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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**

**(VENICE COMMISSION)**

**COMMENTS**

**ON THREE SETS OF PROPOSALS  
FOR CONSTITUTIONAL AMENDMENTS  
IN ARMENIA**

**by**  
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### **Comments on the draft Amendments to the Constitution of the Republic of Armenia.**

These comments are provided in respect of Constitutional guarantees for Local Self Government in the Republic of Armenia. I particularly wish to draw attention to the following draft amendments, and will refer to the three drafts separately.

#### **Comments on the 1st set of proposals<sup>1</sup> (CDL(2004)100)**

Article 2 Welcome the inclusion of local self-government bodies in this article

Article 11.2 This recognition and guarantees for local self-government supported

Article 27.1 This right is supported

Article 30 The first two paragraphs supported. *The third paragraph should end with ‘to vote or be elected’. The last sentence is vague and should be deleted*

Article 94 *The new article 88.1 in the constitution cannot be supported. It is not appropriate for the Mayor of Yerevan to be appointed by the President, even if the candidate is nominated by the Government. This would not be in accordance with the European Charter on Local Self-Government (Article 3 - Para 2 The Mayor MUST be elected by the citizens of the City). The Mayor should only be discharged from his post in conformity with Amended Article 109 (Article 118 in this draft law) Furthermore the Mayor of Yerevan should undertake only those responsibilities for which he is responsible in accordance with a new Law on the City of Yerevan. His must not be responsible for the Territorial policy of the Government, unless some functions are delegated to the City of Yerevan in accordance with a law on the City of Yerevan. Nothing should be incorporated in the amendments to the Constitution which would diminish the independence of local self-government.*

Article 106 Para 1.1 This is supported

Article 107 Para 5 - This will strengthen local self-government

Article 104 *Final line to be amended to read ‘guaranteed in accordance with the Constitution*

Article 111)

Article 112)

Article 113) Support

Article 114)

Article 115 *Final Paragraph second line amend to read ‘...local problems through Consultation and local referenda. The law...’*

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<sup>1</sup>In these comments, weaknesses are in bold italics.

Article 118 *The wording should be amended to read ‘The Government may, on the basis of a conclusion by the Constitutional Court, or in cases prescribed by law, discharge the Head of Community....’*

Article 119 *Consolidation or separation of communities may take place both by the will of communities through consultation, and possible referenda, (In accordance with the European Charter of Local Self-Government Article 5) and the National Assembly upon the recommendation of the Government*

It does seem that in many respects the European Charter of Local Self-Government has been respected. However, I think we need to be particularly strong on Amendment Article 94. The appointment of the Mayor of Yerevan by the President in co-operation with the Government is totally unacceptable. It is necessary for the Mayor to be elected either directly by the citizens, or indirectly by the democratically elected representatives of the City of Yerevan. In addition he should not be responsible for Government territorial policies, the citizens must have a clear indication what are the responsibilities of central government, and what are those of local government. This is necessary to ensure the independence of a democratic local government system.

The above changes will result in amendments being necessary to the Law on Local Self-Government, together with a Law on the City of Yerevan. In addition there will be other laws which will require drafting or amendment.

#### **Comments on the 2nd set of proposals (CDL(2004)101)**

Article 13 *Support adding the new article 11.1*

Article 41 The proposed amendment to Article 104 is supported.

Article 42 The addition of Article 104.1 is fully supported

Article 43 Re-wording of Article 105 supported, but would suggest adding as a final sentence to this paragraph. ‘All responsibilities delegated must be accompanied by the appropriate financial resources

Article 44 Additional Article 105.1 supported

Article 45 Re-wording of Article 106 supported

Article 46 Re-wording of Article 107 supported with a suggested addition to the wording in the penultimate sentence as follows: ‘ The populace of the administrative territorial units may be directly involved in the administration of local affairs by resolving the problems through consultation and/or a referendum’.

Article 47 Proposed amendment to Article 108 fully supported

Article 48 Removal of Article 109 supported

**Comments on the 3<sup>rd</sup> set of proposals (CDL(2004)107)**

Article 10 Support the proposed wording in Article 11.2

Article 136 Support the re-wording of Article 104

Article 137 The proposed wording of the new Article 104.1 is supported and is compatible with that proposed by Mr Sardoyan

Article 138 Article 105 re-wording is acceptable and can be supported

Article 139 Additional Article 105.1 is similar to that proposed by Mr Sardoyan and can be supported

Article 144 Article 109 amendments - **not** supported

Article 145 New Article 109.1 **not** supported

Article 146 Article 108 - The proposed wording should be revised to provide more emphasis on the need for consultation with local communities prior to a local referendum

In both of the above drafts, it does seem that in many areas the European Charter of Local-Self Government has been respected. Once again it must be emphasised that citizens must be provided guarantees in the constitution, defining the responsibilities of local government, this should then ensure the independence of a democratic local government.