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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

(VENICE COMMISSION)

**COMMENTS**

**ON THE ARMENIAN ELECTORAL LAW  
AND PROPOSED AMENDMENTS  
AFTER THE VISIT OF THE VENICE COMMISSION  
TO EREVAN ON 15-18 NOVEMBER 2000**

**Presented by**  
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**at the 45<sup>th</sup> Plenary Meeting of the Commission  
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**REMARKS ON THE ARMENIAN ELECTORAL LAW AND PROPOSED  
AMENDMENTS AFTER THE VISIT OF THE VENISE COMMISSION TO EREVAN  
ON NOVEMBER 15-18, 2000**

The 1999 law<sup>1</sup> is an improvement over the previous one as our Armenian friends were aware of its weaknesses. In 1997 four drafts had been presented but the March 1998 presidential elections retarded the final draft of the present law.

Certain articles in the current version should be amended to simplify procedures, for example the way in which the voting takes place, or to explain clearly procedures that are complex and difficult to follow, for example the adjudication/appeals system. The latter provides for the competency of law courts and superior commission. In order to clarify this system, we have drawn two tables that we suggest be placed in an annex to the law.

**1. The Voter Register**

Armenia's choice of voter registration is part of a current international trend. Armenia has a permanent voter register, one which is liberally construed as far as « transparency » is concerned. 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. But it is also a more reasonable provision than that of the previous law where registration was possible right up to election day and could only burden the work of electoral commissions at an already very tense moment.

The time-frame and distribution of information by the administration having to do with voter registration (*Articles 12, 13 and 14*) is logical and includes the usual checks at precinct level. The law should have included a deadline for the data submission to the relevant Precinct Electoral Commission (PEC) and Regional Electoral Commission (REC). *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. As far as the military that are stationed in barracks 50 kilometres away from the nearest polling station, the register is compiled by the Head of the military unit and submitted to the relevant regional commission 20 days before voting (We will deal later with the military vote).

According to *Article 12* the voter register should be displayed in a « *place visible to everybody* », another step in an already transparent process. The register is shown to the public until 7 days after the election. *Article 14* states that a voter can request that changes be made (by the community head) if there are inaccuracies concerning himself or others.

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<sup>1</sup> Information dealing with elections in Armenia is found in four documents :

- The electoral law itself (February 4, 1999);
- The amendments to the electoral law (March 19, 1999);
- Provisions of the criminal and administrative code that deal with elections;
- and Regulations issued by the Central Electoral Commission (CEC).

The identification documents other than passports mentioned in *Article 55.3* are not clearly designated but many electoral laws do not go into greater detail about this issue. There are exceptions who do so for special reasons. As for Armenia, the word « document » means a great variety of them because of internal and refugee problems; for example, Soviet, Russian, Azerbaijan, Karabagh. A non-inclusive list which could not at this time be written into a law.

## 2. The Time-frame

*Article 117* gives the time-frame for the steps that have to be taken from the moment an election is called to the registration of candidates. This article simplifies the work of those who have to apply the law because the information contained in it is usually (in other electoral laws) spread throughout different articles in the law.

## 3. 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 space that he has tried to reserve for a meeting).

## 4. Permanent Election Commissions

Armenia understood quite early the usefulness of having permanent electoral bodies. The Armenian approach is pragmatic : a three-member permanent body at the national and regional levels. The nature of the commissions is mixed, with three members designated by the government, the others by the parties represented in parliament and by the first four other parties contesting the election that have obtained 30.000 signatures. Because it is unknown beforehand if all parties represented in Parliament will either reach the required number of signatures or will even run for the elections, the law does not give a fixed number of members of the CEC and other commissions (*Article 35*).

Fraud is difficult but, of course, not impossible even when with members of commissions belong to different political parties. On the other hand, commissions that are only made up of party representatives can lead to lengthy and protracted discussions that slow down decision-making. Efficiency is an essential element of credibility vis-à-vis the voter and therefore an essential element of the process. The mixed nature of the commissions adopted by the new law would seem the right way of doing things. Note: the secretary of the old CEC has been included in the new CEC which brings continuity to the electoral administration.

The Chairman of the commissions has significant powers but it must be borne in mind that, rules and regulations<sup>2</sup> are, in the way the Armenian CEC has worked in the past, decided by a vote of the whole commission after heated discussions while the media observe. In 1998, legal or technical experts who were among the audience were at times asked to give their opinion.

## 5. Recall of Commission Members

The procedure for the recall of commissioners before the mandate comes to an end is provided for in *Articles 35.4* and *38.2.2-3-4*. The different procedures are explained in a

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<sup>2</sup> The Electoral Code envisages that regulations must be issued by the CEC in order to clarify election procedures, e.g. *11.2, 12.6, 15.4, 17.3, 18.1, 20.2-9, 26, 27.3, 28.2, 34.2, 39.8, 41.1, 43.2, 52.1, 60.1.1, 61.8*.

logical manner. Some concern has been raised by this right to recall. It is a fact that the recall of elected members of parliament has disappeared in Western democracies because there is a two level reason for their election :

1. Nomination by the party.
2. Election by the voters.

The CEC members are not elected by anyone, they are only designated by the party and they represent the party even if they have to act for the general interest.

The Chairman of the CEC (who is elected by the members of the CEC) has the right (*Article 39.3*) to hire a staff whose task is clearly limited by the law to « auxiliary works ». It is then « headed by the Secretary of the Commission » (*Article 39.3*) which means that that this staff will not be engaged in decision-making or activities of a sensitive political nature. Should the whole commission have a say in the choice of the technical staff ? Democracy is not only about « multiparty control » in the commissions, it is also about efficient decision-making. The law gives the Commission decision-making power on the crucial political issues and in so doing, is in conformity with democratic values.

#### 6. Transparency

An efficient way to make an election more transparent is to communicate information on the participation (turn-out) on polling day from the polling station to the regional commission and, in turn, to the CEC. *Article 7.6*, deals with this matter. Data on the turn-out is transmitted every 3 hours and published by the CEC from 11a.m. onwards. This information is taken up by live TV programs every 3 hours. For this reason every precinct station should have a telephone.

It is most useful to have regular data on the turn-out because this makes it more difficult to stuff ballot boxes at a given time without the local proxies or those at the regional level not being aware of the fraud.

#### 7. The Required Signatures for the Registration of Candidates

The amendments have reduced the number of signatures required to register as a candidate. It is a liberal measure. Nevertheless, when making comparisons at the international level, it is a true and surprising fact that even the most peculiar parties obtain easily large number of signatures. This holds true for different types of democracies such as Russia or France. In principle, signatures are asked-for in order to limit the number of fancy parties. As a matter of fact, the more efficient and long-term method is the electoral system itself (we will look into this later).

The number of signatures obtained by parties not represented in parliament have an important impact on the composition of electoral commissions (even until the following parliamentary elections) as the 5 « new » parties that get the most signatures are included in the commissions. This is a liberal measure but gives an exaggerated importance to signature collection. It can be expected that very weak parties will make huge efforts not just to be registered but to get into the commissions. Another way should be considered.

We have witnessed the 2% random sample method of checking signatures by different party members and we can attest to its validity. Forged signatures are easy to spot as the same

handwriting appears page after page. The 2% rule is practical either with a small electorate or that of the Presidential election of the Russian Federation, where one million signatures had to be collected.

#### 8. Constituency Boundaries.

*Articles 98.1 to 3* provide 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.

#### 9. The Size of the Polling Stations

The terms « precinct centre » and « electoral precinct » are not clear in *Article 15* and *16*. It could almost be argued that an electoral precinct could have a number of electoral centres (polling stations). In this case the limit of 3,000 voters per electoral district (article 15.6) would not be too high as it can be argued that an electoral precinct of 3,000 voters could be divided into two precinct centres of 1,500.

#### 10. 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 very likely 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* » .

### 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.

It is common practice to have no one touch the ballot once it has been given out to the voter; the reason for this is that 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 out the ballot to the voter and another before the voter deposits the ballot in the box. The second is not explained clearly in the law: how does the commission member check that the voter is in the right district,.

### 11. The Vote Against « All candidates »

The Armenian law has adopted the Russian Federation's approach to having a « blank vote » by introducing « the vote against all candidates ». We must admit that when it first appeared in the Russian Federation we had doubts about it. We were afraid that in an evolving democracy too many citizens would be tempted to vote « against all ». But our fears were unfounded. The vote « against all » has been kept at a low level and corresponds exactly to what can be expected from a « blank vote ». Armenia has thus adopted a measure that many scholars believe should be included in all electoral laws. Introducing a « blank vote » is a way to reduce the number of spoiled ballots and improve turn-out.

There is some truth in saying that the vote « against all » in the case of only one candidate competing in the one member constituency has more effect than when two or more candidates are in competition as the law (*Article 116.3*) says that in the case of only one candidate, he is elected if he obtains more than half the votes of the participants. This means that the « lonely » candidate has to reach the absolute majority of all voters whereas when there are two or more candidates, a relative majority of expressed votes for the candidates is sufficient. This should not be an issue as the vote “against all” is usually at a low level. The only exception to this would be if a very unpopular “lonely candidate” ran for office and then the absolute majority that is required would be justified.

## 12. The Vote Count

Every step of the count should be visible if transparency is to be obtained. Once the ballot box has been opened the chairman 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 a smaller table where four Commission members sit. One commissioner takes a ballot out of a 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.

## 13. 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.

## 14. The Military Vote

When the vote takes place in barracks observers have difficulties no matter in what country they are in. Unit commanders are reticent to letting observers or political proxies into military territory. Armenia is not an exception to the rule and no law will have much of an effect on this.

*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.

During our meetings in Yerevan we heard remarks on the military vote; two cases were considered :

- Elections that have no territorial significance : Presidential elections and the proportional part of the parliamentary elections.

In this case the notion of “domicile” and not “residence” should be taken into account. A professional soldier and his family whose legal “domicile” is in the same territory as the barracks should vote in these two types of elections. Conscripts whose stay will be short lived and whose previous domicile was with their family should be able to vote by the post. Postal vote should be held ten days before the election day. The question then raised is to the efficiency of postal services.

It has to be kept in mind that the military have to be considered as other citizens with the same voting rights. The fact that they live in barracks for variable periods of time does have consequences but should not limit their rights as citizens.

#### 15. The Electoral System and the number of M P S.

The definition is given in *Article 95* :

- 56 seats are distributed on a list proportional system. The nation is considered as one constituency. There is a 5% threshold for seat allocation. The seats are attributed by simple quotient and the largest remainder method.
- 75 seats are distributed in one member constituencies on a plurality basis.

As time goes on the electoral system will have an effect on the party system so it is useful to examine the system with some attention. The mixed system adopted is in conformity with the norms and tendencies of evolving democracies. On the other hand, in our meetings, we understood that there was a feeling in political circles that the number of deputies should be reduced; this came as a surprise as there is no rule as to the ratio of members of parliament (MPs) to the voting population. Armenia has 131 members for a voting population of 2.2 millions and if we look to different types of democracies with similar voting populations we obtain the following figures :

Lithuania – 137 MPs for 2.600.000 voters  
 Ireland ----- 166 MPs for 2.500.000 “  
 Norway ----- 165 MPs for 3.200.000 “

From this point of view Armenia is not different to other states of similar size.

It can be argued that member of parliaments are expensive but it can also be said that if they are too few then each member of parliament has to represent and deal with a large number of citizens, so that the representation ratio is lower.

We have also learnt that there was a motion to reduce the number of one member constituencies in favour of member of parliaments elected on the proportional list part of the election. It is here that we have to face the fact that changes such as these can bring unexpected and unwanted effects that can jeopardise the whole democratic process.

Drafters of electoral laws take into account the experience of other democracies but while doing so should bear in mind that conditions in the west are quite different than in evolving democracies. This can lead to substantial differences in party systems that result from the introduction of similar institutions or electoral systems.

Western democracies have strong association movements such as trade unions that greatly influence the way over half of their members vote. This leads in some western democracies that use Proportional Representation to have the two parties that control the trade union movement also to have dominant positions in an almost permanent way. Citizens of evolving democracies that ten years ago lived in soviet regimes, where membership of associations was compulsory, are not prone to join associations. They consider themselves free and in their minds associations are associated with the constraints of the past. Considered from this point of view Armenia should be compared to the many western democracies with Proportional Representation that have weak party systems, which lead to government



instability. Government instability is dangerous in countries such as Armenia that are in full economic social and political crisis.

We also heard that one-member majority constituencies can introduce into the assembly a person who's honesty is doubtful, but this is not a good argument. Party lists are just as prone to include candidates which in the long run are not above board. On the other hand, voters can decide on their own who is honest when they have to choose a candidate in a one-member constituency easier than when they have to choose an unknown list of names for proportional representation.

To conclude the question of the number of member of parliaments and that of the electoral system it is suggested that if there is a consensus to reduce the number of members of Parliament the same ratio of majoritarian and proportional seats should be kept.

#### 16. 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.

*Articles 66 and 67* of the Constitution provide for procedures that can be engaged against member of parliaments. The Constitution should clearly define immunity from prosecution for political reasons as opposed to prosecution for reasons related to business transactions. The immunity of a member of parliament should concern immunity prosecution for issues of freedom of speech and political matters and not for criminal matters that are dealt with in the criminal code.

#### 17. The ballots.

We think 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) of 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 only!) 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.

#### 18. By-elections

By-elections are held twice a year (*Article 118*). This could be considered as a better 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. 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.

#### 20. Observers

*Article 28.2* states that the CEC establishes the procedure for performing the observer mission. We have to wait for the regulations that will be issued by the CEC on the question.

##### A. Can Observers « Appeal » the Electoral Commission ?

According to *Article 30.1* :

*« Proxies, Observers, and the Representatives of Mass Media have the right to :*

- 1) *be present at the sessions of electoral commissions, and during the voting - at the precinct centre;*
- 2) *get familiarised, without impediments, with the electoral documents, ballot specimens, decisions of the electoral commissions, protocols of the sessions, to receive their copies and to make excerpts;*
- 3) ***appeal** the decisions, actions or inaction of electoral commissions. »*

Firstly, *Article 30.1* is a general article. It states in general the rights of three different categories of people : proxies, observers, and representatives of mass media. A right as specific as an appeal (either to a court of law or a superior commission) is normally

mentioned in a article specific to the appeal procedure. Another comment: the rights and duties of these three categories should be treated separately.

Secondly, in *Article 30.1.3* the word « appeal » is not used as a legal term (the same problem you find in *Article 18.8* regarding the use of appeal to the « relevant bodies »). Is it used with the meaning of « to summon, to question, to challenge »?. Read in the latter meaning, it still would contradict *30.2*. (« ... observers, ... have **no right to intervene** in the work of the electoral commissions ».)

Observers should not even have the right to question the work of the commissions. 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.

#### B. Presence of Observers at the PEC, REC and CEC

*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 state ensures the participation of proxies, observers and the representatives of mass media in the activities of electoral commissions...* ». Observers can be present during the sessions of the commissions.

*Whether observers are allowed to be present or not depends on whether the article defining the activity of the election commission uses the word “session” to qualify the activity. Article 30.1 states the rights of « Proxies, Observers, and the Representatives of the Mass Media ». These heterogeneous groups have the right to : 1) be present at the **sessions** of the electoral commissions, and during the voting at the precinct centre ... ». Article 60.1 clearly defines the summarisation of votes at the PEC level as a session :: « *The Chairman of the PEC ... invites/asks all the persons not entitled to attend the sessions of the PEC out and closes the precinct centre. After these steps are performed the PEC starts the **session** for summarisation of the voting results. »**

What about the REC level ? *Article 62* deals with summarisation at the RECs. But it is not defined as a session in the first paragraph as it is for the PEC. One has to wait for the fourth paragraph where « *the summarisation protocols of the election in the region are signed by the members of the commission attending the **session** ... »* : the summarisation of the precinct summarisation protocols at the Regional Electoral Commissions are defined as sessions by *62.4*, therefore observers can attend. Further, *62.6*, also defines it as a session : « *the summarisation protocol is signed by the members of the commission attending the **session** »*. It could be argued that it is the signature of the protocols that is considered a session but it is a specious argument. The words « attending the session » refer to what the members of the commission are attending, which includes, according to the previous paragraph, filling out the protocols, signing them. Nowhere can you read or imply that the law divides the whole process in parts, the counting, the filling out, etc.

As for the CEC, we look at *Article 63*, (« *Procedure for the Summarisation of the Election Results at the Central Electoral Commission* ») paragraph 1 : « *Based on the preliminary results of elections received from the REC, the CEC ...announces the preliminary results of the elections ... »* and paragraph 2 : « *Until the announcement of the preliminary results of the elections the **session** of the CEC is not interrupted.* » Paragraph 2 of *Article 62* defines the procedure by the CEC as a session.

*Article 62.10* does not mention that observers can be present during the verification process of precinct protocols by the REC.

Also according to *Article 7.3*, the other period during which the observers, and others, can be present is “*During the voting*”. Does this term only circumscribe itself to the voting process in the precinct ?

The difficulty of not having clear definitions in the articles concerning the presence of observers will lead to difficulties. 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, counting, transport and aggregation of results.

#### 21. 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.

#### 22. Appeals :

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, 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 take 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)<sup>3</sup> : the court of First Instance takes 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 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*).

### 23. The Arrest or Detention of Candidates

The possibility of arrest or detention of candidates during the campaign period and before the final outcome of the election has been declared (mentioned in *Article 18.9*) has the safeguard of being decided either by the CEC or the REC<sup>4</sup> by a two-thirds vote of the total number of commission members (*Article 111.6*). One must remember that the commissions include members of different parties, whose contribution would probably be necessary to achieve the two-thirds vote.

### 24. Campaign funding

*Article 25.11* : when presenting a declaration on the use of pre-election funds candidates should also present relevant documentation. The relevant documentation depends on the CEC according to the second line of *25.11*, and that is «*The CEC establishes the specimen of the declaration and the procedure for its submission.* »

### 25. Campaign in the Media

The provisions concerning this issue apply to both private and state media. *Article 20.3* states « *local radio and television companies* » whereas same article, parts 1, and 2 talk about « *state radio and television* ». The language of the law opposes « radio and television

<sup>3</sup> The articles mentioned in parenthesis below are the numbers of the dispersed articles as they stand now.

<sup>4</sup> According to *Article. 111.6* a candidate to the National Assembly on the proportional side can be arrested or subject to criminal or administrative liability by court order only « *upon the consent of the CEC* ». The candidates for the majoritarian National Assembly « *upon consent of the REC* ». The consent is obtained by « *at least two-thirds vote of the total number of the members of the commission.* »

**companies** » to « **state** radio and television ». From the use of the word « state » as opposed to « companies » one can imply that companies are private.

The implementing procedures of *Article 20.2 (Pre-election campaign through mass-media)* should be left to the Central Election Commission.

#### 26. Display of Campaign Posters at Precincts

*Article 21.2* does not have a provision prohibiting the display of campaign posters within 50 meters of the polling place.

#### Conclusion

An electoral law gives clear indications as to the intent of the drafters. This law also presents the same liberal democratic ideas as the preceding one, especially as far as the large number of parties in the electoral commissions goes. It has, fortunately so; done away with voting and counting procedure barriers that were so complicated that no administration could have applied the law.

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

We will make a brief comment on the above-mentioned number of parties in the electoral commissions : 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 comments. If the total number of seats is reduced a similar ratio should be maintained.

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.

The question of the military vote, which has been raised, is a political matter and seems a minor issue just as the recall of the commission members.

Finally, observers of national and international organisations should not be considered in the law as proxies or party delegates who should have different rights.

## 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