following the declaration of the State of Emergency, large numbers of Ter-Petrossyan supporters were arrested in what appears to be a *de facto* crackdown by the authorities on the opposition.

VIII. Conclusions and recommendations

70. The Presidential Election in Armenia, on 19 February 2008, was administered mostly in line with Council of Europe standards. The authorities made improvements to the legal framework, but did not demonstrate commensurate political will to ensure its full implementation. The Ad Hoc Committee urges the authorities to address the shortcomings and challenges outlined in this report, especially with regard to the lack of public trust in the electoral process and its outcome.

71. The restrictions in the Constitution on the passive voting rights of citizens holding dual nationality run counter to Council of Europe standards and should be abolished.

72. The Ad Hoc Committee is deeply concerned about the lack of public confidence in the electoral process, and, as a result, its outcome. This lack of trust is one of the main obstacles to the consolidation of democracy in Armenia. Unfortunately, the unequal campaign conditions, the shortcomings and violations observed on Election Day, as well as the manner in which electoral complaints and appeals were dealt with, have done nothing to increase public confidence in the electoral system.

73. The Ad Hoc Committee regrets the manner in which the election administration, and especially the CEC, has handled the complaints and appeals process, which did not give complainants access to an effective legal remedy and undermined public confidence in the impartiality of the election administration. The Election Code should specifically stipulate that election related complaints can only be dealt with by the CEC when in formal sitting.

74. A number of electoral stakeholders expressed little trust in the judiciary as impartial arbiters in election related disputes. While stressing the importance of the recognition of the rule of law by all contestants, it raises questions about the perception of the independence of the judiciary, which should be a key concern for the Assembly.

75. The lack of formal sessions of the CEC undermined the transparency of the election administration. The informal arrangements opted for must be avoided during future elections, and, where necessary, prohibited by law.

76. This election clearly demonstrated the limits to the effectiveness of the stamping of identity papers as a mechanism to prevent multiple voting as a means for electoral fraud. The Ad Hoc Committee therefore urges the authorities to introduce the inking of voters' fingers, which has shown its effectiveness in a number of other European countries.

77. While an analysis of the events that culminated in the Declaration of Emergency, on 1 March 2008, are outside the scope of this report, it is clear that the main underlying cause is the total lack of public trust in the electoral process and the legitimacy of its outcome. The electoral framework must therefore be reformed as a matter of urgency. These reforms should be carried out in a dialogue between authorities and opposition (parliamentary and extra-parliamentary) and aim to inhibit any control or domination by the interests of one political force or faction over the electoral administration and the election process.

APPENDIX 1

**Ad hoc Committee to observe the Presidential election in Armenia (19 February 2008)
Programme from 18 to 20 February 2008**

Sunday, 17 February 2008

Evening/Night: Arrival of the members of the delegation. All members will be met and provided with transfers to Armenia Marriott Hotel Yerevan, 1 Amiryán Street, Yerevan

Monday, 18 February 2008

Marriott Hotel

09:00 Ad Hoc Committee meeting

Marriott Hotel Grand Ballroom

Joint Briefing Delegations of the OSCE PA, PACE and EP

09:30-09:45 **Opening by the Heads of Parliamentary Delegations**

- Ms Anne-Marie Lizin, Head of OSCE PA Delegation and Special Representative of the OSCE CiO
- Ms Marie Anne Isler Béguin, Head of Delegation of the European Parliament
- Mr John Prescott, Head of Delegation of the CoE Parliamentary Assembly

09:45-10:15 **Political Background**

- Ambassador Sergey Kapinos, Head of the OSCE Office in Yerevan
- Ms Bojana Urumova, Special Representative of the Council of Europe Secretary General to Armenia
- Mr Raul de Luzenberger, Head of the EC Delegation to Armenia
- Mr Peter Semneby, EU Special Representative for the South Caucasus

10:15-12:00 **Briefing by the OSCE/ODIHR Election Observation Mission**

Introduction

- Ambassador Geert Ahrens, Head of Mission
Political overview, Campaign activities and media landscape
- Ms Lolita Cigane, Political Analyst
- Mr Ivan Godarsky, Media Analyst
- Questions

Elections Framework

- Mr Olexiy Lychkovakh, Election Analyst
- Ms Karen Gainer, Legal Analyst
- Questions

Polling procedures and observation forms

- Mr Paul O'Grady, Deputy Head of Mission
- Mr Olexiy Lychkovakh, Election Analyst
- Mr Anders Eriksson, Statistics Expert
- Questions

Observers' Safety

- Mr Andrey Sherbakhov, Security Officer

12:00-12:15 Coffee break

12:15-13:00 **Electoral Administration**

- Mr Garegin Azaryan, Chair, Central Election Commission
- Mr Nerses Nazaryan, Head of Yerevan City Police Department
- Mr Agvan G. Hovsepyan, Prosecutor General of the Republic of Armenia

13.00-14.00. Lunch break

14:00-15:40 **Meetings with candidates (1st session)**

- Mr Arthur Baghdasaryan (The Rule of Law Party)
- Mr Gagik Tadevosyan, representing Mr Artaches Guegarnian (National Unity Party)
- Mr Tigran Karapetyan (People's Party)
- Mr Aram Harutyunyan (National Accord Party)
- Mr Vahan Hovhannisyan (ARF Dashnaktsutyun Party)

15:40-15:50 Coffee break

15:50-17:10 **Meetings with candidates (2nd session)**

- Mr Vazgen Manukyan (National Democratic) Party Mr Arman Melikyan (self – nominee)
- Mr Serzh Sargsyan (Republican Party)
- Mr Levon Ter-Petrosyan (self – nominee)

17:10-17:50 **Roundtable with NGO representatives (International and Armenian)**

- Mr Avetik Ishkhanyan, Helsinki Committee of Armenia [tbc]
- Mr Harutyun Hambardzumyan, 'It's Your Choice', domestic election monitoring organisation
- Mr Gegham Sargsyan, NDI
- Ms Linda Edgeworth, IFES

17:50–18:30 **Roundtable with Media Representatives**

- Mr Boris Navasardian, Yerevan Press Club
- Mr Aleksandr Iskandaryan, Caucasus Media Institute
- Mr Grigor Amalyan, National Council on Public Radio and Television
- Mr Armen Arzumanyan, State TV

18:30 **Concluding remarks**

18:30-19:15 **Deployment**

- Area specific briefing conducted by OSCE/ODIHR LTO teams 1/2/3
- Meet with interpreters and drivers

Tuesday, 19 February 2008

Observation of the Presidential Election

Wednesday, 20 February 2008

08:30 Ad Hoc Committee Meeting, possibly joint debriefing

15:00 Joint Press Conference (tbc)

Evening / night: departure of the members of the delegation

APPENDIX 2

Continued progress is key to ensuring public confidence in democratic election, says PACE delegation

Strasbourg, 31.01.2008 – A pre-electoral mission of the Parliamentary Assembly of the Council of Europe has just completed a visit to Yerevan to assess the political climate and preparations for the forthcoming Presidential election in Armenia. Its main task was to assess progress in the implementation of the electoral framework, as continued progress in the manner in which the election is conducted will be essential to ensure public confidence in the electoral process in this country.

The delegation noted that the parliamentary elections in 2007 had shown progress over previous elections and expressed its hope that this progress would continue during the forthcoming Presidential election on 19 February 2008. It was therefore heartened by the clearly expressed political will of the authorities to address previous shortcomings and to hold fully democratic elections in line with Armenia's commitments to the Council of Europe. In this respect, the delegation welcomes the improvements in the legal framework for these elections, which address a number of recommendations of the Parliamentary Assembly. However, it would also like to stress that the democratic conduct of the elections will squarely depend on the electoral framework being fully implemented, both according to the letter and spirit of the law.

Genuinely democratic elections, and the legitimacy of their outcome in the eyes of the people, depend on a high level of public confidence in the electoral process. In that respect, the delegation is concerned with the apparent lack of trust in the electoral process, including in the impartiality of the legal complaints and appeals process, expressed by a number of interlocutors. It therefore strongly recommends that the authorities take all necessary measures to ensure public confidence in the electoral process, especially with regard to the secrecy of the vote and the transparency of the counting and tabulation processes.

While the setup of the voting booths has been changed to impede vote-buying and multiple voting, there is some concern that this may lead to voters inadvertently showing how they voted, especially if large numbers of people are present in the polling stations. The delegation saw a sample voting booth and was convinced that they are designed according to international standards. However, it calls upon the Central Election Commission (CEC) to take all precautions to ensure the secrecy of the vote on election day. Moreover, while the CEC has made laudable efforts to increase the transparency of the tabulation process, these measures did not work fully satisfactorily during the previous parliamentary elections. The delegation hopes that the technical problems encountered at that time have been overcome and recommends that the CEC sets a minimum timeframe during which the results protocols have to be publicly posted at polling stations.

The Election Code ensures a balanced composition of all election commissions, but it was noted that this balance was not reflected in the composition of the leadership troikas of the Territorial Election Commissions. The delegation hopes that this imbalance will not be repeated at the level of the Precinct Election Commissions.

Democratic elections demand a level playing field between all candidates during, but not limited to, the legal campaign period. The delegation therefore regrets the clearly unbalanced media coverage on most broadcast media, including public television, before the official campaign period, as was reported by several monitoring organisations, including by the Election Observation Mission of the OSCE/ODIHR, whose findings – published in its first interim report – the delegation fully supports.

The delegation heard several complaints that the current Prime Minister, who is a Presidential candidate, would have unfair campaign advantages as a result of his decision to maintain his position as Prime Minister during the campaign period. While recognising the legality of the current Prime Minister continuing his functions despite being a candidate, it adds to the responsibility of the government to avoid any perception that administrative resources are abused in favour of, or against, any particular candidate. The delegation welcomes the fact that, until now, the election campaign has taken place in an open and unimpeded climate, but notes reports by some candidates of their difficulties in obtaining campaign offices in some regions.

The delegation is confident that the authorities will address the concerns of the delegation and will continue its efforts to organise a fully democratic Presidential election that will have the full confidence of the Armenian people.

The delegation would like to thank the authorities for their co-operation and assistance during this visit. The Parliamentary Assembly will return to Armenia to observe the Presidential election with a 30-member delegation.

(*) The pre-election delegation of the Parliamentary Assembly visited Yerevan from 29 to 31 January 2008. The cross-party delegation was composed of John Prescott (United Kingdom, SOC), Head of Delegation, Lord Russell-Johnston (United Kingdom, ALDE) and Bjørn Jacobsen (Norway, UEL). During its visit, the delegation met with the President of Armenia, the Chairman of the National Assembly of Armenia, the Armenian delegation to PACE, the Chairman of the Central Election Commission, all but one of the Presidential candidates, the Minister of Foreign Affairs, the Chairman of the Constitutional Court, the Head of the Police, the international community in Armenia, as well as representatives of the mass media and civil society.

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APPENDIX 3

Armenian presidential election mostly in line with international commitments, but further improvements necessary

Yerevan, 20 February 2008 – Yesterday's presidential election in Armenia was conducted mostly in line with the country's international commitments, although further improvements are necessary to address remaining challenges, the International Election Observation Mission said in a statement published today.

The observers found that the Armenian authorities made genuine efforts to address shortcomings noted in previous elections. But there is a need for further improvements and political will to tackle concerns such as the lack of public confidence in the electoral process and the absence of a clear separation between State and party functions. The conduct of the count did not contribute to reduce suspicions among stakeholders.

"In an active and competitive election, Armenians turned out in strength to choose between genuine political alternatives. The problems we observed, particularly during the counting, must be addressed to increase overall confidence in the electoral process", said Anne-Marie Lizin, OSCE PA Vice President and Special Co-ordinator of the OSCE short-term observers.

"While we noted improvements in the framework for these elections, problems with its implementation, especially during the vote count, in some cases undermined the trust of the people. In the end, the final choice lies in the hands of the Armenian people. Therefore, its trust in the electoral process is crucial to genuine democracy", said John Prescott, the Head of the PACE delegation.

"Compared to the previous presidential elections, significant progress was noted with regard to the preparation and conduct of the electoral process. However, the whole electoral environment and reported interferences still have to be carefully assessed. The EU will continue to support the reinforcement of democracy in Armenia via its Neighbourhood Policy", said Marie Anne Isler Béguin, Head of the European Parliament delegation.

"An election is not a one-day event, and today's statement is a preliminary one. We will stay in Armenia to observe the completion of the tabulation process and the resolution of election disputes through the available mechanisms. This process should clarify aspects of the election that need further investigation", said Ambassador Geert Ahrens, the Head of the ODIHR long-term election observation mission.

Close to 400 observers, including some 75 parliamentarians, monitored the elections for the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Council of Europe Parliamentary Assembly (PACE), and the European Parliament (EP).

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