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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Comments on the Armenian draft laws on
Citizenship, Aliens and Refugees
(CDL (94) 22, 23 and 24**

by

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Armenian Draft Laws on Citizenship, Aliens, and Refugees

Report on the drafts CDL (94) 22, 23 and 24

GENERAL PREFACE

My comments are based on Council of Europe copies, dated 5 May 1994, of English translations of three Armenian drafts. The translations are not very finished, and two of the copies at my disposal have other defects, too, making them difficult to read. I have not, either, had access to any preparatory materials; and my knowledge of the historical, political and cultural background, in short of the Armenian realities is very meagre.

For all these reasons, my comments cannot be very penetrating. I hope, however, that I have understood the drafts correctly enough for those comments I am able to make. In my opinion, Armenian legislation in the fields concerned can well be based on the drafts. My comments concern several details in the drafts.

Draft Law on Citizenship, CDL (92) 22

Chapter 1. *General Principles*

Art. 1. Even though the Armenian citizenship law is drafted to be very liberal, the draft does not quite correspond to the ultra-liberal declaration in the beginning of this Article: "Everybody has the right to be a citizen of the Republic of Armenia." Several provisions in the draft, e.g. in Article 14, show, however, that in many cases the naturalization of foreigners (and stateless persons) depends on the

discretion of the authorities, and in some cases naturalization is entirely forbidden. Such rules are, of course, quite normal internationally, and I do not even recommend that every one be granted the right to be Armenian citizen.

The intention of the drafters may have been to stress the principles of non-discrimination in interpreting the statute and in deciding citizenship cases. This intention is to be commended; but could it not be expressed in the law without the exaggeration embodied in the present text?

The second sentence of the first paragraph ("A citizen of Armenia cannot be deprived of his/her citizenship") is also an exaggeration, as is seen in Articles 18 and 26. I will return to this question in my comments to the latter article.

Art. 5. This article gives the impression, repeated in Art. 33, that Armenian citizenship is embodied in the documents, mentioned in this article, in the citizen's possession. On the other hand, point 5 of Art. 36 organizes the registration of citizens. In many countries, citizenship is embodied in official registers. I understand the essence of the future Armenian system so that the citizenship is embodied in the documents mentioned in Art. 5, but lost or destroyed documents can be replaced on the basis of the registers, and the Armenian citizenship-or lack of it-of e.g. persons not willing to show their documents can also be ascertained on the basis of the registers.

Art. 6. The absolute ban on the extradition of citizens is, in my opinion rightly, modified by the influence of international treaties according to Art. 2. At least in the future it might be advisable to study whether other modifications are needed.

Chapter 2. *Acquirement of Citizenship of the Republic of Armenia*

Art. 13. In view of the very complete regulation of the citizenship of children in the draft I would suggest that this article would be supplemented with a provision on the citizenship of a child of whose parents one is stateless while the citizenship of the other is unknown.

Art. 16. This reference provision cannot be commented without knowing the provisions referred to.

Chapter 3. *Citizenship of the Child in the Case of Adoption or Change of the Citizenship of his/her parents*

No comments.

Chapter 4. *The End of Citizenship of the Republic of Armenia*

Art. 25. I wonder whether there is reason to grant any one the right to denounce his citizenship in case he then becomes stateless.

Art. 26. According to the draft, the citizenship is "considered lost" in the cases mentioned in this article. This entails, if the English translation is correct, that the citizenship is lost *ipso facto*, without any decision or even constataion of any Armenian authority. In my opinion, this is not an expedient solution. The loss of citizenship should be expressly decided by an authority, although this makes the contradiction with the principle in Art. 1 that no one can be deprived of his Armenian citizenship even more clear. The decision should include the reasons for the loss of citizenship and the date from which the decision shall take effect, and there should also be a possibility for judicial review.

I wonder whether there is reason to deprive any one of his citizenship under point a) of this article even in case he has no other citizenship and the result thus is that he becomes stateless.

I also wonder whether there is reason to the absolute ban on double citizenship in the case mentioned under point c).

Chapter 5. *The Organs dealing with the problems of citizenship, etc.*

Arts. 28 to 31 of the Draft Law are lacking in my copy of the draft, and so are any paragraphs in Art. 27 after the first one as well the title of Chapter 6. I am thus unable to comment these parts of the Draft Law.

Art. 32. Is this article to be understood so that there is no judicial review of executive and administrative action under the proposed Law? It is quite understandable that the use of executive and administrative discretion is more or less exempt from court control; but in many cases, decisions under the Law will affect the rights and duties of persons profoundly, and in such cases, the legality of the decisions should be subject to judicial review.

Chapter 7. *Concluding Points*

No comments.

Draft Law on the Legal Status of Foreign Citizens in the Republic of Armenia, CDL (94) 23

Chapter 1. *Common Principles*

No comments.

Chapter 2. *Entrance and Exit of the Republic of Armenia by a Foreign Citizen*

Art. 6. It is of course quite normal that a visa shall be applied for on a completed form. I wonder, however, whether there is reason to make this an absolute requirement. There might be occasions-urgent cases, State visits, etc.-where it might be expedient to grant a visa even without a formal application.

Art. 12. To require a completed declaration has alrerady for decades before Schengen been, and is also outside the Schengen area, more an exception than a rule at European frontiers and airports.

Chapter 3. *The Status of Foreign Citizen in the Republic of Armenia*

Art. 21. The second sentence in the English text is obviously a translation error: it is clear from other provisions that the ordinary status is not given to every foreign citizen who has submitted an application.

Chapter 4. *The Rights and Responsibilities of Foreign Citizens in the Republic of Armenia*

Art. 27. Depending on what is meant with a "political or public organization", the provision banning membership of foreign citizens in such organizations may be in conflict with the provisions on freedom of association in the human rights conventions of the United Nations, the Council of Europe and the International Labour Organization.

Chapter 5. *The Legal Situation of the Foreign Citizens Having a Status in the Republic of Armenia*

Art. 35. According to this article, a foreign citizen with a status has the same rights as Armenian citizens to be member of "a benevolent, cultural, sports or other public organizations." I hope the expression "other public organizations" also includes trade unions and political associations, as membership in these organisations is also protected by the human rights conventions mentioned in my comments to Art. 27.

Art. 37. The prohibition of foreign citizens with a special status to leave Armenia within certain periods, or to be absent from Armenia longer than for a certain time, can obviously only mean that in breaking these prohibitions, foreign citizens may lose their status, not that Armenian authorities could by force prevent them from leaving the country.

Chapter 6. *Responsibilities of Foreign Citizens; The Procedure of their Expulsion from the Republic of Armenia*

Art. 42. I note that no judicial review is provided against administrative decisions to expel foreign citizens.

Draft Law on Political Asylum (CDL (94) 24)

Art. 1. The definition of "Refugee" in this article differs from the definition in the Geneva Convention of 1951 relating to the status of Refugees in the respect that the Draft Law requires that the person has really been subject to persecution while it for the Convention is sufficient that there is a well-founded fear of persecution.

Arts. 2 and 3. These articles deny political asylum to persons accused of, or prosecuted for, terrorist or violent actions. The Convention refers, in stead of accusations or pro-

secutions, to serious reasons for considering that the person has committed a serious crime, as defined in point F of Article 1 of the Convention.

Art. 4. The prohibition to forbid asylum applicants to cross Armenian borders is more liberal than required by the Geneva Convention (Art. 31), and also more liberal than the practice of many countries. Of course, I do not criticize the liberal draft—I only hope that the liberal provision does not prove to be unrealistic in the future.

The duty to grant temporary asylum according to the second paragraph of this article may become very burdening, regard taken to the duty to provide the persons in question with lodgings and other facilities under Art. 10.

Art. 5. I hope the asylum cases will not be so many as to limit the possibilities of the Supreme Court to take care of its other duties. Another possibility would of course be to entrust a lower court or an administrative authority with the decision of asylum applications in the first instance, with a right of the asylum seeker to appeal to the Supreme Court.

Art. 6. The time limit of ten days is also very demanding upon the Supreme Court. It would of course be very gratifying if the applications really could be handled within the time limit.

The reference to Articles 1 and 3 should evidently be to Articles 1 to 3.

There is no provision as to who shall decide questions of withdrawing the right of asylum once granted, e.g. when there is no more any reason to fear persecution in the home country.

Art. 11. There might be reason to refer also to the Geneva Refugee Convention of 1951 and the New York Refugee Protocol

of 1967. Such a reference could be useful also in the case that the instruments in question are even without the reference binding upon Armenian authorities.