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The Role of Civil Society Observation Missions in Democratization Processes in Armenia

By Armen Grigoryan (Transparency International Anticorruption Center, Armenia)

Abstract

This article aims to explore the impact of civil society observation missions on the transparency of national and local elections in Armenia. Observation missions in transitioning countries are key to developing electoral institutions and increasing public trust in elections. In many post-Soviet countries, civil society observation missions developed earlier than in Armenia, where they mainly started after 2010, but during the short period since then, they have developed rapidly. The article examines how election observation influences the election process and democratization in Armenia. It also examines the abuse of state resources by the ruling political party and its allies as well as its impact on the results of elections.

Organising free and fair elections is more important than the result itself
Fatos Nano (BBC, 2003)

Introduction

Holding free and fair elections is one of the essential elements of democracy, without which it cannot exist and function. That is why the most important precondition for the democratization of any country is the development of a full-fledged democratic electoral system.

Democracy literally means “government by the people; a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system” (Dictionary.com Unabridged, n.d.).

Today, one of the major challenges facing the states that are in the process of democratizing is manipulated elections. Armenia is also affected by this fundamental issue; moreover, it is one of the main obstacles to the democratization of the country. Starting with Par-

liamentary elections in 1995 the results of all national elections in Armenia have been questioned because of large-scale fraud, albeit varying in degrees and severity. Since those elections, the people have not been able to form a government through free and fair elections.

The democratization of Armenia is a fundamental precondition for the development of the country. Democracy is the most efficient system for solving the issues of security, economic development, and poverty reduction facing Armenia. The free expression of the will of the majority of the citizens is very important for forming a government and it is equally important in economic development and poverty reduction.

Election Observation Missions

Local and international institutions are trying to improve the quality of elections in Armenia. There are a number of factors affecting the electoral system's development in Armenia. Two of them are local and international observation missions. The OSCE Office for Democratic Institutions and Human Rights, which has carried out observation missions in Armenia since the Presidential elections in 1996, plays an important role in the development of Armenia's electoral system (OSCE, 1996).

Although people usually have little trust in the positive impact of international observation missions in the academic field, there are a large number of professionals who believe that international observation missions affect the dynamics of electoral violations by reducing them. At the end of the 20th century, the participation of international observation missions in electoral processes has become an international customary norm. One of the first attempts to invite international observers was instigated by the Cuban dictator, Fulgencio Batista, who, in 1958, invited international observers to legitimize his government, but international organizations refused to participate, and as a result of these elections, Batista resigned and left the country, and Fidel Castro came to power (Hyde, 2011).

In the modern world order, which is centred on internationally recognized standards and norms of democracy, the declared domination of liberal democracy creates incentives for states to present themselves as a democracy. This is the reason why states tend to invite international observers to recognize the legitimacy of the elections by the international community. Even dictators apply such a practice. Approximately three-quarters of all national elections conducted from 1990 to 2006 throughout the world (except in established democracies), and which led to a change in political power, were monitored by international observers (161 of 215). In 70% of the elections, where counting results

led to the opposition's success, international observers were present (258 of 368) (Hyde, 2011).

Observer Missions in Armenia

International observer missions have an important role in the development of the electoral system, but they do not have the same effect in all countries. Recently, local and international observation missions have begun to complement each other. The demands of local observers have also been taken up by international observers and sometimes have been reacted upon. For instance, the requirement to publish signed voters' lists was included into Armenia's electoral regulation (Panorama.am, 2017), and the requirement of the mandatory testing and certification of citizen observers by the Central Election Commission as a prerequisite to carry out election observations was removed from the 2016 Electoral Code (Republic of Armenia, 2016). Both of these achievements are the result of joint demands and cooperation between local and international observation missions.

Local observation missions in Armenia started to form in the 2000s. Similar to other post-Soviet countries, in Armenia, fake local observation missions meant to rubber-stamp the official result have also been formed, but their impact has decreased over time as the impact of independent observation missions has shattered their activities. Since 2007, many local non-governmental organizations have been conducting observation missions in Armenia. According to the official website of the Central Electoral Commission of the Republic of Armenia, during the Parliamentary elections in 2007, 53 organizations registered 13,798 observers. In the 2012 Parliamentary elections, 53 organizations registered 31,451 observers. During the Parliamentary elections in 2017, 49 organizations registered 28,021 observers. During the Presidential elections in 2008, 39 organizations registered 15,103 observers. During the Presidential elections in 2013, 26 organizations registered 6,251 observers. During the Constitutional referendum in 2015, 18 organizations were accredited with 2,789 observers. However, the public was not properly informed about most of the observation organizations' activities. Many local organizations have conducted fake monitoring without reporting to the public.

The local observation mission phenomenon is a peculiarity of countries that have started the democratization process only late in the 20th century. Western democracies have generally not gone through such a process. Today, in transitional countries, observation missions have an important impact on the formation of the electoral system. The local observation missions cannot solve all the issues of the electoral system, but their involve-

ment has a significant impact on the development of the institution.

For example, the practice of the Citizen Observer Initiative (COI) during the 2015 Constitutional referendum in Armenia shows that the observers had a significant impact on elections day. The COI had representatives in 526 out of 1,998 polling stations distributed in all regions of Armenia. A comparison of polling stations with and without observers shows the impact of the observers. In the polling stations where there were no observers, the turnout was on average 5% higher, at the same time the “yes” votes were 7% higher and “no” votes were 6.5% lower. Accounting for the fact that observed and unobserved polling stations were equally distributed across the country, it can be argued that the difference may be explained exclusively by the actions of the observers (Ghazaryan, 2016). Furthermore, the distributions of “yes” votes for polling stations with and without observers are different (Ghazaryan, 2016). The distribution for polling stations without observers is left-skewed; the number of stations with 80% “yes” votes is the highest (about 300 stations). However, where observers were present, the number of stations with 30% “yes” votes is the highest (more than 90 stations), the next highest number being stations with 60% “yes” votes (about 80 stations) (See Ghazaryan, 2016; the mentioned percentages are approximate). According to Ghazaryan (2016), the fact that the distribution for stations with observers is double-peaked suggests that observers cannot always prevent violations.

Impact

Local observation missions are also important in the sense that the international community and international observation missions usually base their work on local observer organizations. For example, after the Constitutional referendum in 2015, the US embassy and the European Union Delegation in Yerevan issued their statements on the basis of the work of local observers.

The US Embassy in Yerevan in its statement on the Constitutional referendum said: “The credible allegations of electoral irregularities reported by both non-partisan observers as well as Armenian political parties are of concern, however, and need to be fully investigated to ensure that the Armenian people can see the outcome of the referendum as credible and legitimate” (U.S. Embassy in Armenia, 2015). The EU delegation in Yerevan stated: “We also take note of the concerns expressed by independent observers regarding the conduct of the referendum. We urge the Armenian authorities to fully investigate in a transparent manner credible fraud allegations” (Mediamax, 2015). The OSCE Office for Democratic Institutions and Human Rights

(OSCE ODIHR, 2016) has also voiced concerns about the issues raised by the local observation missions.

One of the main results of observation missions and international community activities after the Constitutional referendum in 2015 was that 74 criminal cases were initiated against people who were engaged in election violations. It should be mentioned that nobody was sentenced to prison and those who were convicted of election violations were only fined. At the same time, however, the COI created a website with the profiles of election violators to use public shaming as an alternative way to discredit election violators (TIAC, n.d.).

The successful experience of the observation mission also had an important impact on the changes to the electoral code in 2016. Members of the Citizen Observer Initiative, in particular, have begun to actively participate in the process of Electoral Code formation in Armenia (TIAC, 2016). Members of the Citizen Observer Initiative and other civil society organizations participated in negotiations on law-making with a 4 + 4 + 4 format, where the government, the opposition and civil society organizations (each represented by four members) began to negotiate the provisions of the new Electoral Code.

The 2016 draft electoral code proposed by the government contained a number of regressions. These regressions were mainly conditioned by the Constitutional referendum in 2015, during which observers had much impact because they reported violations to the public. After encountering restrictions posed by the presence of observers in polling stations, the authorities decided to hamper the work of observer missions. For the first time in the history of Armenia, a media accreditation institute has been established by the Electoral Code. The Electoral Code has also restricted the number of observers and media representatives to 15 in each polling station.

However, there was also progress in the Electoral Code related to the tests required by the Central Election Committee (CEC). To be accredited, observers will no longer submit the CEC test. The publication of signed voters’ lists, which had been the main demand of the opposition and civil society, has also become a legislative norm. Thus, both of these new developments came into reality through the support of observation missions.

During Parliamentary elections in 2017, the Citizen Observer Initiative had 3100 observers in 1500 polling stations (i.e. 75% of the total). On elections day observers reported 1619 violations, of which 216 were related to the voting preparation processes, 864 to the voting process, 144 to counting and 394 to general offenses. In total, only 707 were registered in the registry book by the precinct election committee.

The practice of Parliamentary elections in 2017 shows that a strong presence of observers in the polling stations pushed the main violations out of the polling stations. The presence of observers changed the rules of the game and decreased the violations in the polling stations. During Parliamentary elections in 2017 overall, the COI recorded fewer violations compared to the Constitutional referendum in 2015, considering the number of observers and covered polling stations. During the Constitutional referendum, the COI recorded ballot stuffing, turning off the lights of the polling stations, using force against observers, etc. During the parliamentary elections, such violations decreased.

Administrative Resources

At the same time, administrative resources played a major role in manipulating the elections. The most vivid evidence of this is the number of votes. Only two parties, the Republican Party of Armenia (RPA) and the Armenian Revolutionary Federation Party (ARF), which form the governing coalition and have administrative resources, increased their votes compared to the Parliamentary elections in 2012. According to the official CEC webpage, the RPA received 664,000 votes in 2012 and 771,000 votes in 2017, while the ARF received 86,000 votes in 2012 and 103,000 in 2017. Moreover, in 4 electoral districts in Yerevan, the ARF on average received approximately 6,000 votes, while in the Shi-

rak region (the 11th district), where the regional governor is appointed by the ARF it received approximately 12,000 votes.

The Prosperous Armenia Party (PAP), which is led by tycoon Gagik Tsarukyan and is famous for distributing bribes, received approximately 454,000 votes in 2012 while in 2017 it received 428,000 votes. With limited administrative resources, the PAP could not increase the number of votes, even though it bribed voters. These numbers show that even if a party with limited administrative resources distributed bribes, it did not help to increase votes. This indicates that one of the main factors for success in the Parliamentary elections in 2017 was the use of administrative resources.

Conclusion

The last 3–4 years of election observation in Armenia show that observation missions have an important role in the development of the electoral institution. Even though their presence in polling stations has decreased the number of violations in polling stations, outside of polling stations there are still different kinds of violations occurring that need to be detected and counteracted. The increased observation of electoral processes by observation missions can have further impacts on detecting and counteracting those violations and developing the electoral institution in Armenia.

About the Author

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Some of the Major Challenges of the Electoral System in the Republic of Armenia

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Abstract

This article presents some of the major problems of the electoral legislation and the electoral system of the Republic of Armenia. First, it analyses the electoral system and the activities of the electoral administration bodies. It then discusses the interdependence between the law enforcement practice and changes in the electoral law. Furthermore, the article also discusses the problems and risks observed in electoral processes. As part of these problems, the article scrutinizes the efficiency of the existing legislative solutions in terms of preventing and revealing electoral violations, conducting effective examination, and effectively defending subjective and objective electoral rights.

Electoral Administration Bodies as the Institutes Defending Subjective and Objective Electoral Rights and Their Effectiveness

Drawing on the advice provided by the Venice Commission of the Council of Europe, the Republic of Armenia (RA) created a three-tier structure for electoral commissions, consisting of a permanently operating Central Electoral Commission (hereinafter: the CEC), permanently operating territorial electoral commissions (hereinafter: TEC) and precinct electoral commissions (PEC) formed at the time of the elections. When exercising their powers, the electoral commissions must be independent and autonomous and abide by the principles of legality, collegiality and transparency. Any interference with their actions is prohibited (RA Electoral Code, Article 36). The Electoral Code foresees appeals against the actions and/or inaction of lower-level electoral commissions at upper-level commissions or the Administrative court (RA Electoral Code, Article 48).

The aim of the aforesaid legal regulations is the introduction of checks and balances within the system of electoral commissions, which must ensure effective electoral administration, effective examination of electoral disputes and the right to appeal, which are among the essential components of electoral law. Without these components, if there are no effective remedies, electoral law becomes declarative in nature.

There are innumerable facts demonstrating the lack of independence and autonomy of TECs, as well as their incompetence. In most cases, TEC members cannot differentiate between administrative proceedings and a session convened with the aim of refusing the initiation of such proceedings, which speaks of their lack of competence. For example, TEC members notify the complainants about administrative proceedings instituted on the basis of their complaints; however, when complainants attend the hearings, they often find that the TECs are