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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**COMMENTS
ON THE DRAFT AMENDMENTS
TO THE ELECTORAL CODE
OF ARMENIA**

by

Mr Hjörtur TORFASON (Member, Iceland)

I. Introduction

1. *The following comments are submitted to the Secretariat of the European Commission on Democracy through Law (the Venice Commission) in response to a request to the Commission for providing an opinion, jointly with the OSCE/ODHIR, on draft amendments to the Universal Electoral Code of the Republic of Armenia which are currently under consideration in the Armenian National Assembly.*

2. *The draft amendments refer to the Electoral Code of 1999 as in force as of 3 August 2002 (cf. Commission Doc. CDL(2003)52), with amendments adopted at that time. The Code as then amended has been commented on by the Venice Commission and the OSCE/ODHIR through Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia (CDL - AD (2003)21, here referred to as the Joint Recommendations), as well as by Additional Considerations on that subject based on the roundtable on electoral reform held in Yerevan between 24 – 27 February 2001 (the Additional Considerations).*

3. *Subsequently, a draft law of 2004 (in a version of 21 July 2004) for amending and supplementing the Electoral Code was considered by the Venice Commission and the OSCE/ODHIR in a Joint Opinion on the Draft Amendments to the Electoral Code of Armenia (CDL – AD(2004)49, here referred to as the Joint Opinion). On the Commission side, this opinion was based on comments by my fellow Member Taavi Annus, which were seconded on my part in the October 2004 Plenary Meeting and in the Council for Democratic Elections.*

4. *The present request for an opinion relates to a revised Draft Law on Amending and Supplementing the Electoral Code of the Republic of Armenia, in a version of 14 December 2004, due to be submitted to second reading in the National Assembly.*

5. *In rendering an opinion on this Draft Law, I have been specifically invited to compare its provisions against the previous joint comments of the OSCE/ODHIR and the Venice Commission, in order to assess whether and to what extent these comments have been implemented or reflected in the proposed amendments to the Code. In reviewing the Draft on this basis, I have had the benefit of considering the comments on the subject made earlier in this month by Mr. Annus, who has made the same comparison.*

6. *The result of my review is that I am able to second or support the opinions of Mr. Annus in almost all respects, and have very few matters to add for complementing them. Accordingly, the following comments on the Draft Amendments will be set out in the order of the numbered paragraphs of his comments on the substance of the Draft (starting with No. 5), and in the form of additional/alternative comments or an affirmation of his views.*

II. Draft Amendments to the Electoral Code

7. 5 and 6. Composition of Electoral Commissions. The fact that the Draft does not change the basic provisions of Articles 35 and 36 of the Code for appointment of members of the Central Electoral Commission (CEC) and the Teritorial Electoral Commissions (TECs) must be registered as a cause for disappointment and a flaw in the overall Draft. In respect of this issue, attention must again be called to the views expressed in the Joint Recommendations (paras. 9-10) and the Additional Considerations (Section1).

8. Generally speaking, it is not objectionable in itself to have “partisan” electoral commissions in the sense of being appointed by parties (factions) in the current or dissolved National Assembly, since this is one of the ways of promoting trust in the commissions by actors in the political arena, and the maintenance of neutrality of the commissions is in the long-term interest of political parties. However, as more extensively noted in the Joint Recommendations, it results from the rule of having the commissions constituted only by such appointments coupled with an appointment of three members by the President of the Republic (without any non-partisan-based appointments) that the commissions cannot be regarded as being sufficiently pluralistic and providing an adequate balance in favour of overall impartiality and independence.

9. Accordingly, unless there is widespread consensus in Armenia for maintaining the present appointment structure for the time being, the said flaw must be regarded as serious, and the matter should in any case remain on the agenda of the National Assembly.

10. On the other hand, the requirement for training and certification of election commissioners is an important improvement, and the comments thereon are to be seconded.

11. 7. Electoral Constituencies. The proposed change from 15% to 10% in Article 17.1(1) of the Code is to be welcomed. I assume that the words “on average” mean that no constituency may differ by more than 10% from the overall average number of voters per constituency, while a difference of more than 10% between individual constituencies may exist. I believe this is acceptable, and assume that a tighter rule might work unnecessarily against rural constituencies. However, the text could be clarified.

12. The rewording of 17.1(3) and deletion of 17.2 is to positive effect.

13. 8. Ineligibility to be elected. The list in Article 97(2) of people in official positions who are not permitted to run in majoritarian Assembly constituencies without resigning from their position, which is not to be changed under the Draft, is admittedly somewhat wide, but it leaves the persons who are not covered by 97(3) with the option to run in the proportional elections without hindrance. The problem with the list is that it does discriminate to some extent between the officials concerned and persons of influence within the private sector, such as captains of industry and commerce, heads of cooperatives and labour union leaders. However, I am not sure whether this discrimination is serious enough to be regarded as wholly inappropriate under current social conditions in Armenia.

14. 9. – 13. No additional comments.

15. 14. – 15. Media. The comments in paragraph 14 are seconded. As to the problems with the text, I assume that in Article 9(a) of the Draft, the word after which “citizens and legal entities” are proposed to be inserted in Article 20(3) and (4) is the word “bodies” in the English translation of the Code, and that accordingly, these clauses also are intended to cover privately owned TV and radio stations (3) as well as newspapers and magazines of regular publication (4). I agree that further clarification may be desirable, but the principle is well founded.

16. As to paragraph 15, I assume that the proposal in the new Article 20(10) to have applications over violations of media representation principles made to a “court” rather than “a relevant competent state body” (as in Article 41(1)(24) of the Code) may be due to the sensitivity of the issue. In order to distance the CEC from prosecuting functions, it might

perhaps be provided that the Commission should express an opinion on the merits of referring the reported violation to a court, while leaving the further action to the monitoring authority.

17. 16. – 17. No additional comments.

18. 18. – 23. Voter lists. The proposed creation of a permanent national voter register under centralised administration is to be highly welcomed. I generally agree with the comments of Mr. Annus, although perhaps with some reservation as regards the role of community heads. I presume that their proposed involvement under provisions such as 9(2), 9(5) and 12(1) may be naturally explained by their general tasks and general interest in the personal registration system of the country.

19. I also do not share his concern over Article 10(2). Although his point thereon is well taken as a matter of language, I see no risk of misinterpretation in the proposed text on a citizen's name being registered only in one community and only once.

20. 24. – 26. No additional comments.

21. 27. “Voting against all”. I share the view that this option should be removed from the ballot. If this is considered problematic under present social conditions in Armenia, however, it is perhaps appropriate to raise the question whether the matter may be resolved by providing expressly in the Code that blank ballots be counted separately from other invalid ballots (if this is not already done as a matter of practice). A provision to that effect may suffice to indicate that voters who are dissatisfied or undecided need not only express this by staying at home and thus forgoing the secrecy of the voting place.

22. 28. – 40. These paragraphs are seconded without additional comment.

23. 41. – 46. These concluding paragraphs are also seconded without additional comment. In respect of paragraph 43, however, it is to be noted that the 7-day ban against public opinion polling according to Article 10(6) of the Draft Law (which is interesting) does not seem to be an innovation, but merely to involve a rewording of the existing Article 22(3) of the Code.