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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  
**Mr Carlos CLOSA MONTERO (member, Spain)**

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*\*This document has been classified restricted at the date of issue. Unless the Venice Commission decides otherwise, it will be declassified a year after its issue according to the rules set up in Resolution CM/Res(2001)6 on access to Council of Europe documents.*

On 5th February 2007, the Parliamentary Assembly of the Republic of Armenia amended its electoral code. These amendments were unknown to the Venice Commission and ODIHR when drafting its previous opinion which was approved at the 70<sup>th</sup> Plenary Session on 27 March 2007<sup>1</sup>.

The amendments submitted for consideration make part of a permanent process of revision of the Electoral Code which has been the object of numerous opinions from the Venice Commission. This ongoing process is in itself evidence of the difficulties of the Parliament of Armenia to achieve a stable settlement on the electoral code that satisfies both the legitimate political requirements of Armenian political forces and the international standards and norms.

The 13 articles amending the electoral code concern basically two subjects: the delimitation of the territory in which elections are held and the enfranchisement of citizens in certain circumstances. In both cases, the amendments introduce a restrictive interpretation that reduces both the territorial scope in which elections are legally held and the categories of enfranchised citizens. No memorandum accompanies the amendments and no exposition of motives or motivation precede these. In these circumstances, it is very difficult to ponder the meaning of the amendments and the Venice Commission can only make a blind evaluation of de-contextualized norms. Likewise, the lack of memorandum or exposition of motives does not render the law more transparent.

#### *Territory for holding the elections*

As for the territory, the aim of the amendments proposed (Articles 1, 6, 7 and 8) is to restrict the holding of elections to the territory of the Republic of Armenia and exclude the possibility of voting in diplomatic and consular missions. Even though the territory of diplomatic and consular missions is Armenian territory, this kind of restrictive provision is not unknown in other electoral legislations. Moreover, an important number of countries around world do not permit their citizens to vote outside their territories. In Latin America, for example, Chile, Costa Rica, Paraguay and Uruguay do not have voting rights abroad. In Europe, a wide range of the states explicitly contemplate this possibility, and the tendency moves forward in this direction. Countries such as Greece or the Czech Republic, for example, have incorporated the right of their citizens to vote abroad only in the last decade. Albania, in turn, has not still modified its electoral law in this sense. Hence, the amendments proposed are not totally unknown in other jurisdictions but their effect is, however, de-enfranchising certain Armenian citizens (i.e. these living abroad) and reforms that seek these kind of restriction of political rights should be always carefully justified (which is not the case).

#### *Voting rights for dual nationality holders*

As for dual nationality holders, provisions in Articles 2, 12 and 13 aim at regulating their voting rights. The requirement of registering (Article 2 amending Article 2.7 of the electoral code) for dual nationality holders does not seem inconsistent with normal practice. Thus, for instance, a similar provision exists in Bosnia and Herzegovina<sup>2</sup>. The restriction of passive suffrage (i.e. the possibility of standing as candidate and/or nominate candidatures either for presidential election – Article 12 – or legislative elections – Article 13) for dual nationality holders is not very common. Normally, electoral legislation mirrors conditions for passive and active suffrage. Citizenship and residence are two common requirements for eligibility. The Venice Commission

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<sup>1</sup> CDL-AD(2007)013 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).

<sup>2</sup> The Electoral Law states in Article 1.5 that “a citizen of Bosnia and Herzegovina who holds dual citizenship pursuant to Article 1(7)(d) of the Constitution, shall have the right to register and to vote, only if Bosnia and Herzegovina is the country of his or her permanent residence.”

has stated previously that restrictions on the right to vote, both active and passive, should be abolished<sup>3</sup>. However, this kind of restrictions is not unknown in other jurisdictions, and, hence, it cannot be conclusively concluded that they go against international standards and best practice. Lacking an explanation on the reasons of this amendment, it is very difficult to ponder the reasons for these amendments.

As in former opinions, this opinion partakes the assumption that formal conformity with certain standards does not necessarily guarantee that the law regulating the electoral process respects the underlying democratic requirements.

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<sup>3</sup> See CDL-AD(2005)011 and 012 Report on the abolition of restrictions on the right to vote in general elections endorsed by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004).