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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMMENTS
ON AMENDMENTS TO THE ELECTORAL CODE
OF THE REPUBLIC OF ARMENIA
ADOPTED ON 26 FEBRUARY 2007

by
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1. Introduction

1.1 Mandate

The Venice Commission adopted on 16-17 March 2007 a Final Opinion together with OSCE/ODIHR on the amendments passed on 22 December 2006 to the election law of Armenia. In the meantime, further amendments had been passed on 5 February 2007, which were not covered by the opinion. The current review is limited to the changes made in February 2007.

1.2 Reference Documents

The report is based upon:

- Law on making amendments to the electoral code of the Republic of Armenia adopted on 5 February 2007, CDL-EL(2007)008.
- Electoral Code of Armenia as of 12 October 2005, CDL-EL(2006)019.
- Law amending the electoral code of the Republic of Armenia adopted on 22 December 2006, CDL-EL(2007)002.
- Final Joint Opinion on Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) adopted by the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007), CDL-AD(2007)013.
- Code of Good Practice in Electoral Matters. Adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002), CDL-AD (2002)023 rev. (hereinafter referred to as *the Code of Good Practice*).

2. The Changes

The changes introduced by the 5 February amendment fall into three parts:

- It abolishes the previous possibilities for citizens travelling or residing abroad to vote at diplomatic and consular missions.
- It regulates the rights to vote and to be elected of those keeping multiple citizenships according to the newly introduced arrangements for such citizenships.
- It introduces an addition to the regulation of the authority to maintain the voters lists by the police and the fees for receiving a copy of the voters lists.

3. Review

3.1 The right to vote from abroad.

Prior to the February amendments the law stated in Article 2, paragraph 2 on citizen's electoral rights:

"During the preparation and conduct of elections, citizens of the Republic of Armenia who travel or reside outside Armenia, shall have electoral rights. The exercise of electoral rights of those citizens of the Republic of Armenia shall be ensured by diplomatic and consular missions of the Republic of Armenia, in accordance with procedures set by this Code and by Central Electoral Commission."

The law included a number of articles working out in detail how this group of citizens should be accommodated in terms of voter registration and voting arrangements.

All the provisions for voting abroad have now been removed from the law. When countries are considering arrangements for external voting they will have to balance the universal suffrage against transparency and security during the elections. It is also a matter costs to what extent

large groups can be accommodated. Different countries come to different conclusions in these considerations.

In the Code of Good Practice in Electoral Matters of the Venice Commission the explanatory report states under the Universal suffrage, when discussing residence requirements:

“Conversely, quite a few states grant their nationals living abroad the right to vote, and even to be elected. This practice can lead to abuse in some special cases, e.g. where nationality is granted on an ethnic basis.” (par. 6.c).

There is in other words no *requirement* within the Code of Good Practice to support external voting; it is an option to be considered. It must therefore be up to the legislature of each country to balance the principle of universal suffrage against the requirements for transparency, security and practical considerations.

3.2 *The rights of those with multiple citizenships*

The possibility for keeping multiple citizenships has been introduced in Armenia. The amendment to the election law draws two consequences of this new option:

1. Article 2 introduces a new point 7 which allows people with multiple citizenship (more than the Armenian one), the right to vote in the same way as other citizens, provided the person is registered in Armenia.
2. Articles 65 and 97 are amended to exclude such citizens for running as candidates for the Presidency and the Parliament. For local elections there is no such exception.

In most countries, all citizens are treated the same regarding the right to vote and stand for elections, with a few limitations. In the Code of Good Practice the following is stated under universal suffrage:

“Universal suffrage covers both active (the right to vote) and passive electoral rights (the right to stand for election). The right to vote and stand for election may be subject to a number of conditions, all of which are given below. The most usual are *age* and *nationality*.”

The conditions are related to age, nationality, residence and some limited rules for suspending electoral rights. The Code of Good Practice even states that the list of conditions is comprehensive.

By *nationality* the Code of Good Practice means requirement on citizenship. It is said that citizen requirements may be problematic if a state withholds from persons who have resided in the territory for generations. Then the same paragraph of the Code of Good Practice states: “Furthermore, under the European Convention on Nationality¹ persons holding dual nationality must have the same electoral rights as other nationals.²”

In Armenia one has chosen to give full active voting rights to those with an extra citizenship, but not the right to be elected (the passive voting right) for national positions. This is clearly against the Code of Good Practice. The reason for the exception is probably that one may believe that persons with a second citizenship may have divided loyalties. However, once the right to dual citizenship has been accepted there does not seem to be good reasons for giving such citizens fewer rights than other citizens and such limitations are not common³. When it comes to the assessment of a person’s loyalties, views, credibility and programme

¹ ETS 166, Article 17.

² The ECHR does not go so far: Eur. Comm. HR No. 28858/95, judgment 25.11.96 Ganchev vs. Bulgaria, DR 87, p. 130.

³ There are examples in some democracies of limitations beyond the four listed in the Code, but they are still not generally recommended.

one should let the voters be the final judges when casting their votes.

3.3 *The responsibilities for maintaining the voters lists*

Article 9 of the law is amended as follows:

“The Passport and Visa Department of the RA Police (hereinafter, the Authorised Agency)” phrase in the point 1 of the Article shall be amended to read as follows: “The Police of the Republic of Armenia under the auspices of the Government of the Republic of Armenia (hereinafter, the Authorised Agency).”

A specific department of the police is not mentioned any more, which may provide a useful independence of a certain organisation within the police. The mention of “under the auspices of the Government” could have two interpretations: It could mean the obvious, namely that the police is part of the government structure. This would not have been necessary to regulate in this law, however. The second interpretation is that the government is given a more active role in giving instructions and define procedures for voter registration and for production of voters lists.

Armenia has so-called passive voter registration which means that the voters lists are drawn from the civil registers which are already maintained by the police. The responsibility for the lists will therefore have to rest partly by the agency maintaining the civil registers. On the other hand the Central Election Commission (CEC) has the overall responsibility for delivering a correct election (Article 41, paragraph 1), and it is a body independent of the government. One of the key elements for providing such an election is a good voters register. The voters register shall allow all those who are legitimate voter a chance to vote, and it shall prevent voting by illegitimate voters and multiple voting. Like in many other countries the voters lists have been subject to conflict and debate, and despite the fact that efforts have been made to correct mistakes, remove deceased people and duplicates, the general trust in the quality of the registers is still not established.

The CEC has already worked out detailed procedures for how people can apply for registration if they should be left out of the lists. Instead of reducing the role of the CEC in improving the quality of the voters lists, one should strengthen their role. That could mean that the CEC is given a clearer mandate to instruct the agency in their work regarding the maintenance of the voters lists.

On the right for voters to receive a copy of the voters lists the amendment states:

“The phrase “for an appropriate fee” of the point 3 of Article 13 of the Code shall be replaced with a phrase “for a fee established by the Government of the Republic of Armenia.”

This is a technical change which should not allow the Government to set a fee which would be prohibitive for voters or parties in acquiring a copy of the voters lists.