

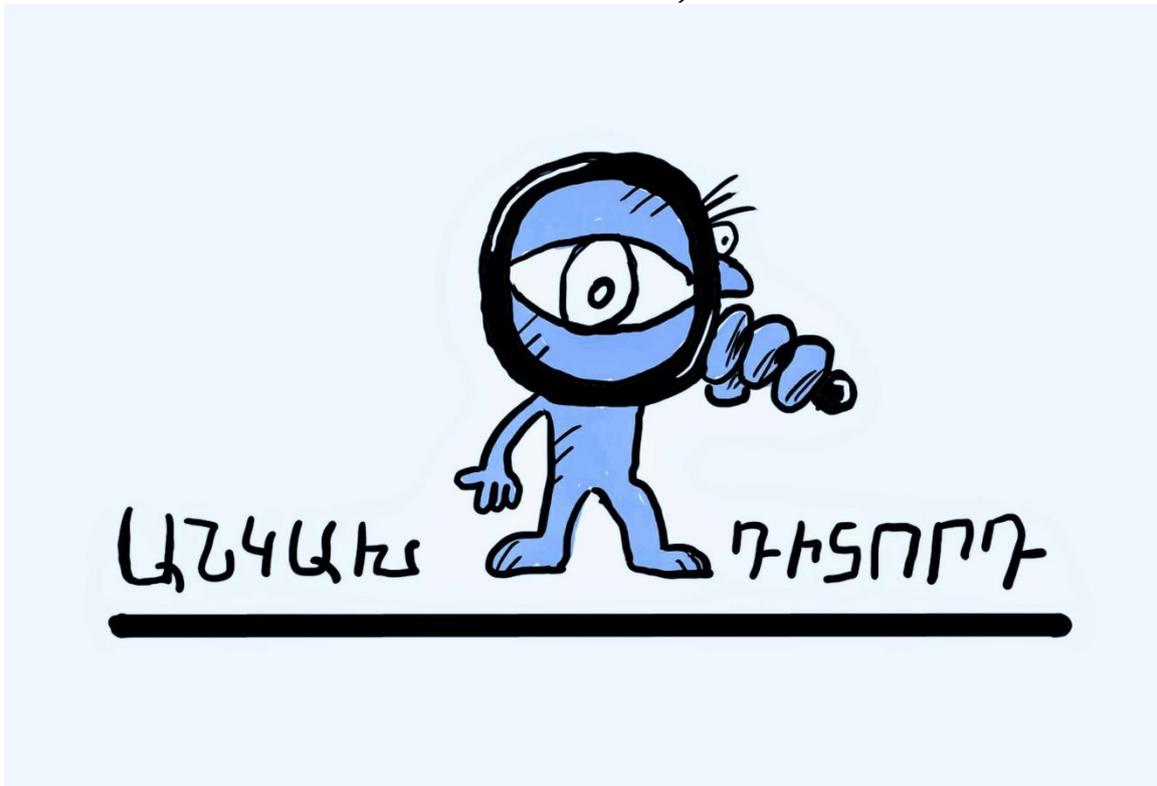
March 21, 2017



'Independent Observer' Public Alliance

LONG-TERM OBSERVATION INTERIM REPORT

MARCH 5-20, 2017



NA Elections 2017

Շրագրային համագործակցության կառուցվածք
Հայաստանի, Ադրբեջանի, Վրաստանի, Սերբիայի Հանրապետության, Ռկրաինայի և Բելառուսի համար

Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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Open Society Foundations - Armenia

Բաց Հասարակության Հիմնադրամներ - Հայաստան

The 'Independent Observer' Public Alliance, formed by Helsinki Citizens' Assembly-Vanadzor, Union of Informed Citizens, Martuni Women's Community Council and Goris Press Club NGOs, observes the RA National Assembly April 2, 2017 election campaign. The election campaign was observed with the financial support of Open Society Foundations - Armenia, Embassy of the Czech Republic in Armenia, Norwegian Helsinki Committee, Council of Europe and European Union. Hereby, we present the information collected within the period of March 5-20, 2017 of the election campaign.

The views in the Report do not in any way reflect the official views of the funding organizations.



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General information

During the election campaign period for the National Assembly (NA) elections to be held on April 2, 2017, the 'Independent Observer' Public Alliance carries out long-term observation mission in all the 13 voting districts (VD) of the Republic of Armenia. The long-term observation mission involves previously trained 61 observers and a legal consulting team consisting of 26 lawyers.

The long-term observation mission of the election campaign aims to assess the situation of providing during the election campaign equal opportunities for the nominated political parties and alliances in compliance with the requirements of the RA Electoral Code and to promote the democratization of the election processes through identifying and presenting the activities of the election campaign participants and the obstacles they face during such activities.

The election campaign was observed through the methodology below:

1. interviews with the representatives of all the political parties and alliances, candidates and participants of campaign events and rallies;
2. observing the election campaign rallies and meetings of candidates of political parties and alliances;
3. recording the incidents occurring during the election campaign;
4. examining the incidents voiced by the media during the election campaign;
5. assessing the identified violations based on the legislative acts and by-laws on elections.

The interim report covers some 314 interviews with the representatives, heads and authorized persons of the district campaign headquarters of the political parties and alliances and their district candidates and campaign managers. A total of 50 election campaign rallies, events and meetings of the candidates of political parties and alliances were observed. 217 participants of the election campaign rallies and meetings were interviewed. The Report sums up information collected based on alerts of 238 incidents and violations.



Legislative regulations

On December 29, 2016, the Republic of Armenia President Serzh Sargsyan signed Decree № NH-1260-N setting April 2, 2017 as the date of the next-in-turn Republic of Armenia National Assembly elections. The adoption of Decree was based on Article 103(1 and 2) of the RA Electoral Code.

Once the Decree on Setting the Date for RA National Assembly Elections was adopted, many people spoke out that the election date was set in violation of the RA Constitution, whereas in case of its right application, the RA National Assembly elections date should have been set for a day within April 22-May 2, 2017.

The constitutional law divides the election process into certain stages; setting the election date is the start of the election process and the basis for coordinating this process at the next stages.

It follows that if the next-in-turn election date is not set in line with the Republic of Armenia document of the highest legal force but in its gross violation, any action taken and any authority formed after it may not be considered legitimate as it is initially illegal.

Besides, if the next-in-turn election date is set for April 2, 2017, persons with their voting rights arising within April 2-22, 2017 will not be able to vote in the elections. It appears that setting the election date in violation of the Constitution also breaches the rights of the persons who become 18 within April 2-22, 2017.

HCA Vanadzor submitted an application on this issue to the RA Human Rights Defender asking him to apply to the Constitutional Court of the Republic of Armenia on constitutionality of Articles 103 and 144 of the RA Electoral Code and particularly their compliance with Articles 1, 2, 7 and 48 of the RA Constitution and Article 68(1) of the text wording adopted in 2005.

In his response to the application, the RA Human Rights Defender stated that there were no available legal grounds to apply to the RA Constitutional Court on the raised issue, that is to say, there was no legal regulation by which the RA Ombudsman might apply to the Constitutional Court.

Any legal rule may be defended properly if the competent and responsible state body is consistent in its application and consistently imposes the sanctions provided by law in case of detecting any violation.



It should be stressed that both the RA Criminal Code and the RA Code of Administrative Offenses provide for sanctions for violating rules under the RA Electoral Code. Unlike the RA Criminal Code with its more or less clear mechanisms and procedures of their application, in case of the RA Code of Administrative Offenses, we have no well-established practices of its application and there are no well-known cases when upon detecting an administrative violation, any competent election commission exercised its powers and applied to the RA Administrative Court.

The RA Code of Administrative Offenses does not clearly specify which election commission is authorized and obliged to draw up administrative offense reports on which offense; the Code mentions the term 'competent election commission'; in practice, such legal regulation might cause different interpretations, so that the victim had no opportunity of a clear understanding of which election commission he/she should apply to for which administrative offense.

To get clarification of this issue, HCA Vanadzor sought with the RA Central Election Commission official explanation on the term 'competent election commission' in Article 254(1) of the RA Code of Administrative Offenses and specification which election commission is competent and obliged to draw up administrative offense reports for violation of which articles.

In terms of the application, the RA Central Election Commission decided to provide clarification and rejected the application. In spite of this, in the reasoning of its decree on rejecting the application, the RA Central Election Commission clarified which election commission is authorized to draw up reports on violations of which articles.

The RA Electoral Code provides for the use of technical equipment during elections to reduce cases of double voting or voting instead of another person.

The RA Electoral Code stipulated that such process was to be ensured by a relevant specialist; based on this, changes and amendments were made to the RA Code of Administrative Offenses: Articles 40.13 and 40.14 were added imposing administrative responsibility on the specialists operating technical equipments for failure to fulfill their powers or their improper fulfillment as well as on the election commission members who refuse to replace such specialists. Meanwhile, the Code was not amended respectively to specify the body competent to examine and resolve the issue of imposing administrative responsibility.

To resolve this issue, a proposal was drawn up and submitted to the RA Central Election Commission suggesting initiating and drawing up a draft legislative amendment and submitting it to the RA National Assembly for discussion. In terms of the proposal, the RA Central Election Commission expressed its gratitude for raising the issue and stated that it would prepare a relevant draft. The mass media informed that the RA Government was considering at a special session the



draft amendments. Nevertheless, the RA National Assembly has not considered the draft and made any respective amendments yet.

It follows that a specialist in the election process may fail in his/her powers and face no responsibility for doing so.

While Chapter 28 of the RA Administrative Procedure Code aims to settle the features of the judicial proceedings of electoral disputes, its regulations do not fully settle such issues and in practice may lead to misconceptions. Also, due to the absence of any precedents, the parties to the election process may also be deprived of the possibility of judicial protection due to the fact that the procedures are not simple enough. Also, there is no published official guideline to serve as guidance and specify the provisions on the features of applying to the court of law.

Here, a few issues should be emphasized; in particular, the special procedural deadline for submitting claims on electoral disputes is provided under Article 209(1) of the RA Administrative Procedure Code; accordingly, such claims may be submitted to the Administrative Court within 3 calendar days upon the date when the plaintiff learnt or should have learnt about the violation of his/her voting right.

It is noteworthy that the special provision makes no exception for the cases when an administrative act, action or inaction are challenged before higher instances under the administrative procedure. Obviously, if a person appealed an administrative act, action or inaction under the administrative procedure before higher instances, it appears virtually impossible to file a claim with the RA Administrative Court within 3 days upon learning about the violation of the right.

Unlike the special provision (Article 209 of the Code), the rule on the general procedural deadlines (Article 72(2) of the Code) stipulates that in cases where the act or action adopted or rejected by the administrative body is appealed under the administrative procedure, the terms under this Article are calculated from the date the decision on the complaint becomes effective or after the deadline for the examination of the complaint expires.

Thus, the general rule makes it possible for plaintiffs to challenge the act under the administrative proceedings if he/she wishes to do so and in case of no positive results, apply to the court of law and in this case the procedural terms are calculated from the date the decision on the complaint becomes effective or after the deadline for the examination of the complaint expires.



However, the absence of this provision for electoral disputes may lead to legal disputes and traps for the persons who exercise their right of appeal under the administrative procedure and merely inevitably miss the procedural deadlines for filing a claim.

Article 28 of the RA Administrative Procedure Code has no mention that the claim must meet the requirements for submitting claims under the general procedure, i.e. their content and form, including the rules for choosing types of claim. It should be noted that the RA Administrative Procedure Code provides for no possibility to appeal the first instance court's judicial act, which as such may be considered an unconstitutional regulation.

Facts and violations identified by observation within March 5-20, 2017

Table 1 covers summary information on various violations.

V D	Marzes (regions)/ communities	Printed advertisements/campaign materials	Acts of violence and pressure	'Charity' – disguised election bribes, impacting free expression of voters' will	Use of administrative resources
1	Avan, Nor Nork, Kanaker-Zeytun	+	+	+	-
2	Arabkir, Ajapnyak, Davtashen	+	+	-	-
3	Malatia-Sebastia, Shengavit	+	+	+	+
4	Kentron, Nork Marash, Erebuni, Nubarashen	+	+	+	-
5	Ararat	+	+	+	+
6	Armavir	-	+	+	+
7	Aragatsotn	+	-	+	+
8	Gegharkunik	+	+	+	+
9	Lori	+	+	+	+
10	Kotayk	-	+	-	-
11	Shirak	+	+	+	-
12	Syunik and	+	+	+	+

	Vayots Dzor				
13	Tavush	+	+	+	+
	Total	11	12	11	8

Printed advertisements/campaign materials¹

During the observed period of the election campaign, some campaign materials of the nominated political parties and alliances were damaged and such incidents have not received any legal assessment yet and/or those responsible for such actions or orders have not been identified. Such situation leads to unequal political competition and interferes with the citizens' right to awareness. Facts of damaging campaign materials were identified at 11 voting districts (VD) (here are a few examples of such incidents²).



c. Yerevan, Avan



Ararat



Armavir

¹ 124 alerts were received on such violations.

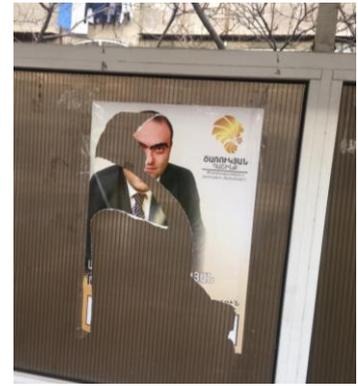
² <https://www.facebook.com/marukyan/posts/10155124892054586>, c. Yerevan, Avan: the 'Yelk' Alliance campaign poster is damaged. Torn campaign posters of various political parties and alliances at the addresses below: 5, 11, 32 Kievyan St, near b. 69 Baghramyan Ave., 18/1 Nansen St., c. Yerevan, Artashat, Spitak, Dvin, etc.



Martuni



Vanadzor



c. Yerevan, Erebuni

Also, violations were identified in placement of the election campaign materials; campaign posters were displayed in places not prescribed for such purposes.³



Yerevan, Ajapnyak



Artashat

³ In Yerevan, on the residential building on Halabyan Street in front of 'Hamalir' Sports and Concerts Complex, the RPA (Republican Party of Armenia) election campaign poster with Karen Karapetyan on it is displayed. In Armavir, 'Haykakan Veratsnund' ('Armenian Renaissance') Party district candidate Artur Yeghiazaryan's campaign posters are placed on the walls of the residential buildings, Beeline Office, ENA (Electric Networks of Armenia) Office and on Ucom billboard. In Ijevan, 'Dashnaksutyun' ('Armenian Revolutionary Federation') Party candidate Suren Manukyan's campaign posters are displayed on the mini-buses with yellow number plates. In Berdavan, the wall of the music school after Garik Aleksanyan displays Karen Nazaryan's campaign poster (and his party's headquarters is located there too), etc.



Acts of violence and pressure⁴

In March 5-20, 2017, political opponents and citizens suffered acts of violence and pressure; as a result, some persons received bodily injuries of different gravity.

Such incidents also occurred before the official start of the election campaign. The Police treated such situations selectively (arbitrarily) by responding too late in some cases. The biased attitudes of the law-enforcement agencies and some political forces involved in the political process result in an atmosphere of fear which in its turn negatively impacts the election processes.

Apart from the incidents widely covered by the mass media, our observers received information on the following incidents of violence and pressure:

- Syunik region (marz), t. Goris: the President of Goris State University Students Board forced all the students to attend the RA Prime Minister's meeting in Goris;
- Syunik region (marz), t. Goris: Karine Movsisyan, Headmaster of Secondary School № 1 after Axel Bakunts forced all the staff to attend RA Prime Minister Karen Karapetyan's meeting in Goris and hold Republican Party flags in their hands;
- Syunik region (marz), t. Goris: Artush Makunts, Head of 'Goris' penitentiary facilities, told his staff members to vote for his daughter Arevik Makunts;
- Gegharkunik marz (region), v. Astghadzor: head of village and RPA member Robert Khachatryan made negative remarks against candidate for NA Simon Hakobyan by insulting his personality. The head of the village is against this candidate and expresses his attitude by his actions as well (he calls the villagers and threatens to fire or murder them, etc.). He also threatens the 'Haykakan Veratsnund' ('Armenian Renaissance') Party members in the village, who are friends of the said candidate;
- Aragatsotn marz (region), village Ashnak: there were several incidents against representatives of other parties. Some RPA supporters, led by Tavros Sapeyan, put pressure on the representatives of 'Dashnaktsutyun' (Armenian Revolutionary Federation) Party and Tsarukyan's Alliance;
- Yerevan, Arabkir: there were threats to destroy the Freedom-fighters Union premises after the RPA suggested renting it and received the refusal of the Head of the Union; an ANC (Armenian National Congress) member;
- Armavir marz (region), Jrrat village, on March 12-14, clashes occurred there, when the RPA supporters (according to the eye-witnesses, led by Deputy Chief of Police L. Yeranosyan, who sponsored, supported and provoked them) prevented the representatives

⁴ 30 alerts were received on acts of violence and pressure.



of another political alliance, ORO (Oskanyan-Raffi-Ohanyan) from holding a campaign meeting in that village. As a result, lots of people received gunshot and blunt bodily injuries of different gravity.

Such acts of violence and pressure occurred at least in 12 voting districts.

The incidents with the use of firearms and physical force and knife fight during the election campaign widely covered by the mass media, as well as the direct involvement of the RPA candidates and RA Police high-ranking officials in such incidents and the inadequate and belated response of the law-enforcement agencies as another manifestations of the impunity system developed for years, lead to increased tension and an atmosphere of fear and unequal competition opportunities during the election campaign.



'Charity' – disguised election bribes, impacting free expression of voters' will⁵

In the observation period, the observation mission learnt from the campaign headquarters and candidates of the nominated parties and alliances, the mass media publications, as well as the campaign rally participants and rally observation findings that various political parties and/or alliances both promised and gave to the voters for their votes:

- cash awards, in-kind aid, food and other donations, support in the educational process by paying tuition fees;
- services, construction works (community road repair, construction of playgrounds);
- lots of other acts of 'charity'.

Another form of impacting the free expression of voters' will is publishing by the media of the public opinion survey findings in violation of the RA Electoral Code requirements (e.g. the funding source of the survey is not mentioned). In this period, such incidents were also identified.

The public sector employees are forced into the election campaigning process both during and after their working time. The observation mission received some alerts that the large and small business employees are also forced into such campaigning.

The said actions, in their turn, impact the free expression of voters' will.

The observers received information below on similar cases:

- Lori marz (region), Vanadzor: for March 8, 'Ella' beauty salon (hairdresser's) offered girls and women free services within 1000 AMD on behalf of RA NA candidate K. Karapetyan;
- t. Artashat: on March 8, the Tsarukyan Alliance distributed at the central dental clinic in Artashat optical glasses as aid to the citizens together with booklets with the biographies of the Alliance candidates;
- t. Artashat: the RPA distributed among community residents firewood (0.5 cubic meter) and flour (25 kg);
- Tavush marz (region), Ijevan: RPA campaign headquarters distributed among people iphone phone cases with the RPA campaign slogan;
- Syunik marz (region), Goris: representatives of 'Haykakan Veratsnund' ('Armenian Renaissance') Party listed the potential voters and promised a support of 5000 AMD for voting for their candidate Alvard Davtyan;

⁵ 38 alerts were received on such violations.



- Yerevan: representatives of 'Haykakan Veratsnund' ('Armenian Renaissance') Party offered 10.000 AMD for voting for their candidates;
- Syunik marz (region), Goris: Syunik marz (region) governor and candidate nominated by rating voting system (RPA) at voting district № 12 Vahe Hakobyan's wife visited all the schools in Goris and donated 150.000 AMD to each of them and gave bunches of flowers to the women teachers;
- Aragatsotn marz (region), Kosh, Ujan and other communities: Ruben Hayrapetyan promised and provided free or low-tariff gas supply works in the communities or for the residents ready to vote for the RPA. The Aragatsotn Gasification and Gas Supply Branch inspectors listed the names of the people ready to vote for the RPA;
- Tavush marz (region), Ijevan: Grand Candy company's delivery drivers distributed candies in shops together with Grigor Avalyan's campaign booklets;
- Syunik marz (region): in frames of his meeting with Goris State University students, RPA Party candidate Vahe Hakobyan promised some young people some money equal to 25% of their tuition fees;
- Aragatsotn marz (region), Tsilkar village: Aragats Akhoyan, RPA-nominated NA candidate from Aragatsotn marz (region), collected firewood and construction beams which he then used as bribe.

Pre-election acts of 'charity' were identified in at least 11 voting districts.



Use of administrative resources⁶

During this election campaign, the representatives of the ruling parties used the administrative resources by involving the public sector employees in the election campaigning both during and after their working time, as well as the students of the higher and other educational institutions.

Use of administrative resources also covers locating the campaign headquarters in public premises and such cases were also identified. Also, there were some cases of using the administrative resources to interfere with and suppress the activities of the opposing political parties and alliances and put pressure on the participants of their campaigns to prevent their involvement.

The use of the administrative resources was manifested by the arbitrary/ineffective police actions.

All this also has a negative impact on the ongoing campaign and results in unequal competition opportunities.

Below, we provide details on some cases of use of administrative resources as provided to the observers:

- Syunik marz (region): Karine Movsisyan, Headmaster of Secondary School after Axel Bakunts, spends her working time almost every day not at her workplace but rather at the campaign headquarters of candidate Vahe Hakobyan nominated by the rating voting system at voting district 12;
- Aragatsotn marz (region), v. Tsaghkahovit: the RPA campaign headquarters are located in a public agency premises namely in the community municipality;
- Lori marz (region), Vanadzor: Karen Karapetyan held a meeting with health providers at working time;⁷
- Tavush marz (region), v. Verin Karmiraghbyur: Tsarukyan Alliance candidate Hayk Ghukasyan's campaign headquarters is located at the premises of a public and social building which also serves as a polling station;
- Ararat marz (region), v. Aygestan: the RPA's campaign headquarters is located in the village municipality premises, address: 31 Shahumyan St.;
- Gegharkunik marz (region), t. Gavar: RPA's campaign headquarters is located at the 'Young Creators' Town House' premises, address: 15, Zoravar Andranik.

Information on the use of administrative resources was received from at least 8 voting districts.

⁶ 21 alerts were received on the use of administrative resources.

⁷ <https://www.youtube.com/watch?v=qVBGBFBPw40>



Measures taken to stop violations

Applications and suggestions on the violations described in the Interim Report (in case they were continuous) were submitted to the RA Central Election Commission to take the measures prescribed by law and stop the violations. Public Alliance member HCA Vanadzor submitted to the RA Central Election Commission 8 applications, 7 of which still remain unanswered.

On 1 of the applications we received from the RA Central Election Commission a decision to reject it; in these terms, a claim is drafted and will be filed with the RA Administrative Court.

Summary

Thus, based on the above facts, we hereby state that lots of violations within March 5-20, 2017 of the RA National Assembly April 2, 2017 election campaign resulted in unequal competition opportunities for the nominated political parties and alliances.

Founding members of 'Independent Observer' Public Alliance:

Helsinki Citizens' Assembly-Vanadzor;

Union of Informed Citizens;

Martuni Women's Community Council;

Goris Press Club NGOs

Twitter: @IndObserverArm

Facebook: @Անկախ դիսորդ - Independent Observer

E-mail: independentobserverarm@gmail.com

Hotline: 0 8000 12 11