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

**COMMENTS**

**ON THE DRAFT AMENDMENTS AND ADDITIONS  
TO THE ELECTORAL CODE  
OF THE REPUBLIC OF ARMENIA**

**by**  
**Mr Bernard Owen (France), expert**

In writing our comments on the amendments to the Election Law of the Republic of Armenia we have taken into account the questions asked by GT SUIVI. AGO (2001) (revised) and the answers by the Ministry of Foreign Affairs (24 April 2001). We also have taken into account the articles concerning the administrative and penal courts that decide electoral matters. Nevertheless certain comments that were made after the Venice Commissions meeting in Yerevan (15-18 November 2000) and accepted by the 45<sup>th</sup> plenary meeting (15-16 December 2000) have not been mentioned in any of the available documents, including the questions that were asked.

***Electoral commissions :***

1. Article 38 has been modified to do away with the recall of Commission members by the party by whom they were nominated.
2. The second question concerns the training of members of electoral commissions : «some plans for training of electoral commissions are being taken with the European Union» but already a number of measures have been taken for the training of members of Electoral Commissions. Thus, before the elections of the National Assembly on May 30, 1999 and the elections of the local self-government bodies on October 24, 1999 a training program was carried out with the participation of 21,000 members of district and regional commissions.  
Prior to the elections to the National Assembly, and as a result of the cooperation between the OSCE and the Central Electoral Commission, a training manual « An Expert Assistance to Armenia » for regional commissions was published.

With the assistance of UNDP and the Government of the Republic of Armenia two manuals for « Guidelines for District Electoral Commissions » and « Decrees and Resolutions of the Central Electoral Commission » was published. A vast range of training, both for commission members and for voters has been carried out through TV, radio and other mass media.

The composition of the Central Electoral Commission has been completely modified to have now half of its membership from the parliamentary factions and the other half minus one named by the government. It has to be remembered that probably over half of the factions makes up the government majority so that the CEC is heavily biased on the side of the government. We do not know the reason for this change. We had mentioned in talks that although some party members had a legal background it would be useful to have in the CEC one or two judges as such and a member from the Ministry of the Interior but the fact that the opposition is now only a minority was quite unexpected.

***Appeal procedures :***

What reforms are planned to make the appeal procedure simpler, quicker and more consistent? How can conflicts of jurisdiction be prevented ? The Armenian authorities make proposals. The translation does not give a clear idea of the suggested measures.

3. It appears that appeals to decisions made by commissions will depend on the level of the commission. For example : we understand that decisions of polling station

commissions would go to first instance courts while those of constituencies (or district) would go to a higher level court (an appeal court).

4. It is stated that appeals are regulated by the Electoral Code and an example is given : the decision of the Electoral Commission on refusal of registration may be appealed to the court within 3 days.

The remarks of the Venice Commission were quite clear on the subject of conflict of competence. The law was not clear at all and the Venice Commission had proposed the rewriting of article 40-1 to become a general statement of competence, and art. 41-1 would include what was found in art. 40-2 and 40-4. We have in the «annexes» what was in the Venice Commission's comments :

- Annex I – the new proposed article 40-1 and the new proposed article 41-1
- Annex II – table of competencies by organization
  - constitutional court
  - court of first instance
  - court of appeals
  - superior electoral commission
- Annex III – table of competencies by five types of disputes.

The electoral law should give information as to the simplified procedures used for electoral complaints. The time scale of 2 to 5 days implies that the procedures are different to those of common law.

***Action against electoral fraud :***

5. – Question : is electoral fraud a criminal offense ? the answer is yes.  
Articles 133 to 134 deal with this question ; those two articles are divided into 10 paragraphs each dealing with precise cases leading to fines and imprisonment in all cases.  
The maximum fine is 500 minimum wage and the maximum imprisonment is 5 years.  
Minor cases of fraud are to be found in the «code of administrative laws» art. 40-1 to art. 40-7, each case leads to a fine of up to 200 at 500 minimum wages.
6. The question that deals with publication of results immediately at various levels as well as turn out figures is not answered by the Armenian response but according to art. 61-8 of the electoral law, copies of the protocols are immediately displayed in a visible place of the polling center, and art. 133-1 and 134 of the criminal code are applied to any fraud having to do with incorrect approval of results or forgery of election documents. The protocols and corresponding equipment is then transferred to the Regional Electoral Commission in conformity with procedure established by the Central Electoral Commission. But, it is clearly said in the electoral law, art. 7-6, that turnout figures of each polling station are transferred every 3 hours to the regional electoral commission where they are published ; these figures are forwarded to the C.E.C. which also publishes them. Hindrance to the work of election commissions could be treated by art. 133 of the criminal code or art. 134 that deals with forgery of election documents, as the case may be.

***Registration of parties and candidates :***

Question : is there more transparency and greater reliability in the verification of signatures ?

7. Transparency is dealt with in art. 7 of the Electoral Code where it is said that all decisions are published in the official press within 3 days - observers, proxies and the press are admitted to all activities of electoral commissions.

Signatures are required for presidential elections, 35,000 signatures are required (art. 67.11) and are registered in an official booklet. 2 % of the total signatures in the booklet are checked. The same article applies to the 500 signatures required for the candidates of the majoritarian part of the parliamentary elections (Article 107). In practice it is quite sufficient as forgeries are grouped, written by the same handwriting and are easy to detect, art. 69, 70. Furthermore the check of the signatures by the C.E.C. is reported on a protocol and upon request it is handed to the candidate or the candidates' representative.

Note that forgery of signatures for referendum are in art. 134-1 -2 of the criminal code.

***Sanctions :***

8. The question on sanctions has been dealt with in N° 4 on action against electoral fraud.

***Voting by members of the armed forces :***

9. Question : what action is taken so that members of armed forces can vote freely?  
Art. 10-3 states that the members of the armed forces are included on the list of the precinct in which the unit is located – art. 54-1 says that military and servicemen of the Ministry of International Affairs and National Security enter the polling station not in a marching order. This implies that they are considered as normal citizens especially as the second part of article forbids access to the polling station of persons with arms and munitions.

***Observers :***

10. Question : asks about the admission and rights of observers.  
The answer given by the Armenian authorities only deals partially with the remarks of the Venice Commission. The criticism came from the fact that three categories of persons were classified as observers. Art. 30 states the general rights of proxies, observers, and representatives of mass media. The rights and duties of these categories should be treated separately.  
They have quite rightly deleted 30-1-30 and replaced it by giving the right of appeal to the proxies. They have nevertheless kept article 30-4.  
But observers should not have the right to question the work of the commissions. Their role is neutral. Their role is to observe, not to monitor (as it is unfortunately said in article 30-4). International or national observers should observe, ask questions, take notes and report back to their organization who decides from information gathered from different parts of the country.

***Electoral boundaries :***

11. Question : are there plans to entrust the drawing of electoral boundaries to an independent commission ?

Electoral boundaries have political effects but are based on demographic and administrative facts. Art. 98-1 and 2 determine the way the boundaries are set up. The figures are based on registered voters and not on those of the population. This is a good choice as the number of voters should be more accurate than that of the population.

Boundary commissions are supposedly politically independent but their task is not easy and the ideal system that can be applied universally at all stages of evolving democracies has yet to be found. A suggestion for Armenia is that the Central Election Commission in which the main parties are represented, although now government representatives and political factions supporting the government will have a majority, would be joined by representatives of the Demographic Institute (statistics), a member of the Ministry of the Interior that deals with boundaries and a scholar on human geography.

***Freedom of Expression :***

12. Question : is it envisaged maintaining a specific provision in the electoral law on dissemination of false or defamatory information on parties or candidates ?

The Armenian authorities have answered positively on maintaining a provision in the electoral law on false or defamatory information on parties or candidates. They mention art. 139, paragraph 22, which has to do specifically with this point. This point could also be dealt with art. 133-2 of criminal code which punishes false information on candidates or parties by fines of 300- 500 minimal salaries or with imprisonment of up to 5 years.

***Electoral lists :***

13. Question : Has action been taken, or is action planned, to make electoral lists more reliable ? What are the conditions for registration ?

Voters lists was reviewed twice a year in January and June, with another review 35 days prior to election day, art. 9-3 and 9-9. This was quite a burden on those that have to deal with this matter especially before elections when there are many other things to organize. The Armenian authorities say that it has been decided to hold only one review per year. The electoral law gives practical details as to the transparency and art. 133-3 of the criminal code deals with forgery and breach of order in the making of voters lists. The sanction is imprisonment of up to one year, deprivation of certain rights up to 2 years or with a fine of up to 500 minimal wages.

***Voting and counting procedure :***

14. Question : Is the voting procedure to be further simplified and clarified ?

The voting procedure is much simpler and efficient now that the «coupons» of the preceding law have been done away with. Working out the inaccuracies does

complicate the counting but is acceptable. Nevertheless the Venice Commission Report mentioned the role of RECs in article 42-1; 9-19 stating that the REC «clarifies and summarizes the election results» was not clear.

The same report also suggested an easy practical way to go about the vote count, but it does not seem to have been taken into account except for a detail as to the voting procedure in article 57-4.

***Media :***

15. Question : What measures are being taken to ensure the impartiality of the public media and fair access to it by all candidates during electoral campaigns ?  
Article 20 of the Electoral Law enumerates the rules that give equal free time on state and radio, television.  
Appeals can be made in case of violations of pre-election campaign by electoral commissions against candidates or parties but the appeal by candidates or parties to the administrative court (art. 40) is not clear (perhaps because of translation).

***Annulment of the vote and consequences :***

16. Question : If the result of the elections regarding allocation of seats was subject to irregularity, can cancellation and repetition of the vote take place at precinct level ?  
The answer of the Armenian authorities give satisfaction.

***Miscellaneous :***

17. Question : What other legal or practical measures are foreseen to guarantee free and democratic elections ?

The Venice Commission gave clear indications as to the electoral system and the number of M P S. This does not appear in the questions asked, that is why we will, once more, deal with this important question.

18. The Electoral System and the number of M P S.

The definition is given in article 95 and we expect that it has not been modified in any way.

- 56 seats are distributed on a list proportional system. The nation is considered as one constituency. There is a 5% threshold for seat allocation. The seats are attributed by simple quotient and the largest remainder method.
- 75 seats are distributed in one member constituencies on a plurality basis.

The reasons for our position are as follows: As time goes on the electoral system will have an effect on the party system so it is useful to examine the system with some attention. The mixed system adopted is in conformity with the norms and tendencies of evolving democracies. On the other hand, in our meetings, we understood that there was a feeling in political circles that the number of deputies should be reduced; this came as a surprise as

there is no rule as to the ratio of members of parliament (MPs) to the voting population. Armenia has 131 members for a voting population of 2.2 millions and if we look to different types of democracies with similar voting populations we obtain the following figures :

Lithuania – 137 MPs for 2.600.000 voters

Ireland -----166 MPs for 2.500.000 "

Norway ----165 MPs for 3.200.000 "

From this point of view Armenia is not different to other states of similar size.

It can be argued that member of parliaments are expensive but it can also be said that if they are too few then each member of parliament has to represent and deal with a large number of citizens, so that the representation ratio is lower.

We have also learnt that there was a motion to reduce the number of one member constituencies in favor of member of parliaments elected on the proportional list part of the election. It is here that we have to face the fact that changes such as these can bring unexpected and unwanted effects that can jeopardize the whole democratic process.

Drafters of electoral laws take into account the experience of other democracies but while doing so should bear in mind that conditions in the west are quite different than in evolving democracies. This can lead to substantial differences in party systems that result from the introduction of similar institutions or electoral systems.

Western democracies have strong association movements such as trade unions that greatly influence the way over half of their members vote. This leads in some western democracies that use Proportional Representation to have the parties that control the trade union movement also to have dominants positions in an almost permanent way. Citizens of evolving democracies that ten years ago lived in soviet regimes, where membership of associations was compulsory, are not prone to join associations. They consider themselves free and in their minds associations are associated with the constraints of the past. Considered from this point of view Armenia should be compared to the many western democracies with Proportional Representation that have weak party systems, which lead to government instability. Government instability is dangerous in countries such as Armenia that are in full economic social and political crisis.

We also heard that one-member majority constituencies can introduce into the assembly a person who's honesty is doubtful, but this is not a good argument. Party lists are just as prone to include candidates which in the long run are not above board. On the other hand, voters can decide on their own who is honest when they have to choose a candidate in a one-member constituency easier than when they have to choose an unknown list of names for proportional representation.

To conclude the question of the number of member of parliaments and that of the electoral system it is suggested that if there is a consensus to reduce the number of members of Parliament the same ratio of majoritarian and proportional seats should be kept.

### Concluding Remarks

We have to keep in mind that the law will have to be applied in a similar way throughout the country. It is for that reason that all has to be quite clear and simple. We have stressed the importance of organizing the law so that there is no conflict of competence in the judicial appeals system. This is a point that should be further looked into.

The sanctions in the administrative courts and the penal measures in the criminal code appear adequate.

As far as efficiency and simplicity is concerned, the electoral law is a great improvement to that which was used until the 1998 elections. We do regret that the members of the commissions still have to work out a “measure of error”, which was not well understood by them in the 1999 elections. The Venice Commission prepared a simple method for the vote count but it has not been followed by the amendments. This question may have been dealt with (or will be dealt with) in training sessions or regulations of the Central Electoral Commission but we have no information on this matter.

The composition of the CEC has been completely modified by increasing the members nominated by the government that should, when added to the representatives of the parties supporting the government, reduce considerably the power of the opposition.

We lack information on the decision-making process of the CEC and the composition of regional and polling commissions.

The Report of the Venice Commission mentioned, and we have now repeated it, that a change in the proportion of majority seats and proportional lists is not advisable. (Article 95 – 75 seats distributed in one-member constituencies on a plurality basis and 56 basis on a proportional list system with a 5% threshold for seat allocation.) The only change that would facilitate distribution of powers on a regional basis would be to consider the proportional allocation of seats on a regional basis and not, as now, on the national level.

There is no legal universal mold for all election matters from which parts can be taken and applied to all countries but we can tell by our own experience and that of others that certain measures can be recommended and others should be done away with.

## **Annex I      Proposed reorganization of articles 40-1 and 41-1**

The law provides for a parallel appeals system. There is the possibility of appeals from a decision of a lower election commission to a superior commission as well as appeals to law courts.

All the articles on the appeals systems should be under one chapter. As we mentioned in the preliminary statement we suggest the rewriting of article 40 so that it stands as a general statement on adjudication. The procedures with the details should be found in the two tables in the annex I and II, which mention the corresponding articles.

### Art. 40.1: General principles of adjudication

- Decisions, actions and inaction of the electoral commission can be appealed to a superior electoral commission or to a court.
- Each case of appeal, whether it is to a superior commission or to a court, is specified by the corresponding article.
- The appeals to the superior court or commission have to take place within 2 days after the publication of the decision, action or disclosure of the law or regulations as a result of the inaction if no other date is fixed by this code.
- The superior electoral commission decides those appeals before the final results of elections are summarized, if no other procedure is established by this code. The superior electoral commission and the court of first instance take decisions within 5 days.

The details of the competencies now in *Article 40-2* through *40.4* would then be in a new article : *Article 41.1* (as it should stand)<sup>1</sup> : the court of First Instance takes final decisions except for :

1. Elections of the President ( disputes concerning the denial of registration or recognition of a registration as invalid are appealed to a Court of Law, *Article 75*).
2. Elections of Deputies to the National Assembly
3. Refusal to register lists of parties (based on the proportional system) or disputes concerning a registration that is declared void.

The decisions of the REC on summarization of the results of the elections are appealed to the CEC (*Article 40.2*). The decisions/activities/inaction of CEC are appealed to the Court of Law(*Article 40.3*).

The summarization of results of the National Assembly majoritarian elections appealed to the Constitutional Court (*Article 116.9*). The disputes regarding the results of the proportional

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<sup>1</sup> The articles mentioned in parenthesis below are the numbers of the dispersed articles as they stand now.

elections to the National Assembly are also appealed to the Constitutional Court (*Article 115.8*).

The disputes over election results are appealed to the Constitutional Court with the exception of local self governing bodies (*Article 40.4*).

**Annex II**

Constitutional court	Court of First Instance	Court of Appeals or Cassation Court	Superior Commission
<i>Art. 40.4</i> appeals on election results with the exception of local elections.	<i>General principle of adjudication: Art. 40.1</i> - decisions, actions + inactivity of election commissions (appealed to court of first instance or superior commission..		
	When appeal is to court of first instance, court of first instance makes final decision. Exception: See 40.1 under cassation or appeals court.		<i>Art. 40.1</i> - decisions, actions + inactivity of election commissions (with exception of REC decisions on summarization's of voting) appealed to court or superior commission
	<i>Article 18.8</i> - pre-election campaign violations appeal to court.		<i>Art. 40.2</i> - REC decisions on summarization's of elections results appealed to CEC. Exception: NA majoritarian elections, see <i>116.9</i>
<i>Art. 116.9</i> : disputes over results of NA Majoritarian elections		<i>Art. 40.1</i> – Appeal from first instance court of presidential election, NA deputies elections, and refusal to register lists of parties and declaration of list registrations as invalid are competence of court <i>Court of Appeals: 3 days;</i> <i>Cassation Court: 2 days</i>	
	<i>Art. 40.3</i> – CEC decisions can be appealed to court. Exception : Presidential (see <i>Art. 40.4</i> ) and NA proportional (see <i>115.8</i> )		
<i>Art. 115.8</i> : disputes over results of NA PR elections	<i>Art. 102.8</i> – CEC decision on denial or recognition as invalid of party list or person in it		
	<i>Art. 108.9</i> – REC decisions on denial or recognition as invalid the registration of the candidate for deputy.		
	(Local) <i>Art. 124.4</i> - denial of registration or recognition of registration as invalid.		(Local) <i>Art. 40.2</i> - REC decisions on summarization appealed to CEC. Except: NA MAJ (see <i>116.9</i> ).
	<i>Art. 14.3</i> – voter registration inaccuracies <i>Art. 13.2</i> – precinct cannot change voter register without court order		<i>Art. 42.7</i> - REC considers complaints of decisions and actions of PEC.

**Annex III**

Pre-election Campaign Disputes	Voter Registration Disputes	Activities, inaction...of Electoral Commissions	Candidate Registration Disputes	Summarization Disputes
Art. 18.8: violations appealed to court (unclear language about «relevant bodies»)	Art. 14.3: inaccuracies appealed to court	<i>Art. 40.1</i> - decisions, actions + inactivity of election commissions (with exception of REC decisions on summarization of voting) appealed to court of first instance or superior commission.	(Presidential) Art. 75: CEC denial of registration or recognition of registration as invalid can be appealed to court.  Art. 72 : CEC registers candidates for presidential election	(Presidential) <i>Art. 40.4</i> appeals to Constitutional Court on all election results with the exception of local elections.  Art. 83: CEC summarizes Presidential election results
	Voter lists done by community head, which he then submits to head of institution administering territory of precinct center and then to REC (Art. 9)	40.1 - Court of first instance decision is final. Exception: Presidential election, NA deputies election, and refusal to register list of parties and declaration of list registrations as invalid, where court of appeals or cassation court are final decision-makers.	(National Assembly PR) <i>Art. 102.8</i> – CEC decision on denial or recognition as invalid of party list or person in it can be appealed to court.  Art. 100: CEC registers candidates.	<i>Art. 115.8</i> : disputes over results of NA PR elections to Constitutional Court.  Art. 115: CEC summarizes
		40.3 - CEC decisions/inactivity /activity can be appealed to court. Exception: Presidential (Art. 40.4) and NA PR (115.8)	(National Assembly Majoritarian) <i>Art. 108.9</i> – REC decisions on denial or recognition as invalid the registration of the candidate for deputy can be appealed to court  Art. 108: REC registers candidates.	(National Assembly Majoritarian) <i>Art. 116.9</i> : disputes over results of NA Majoritarian elections are appealed to Constitutional Court  REC summarizes National Assembly Majoritarian (116.1)
		<i>Art. 42.7</i> - REC considers complaints of decisions and actions of PEC.	(Local) Art. 124.4: appealed to court (REC registers candidates to community head or council member, Art. 124)	(Local) <i>Art. 40.2</i> : REC decisions on summarization's of elections results appealed to CEC. Exception of NA majoritarian elections, see <i>116.9</i> . Art. 131: REC summarizes

