



Strasbourg, 26 February 2016

CDL-EL(2016)003*

Study No. 840 / 2016

Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SECRETARIAT NOTE
ON THE PUBLICATION OF LISTS OF VOTERS
HAVING PARTICIPATED IN ELECTIONS

**This document has been classified restricted on 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.*

1. The Explanatory Report of the *Code of good practice in electoral matters* enounces that “since abstention may indicate a political choice, lists of persons voting should not be published”.¹ More generally, making personal data from the voters’ lists broadly available would raise problems of data protection.²

2. The problem of the accuracy of voters’ lists has been raised and studied on different occasions. In June 2013, the Council for Democratic Elections examined for the first time the issue of voters residing *de facto* abroad while still registered as in-country residents. A series of documents and comments were prepared and in December 2015, a summary report submitted to the Commission for adoption, summarised the problems linked to voters who are *de facto* abroad and the solutions found to prevent fraud.³

3. The presence of citizens residing abroad on voters’ lists could indeed lead to impersonation on election day through the use of the name of a person who is out-of-the country. According to paragraph 39 of the Summary Report on voters residing *de facto* abroad, among the measures to avoid fraud, there are: “[identity controls at the polling station, which should not undermine the secrecy of the vote, are made more efficient through the issuance of specific voters’ ID documents; the use of biometric measures to identify duplication in records; the adoption of anti-counterfeiting measures for identity documents; the on-line verification of the identity of voters; controlled destruction of identification documents which remain unclaimed by citizens. The use of indelible ink is a good complement to such controls”.⁴

4. This situation has been the object of concern in several countries, such as Armenia, Bulgaria, Moldova, “the former Yugoslav Republic of Macedonia” and Tunisia. The problem of the accuracy of voters’ lists when the number of voters residing *de facto* abroad is very high is a complex one. Several measures to exclude or at least of diminish the possible falsifications due to the fact that a large number of the persons included in the voters’ lists are abroad on election day have been considered. One measure has been centralising the control of the voters’ lists under a public institution;⁵ other recommendations have included improving procedures for correcting lists, particularly on election day, or even disaggregating voting data so they can be assessed in their own district or municipality.⁶ In the case of Armenia, one of the key issues raised by civil society and by the reports issued by the Parliamentary Assembly of the Council of Europe and OSCE/ODIHR, is to identify methods against electoral fraud allegations and to avoid multiple voting and electoral fraud in the voters’ lists. According to the report on the recent constitutional referendum held on 6 December 2015 by the NGO *European Platform for Democratic Elections*, overall 1,080 violations were reported.⁷ The voters’ list in Armenia contains an important number of citizens residing *de facto* abroad or deceased, and the accuracy of this list has become a complicated issue.

¹ Code of Good Practice in Electoral Matters ([CDL-AD\(2002\)023rev](#)), para. 54.

² See for instance the joint Opinion on the revised Electoral Code of “the former Yugoslav Republic of Macedonia” ([CDL-AD\(2011\)027](#)), para. 20: “The issue of use or abuse of information from the voter lists is not sufficiently addressed by the amendments. Article 55(1) stipulates that the personal data contained in the voter lists must be protected in line with the law and cannot be used except for the purpose of “*exercising the citizens’ right to vote*.” However, Article 55(2) requires the State Election Commission (“the SEC”) to supply all of the data from the voter lists to any registered political party or independent candidate, upon request. The legal framework should clearly state the permitted usage of information obtained from the voter lists and whether the information can be used for the campaign activities of political parties and candidates. At a minimum, more guidance should be provided to political parties and candidates by providing a concrete definition for the term “*exercising the citizen’s right to vote*”.”

³ See mainly the Information Report on electoral lists and voters abroad in Bulgaria, Moldova and Tunisia ([CDL-PI\(2015\)003](#)) as well as the Summary Report on voters residing *de facto* abroad ([CDL-AD\(2015\)040](#)).

⁴ CDL-AD(2015)040, para. 39.

⁵ For example, in Moldova.

⁶ See for example in the case of Bulgaria, Joint Opinion on the draft Election Code of Bulgaria ([CDL-AD\(2014\)001](#)).

⁷ See their report here:

http://www.epde.org/tl_files/EPDE/EPDE%20PRESS%20RELEASES/Armenia%20Constit%20Ref_Statement%207%20Dec_Fin_EN.pdf

5. In order to prevent future abuses, the publication of the lists of voters having voted in elections has been raised as a way to fight against fraud. This brings up a series of questions, which are submitted for consideration to the Council for Democratic Elections:

- a. Is the publication of voters' lists after elections a valid measure to fight against electoral fraud?
- b. Is this publication in conformity with electoral standards in the field of elections, and, more precisely, with the principle of secrecy of the vote?
- c. Should the position taken in the Explanatory Report to the Code of good practice in electoral matters be modified in general or for some countries (e.g. countries where there are reasons to question the accuracy of voters' lists or where a particularly high number of registered voters live abroad)?