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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMMENTS  
ON THE DRAFT AMENDMENTS TO  
THE ELECTION CODE OF ARMENIA  
REGARDING THE IMMUNITY OF CANDIDATES IN ELECTIONS**

by

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*\*This document has been classified restricted on the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

1. According to the proposed amendments, the following provisions of the Election Code of Armenia would be revised: Article 33(2), Article 78(5), Article 111(6) and Article 127. These provisions establish certain immunity for the members of the Central Electoral Commission, as well as the members of district and precinct electoral commissions (Article 33(2)); Presidential candidates (Article 78(5)); candidates for the National Assembly (Article 111(6)); and community leader (mayor) and council member candidates (Article 127).

2. In its Guiding Principles for the Fight against Corruption, the Council of Europe Committee of Ministers has emphasised that immunity from investigation, prosecution or adjudication of corruption offences should be limited to the degree necessary in a democratic society.<sup>1</sup>

3. In its fifth General Activity Report, the GRECO (Group of States against Corruption) stated that “*compliance with Guiding Principle 6 requires that the categories of professionals benefiting from immunity be limited to a minimum*”. However, it also added that “*according to GRECO’s standing practice each Member has been assessed on its own merits and, as a consequence, a few exceptions to the aforementioned rather strict interpretation of General Principle 6 have been accepted*”.

4. In its evaluation report on Armenia adopted in March 2006, the GRECO was concerned about the rather wide scope of immunities and recommended “*to consider reducing the categories of persons enjoying immunity from prosecution and to abolish, in particular, the immunity provided for parliamentary candidates, members of the central electoral commission, members of regional and local electoral commissions, candidate mayors and local council candidates*” (par. 56). The recommendation was repeated in the compliance report on Armenia, adopted in June 2008.

5. The proposed amendments are in line with the GRECO recommendations. However, presidential candidates are not expressly mentioned in the recommendations.

6. It can be considered exceptional that immunity is extended to mere candidates for public offices. The only conceivable justification for such an extension is to prevent undue pressure on the candidates and guarantee that elections are not affected by ungrounded indictments or detentions. This justification must be balanced against the reasons favouring the limitation of immunity and underpinning the GRECO recommendations.

7. Taking into account the importance of the office in the political system, in a young democracy like Armenia, securing fair elections may justify the immunity of presidential candidates. By contrast, with regard to the other persons covered by the proposed amendments, the reasons for limiting immunity weigh heavier than those supporting.

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<sup>1</sup> Council of Europe Resolution (97)24 on the Twenty Guiding Principles for the Fight Against Corruption, Committee of Ministers (adopted by the Committee of Ministers on 6 November 1997 at the 101<sup>st</sup> session of the Committee of Ministers), Guiding Principle no. 6.