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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

COMMENTS

**ON THE YEGORIAN AND THE SAHAKIAN
DRAFT ELECTORAL LAWS
OF ARMENIA**

by

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Introduction

In the present text we deal with the most significant points of the electoral process. Most of them were discussed with our Armenian friends during our April 1997 and January 1998 meetings. We quickly saw that some issues were at the forefront of the Armenian political life and were, at times, considered with passion. In our text, we stayed at a technical level, taking into account what is common to democracies and adapting it to the Armenian political background.

In evolving democracies there is suspicion about whatever is produced by the administrative structure. In Armenia, this is the result of the past soviet regime, where laws and regulations were not uniformly or regularly published. In any case, authority could never be challenged.

There is a tendency, therefore, to have too many checks. But they lead to complex regulations that increase the possibility of mistakes. All rules have to be clear, simple, well known to everyone and applied evenly.

Everything is now changing but the minds of citizens have a tendency to follow rather than precede events. Transparency is the first step towards restoring confidence. All drafters have to keep this well in mind.

Formation of Electoral Commissions

The composition of the electoral commissions is a major point in the successful running of an election.

An electoral commission must answer two questions :

- 1) *Is it impartial ?*
- 2) *Is it competent ?*

Both are just as important for the result of the election to be accepted by all the players.

The first point, impartiality, is obtained by having parties that oppose one another in the commission. Everyone will see to it that the other is behaving in a democratic manner.

Among the principles of formation of electoral commissions, Article 5¹ in the Yegorian draft includes representatives of parties that received at least 5% of the votes during the elections to the National Assembly. This 5% threshold is realistic otherwise there would be 13 parties in the Central Election Commission which is too large a number for efficient decision-making. The same draft adds representatives of other political parties, those that have been registered to participate in the coming election. This multiplies the number of parties as the number of parties allowed to participate in the proportional representation part of the election should be larger than the number of parties having elected candidates.

For the Central Election Commission as well, the Yegorian draft² indicates that the number of members who are representatives of political parties and who are candidates in the present election must not exceed the number of representatives of political parties which passed the 5% threshold during the preceding election.

A similar clause exists for the National Assembly and presidential elections.

The number of « organizations » allowed in the Central Electoral Commission must not be higher than the number of representatives from the parties having obtained more than 5% of the votes. This of course creates a bias in favor of political parties in the following way :

parties having obtained +5% - « organizations »
other parties with candidates

The Sahakian draft³ could be considered as a reaction against the party bias in the Yegorian draft by having half of the members representatives of the parties in parliament (*without* the 5% threshold) with an equal number of members presented by the council of justice and appointed by the President of the Republic.

In the third or Khatchatrian draft, the Central Election Commission has representatives from each party having obtained seats from the proportional part of the election.

¹ " Principles of Formation of Electoral Commissions ", Article 5.

² "Procedure of formation of the Central Electoral Commission ". Article 6.

³ Article 28.

The second point, competency, needs members that are chosen for their knowledge of organization and efficiency. These members are chosen among lawyers, administrative personnel, judges, mathematicians. Article 5 of the Yegorian draft gives a confused picture of these non-political members. The membership of the election commissions includes the representatives of public organizations (what exactly is the meaning of public ?) which deal with issues of democracy and human rights as well as citizens of the medical professions or other citizens that have higher education who do not work for the State or Self-governing bodies. Elections cannot be held efficiently without cooperation of some members of the state bodies.

The third or Khatchatrian⁴ draft includes three judges from the « cassation » court appointed by the same court. Article 28 proposes to have the Minister of Justice as chairman of the Central Electoral Commission which would lead to a lack of consensus in present day Armenia.

The 5% threshold for parties in the National Assembly would appear a reasonable solution. Other parties could have the status of observers and sit in all sessions of the Central Electoral Commission without voting rights. The administrative authorities as well as the legal profession also need to be present so that all who are concerned with the election play a role in the administrative organization of the election. An equilibrium between party administrative (judicial) authority and technical support seems advisable.

As far as the members of the legal profession are concerned, they could be chosen among the judges - for example 2 - elected by the members of the constitutional court by secret ballot. Two attorneys could also be elected by the members of their professional association, also by secret ballot. A computer expert and a media expert should be part of the Central Electoral Commission.

There would also have to be a member of the central administration (the equivalent of the Ministry of the Interior in France and the Home Affairs in the United Kingdom). Although local electoral commissions are institutions separate from the local authorities their autonomy, as far as conducting the election, is not total, and cooperation between local authorities and local election commissions should be coordinated from above.

⁴ Article 3, points 1 and 3.

The different levels of electoral commissions

Yegorian	Sahakian
Precinct electoral commission 50 districts (one member)	Precinct electoral commission 91 one member district
No commission	District electoral commission
11 Regional electoral commission	----
Central electoral commission	Central electoral commission

In the Yegorian draft the number of regional electoral commissions could be eleven (that is, if the Regional Electoral Commission correspond to the Armenian administrative regions). These regions control the districts that do not in any case have electoral commissions. The Yegorian draft has the numbered coupons checked at the Regional Electoral Commission level. This means that coupons have to be transported from the Precinct Electoral Commission to the Region level which means increased possibilities of loosing documents, mistakes, and even fraud.

The Sahakian⁵ draft does away with coupons and gives the District Electoral Commission the power to register candidates for the district one-member elections and declare the results for their elections. This is logical, and it is more efficient to have district commissions dealing directly with both the registration of candidates as to the results for the district one-member elections. It is also in conformity with international practice.

⁵ Article 40.

Adjudication of claims

Evolving democracies involve the electoral commissions to different degrees in the judicial system.. This results from the initial mistrust in the existing administrative structures. It is possible to appeal from a lower election commission to the one above it. The timeframe is very short, 2 to 3 days for the appeal and the decision.

The fact that the registration of voters is in the hands of the local authorities, even if it is overseen by the electoral commissions, places the appeals regarding voter registration, quite logically, in the jurisdiction of the courts.

Both drafts have similar special provisions for the adjudication of claims regarding the process of registration of voters. The Sahakian draft⁶ has a first appeal (in a written form) regarding changes in the list of voters to the community leader. The community leader has to decide within 3 days. The decisions of the community leader (the local authority) can be appealed to a court of law⁷. No delay in either draft for the court appeal. The Yegorian draft has time limits closer to the election⁸ 5 days prior to elections. The Sahakian⁹ draft provides for 12 days prior to the elections. Because of the short delay, the Yegorian draft gives the possibility of an additional list right up to the election upon decision of the court.

Only the Yegorian draft introduces the adjudication of a claim from one commission to another but in a general two-fold provision : Decision of electoral commission can be appealed either to the superior commission or a court of law.

A time-frame is given : Appeal 2 days after decision
for both DECISION 3 days after submission

On summarizing results, the Yegorian draft reduces the delay of appeal from a Precinct to a Regional commission to 1 day. The decision of a Regional Election Commission can be appealed to a court of law within 2 days. The court can decide on the results of the election¹⁰. The Sahakian draft does not include an appeal to a superior commission (article 38). Decisions of electoral commissions can be appealed to a court of law within 2 days. The constitutional court has jurisdiction to adjudicate claims regarding the result of the presidential and National Assembly elections according to the Sahakian (Article 38, point 2) and Yegorian (Article 14, paragraph 4) drafts.

Both drafts deal in a similar way with appeals against rejection of candidates for the presidential election by the Central Election Commission. There is a slight difference in the 3 day delay of the Sahakian (Article 106), and the 2 day delay (Yegorian Article 14). But the main

⁶ Article 13, point 1.

⁷ Sahakian draft, Article 13.

⁸ Article 16.

⁹ Article 13.

¹⁰ Yegorian draft, Article 14, and Article 67 for the Elections of the Local self-governing bodies.

difference lies in the issue of which court of law has jurisdiction over such an appeal. On the one hand, the Yegorian draft has the « appeals court » which seems appropriate as it deals with a decision coming from the highest electoral commission, the Central Electoral Commission. On the other, the Sahakian draft, only mentions « a court of law ».

The appeals procedure regarding the registration of candidates elections to the National Assembly starts with decisions from the District Electoral Commission (Sahakian Article 106) or Regional Electoral Commission (Yegorian article 34) or, for the proportional representation part of the election, the Central Election Commission. But the type of court is not specified.

The electoral system¹¹

The three draft laws all consider mixed electoral systems. The difference between them lies in the number of proportional seats in comparison to the one-member plurality seats.

Sahakian draft

91 deputies elected in one-member districts by plurality.
40 deputies elected by proportional representation in one national constituency.

Yegorian draft

50 deputies elected in one-member districts by plurality.
91 deputies elected by proportional representation in one national constituency.

Khatchatrian draft

91 deputies elected in one-member districts by plurality.
40 deputies elected by proportional representation in one national constituency.

The larger number of one member plurality seats seems preferable for the following reasons :

- The larger number means smaller one-member constituencies so that it is easier for a concentrated minority to obtain a seat.
- The one-member constituencies will lead in the long run to a well rooted party system as the efforts of party candidates have to spread throughout the country.

It is a fact that in evolving democracies there are quite a number of independent candidates but as time goes by, the independent candidates progressively join the main parties which are actively involved in government and the opposition. This means less independent candidates and a strengthening of the party system away from a multiplication of political parties.

¹¹ Sahakian: Basic provisions in Article 61, also Articles 94 for the National Assembly, and 118 for Local self-governing bodies; Yegorian: Articles 64 for the National Assembly; elections of the local self-governing bodies Article 64.

The increase of the proportional representation list part of the election can bring about the multiplication of weak political parties.

Evolving democracies need strong governments compensated by a strong opposition. Fragile governments such as are found in some western countries would play havoc with democracy in countries that are in full political, social and economic crisis. Let us keep in mind that the best way to obtain guarantees as to human rights is to build institutions that lead to long lasting democracies

- **The district boundaries**

Deciding on the boundaries of the one-member constituencies is an important and difficult issue. There has to be a similar number of voters per constituencies. This is made difficult by the way the population is spread out throughout the country. You have to take into account the geographical divisions and the administrative boundaries which are often similar. There are always political implications so that a number of organizations have to be involved. It would be preferable to have a boundary commission under the authority of the Central Electoral Commission, or even as part of that body. The political parties have to be involved with technical assistance from a demographic, and geographic, advisor and a member of the administration well informed on administrative boundaries.

The Yegorian draft deals with the boundaries of the one-member districts¹². The boundary divisions are implemented in the manner prescribed in the addendum which we do not have. The Central Electoral Commission forms the electoral districts for the election of the National Assembly. The number of « voters » (this time it's « voters » not « population ») shall not differ by more than 15%¹³.

We have not found any provisions in the Sahakarian draft dealing with district boundaries. This is an important issue and should be in the law.

On a theoretical base it could be argued that in a mixed electoral system there are two kinds of members of the assembly. But in practice, as it is in Germany or Hungary, this does not appear to have any effect on the way the members act or are perceived by the citizens.

The Voter Register

Traditional democracies and evolving democracies meet the same difficulties in having a permanent register. A 100% correct register is impossible to obtain. In France, for example, 9% of her citizens over 18 who have the capacity to vote are not on the register. So we know what is impossible to attain but all efforts should go to make voting registers as accurate as possible.

¹² Article 53.

¹³ Yegorian, Article 9, paragraph 21.

In order to achieve this purpose, none of the three drafts give sufficient details on how to proceed. Are the local authorities going to compile the lists from police registers ? In that case, are such registers accurate ? Are they going to have positive registration with citizens going to local authorities to be registered ?

In the three drafts, the time for public scrutiny of the voter register is limited to short periods linked to the electoral campaign : 22 days prior to the election in the Sahakian draft¹⁴, and 30 days in the Yegorian and Khatchatryan¹⁵.

Given the population movement in Armenia, positive registration would seem the best way of knowing where the voting population is living. Whichever way is chosen, the voter registers should be publicly posted. Voters should also be able to go to the local authorities to update the register at fixed dates, once or twice a year, as well as during the election campaign time-frame as the drafts propose.

The existence of registration periods outside of the campaign and election time-frame means that there is more time to deal with registration and the appeals linked to it. Local authorities and courts of law can be expected to be very busy before an election so that independent registration and update periods would add to the necessary efficiency and transparency of the process.

The voting procedure

The voting procedure and the ballots have an effect on the efficiency of the counting and on what the citizens will think of the elections.

It is not by multiplying the checks that you will limit mistakes or fraud. Too many checks only complicate the procedure and create opportunities for mistakes or fraud.

A simpler way would be to use ballots that are not taken from numbered coupons, with or without envelopes. The numbered stubs or coupons only add to the possibility of mistakes, specially when, as in the Yegorian draft (Article 25), the stubs or coupons are counted at the regional level after the coupons have been packed and transported from the precinct.

It is difficult and rare to obtain exactly the same figures when comparing the signatures on the voter register and the number of ballots in the box when the two operations are conducted one after the other in the same place (the precinct). Having a third check at another level of the electoral process can only add to the possibility of mistake. The Sahakian (Article 55) draft that provides for envelopes has 9 checks which is too many and can only lead to confusion and mistakes. In any case, envelopes should not be numbered.

The protocol should only include :

- 1) number of registered voters ;
- 2) number of signatures on the register ;

¹⁴ Sahakian, Article 11, point 3.

¹⁵ Yegorian Article 16, point 2, and Khatchatryan, Article 11, point 2.

- 3) number of envelopes in the box and all information that deals with candidates or parties and void ballots.

The check for void envelopes and ballots should be done simultaneously at the time of opening the envelopes.

In the Yegorian¹⁶ draft, 3 counts take place before the box is opened and the final count of the ballots in the box is only done after the full count has taken place (candidates, parties and void ballots).

The advantage of having the ballot in an envelope is that the ballot box, once opened, can be emptied on a table. The envelopes can then be put in stacks of 20 grouped by 100. The check between the number of ballots that came out of the box and the voters having signed the register is then made between 2 complete units which saves time and reduces possibilities of mistakes. The opening of each envelope is then clear for everyone. Another way is to place, when the box is opened, 100 envelopes in a large envelope placed in full view of everyone.

Whether one or the other method is adopted, the checking of the number of ballots that came out of the box is easily done by the number of signatures in the voter register. There is then no need to compare the number of envelopes that have been given out. This in turn does away with another step thus eliminating the possibility of another level of mistakes.

All the voting procedures have to be totally transparent. All people who are allowed in the voting station (precinct) must be able to follow all steps of the count as well as those of the voting without, of course, getting in the way or interfering with procedures.

Registration of Candidates

A number of signatures is often required by electoral laws to limit the number of parties or candidates (number of parties presenting candidates or independent candidates). The efficiency of such a method has not been proved. The ease with which candidates for the presidency to the Russian Federation, for example, obtain one million signatures casts a doubt on the efficiency of such a method.

The Sahakian¹⁷ and Yegorian¹⁸ drafts have similar approaches to the nomination of candidates. Both have a two level position :

- 1) The first level deals with the presentation of a candidate either by a party or a citizen's association. A political party needs a declaration of its board, the citizen's association needs in one draft law 100 signatures, in the other 1000 signatures.

¹⁶ Article 25.

¹⁷ Articles 66, 67, 69, 70 for President; Articles 99, 100, 104, 105 for deputies to the National Assembly; and Article 122 for Community Leader and Members of Community Council.

¹⁸ Article 33 for President; Articles 51 and 52 for deputies to the National Assembly; and Article 68 for Community Leader and Community Council Membership.

- 2) Once this first level of nominations has been accepted by the Central Electoral commission, the second level requires 30,000 or 25,000 signatures. Both drafts are similar except that the Sahakian one (in Article 91) reduces the requirements to 10,000 signatures for « new or extraordinary elections ».

Local self-government

It is advisable for large local authorities to be composed of at least two different political tendencies. But it also has to be kept in mind that local authorities have a difficult task that calls for efficient local government. The electoral systems proposed in the Yegorian and Sahakian drafts correspond to this double criteria.

Sahakian draft :

One multiballot majoritarian district for population of less than 3000. When a municipality has more than 3000 it is divided into multi-ballot majoritarian districts of a population of 3000. Population within each voting district of the same community shall not exceed 40% of the total number of residents of the community¹⁹.

Yegorian draft²⁰ :

5000 = 1 multiballot majoritarian district 8 members.

5001 > 20.000 = 2 multiballot majoritarian district electing each 5 members.

20001 > 45.000 = 3 multiballot majoritarian district electing each 5 members.

+45.000 = 5 multiballot majoritarian district electing each 3 members.

Firstly, both drafts should indicate clearly the type of majoritarian system they propose. It would seem that they are by « plurality » but it is useful to say so.

Secondly, the two drafts have a similar approach in regards to the electoral system for local elections. The 3,000 limit (Sahakian approach) applied to the smallest category of local authorities seems more realistic than the 5,000 limit of the Yegorian project as it is advisable to reduce the number of local authorities that will have municipalities of the same political tendency. The 3000 limit could even be reduced but then the demographic groupings of the country would have to be taken into account.

¹⁹ Sahakian, Article 135.

²⁰ Yegorian Article 64.

As far as population variations, the population will not vary more than 3% of the total number of votes of the community (last paragraph, Article 64, Yegorian draft). The 3% threshold is optimistic - 20% seems more realistic.

For local self-government, the community leader is elected in a district made up of the territory of the whole community²¹. A candidate for community leader who receives plurality of the vote is considered as elected (if only one candidate is standing then he has to obtain ½ of registered voters)²².

Lastly, but as importantly, why the use of the terms population and residents, and not voters? The variations in the size of local election districts are measured by « populations ». The National Assembly districts in the Yegorian draft are based on « citizens ». The Sahakian draft does not deal with this last question. It would be more precise to deal with « registered voters » as figures should be more accurate as they correspond to more significant data.

The Media

(Articles 17 and 18 in the Sakharian draft
and Article 17 in the Yegorian draft)

Both drafts deal with equal time in state owned television but throughout the world this is not the main issue. The main issue lies on the fact that during the election period there is extra news coverage of the main political leaders, where they can be seen performing activities that have nothing to do with elections - for example, the opening of a new stretch of highway by a minister, the inauguration of a hospital by a mayor of the city who is a candidate or is known to give his support to a candidate.

The only way to deal with this problem is to have a media commission, technically a subcommission of the Central Electoral Commission, which oversees the news coverage. This has an important preventive effect.

Opinion Polls

The Sahakian draft prohibits the publication of opinion polls during the pre-election campaign (Article 20, point 2).

The political climate in Armenia is such that polls can only be allowed if a very precise control is effected by a 3 or 4 member commission under the authority of the Central Electoral Commission. All polls would have to give very precise details on how they were conducted, the number of interviews, the exact date, the selection process, the exact questions. Otherwise polls during the campaign are not advisable.

²¹ Sahakian, Article 118.

²² Op. cit., Article 71

Military vote

It is impossible to check on the freedom and the secrecy of the vote if the military vote in the barracks. The military should be considered as normal citizens and should have their names on a normal voter register.

There are two ways for obtaining this:

- 1) To have the drafted soldiers registered with local authorities in their permanent place of residence (or where they lived with their parents)²³ ;
- 2) To have the drafted soldiers registered in the local authority where the barracks are located.

For Armenia, which is an evolving democracy, the first way seems easier to obtain. The soldiers that have their permanent place of residence a long distance from their barracks would have to be given a 48 hour leave to go and vote. Those that have their permanent residence close to the barracks could be given a much shorter leave so as not to have the military disorganized on the day of the election. Postal votes which give satisfaction in some countries and not in others could be organized and limited to the military vote whenever distances are too great.

Diaspora vote

International Foundation for Election Systems (IFES) and IDEA give figures of potential voters ranging from close to 700,000²⁴ to 800,000²⁵. This population left after 1991. These substantial numbers are in no relation to the Diaspora armenians who registered to vote, just above 8,000 while only 2,000 went to vote²⁶.

The figures of the Diaspora vote demonstrate that it is not a significant issue but that, all the same, the electoral law should contain clear and precise provisions on registration abroad.

Security forces in polling stations

(Sahakian Article 49, point 1)

Countries throughout the world have different positions as regards to the presence of security forces in polling stations. It is the practice in several states to have a member of the security force inside the polling station. The Russian Federation has such a practice and no one has reported that security forces act in any way against the freedom or the secrecy of the vote.

²³ Article 15 in the Yegorian draft. Article 9 in the Khachatryan draft.

²⁴ IDEA: Armenia. Review of Proposed Electoral Codes of the Republic of Armenia by Peter Harris and Igor Koyakov, 15 January 1998, page 6.

²⁵ IFES: Technical Assessment. Armenian Presidential Elections of 1996, October 8, 1996, p. 2.

²⁶ Figures give by the Central Electoral Commission.

The presence of the security forces in this context does not stand in the way of people voting freely so attention should be paid to other issues that can have negative effects on the elections.

The Presidential Term of Office

In the Yegorian draft (Article 32) it is stated « the President (of the Republic) cannot serve more than two terms ». This is already in Article 50 of the Constitution, which is why the Sahakian law does not mention it.

ADDENDUM

OBSERVERS

-The rights and duties of observers should be stated in a clear but general manner. For example: that they have the right to witness all election related matters and attend all meetings of electoral commissions. But if the rights and duties are enumerated and drafted in a detailed manner, then they should be exhaustive.

The title of chapter 5 of the Khachatryan draft is "International observers: their rights". The first article (number 25) of that chapter gives the right to "foreign citizens, organizations or associations" once they have been registered by the CEC, to participate in the election as observers. The second paragraph seems to include national organizations who have asked to be observers and "whose statutes deal with democracy and human rights". Art. 26 enumerates the rights of observers and proxies in a fairly thorough manner. They can attend meetings of commissions and be in polling stations during the elections. It should be added that they can also attend the count. It has happened that polling station commissions have refused access to the counting as it was not strictly speaking "voting".

The title of article 26 of the Sahakian draft mentions "proxies and observers". Nevertheless, article 26 paragraph 1 that deals with their rights, only proxies and candidates are mentioned (probably they forgot to write in "observers"). There again the wording is not quite adequate. Their presence is allowed "at the session of the electoral commissions and during the voting". If the draft mentions "voting" it should also mention "counting" and the aggregation of results.

In paragraph 2 the word "observer" reappears. No restrictions on the rights of proxies and observers are permitted. The paragraph then introduces a clause similar to that used for deputies "They are not subjected to responsibility for the expression of their opinion on the course of elections and the summarizing of the results". This is too wide-open a view on observer's rights as it could give observers who are not fully trained the impression that they can express opinions to the media which, of course, is not the case. Observers should only take notes and report to their organization.

The Yegorian draft deals with proxies but not with observers.

A code of conduct for observers should be included in the regulations given out by the CEC. The code should also mention that observers have to respect the laws of the country.