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(VENICE COMMISSION)

COMMENTS ON THE ELECTORAL LAW AND THE ELECTORAL ADMINISTRATION IN ARMENIA

by

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I. Introduction

1. In view of the preparation of the 6th meeting of the Council for Democratic Elections which will take place in Venice on 16 October 2003, my comments identify the most problematic issues concerning the electoral law in the Republic of Armenia and provide recommendations both on the legal and the administrative framework of the elections. However, the emphasis is on improvements to the Electoral Code.

2. The analysis and the recommendations are based on:

- the Constitution of Armenia;
- the Universal Electoral Code adopted by the National Assembly of the Republic of Armenia on 5 February 1999, as of August 3, 2002;
- the Joint Assessment of the Amendments to the Electoral Code of the Republic of Armenia adopted in July 2002 by the OSCE/ODIHR and the Venice Commission, CDL-AD (2002) 29;
- the Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, adopted by the Venice Commission on 18-19 October 2002, CDL-AD (2002) 23 rev;
- further documents and election observer reports indicated in the Appendix.

3. The present document cannot take into account election-related provisions in other laws, e.g. the Law on Political Parties, the Law on Mass Media, the Law on Local Self-Government, the Criminal Code, etc.

II. General remarks

4. Since independence in September 1991, several elections have been held in the Republic of Armenia. The most recent elections – and the first elections since the Republic of Armenia joined the Council of Europe in January 2001 – were the local elections of October 2002, the presidential elections of February/March 2003 and the parliamentary elections of May 2003.

5. Although important improvements have been made, elections since independence have generally fallen short of international standards for democratic elections according to international observer reports. This is even true for the presidential and parliamentary elections of 2003 which were conducted under the Electoral Code, as amended in 2002.

6. The Electoral Code, amended in 2002, in general constitutes the basis for the conduct of democratic elections. However, some provisions (or non-provisions) can be considered as problematic or debatable. Furthermore, the electoral law is not implemented and not respected appropriately. These comments evaluate the electoral law against the background of both the international standards for democratic elections and the conduct of the presidential and parliamentary elections in 2003. Most recommendations of the Joint Assessment made by ODIHR and the Venice Commission, CDL-AD (2002) 29, have been incorporated into these comments.

III. The Electoral Code: Issues to discuss

7. Electoral basis. According to Article 1.3, "(t)he state encourages that the elections of the President of the Republic, elections to National Assembly, local selfgoverning bodies are held under competitive and alternative principles". The term "alternative" is rather unusual in that context. It would be sufficient to refer to "competitive principles" or to "principles of free and fair elections".

8. Composition of Electoral Commissions: The Electoral Code provides for a three-tier commission structure: the Central Electoral Commission (CEC), Territorial Electoral Commissions (56 TECs, one for each single-mandate constituency) and Precinct Electoral Commissions (PECs, one for each Electoral Precinct). According to the Electoral Code, the CEC is comprised of three members nominated by the President of the Republic and one member from every party (alliance) that have a faction in the current or dissolved National Assembly appointed by the decision of permanently functioning bodies (Art. 35.1). Currently the CEC has nine members in total. The TECs are formed in accordance with the same procedure (Art. 36.1). The members of the PECs are appointed by the respective TECs, according to the principle "one member of the TEC – one member of the PEC" (Art. 37.1).

9. Despite several improvements to the Code by the July 2002 amendments, e.g. not allowing political parties and the government to recall members of electoral commissions (in the case of its appointee) (Art. 38.2), the composition of the electoral commissions is debatable in the author's opinion. Although the formalities of appointment are not necessarily problematic, in practice the government still greatly influences the commission's work. Significantly, the appointees of the President and the government parties held *de facto* the majority (and in almost all cases also the chair persons) of the CEC and TECs in the 2003 elections. In conjunction with the lack of transparency in the commissions' operations and decision-making processes (see below), the failure to create a politically well-balanced commission can be regarded as an obstacle to the impartiality of the electoral administration.

10. For the reasons given, it might be advisable to review the method of appointment of the members of the electoral commissions, in particular of the CEC, to strengthen the impartial performance of the electoral administration. Even if the issue of the composition of the electoral commissions is politically very delicate and has to be handled with great care, some reforms might be reconsidered. It might be discussed, for example, whether to implement a pure "partisan balance model" according to which all commissioners are nominated by the political parties, or to apply an impure "partisan balance model". In the latter some seats might be reserved in the CEC for non-partisan individuals, who are not proposed and appointed by the government, but instead by the Judiciary (e.g. Constitutional Court) or by the Parliament (for example, with a qualified majority). At any rate, in order to reduce the government's influence on the commissions' work, the administration should not have more than one representative in each election commission.

11. Prohibition of judges becoming members of the Electoral Commissions. In this line of argumentation, the prohibition of judges becoming members of electoral commissions (Art. 34.4) should be reconsidered, too. In some new democracies, the incorporation of judges into the electoral commissions is regarded as being an important step towards strengthening impartiality and professionalism, provided they act in a really independant way. It should be remembered that the "Code of Good Practice in Electoral Matters" of the Venice

Commission also recommends that the central electoral commission should include at least one member of the judiciary (CDL-AD (2002) 23 rev).

12. Organisation of activities of the Electoral Commissions. According to Article 39.7 the decisions of the electoral commissions are valid if more than half of the members of the commission have participated in voting. The decision is considered to be adopted with more than half of the votes cast. In the event of a parity of votes, the vote of the commission Chairman is decisive. Thus, in the case that only five or six members participate in the voting, even key decisions can be approved by only three of the currently nine members.

13. Although it is not uncommon by international comparison that an electoral commission decision requires only the presence of the majority of its members and the votes of the majority of the members present (and that the chair person has a decisive vote in the case of parity), these provisions might perhaps be reconsidered in view of the Armenian political situation. Taking into account the problems of creating politically well-balanced electoral commissions in Armenia, it might be advisable to consider the introduction of a higher quorum and/or a qualified majority with the aim that the commissions‘ decision making process would be based on general agreement. In several countries a meeting of the election commission has legal authority, for example, if no less than two-thirds of the members attend it. (In a few countries, even the presence of all members is required which the author would not recommend due to the high risk of a blockading of the commissions‘ work). It is also possible to demand a two-thirds majority vote of the present commission members or, at least, an absolute majority of all members (not only those present) for a decision to be adopted. An interesting approach is also to differentiate between the types of decision in such a way that key decisions of the electoral commission require a qualified majority or a higher quorum than ordinary day-to-day decisions. In summary: Aiming at increasing the representativeness of the commissions’ decisions, it could be wise to consider a reform of Article 39 of the current Electoral Code and the introduction of a higher quorum and/or of a qualified majority at least for important decisions of the electoral commissions (which in such a case would be defined in Art. 41, 42 and 43).

14. Redrawing of constituencies. With regard to the delimitation of constituencies, the current Electoral Code stipulates that constituencies shall contain an equal number of votes while allowing differences of up to 15% in the number of voters (see Chapter Three of the Electoral Law). International observers have criticised the fact that the Electoral Code does not specify the procedure to be used to calculate the differences. According to ODIHR (2003b: 5) it is not possible to confirm whether the sizeable factual differences that exist between constituencies are within the limits permitted by law.

15. Though from reading Chapter Three of the current Electoral Code it is clear that the constituencies are formed and numbered by the CEC on the basis of the number of registered voters, as submitted by the Marzpets/Governors, it may be recommendable that the procedure for drawing and re-drawing the constituencies be more precisely and transparently regulated by the Electoral Code. A reduction of the maximum deviation, from 15% to 10% might well be worth considering here.

16. Time for establishing the electoral constituencies. According to Chapter Three of the current Electoral Code, the CEC defines the constituencies at least 90 days prior to election days. Some electoral experts express the opinion that the time for (re-)establishing the constituencies should not depend on the date of elections. This issue might be reconsidered in

the Armenian context, too. In Armenia, the periodical review of the voters list might perhaps form the basis of (re-)drawing the constituencies.

17. Requirements for candidates: "permanent residency". The requirement for candidates to prove a certain period of "permanent residency" in the Republic of Armenia was problematised by international observers since the law regulating residency issues, the Civil Code of Armenia, seems not to contain such a concept (see ODIHR 2003b). These comments cannot evaluate whether the Electoral Code is consistent with the Civil Code of Armenia. However, in any case it is important that the concept of "permanent residency" is clearly defined, if it is to be used as a requirement for candidates.

18. Incompatibilities. Articles 97.2 and 97.3 prevent certain persons who hold public office to stand as candidates in National Assembly elections, unless they resign from office before registration. However, the incompatibilities are not the same for the proportional and the majoritarian contests. Thus, for example, Ministers, Deputy Ministers, the Mayor of Yerevan, Deputy Mayor Governors, Deputy Governors, Community Leaders and insurance agents (social security employees) are not allowed to stand as candidates in the majoritarian elections, unless they resign from office (Article 97.2). They are, however, allowed to stand in the proportional elections (Art. 97.3) without resigning from office. Thus, the compatibility provisions are not consistent for the National Assembly elections. The restrictions differentiate in an inappropriate manner between the majoritarian and the proportional part of the parliamentary elections. The Electoral Code should therefore be amended to establish equal compatibility conditions for candidates for the National Assembly.

19. Nomination of candidates. The Electoral Code provides that registered parties as well as registered initiative groups of at least 50 citizens have the right to nominate candidates for the National Assembly majoritarian elections (Art. 104 and Art. 105). However, Article 104.1, second sentence, does not allow party alliances to nominate such candidates. The justification for such a prohibition is far from clear. Thus, the Electoral Code should be amended to allow also party alliances to nominate candidates, not only for the proportional, but also for the majoritarian contests of the National Assembly elections.

20. Minimum number of signatures. With regard to the proportional part of the National Assembly elections, the amount of 30.000 signatures required for registration of party lists is relatively high. According to the "Code of Good Practice in Electoral Matters" (I.1.3.ii) of the Venice Commission, the law should not require the collection of the signatures of more than 1% of the voters in the constituency concerned. With the 2003 parliamentary elections the total number of registered voters was approx. 2.3 million. Thus, it would seem to be advisable to reduce significantly the required number of signatures for party lists. According to the 1% principle, even the 500 signatures required for majoritarian candidates might be too many.

21. Signature verification. The Electoral Code prescribes a procedure for verifying the signatures necessary for the nomination of candidates or party lists that only requires 2% to be checked by the CEC (in the case of presidential or National Assembly proportional elections) or by the TECs (in the case of National Assembly majoritarian elections) (see Art. 70.3, in conjunction with Art. 100.10 and Art. 107). According to Article 70.3, „...(t)he relationship of valid and invalid signatures in the two per cent of the total number of signatures proportionally extends to the total numbers of signatures, thus getting the number of valid and invalid signatures within the total number of signatures". This means that the

number of invalid signatures, which has been determined by a 2% selective verification, is multiplied by 50 to assess proportionally how many invalid signatures are present in the entire list submitted.

22. This verification procedure can not be regarded as being appropriate. It is highly recommendable that all signatures be checked – at least until the required minimum number is reached. This opinion corresponds to the "Code of Good Practice in Electoral Matters" of the Venice Commission which stipulates that the checking process must in principle cover all signatures. Only if it is doubtless that the required number of valid signatures has been reached, then the remaining signatures need not be checked (CDL-AD (2002) 23 rev, item I.1.3). In practice, there should not be too many problems in checking all the signatures, especially with regard to the submission of both presidential candidates and majoritarian candidates for the National Assembly, given the relatively small number of signatures (500) needed by them. It is even possible to check completely the minimum number of signatures required for the registration of party lists running in the Election of the National Assembly by way of the proportional system.

23. Property declaration. The nomination of candidates for President and for the National Assembly also requires a declaration about their private property and their family members' income over the last year (Art. 67.7, Art. 100.7, Art. 106.6). In the author's opinion, the obligation to declare the income of family members should be reconsidered since this is going very far. In any case, the property declaration requirements should be specified in more detail by law. Furthermore, it would be important that consistent and uniform guidelines are established by the electoral commission on what has to be declared. In practice, the property declaration criteria were not applied clearly and consistently throughout the country during recent elections.

24. Withdrawal of candidates. In view of the high number of withdrawals of candidates in the parliamentary elections, in particular in the majoritarian contests, the Electoral Code might be amended to not permit the withdrawal of candidates or party lists, except under clearly defined criteria for doing so (see also CDL-AD (2002) 29, item 12).

25. Pre-election campaign. In the elections of 2003, especially the presidential elections, there was a wide-spread (ab)use of public resources in support of the incumbents during the pre-election campaigns. It is welcomed that the Electoral Code prohibits that state and local self-governing bodies (as well as their staff whilst performing duties) conduct pre-election campaigns or disseminate campaign documents (Art. 18.4). The Electoral Code also forbids states and local self-governing bodies to make contributions to the election funds of particular candidates or parties (Art. 25.2). Some further provisions follow the same line, but the Electoral Code does not contain any general provision that prohibits the use of government facilities or resources, besides those permitted by law, for campaign purposes. It might be appropriate to introduce such a general provision in Article 18 ("Basic Principles for Pre-election Campaigns") so as to reinforce the principle of impartiality of the state in the electoral contests.

26. Media. Though a number of states have no provisions in their electoral laws to regulate the behaviour of the media during elections and pre-election campaigns, there are some areas that an electoral law may cover, for example with regard to the allocation of time and space to candidates and parties, political advertising, reporting of opinion polls, voter education campaigns through the media, etc. The Electoral Code of Armenia contains some

provisions that aim to regulate the behaviour in particular of public media during the pre-election campaign (see Art. 20). However, further provisions might be regarded as appropriate so as to introduce in the law, for example, provisions relating to the behaviour of the private media. Of particular importance is also the question of how to control media related provisions of the Electoral Code and how to sanction the non-respect of them. It could be worthwhile improving the Electoral Code and/or the Law on Mass Media in this respect.

27. Voting rights. As already mentioned by the Joint Assessment (CDL-AD (2002) 29, item 30), "...(t)he code makes no provision for special voting procedures, such as the use of early, proxy, mobile, postal or other extraordinary procedures. Such procedures were omitted from electoral legislation when the Code was adopted in 1999 in an attempt to reduce the incidence of fraud. However, the inevitable result is that large numbers of voters are now excluded from exercising the vote". Since voters are allowed to vote only in the electoral precincts where their names are included in the voter lists, in fact, all those voters who are unable to attend their polling station (e.g. hospitalized persons), are excluded from voting. The only exceptions are members of the military as well as citizens who are residents of or staying in foreign countries (see above). According to the Joint Assessment (CDL-AD (2002) 29) it could be desirable to find mechanisms to reduce the number of voters excluded in this way, but this depends on the actual risk of fraud.

28. Taking into account the risk of fraud, it might be desirable to think over whether the correct balance has been found between the need to be rigorous to ensure the integrity of the voting, and the need for flexibility to ensure that citizens' rights to vote are protected. At least, if the risk of electoral fraud were to be reduced, e.g. by the introduction of other means to prevent multiple voting ("inking" etc.), it may be appropriate to consider the (re-)introduction of well-monitored special voting procedures for those citizens who are unable to attend their electoral precincts, at least in the medium term. The Ad Hoc Committees for the Observation of the Presidential Election in Armenia and the Ad Hoc Committee for Observation of the Parliamentary Elections in Armenia suggested to the Armenian Parliament to adopt provisions in the Electoral Code to provide for mobile ballot boxes (Doc. 9742, item 42; Doc. 9836, item 47). In any case, it seems to be inconsistent that citizens abroad are able to vote but not citizens within the country who are unable to present themselves at the polling station. The same inconsistency exists between members of the military and, for example, policemen on duty on election day.

29. Voting rights for members of the military and for citizens abroad. Members of the military are given opportunities to vote, but only in presidential elections and in the proportional part of parliamentary elections. The Electoral Code stipulates that citizens who are military servicemen performing their military service or participating in military training cannot participate in elections to local self-governing bodies and National Assembly elections under the majoritarian system (see Art. 2.6 and Art. 10.1). The same is true for citizens of the Republic of Armenia who have the right to vote but live or are staying in foreign countries (Art. 51).

30. Though it is welcomed that members of the military and citizens abroad are given the opportunity to exercise their right to vote, it has to be noted that this right is restricted to non-constituency based elections. This restriction might be motivated by practical problems in defining constituencies for military and overseas voting or by the assumption that members of the military or citizens abroad may have only a tenuous connection with a particular constituency. On the other hand, especially with regard to the parliamentary elections, the

restriction infringes on the principal of equal suffrage (which is stipulated in Art. 1 and Art. 4 of the Electoral Code) since members of the military and citizens abroad are only allowed to participate in the proportional part, but not in the majoritarian part of the parliamentary elections. Thus, it might be considered whether members of the military and citizens abroad should also be allowed to have also a constituency vote. In such a case, it would be necessary to find mechanisms to define the constituencies in which members of the military and/or citizens abroad are able to vote. (Several countries apply elaborated provisions for military and/or overseas constituency voting).

31. Compilation and review of voter lists. According to Article 9 of the Current Electoral Code, voter lists are permanently managed documents and are compiled in communities, by electoral precincts. They are compiled and maintained by community leaders and are to be reviewed in December and June of each year. According to the Joint Assessment of ODIHR and the Venice Commission, one review of the voter lists, if conducted effectively, would be sufficient (CDL-AD (2002) 29, item 24).

32. Control over voter lists. The CECs and the TECs shall exercise control over the compilation and maintenance of voter lists in accordance with procedures set down by the Central Election Commission. It is specified in the law how citizens, proxies and commission members can check preliminary voter lists and apply to community leaders to make corrections in the voter lists (see Art. 9.9, Art. 12, Art. 14). There is also a provision that inaccuracies in voter lists can be appealed to the court (Art. 14.3). In a welcomed development, the provision that voter lists are not subject to change within two days prior to voting, as well as on the day of voting, not even by a court decision, was overruled by a Constitutional Court decision from 1 October 2002 (CCD-389). According to this decision, a voter can apply to the court even on the day of voting to be included in the voter list for his/her precinct.

33. Nevertheless, it is insufficiently specified in the Electoral Law how the electoral commissions, in particular the CEC, may exercise control over the voter lists. The Community leaders are obliged to submit the voter lists by precincts only to the head of the institution administering the territory of the precinct centre and to the TECs 40 days before elections (Art. 9.8). With regard to the voter lists it seems that the CEC only have the power to establish the procedure for the compilation, the verification and the correction of the voter lists (see also Art. 41.4 and Art. 41.8), but not to implement and control the procedure.

34. Lack of national voter register. From reading the Electoral Code it is unclear how multiple entries of the same voters in the voter lists across community borders can be prevented, given the fact that Armenia has no centralised civil or voter register. Efforts should be made to create a regularly updated national civil/voter register in the medium term.

35. "Inking". In an attempt to reduce incidents of multiple voting, it seems to be advisable to introduce a provision into Section Three of the Electoral Code whereby voters' fingers will be marked with indelible ink at the polling station. In many transition states "inking" is regarded as an important step towards reducing the risk of multiple voting.

36. Ballot paper. With the amendments of 2002, Article 49.4, which provided that candidates' names appear on the ballot paper in alphabetical order, was deleted. According to the Joint Assessment of ODIHR and the Venice Commission "... (t)his seems to leave open the question of how the candidates (and parties) will now be ordered on the ballot paper"

(CDL-AD (2002) 29, item 25). However, Article 82.1 provides that the candidates' last names are entered in alphabetical order onto the ballot for the elections of the President of the Republic. Article 114.2 provides for the alphabetical order of the names of the parties/alliances on the ballot for the elections to the National Assembly by proportional system. Article 114.4 does the same with regard to the candidates for the elections to the National Assembly by the majoritarian system. The same happens for elections to the local self-governing bodies (Art. 130.2, Art. 130.3).

37. The author of these comments does not have any information on the question as to why Article 49.4 was deleted. A systematic reason might be that it provides for the alphabetical order only of the names of candidates, but not of parties/alliances. Thus, the general provision might have been misleading with regard to the proportional part of National Assembly elections. In any case, the deletion of Article 49.4 can not be regarded as problematic as long as the order of candidates or party/alliance names are regulated by the specific provisions for the different elections in the Electoral Code.

38. "Voting against all". Still unusual for western democracies is the possibility of casting a negative vote ("I'm against all", "I'm against") (see Art. 57.1, Art. 57.2). The negative vote stems from the communist tradition of non-competitive elections and is still used in a number of post-communist states. It gives the voter the possibility of expressing their annoyance with the candidates and parties/blocs on the ballot paper. In this way, however, political and party apathy in the population can be strengthened if the voters can simply reject candidates and parties instead of making the (often not so easy) decision as to who is better (or best of the worst) candidate or party/bloc. There are good reasons for completely abandoning the negative vote. In the author's personal view this option should be removed from the ballot paper.

39. Procedure for marking the ballot. It is recommended that a general provision be introduced into Article 57 of the current Electoral Code, according to which the ballot paper is correctly marked and the vote is valid if the voter's intention is clear and unambiguous (see CDL-AD (2002) 29, item 27).

40. Electoral observers. According to Article 30.4 of the Electoral Code, "on the day of voting proxies and observers monitor the work of the electoral commission. To that end they can present their remarks and proposals to the Chairman of the Commission, who then takes appropriate measures". The Venice Commission has already pointed out that observers should not be given the right to monitor the commissions' work since the role of observers is neutral: it is to observe, not to monitor. In general, it would be appropriate to treat separately the rights and responsibilities of proxies, observers and representatives of mass media.

41. Violation of voting procedures. According to Article 57.5, during voting, all cases of violation of the voting procedure established by the Electoral Code, upon the request of two members of the commissions or two proxies, as well as all the decisions of the Precinct Electoral Commission are recorded in the register. Thus, any alleged violation of the voting procedure to be recorded in the register requires the support of at least two proxies or PEC members. The provision was particularly problematic during the second round of the 2003 presidential elections, when there were only two proxies present at polling stations (see ODIHR 2003a: 6). Thus, Article 57.5 might be amended to allow a single commission member or proxy to announce a violation of the voting procedure.

42. Publishing the preliminary results. There are several provisions in the Electoral Code, amended in 2002, that allow the prompt publishing of preliminary results by the CEC (Art. 63.1, Art. 63.8), by the TECs (Art. 42.8, Art. 62.2) and even by the PECs (Art. 61.6). In practice, however, the announcement and publication of preliminary electoral results was not regarded as satisfactory by international observers, for example, in the 2003 presidential elections. There were uncertainties whether not only the CEC, but also the TECs are required by law to publish preliminary results. Moreover, there was a discussion as to whether the electoral commissions are obliged to publish a full breakdown of results by polling station when they announce the preliminary results. In the May 2003 parliamentary elections, therefore, the CEC formally instructed TECs to publish the preliminary results of both the proportional and the majoritarian part of the elections broken down by polling station (in violation of this instruction, however, most TECs provided only summarised preliminary results). Moreover, the CEC committed itself to publishing the preliminary results of the proportional election broken down by polling station. Although this is a positive development, it might be considered whether the regulations on the publishing of the preliminary results on the different levels should be more clearly and explicitly prescribed in the Electoral Code. The law should require publication of the detailed preliminary election results at all levels.

43. Election Results (Local Council Members). The Joint Assessment of ODIHR and the Venice Commission mentioned a minor inconsistency in the Electoral Code: "Article 120 has been amended to increase the size of the community council in a community with a population of up to 3,000 from five members to seven members. The fourth paragraph of Article 134 should similarly be amended to provide for the allocation of mandates to the top seven candidates instead of the top five candidates" (CDL-AD (2002) 29, item 33). However, since there are still five members to be elected in those larger communities where several multi-mandate majoritarian constituencies exist (see Art. 121.2, paragraphs 2 and 3, and Art. 121.3, paragraphs 2 and 3), Article 134.4 might be amended as follows: "The first five candidates, in the case of five-member constituencies, and the first seven candidates, in the case of seven-member constituencies, for the community council members, who have received the maximum number of "yes" votes, are considered elected in the given multi-mandate majoritarian constituency".

44. Complaints and appeals. The management of complaints and appeals is an essential part of free and fair elections. According to the Joint Assessment (CDL-AD (2002) 29, item 36), the procedures in the Code for dealing with complaints and appeals are not clearly defined and are very complicated. The Joint Assessment recommends that Article 40.1 be rewritten as a general statement dealing with complaints and appeals and that all provisions relating to complaints and appeals be drawn together in one chapter. Electoral observer reports also characterise the complaints and appeals procedures as being inadequate and confusing.

45. According to the current Electoral Code of Armenia, in general, decisions, activities and inactivities of the electoral commissions can be appealed to a superior electoral commission or a court of first instance (Art. 40; see also Art. 41.11 and Art. 42.7). Disputes over the election results, with the exception of those over elections of local self-governing bodies, are resolved by the Constitutional Court (Art. 40.4). However, from reading the electoral law several aspects remained unclear or debatable. With the 2003 parliamentary elections, for example, there was confusion as to whether TEC decisions relating to the majoritarian contest could be appealed to the CEC. From the reading of the electoral law it is

unclear why these decisions were not considered by the CEC to be within their jurisdiction. Even more important is that the Electoral Code provides a choice of appealing either to an election commission or to a court which can not be regarded as a good solution (Code of Good Practice in Electoral Matters, II.3.3.c).

46. Significantly, in many new democracies, the appeals review by the electoral administration bodies follows a single hierarchical line and is used before any appeal to the courts. Within the electoral administration, the superior election administration body, e.g. the Central Electoral Commission, therefore takes final administrative decisions about electoral complaints. In some countries, the decisions of the CEC can be appealed to the court, but in general only to a special court, to the Constitutional Court or to the Supreme Court. An alternative approach would be that all electoral appeals may be dealt with by the judicial system. Such an approach, however, may be only a reasonable option in countries where there is much confidence in the professionalism and independence of the judical system. In such a case, it would be important that lower courts' decisions could be appealed to higher courts. The Armenian Electoral Code seems to mix the appeal procedures. A complaint against a decision of an election commission can be lodged to a higher level election commission or to the Court of First Instance with jurisdiction over the election commission making that decision. Decisions of Courts of First Instance cannot be subject to further judicial review in Armenia. It appears to be important that the Electoral Code of Armenia is amended to provide clear and consistent complaints and appeal procedures and to avoid any conflicts of jurisdiction (see also CDL-AD (2002) 23 rev, chapter II.3.3).

47. Appeal of court decisions. Even if the current appeals system is maintained, it must be guaranteed that electoral appeals are decided consistently throughout the country. At the moment, it is problematic that almost all decisions of the election commissions can be appealed to a court of first instance only, but not further. Since decisions of the courts of first instance can not be appealed across the country, there is the risk that the electoral law may not be applied consistently. This is exactly what happened, for example, during the 2003 elections. Thus the Electoral Code might be amended to allow appeals against decisions from the Courts of First Instance. Alternatively, it might be advisable to provide the CEC with more responsibilities to ensure that electoral complaints are decided consistently throughout the country.

48. Electoral violations. In this context, it should be noted that the Armenian Electoral Code – in contrast to many other electoral laws – includes a short chapter on the accountability for violations of the Electoral Code. Article 139 renders persons liable for a number of actions. However, it is open to question whether the list of electoral violations is complete since some aspects, e.g. the misuse of state funds or undue behaviour of the media, are not mentioned there. Furthermore, some of the violations are formulated in a very vague way (e.g., Art. 139.13: "Hindering the free expression of the voters' will"; Art. 139.15: "Hindering the election-related functions", Art. 139.17: "Hindering the normal operation of electoral activities by members of the electoral commissions, civil servants, or officers of local self-governing bodies"; Art. 139.25: „Hindering the normal process of the pre-election campaigns") (see also CDL-AD (2002) 29, item 36). Finally, the electoral violations are not "weighted". There is no distinction between electoral crimes and electoral administrative violations. These comments cannot verify whether the electoral violations that are mentioned in the Electoral Code are recognised as crimes or as administrative legal violations by the Criminal Code or any other law of the Republic of Armenia. In any case, it is important that

electoral violations are specified in a complete and detailed way by the Electoral Code and/or other laws.

49. Sanctions for election violations. It was criticised by international observers that the Electoral Code does not provide adequate sanctions for election violations. Indeed, there are no sanctions provided in the electoral law which is, however, not uncommon by international comparison. In many countries the sanctions for electoral crimes are described in the Criminal Code or other laws. However, in the face of the non-prosecution and non-punishment of widespread electoral violations, for example, after the 2003 presidential elections in Armenia, it might be appropriate to amend Chapter 31. For example, the electoral law might stipulate that electoral crimes will be prosecuted by the state and that they will be punished according to the law. It could also oblige the chairs or members of electoral commissions to inform prosecutors of all election-related crimes that are committed within their area of responsibility. It could even establish punishment amounts for administrative legal violations. Finally, it should be regulated which organ – the electoral commission and/or a court – has the power to sanction which electoral violations and by which means. To mention explicitly in the Electoral Code the way in which electoral violations are prosecuted and sanctioned may have some positive effects on attempts to reduce widespread electoral violations (of course, it is much more important to take effective measures against election violations and to implement the law effectively; see below).

50. Consequences for electoral rights and electoral commissions. These comments cannot evaluate whether the Electoral Code corresponds with the Criminal Code and other laws of the Republic of Armenia. However, it should be made very clear by the Electoral Code and/or the Criminal Code that persons who have committed (or have attempted to commit) electoral crimes will not only be punished by imprisonment or a fine, but also run the risk of losing their active and passive electoral rights. In any case, electoral violators should not be appointed as members of the electoral commissions. Thus it might be appropriate to amend Article 34 ("Principles for Formation of Electoral Commission") to not allow persons who committed electoral crimes or permitted them to take place to be members of electoral commissions. In the same way the Electoral Code might be amended to allow for the dismissal of those election officials found by a superior electoral commission or court to have been responsible for an election violation.

51. Report on Elections. In view of the insufficient implementation and respect of the electoral legislation, it was strongly recommended "... that the CEC's obligation should include a duty to provide an analysis of the violations of the code following each national election, an indication of measures taken against violators, remedies provided to those aggrieved and any legislative improvements that may be required" (CDL-AD (2002) 29, item 21). Article 41 might be amended to oblige the CEC not only to make a statement in the National Assembly on the organisation and the conduct of the elections, but also to elaborate on post-election analysis of electoral violations, remedies for them and required improvements to the electoral legislation and administration.

52. Timeframes. There are a number of other issues which refer to the timeframe established in the Electoral Code, e.g. with regard to the formation and dissolution of the CEC: With the amendments of July 2002, the electoral law (Art. 35-2) provides that the Central Electoral Commission (CEC) is formed and commences its duties 40 days after the elections. Though the early formation of the CEC long before the next election takes place is greatly welcomed, it should be carefully re-examined whether the 40 days period is really

enough not only for the formation of the new CEC, but also for the outgoing CEC to finish its work properly. The Joint Assessment of ODIHR and the Venice Commission has already identified some practical problems by forming the CEC as soon as 40 days after the elections (CDL-AD (2002) 29, item 20).

53. Article 41.3 of the Code requires the chairman of the CEC to report on the election 30 days after it takes place.It is open to question whether it would be recommendable to give the outgoing Commission a little more time than 30 days to finish its work properly.

54. This is particularly important with regard to the timeframe of the Overview and Audit Service. According to Article 25.11, not later than 15 days after the election the candidates and parties submit a declaration to the electoral commission that had registered them, on the use of the amounts available to them in their pre-election funds. The electoral commissions send their registered declarations to the Overview and Audit service of the Central Electoral Commission within three days of receipt. Having received declarations on the use of finances in campaign funding of candidates and parties from commissions that have registered them, pursuant to procedures established in Article 25.11, the Overview and Audit Service checks them and submits the materials to the CEC for discussion within one month. Materials concerning violations discovered as the result of discussions are sent, upon a decision of the CEC, to a court of first instance (see Art. 26). From reading the electoral law, it seems that the Overview and Audit processes may not be finished before the 30 days period of the outgoing CEC ends.

55. The timetable seems to be even more problematic, if the 15-days deadline for parties and candidates to submit campaign accounts to the Overview and Audit Service were to be reconsidered. The deadline was recently reduced by the July 2002 amendments from 30 to 15 days. However, according to the Joint Assessment, "(t)he provisions must be carefully monitored to ensure that greater haste dost not impinge on the accuracy of the accounts" (CDL-AD (2002) 29, item 11). In the opinion of ODIHR and the Venice Commission the change should only be made if the reduced deadline can be complied with effectively (see also item 32). The author agrees with the view that there is value in completing these accounting procedures promptly, but that this should not be done at the expense of accuracy and completeness. Thus, a longer time period may be appropriate if practical problems arise.

56. Incorporating decisions of the Constitutional Court into the Electoral Code. Finally, the Electoral Code has to be amended to incorporate decisions of the Constitutional Court that have supplemented or overruled the Electoral Law. This applies, for example, to Article 14.3.

IV. The Electoral Administration: Issues to discuss

57. General remarks. It is obvious that many problems with elections in the Republic of Armenia are not caused by the electoral law, but instead by its insufficient implementation. The Electoral Code was not properly or fully applied in the past. Thus not only are improvements to the electoral legislation necessary, but also improvements to the electoral administration. Extensive effort should be made in practice to overcome shortcomings in the process of organising and conducting national and local elections in Armenia. In the light of electoral observer reports, in particular that of the ODIHR and the Council of Europe (see Appendix), the following problems should be pointed out:

58. The transparency of elections is one of the main provisions of the Electoral Code (see Art. 7). In practice, however, some important provisions to ensure the transparency of elections were ignored in the past. Practical measures should be taken to improve the transparency of elections, in particular with regard to the work of electoral commissions.

59. Meetings of the electoral commissions. The CEC meetings were criticised as being often short and conducted in a manner that was not conducive to debate or discussion. Thus it is important that the electoral commission holds regular, scheduled and open sessions. The participation of commission members from opposition parties as well as of proxies, observers and the representatives of mass media should be ensured.

60. Decisions of electoral commission. Decisions of the electoral commission have to be made by the quorum and the majority of votes required by the law. It is not acceptable that most CEC decisions were made by its executive officers and secretariat outside of formal sessions. Complaints should certainly not be decided by individual electoral commission members without a formal vote of the commission, as still happened in recent elections. Serious effort should be made to ensure that the decision-making process of electoral commissions corresponds to the law.

61. Publication of electoral commissions' decisions. Greater efforts might be made to publicise decisions of electoral commissions, in particular of the CEC, and to disseminate them to election officials, candidates, proxies, observers, and the media. This would contribute towards a more consistent application of electoral rules.

62. Training of election officials. Election training is an essential precondition for consistently applying the electoral law throughout the country and for impartial assistance to voters (where necessary). Thus members of electoral commissions should receive appropriate and standardised training at all levels of the election administration. In particular, better training for PEC members is needed.

63. Voter lists. Though there have been a number of elections since independence in Armenia and improvements have been made in many communities, the inaccuracy of voter lists remains a serious concern. It is important to improve the quality and the accuracy of the voter lists. In the medium term, it is advisable to establish a national voter register to be able to check the voter lists for multiple entries.

64. Voter information and education. Voter education campaigns should be intensified. It is of utmost importance that the voters understand the basic rules of elections. Voter education should not only provide information on the elections, but should also address the voters' motivation to participate in the electoral process. In the light of the problems of voter registration, voter education should also call upon voters to check their registration entries on the voter lists before polling day. State media might be used for the purposes of voter education, even if there is no such provision for this in the Electoral Code.

65. Guidelines for the nomination of candidates. In order to avoid the inconsistent application of provisions related to the nomination of candidates, it might be advisable to draw up clear and detailed guidelines, and to give them, e.g. to TECs and candidates. In particular the criteria for declaration on property ownership and permanent residency must not differ between constituencies.

66. Accessibility of polling stations for disabled persons. Though both the electoral law and the electoral administration recognise the problems disabled persons have in exercising their right to vote, efforts should be improved to ensure the accessibility of precinct centres by persons with disabilities.

67. Restricted movement of proxies and observers. According to a CEC decision from August 2002, only one proxy at a time is allowed to move around the precinct centre (see ODIHR 2003b). This decision restricts inappropriately the rights of proxies, stipulated in the law, to observe the voting and counting procedure. It should be repealed.

68. Unauthorized persons. In order to ensure the normal course of the voting in the Precinct centres the presence of the unauthorised persons in polling stations should be prohibited effectively. It might be helpful if electoral commission members, proxies and observers were to wear identity badges at all times. This would make it easier to identify unauthorised persons in the polling station.

69. Behaviour of armed forces. There were reports of police presence (without invitation by the PEC chair) in various polling stations during the 2003 elections. It might be recommendable to instruct more systematically members of police forces on how to behave during elections. The same might be useful with regard to members of the military.

70. Electoral fraud. Several instances of fraud have been reported during recent elections, included ballot box stuffing and falsification of result protocols. In a welcomed development, corrective steps were taken in the 2003 parliamentary elections, e.g. re-runs of majoritarian elections in a few constituencies. Intensified training of election officials and effective measures against electoral violations from the very beginning are essential to avoid fraud.

71. Publication of provisional results. In violation of the Electoral Code and CEC instructions many TECs did not publish detailed preliminary results in the 2003 parliamentary elections. Instructions to do so should be made even more explicitly.

72. Complaints and appeals procedures. The inadequate and confusing appeals procedure led to an inconsistent interpretation and application of legislation. Besides necessary improvements to the Electoral Code (see above), it would be advisable to draw up clear and detailed practical guidelines on how to lodge complaints, and how to respond to them.

73. Insufficient measures against violations of the Electoral Code. Authorities failed to take action in the face of clear violations of the electoral law. Perpetrators must effectively be held accountable so to abolish an atmosphere of impunity with regard to electoral crimes.

V. Summary of recommendations

74. Considering possible amendments to the Electoral Code, it is recommendable ....

- ... to refer only to "competitive principles" (or to the "principles of free and fair elections") in Article 1.3 (Electoral Bases). The term "alternative" is rather unusual in that context.
- .... to review the provisions regarding the composition of the electoral commissions, in particular of the CEC and the TECs, to reduce the government's influence on the commissions' work and to strengthen the impartial performance of the electoral administration (Chapter Eight of the Electoral Code).

- ... to abolish the prohibition on judges becoming members of electoral commissions (Art. 34.4).
- ... to introduce a higher quorum and/or a qualified majority at least for important decisions of the electoral commissions to increase the representativeness of the electoral commissions‘ decisions (Art. 39).
- ... to regulate more precisely and transparently the procedure for drawing and re-drawing the constituencies and to reduce the maximum deviation from 15% to 10% in the number of voters between the constituencies (Chapter Three).
- ... to (re-)establish the constituencies independently from the date of elections, but instead on the basis of the periodical review of the voter lists (Chapter Three).
- ... to define clearly the concept of “permanent residency“, if it is used as a requirement for candidature (Art. 65.1, Art. 97.1).
- ... to establish identical compatibility conditions for candidates to both the proportional and the majoritarian part of National Assembly elections (Art. 97.2, Art. 97.3).
- ... to allow party alliances to nominate candidates not only for the proportional, but also for the majoritarian contest of the National Assembly elections (Art. 104).
- ... to reduce the minimum number for the registration of party lists for the National Assembly proportional elections to a maximum of 1% of the registered voters (Art. 101.1).
- ... to check if the 500 signatures required for majoritarian candidates are within the limit of 1% of the registered voters in each constituency.
- ... to prove all signatures necessary for the nomination of candidates or party lists, at least until the minimum number is reached (Art. 70.3).
- ... to specify the property declaration requirements for candidates and to abolish the obligation to declare the income of family members (Art. 67.7, Art. 100.7, Art. 106.6)
- ... to prohibit the withdrawal of candidates or party lists, except under clearly defined criteria for doing so (Art. 78, Art. 111).
- ... to introduce a general provision that prohibits the use of government facilities or resources, besides those permitted by law, for campaign purposes (Art. 18).
- ... to introduce further media-related provisions into the Electoral Code, e.g. with regard to the behaviour of private media during pre-election campaigns (Art. 20).
- ... to (re-)introduce special voting procedures for those citizens who are unable to attend their electoral precincts, if further means are adopted to reduce the risk of fraud.
- ... to allow members of the military and citizens abroad to have not only a party list vote, but also a constituency vote in the National Assembly elections (Art. 2.6, Art. 10.1, Art. 51)
- ... to review the voter lists only once per year (Art. 9.3).
- ... to specify how the electoral commissions, in particular the CEC, may exercise control over the voter lists (Art. 9.4).
- ... to create a regularly updated national civil/voter register in the medium term so as to prevent multiple entries in the voter lists across community borders (Chapter Two).
- ... to introduce a provision whereby voters‘ fingers will be marked with indelible ink at polling stations to reduce the risk of multiple voting (Section Three).
- ... to remove the negative vote (“I‘m against all”, “I’m against“) from the ballot paper (Art. 57.1, Art. 57.2).
- ... to introduce a general provision, according to which a ballot paper is correctly marked and the vote is valid if the voter’s intention is clear and unambiguous (Art. 57).

- ... to treat separately the rights and responsibilities of proxies, observers and representatives of mass media. Observers should not have the right to monitor the work of electoral commissions, but only to observe it (Art. 30).
- ... to stipulate that a report of a violation of the voting procedure be entered into a PEC register on the request of only one commission member or one proxy instead of two (Art. 57.5).
- ... to require publication of a full breakdown of preliminary results by polling station at all levels (Art. 61, Art. 62, Art. 63 etc.).
- ... to abolish stylistic inconsistencies between Art. 120 and Art. 134.
- ... to provide clear and consistent complaints and appeal procedures (Art. 40).
- ... to specify electoral violations and to differentiate between electoral crimes and electoral administrative violations (Art. 139).
- ... to specify how electoral violations are to be prosecuted and sanctioned (Chapter 31).
- ... to not allow persons who have committed electoral crimes or permitted them to take place to be members of electoral commissions (Art. 34).
- ... to oblige the CEC to provide an analysis of the violations of the Electoral Law following each national election, to report on measures taken against election violators and on legislative and administrative improvements required (Art. 41.3).
- ... to revise the timeframe for the formation and dissolution of the CEC and the timeframe of the overview and audit processes.
- ... to incorporate constitutional court decisions into the Electoral Code (e.g., Art. 14.3).

75. With regard to the organisation and conduct of elections serious effort should be made ...

- ... to improve the transparency of elections, in particular with regard to the work of electoral commissions.
- ... to hold regular, scheduled and open electoral commission meetings, which allow for debate and discussion.
- ... to ensure that the decision-making processes of electoral commissions correspond to the law.
- ... to summarise and publish important CEC decisions and to disseminate them to election officials, candidates, proxies, observers, the media etc.
- ... to provide election officials with adequate, standardised training.
- ... to improve substantially the quality and accuracy of the voter lists.
- ... to establish a central/national civil/voter register, in the medium term.
- ... to improve voter information and voter education.
- ... to draw up clear and detailed guidelines for the registration of candidates and parties/ alliances.
- ... to improve the accessibility of precinct centres by persons with disabilities.
- ... to repeal CEC decisions which restrict the free movement of proxies in the precinct centres on polling day.
- ... to prohibit effectively the presence of unauthorised persons in polling stations.
- ... to instruct members of the police and military forces on how to behave during election campaigns and on polling day.
- ... to enforce instructions to publish detailed preliminary results.
- ... to take effective steps against violations of the Electoral Code from the very beginning.

- ... to draw up clear and detailed guidelines for the complaints and appeals procedures.
- ... to hold those persons responsible for electoral violations accountable.

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