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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

ADDENDUM

REMARKS
ON THE ARMENIAN ELECTORAL LAW
AND PROPOSED AMENDMENTS
AFTER THE VISIT OF THE VENICE COMMISSION
TO EREVAN ON 8-11 FEBRUARY 2001

Presented by

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**REMARKS ON THE ARMENIAN ELECTORAL LAW AND PROPOSED
AMENDMENTS AFTER THE VISIT OF THE VENISE COMMISSION TO EREVAN
ON FEBRUARY 8-11, 2001**

These comments follow the one-day meeting held in Yerevan on February 9, 2001 on proposed modifications of the electoral law. They deal with major points that are either subject to agreement or should be further worked upon for technical reasons.

1. The Voter Register

The permanent list is reviewed twice a year with another review 35 days prior to election day (*Article 9.9*). This is quite a burden on those that have to deal with this matter. On this point the Armenian law goes too far because one review a year is considered sufficient. In addition, the fact that citizens who are not on the register can be included up to 5 days before the election day (*Article 101*) is also quite liberal.

Article 10.3 deals with the military, and their families, who are included in normal precinct registers. This registration is based on the data submitted on a « general basis » by the authorities of the military unit. The law should have included a deadline for the data submission to the relevant Precinct Electoral Commission (PEC) and Regional Electoral Commission (REC).

2. Pre-election campaign.

Article 18.23 deals with the pre-election campaign. It provides the electoral commissions with the means to appeal against violations (*18.8*) but no mention is made of what should be available to a candidate if there are violations of his rights (for example: if local authorities deny the candidate the room that he has tried to reserve for a meeting).

3. Recall of Commission Members

The recall of Commission members is in the law (*Articles 35.4, 38.2-2, 3-4*) but appears to have raised criticisms so we have now no objections to amending the law on this point.

4. Constituency Boundaries.

Articles 98.1 to 3 provides the rules to determine the constituency boundaries in conformity with advisable practice, although a 15% difference in the number of voters with reference to administrative boundaries is difficult to obtain. A 25% difference would be more realistic. However, the way the CEC should work with the REC (*Article 42.4*) in this task is not clear.

5. The Voting Procedure

A. Doing Away with Coupons

We consider that the major positive change in the law is the elimination of coupons. The coupons that were in the old law meant that 3 parameters were used to determine the result of

the elections. The task of the electoral commissions was made even more difficult by the fact that the counting of the coupons was done at another level than the ballots and number of signatures. However skilled, whatever their nationality, the administrators of that type of election law would run into trouble.

This new law does away with coupons but keeps the notion of working out the level of inaccuracies of the vote. This time, though, it is done at the precinct level (before it was at the regional level) and in a much simpler and logical manner. Nevertheless, there are a number of points to be made on this issue.

Article 60.4 provides for the way in which the inaccuracies are worked out:

- 1) you compare the number of ballots given to the PEC with the total number in the ballot box and the cancelled ballots. The difference represents the first inaccuracy.
- 2) you compare the signatures in the voter register with the number of ballots in the ballot box. The difference is noted as the amount of the second inaccuracy.
- 3) both first and second inaccuracy are added and you get the total amount of inaccuracies for the precinct.

Electoral laws do not usually go that far and only number 2 is considered as a check on the accuracy of the process. Even then it is not easy to find two figures exactly the same not for reasons of fraud but due to the difficulty for human beings to come up with the same results when adding anything (except for professionals like bank clerks).

The drafters of the law do not seem to have considered the practical consequences in detail. Let us assume that the number of signatures on the voter register differ from the number of ballots found in the ballot box (*Article 60.4.2*). There are no criteria to define which of these two numbers will be the correct one (*Article 60.4.3*). It is an open question if the final decision on the influence of inaccuracies on the election results will be in the competence of the election administration or the court.

The role of RECs in the aggregation phase needs to be clarified, in particular the meaning of a clause in *Article 42.1.9-19* stating that the REC « *clarifies and summarises the election results* ». It would appear that the Yerevan REC has too many polling stations with which to deal. A case could be made for the creation of a second REC in Yerevan.

B. Voting

When compared to the previous law, the voting procedures have been greatly simplified. The ballots have only 3 signatures on the back. *Article 56.2* requires the stamping of the ballot by a member of the commission after the ballot has been handed out to the citizen. The stamp, bearing 4 digits, « shall not come out of the limits of the ballot ». What happens if the member of the commission is nervous and the stamp is not within the limit of the ballot ? is the ballot void ? Applying a stamp to the ballot is multiplying controls unnecessarily and doing so increases the possibilities of mistakes and even of fraud.

The ballot should not be given to the voter. The voter should take it himself and no one should touch the ballot once he has taken it. The reason for this is that, for example, the commission member who knows who is the voter can identify the ballot by applying the

stamp in a certain way so that during the vote count it will become clear the way the designated voters have voted.

Articles 55.1, 55.2 and 57.4 deal with the verification of the name of the voter. There is one too many verifications: one before handing the ballot to the voter and another one before the voter deposits the ballot in the box. The second is not explained clearly in the law. How does he check that the voter is in the right district ?

6. The Vote Count

Observers in the 1999 election saw different degrees of efficiency in the way the vote count took place. Every step of the count should be clearly defined if transparency is to be obtained. The chairman once the ballot box has been opened should not plunge in his hand and take out the ballots one after the other. It is preferable to empty the ballot box unto a large table and make piles of ten ballots then grouped into a hundred and put into a large size envelope. This enables an immediate first count which can be checked with the number of signatures on the register and the number of returned ballots.

The envelopes are then taken one after the other to smaller a table where four Commission members sit. One commissioner takes a ballot out of the large envelope and gives it to the commissioner next to him who opens the ballot showing it to the onlookers. The two other commissioners have a sheet which they have to fill out appropriately by putting a mark for the corresponding candidate or list every time a new ballot is shown. The ballots are organised in piles, one pile per candidate.

7. The Precinct Protocols

The precinct protocols of the summarised result of voting (*Article 61*) include in third position the number of ballots allocated to the precinct electoral commission. According to *Article 114.7* « *The number of ballots allocated shall be 5% more than the number of voters on the precinct voter list* ». In practice this means that it is the only figure in the list that cannot be verified at that precise moment, and this could lead to difficulties. Was the number of ballots delivered well checked ? Did they really represent 5% more than the registered voters ? Only figures that can be checked at the time of filling in the protocols should be taken into account.

8. The Military Vote

We have heard opinions that the military because of their non permanent residence should only vote in elections that have no territorial significance. This limits partially their rights as citizens to vote although it would be done on a temporary basis. If the opinion on this matter is undisputed it could be accepted. One participant proposed the postal vote and this could be a better solution depending on the efficiency of the postal services. If it is to be done it should be done in a carefully thought-out way.

Article 54 is quite clear in the way the military have to vote in normal polling stations : « *They enter unarmed and not in marching order* ». But *Article 54* does not mention that conscripts will be granted leave to vote.

9. The electoral system and the number of MPs

The number of seats in the Parliament and the proportion of plurality seats to proportional list seats have given rise to discussion *that have not lead to a positive vote by the Assembly on the questions*. As was explained in our previous comments it appears preferable to keep the same number of seats in parliament but, most important, to keep the same ratio of plurality one-member seats to proportional list ones. We are ready to participate in future working sessions on those or any other essential questions.

10. MPs' professional status.

Article 65 of the Constitution should allow member of parliaments to continue their previous professional activities otherwise we will have professional politicians or civil servants that have obtained leave while in office and get their jobs back if not re-elected. Those people have little experience in economic and other problems and will not have a practical approach to politics.

11. The ballots.

It would have been preferable to have only one ballot divided in two with on one side the names of candidates and parties in the one member constituencies and on the other side the parties that present lists in the proportional part of the election. When you have two types of election on the same ballot it means that the candidate on the one member constituency can be on the same line (at the same level) as his party's list in the proportional part of the election. In that case independent candidates would not have a party list at the same level. To have one ballot for both the proportional and the majoritarian segments of the election would create in the voter a stronger psychological link between them. The psychological link should be taken into account when the aim is to create a strong party system.

As it stands the mixed system providing for two ballots for the election of the National Assembly presumes that two parallel balloting processes will have to take place. The technical efficiency, the transparency and the nation-wide uniformity of the election process, as well as the work of the municipal and the election administration related to the preparation for the election, would be significantly facilitated if the Electoral Code provided clear answers to the following questions :

- Will the voters be given the two separate ballots simultaneously ?
- Will separate ballot boxes be used for the « proportional » and the « majoritarian » votes ?
- Which of the two types of ballots will have to be processed first during the vote count in the PECs ?
- Which of the two types of PEC protocols will be tabulated first in the REC's ? It has to be pointed out that each REC will have to determine the outcome of the election in 5-11 single-seat constituencies on average (25 in Yerevan) and the outcome of the vote for the parties contesting the proportional election.

The CEC has to issue regulations on these questions.

The threshold of 5% necessary to obtain a seat in the proportional part of the election is normal practice against « splinter parties ». The way it is worked out is unusual but quite acceptable. It depends on the votes cast for the party lists to which is added the sum of inaccuracies.

12. By-elections

By-elections are held twice a year (*Article 118*). This could be considered as a more efficient way than having by-elections whenever a vacancy occurs. We do not agree with this, as grouping by-elections becomes a political test of the governments popularity. These elections take on a stronger political meaning than they should have. In all countries by-elections have lower turn-outs than regular elections and those who abstain are pro-government voters. Two or three by-elections held at the same time will have larger media coverage which gives them a stronger political meaning than they should have.

13. Observers

Article 7.3 is a general article. It defines the « moments » when observers can be present : « In the course of the **sessions of the commissions** and during the voting ... ». The CEC should issue a clear ruling stating that observers can be present at all sessions of the election commissions and attend the voting procedures, the counting, transport and aggregation of results.

According to Article 30.1 proxies, observers, and the representatives of Mass Media have the same rights including that of “ *appeal the decisions, actions or inaction of electoral commissions.* » Observers should not have the right to question the work of the commissions. An observer should ask questions, take notes and report to his organisation. Their role is neutral. Their role is to observe, not to monitor (as it is unfortunately said in Article 30.4). Proxies, on the other hand, should have the right to appeal a court of law. Observers, whether national or international, should not have the same rights as proxies or as the mass media. The rights and duties of each should be dealt with separately.

14. Deadline for Issuing CEC Regulation on the Procedure for Performing Observation Missions

Article 28.2 : no deadline for the issuing by the CEC of the procedure for performing observation mission.

15. Appeals (Adjudication)

The law provides for a parallel appeals system. There is the possibility of appeals from a decision of a lower election commission to a superior commission as well as appeals to law courts.

All the articles on the appeals systems should be under one chapter. As we mentioned in the preliminary statement we suggest the rewriting of article 40 so that it stands as a general statement on adjudication. The procedures with the details should be found in the two tables in the annex which mention the corresponding articles.

Art. 40.1: General principles of adjudication

- Decisions, actions and inactivity of the electoral commission can be appealed to a superior electoral commission or to a court.
- The articles specify the dispute for which the different forms of appeal exist, whether to a superior commission or to a court.
- The appeals to the superior court or commission have to take place within 2 days after the publication of the decision, action or disclosure of the law or regulations as a result of the inaction if no other date is fixed by this code.
- The superior electoral commission decides those appeals before the final results of elections are summarised, if no other procedure is established by this code. The superior electoral commission and the court of first instance make decisions within 5 days.

The details of the competencies now in *Article 40-2* through *40.4* would then be in a new article : *Article 41.1* (as it should stand)¹ : the court of First Instance makes final decisions except for :

1. Elections of the President (disputes concerning the denial of registration or recognition of a registration as invalid are appealed to a Court of Law, *Article 75*).
2. Elections of Deputies to the National Assembly
3. Refusal to register lists of parties (based on the proportional system) or disputes concerning a registration that is declared void.

The decisions of the REC on summarisation of the results of the elections are appealed to the CEC (*Article 40.2*). The decisions/activities/inactivities of CEC are appealed to the Court of Law(*Article 40.3*).

The summarisation of results of the National Assembly majoritarian elections are appealed to the Constitutional Court (*Article 116.9*). The disputes regarding the results of the proportional elections to the National Assembly are also appealed to the Constitutional Court (*Article 115.8*).

The disputes over election results are appealed to the Constitutional Court with the exception of local self governing bodies (*Article 40.4*).

¹ The articles mentioned in parenthesis below are the numbers of the dispersed articles as they stand now.

Conclusion

No major objection can be made to the law although we have to note the rather complex adjudication system, which is poorly explained. This is the reason why we have added the two tables in annex I, which should be placed as an annex to the law.

The large number of party commission members is democratic but democracy is not only about representation but also about efficiency.

The number of majority seats (75) and those from the proportional list (56) should not be changed for the reasons given in our previous comments in order to put in place a durable and strong party system.

On a practical basis, the voting and counting procedures are too complicated and should be modified. Complex procedures lead to inattention, mistakes and open the door to fraud.

Finally, observers of national and international organisations should not be considered by the law as having the same rights as proxies or party delegates.

Annex I

Constitutional court	Court of First Instance	Court of Appeals or Cassation Court	Superior Commission
<i>Art. 40.4</i> appeals on election results with the exception of local elections.	<i>General principle of adjudication: Art. 40.1</i> - decisions, actions + inactivity of election commissions (appealed to court of first instance or superior commission..		
	When appeal is to court of first instance, court of first instance makes final decision. Exception: See 40.1 under cassation or appeals court.		<i>Art. 40.1</i> - decisions, actions + inactivity of election commissions (with exception of REC decisions on summarizations of voting) appealed to court or superior commission
	<i>Article 18.8</i> - pre-election campaign violations appeal to court.		<i>Art. 40.2</i> - REC decisions on summarizations of elections results appealed to CEC. Exception: NA majoritarian elections, see <i>116.9</i>
<i>Art. 116.9</i> : disputes over results of NA Majoritarian elections		<i>Art. 40.1</i> – Appeal from first instance court of presidential election, NA deputies elections, and refusal to register lists of parties and declaration of list registrations as invalid are competence of court <i>Court of Appeals: 3 days;</i> <i>Cassation Court: 2 days</i>	
	<i>Art. 40.3</i> – CEC decisions can be appealed to court. Exception : Presidential (see <i>Art. 40.4</i>) and NA proportional (see <i>115.8</i>)		
<i>Art. 115.8</i> : disputes over results of NA PR elections	<i>Art. 102.8</i> – CEC decision on denial or recognition as invalid of party list or person in it		
	<i>Art. 108.9</i> – REC decisions on denial or recognition as invalid the registration of the candidate for deputy.		
	(Local) <i>Art. 124.4</i> - denial of registration or recognition of registration as invalid.		(Local) <i>Art. 40.2</i> - REC decisions on summarization appealed to CEC. Except: NA MAJ (see <i>116.9</i>).
	<i>Art. 14.3</i> – voter registration inaccuracies <i>Art. 13.2</i> – precinct cannot change voter register without court order		<i>Art. 42.7</i> - REC considers complaints of decisions and actions of PEC.

Pre-election Campaign Disputes	Voter Registration Disputes	Activities, Inactivities..of Electoral Commissions	Candidate Registration Disputes	Summarization Disputes
Art. 18.8: violations appealed to court (unclear language about “relevant bodies”)	Art. 14.3: inaccuracies appealed to court	<i>Art. 40.1</i> - decisions, actions + inactivity of election commissions (with exception of REC decisions on summarization of voting) appealed to court of first instance or superior commission.	(Presidential) <i>Art. 75</i> : CEC denial of registration or recognition of registration as invalid can be appealed to court. <i>Art. 72</i> : CEC registers candidates for presidential election	(Presidential) <i>Art. 40.4</i> appeals to Constitutional Court on all election results with the exception of local elections. <i>Art. 83</i> : CEC summarizes Presidential election results
	Voter lists done by community head, which he then submits to head of institution administering territory of precinct center and then to REC (Art. 9)	40.1 - Court of first instance decision is final. Exception: Presidential election, NA deputies election, and refusal to register list of parties and declaration of list registrations as invalid, where court of appeals or cassation court are final decision-makers.	(Nassemblies PR) <i>Art. 102.8</i> – CEC decision on denial or recognition as invalid of party list or person in it can be appealed to court. <i>Art. 100</i> : CEC registers candidates.	<i>Art. 115.8</i> : disputes over results of NA PR elections to Constitutional Court. <i>Art. 115</i> : CEC summarizes
		40.3 - CEC decisions/inactivity/activity can be appealed to court. Exception: Presidential (Art. 40.4) and NA PR (115.8)	(Nassemblies Maj) <i>Art. 108.9</i> – REC decisions on denial or recognition as invalid the registration of the candidate for deputy can be appealed to court <i>Art. 108</i> : REC registers candidates.	(Nassemblies Maj) <i>Art. 116.9</i> : disputes over results of NA Majoritarian elections are appealed to Constitutional Court REC summarizes NAMaj (116.1)
		<i>Art. 42.7</i> - REC considers complaints of decisions and actions of PEC.	(Local) <i>Art. 124.4</i> : appealed to court (REC registers candidates to community head or council member, Art. 124)	(Local) <i>Art. 40.2</i> : REC decisions on summarizations of elections results appealed to CEC. Exception of NA majoritarian elections, see <i>116.9</i> . <i>Art. 131</i> : REC summarizes