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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**JOINT OPINION
ON THE 26 FEBRUARY 2007 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)**

**based on comments by
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1. Introduction

1.1 Mandate

1. On 28 March 2006, the President of the National Assembly of the Republic of Armenia requested the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to provide an Opinion on draft amendments to the Electoral Code. A joint opinion of the Venice Commission and the OSCE/ODIHR on the Election Code is dated 15 June 2006 (CDL-AD(2006)026) and addresses the Draft Law on Changes and Amendments to the Electoral Code of the Republic of Armenia (CDL-EL(2006)020).

2. Following that opinion, the Venice Commission together with OSCE/ODIHR provided a Final Opinion on the amendments to the electoral code of the Republic of Armenia passed on 22 December 2006 (CDL-EL(2007)002). This Final Opinion was adopted on 16-17 March 2007 by the Venice Commission (CDL-AD(2007)013). Further amendments to the electoral code were passed on 26 February 2007 (CDL-EL(2007)008), which were not covered by the Final Opinion. This current review is limited to the changes made in February 2007.

1.2 Reference Documents

3. This opinion is based upon and should be read together with the following documents:

- Law on making amendments to the electoral code of the Republic of Armenia adopted on 26 February 2007, CDL-EL(2007)008.
- Electoral code of Armenia as of 12 October 2005, CDL-EL(2006)019.
- Law amending the electoral code of the Republic of Armenia adopted on 22 December 2006, CDL-EL(2007)002.
- 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), CDL-AD(2007)013.
- Final Opinion on the 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 Council for Democratic Elections at its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005), CDL-AD(2005)027.
- Code of Good Practice in Electoral Matters. Adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002), CDL-AD(2002)023rev (hereinafter referred to as the Code of Good Practice).

1.3 Procedure

4. At its 71st Plenary Session, the Commission asked the Secretariat to finalise, in co-operation with OSCE/ODIHR, the current opinion based on the rapporteurs' comments of which the Commission had taken note.

2. The changes

5. The February 2007 amendments to the electoral code were adopted as part of a legislative package (affecting primarily the Law on Citizenship, but also several other laws) related to the issue of dual citizenship. The main amendments to the Code were those which affected voting by citizens abroad, as well as voting and candidacy rights of dual citizens located in Armenia.

6. Being adopted so close to the time of the elections, these amendments may have had a direct impact on the voting and candidacy intentions of Armenian nationals with dual citizenship. In addition, late changes in election or related laws not only affect voters directly, but could raise concern that the laws are being amended in order to influence the electoral process or its outcome. It is for these reasons that the Venice Commission, in its Code of Good Practice in Electoral Matters, para. 65, has recommended that amendments to election laws should if at all possible not be made during the period of a year prior to an election.

7. The changes to the electoral code introduced by the 26 February amendment fall into three parts:

- They abolish the previous possibilities for citizens travelling or residing abroad to vote at diplomatic and consular missions.
- They regulate the active and passive voting rights (rights to vote and to be elected) of citizens of Armenia having multiple citizenships according to the newly introduced arrangements for such citizenships.
- They modify the delegation of authority to the police to maintain voter lists and to the government of the Republic of Armenia to establish fees for receiving a copy of a voter list.

3. Review

3.1 The right to vote from abroad

8. Prior to the February amendments the electoral code stated in Article 2, paragraph 2 on citizens' electoral rights:

“During the preparation and conduct of elections, citizens of the Republic of Armenia who travel or reside outside Armenia, shall have electoral rights. The exercise of electoral rights of those citizens of the Republic of Armenia shall be ensured by diplomatic and consular missions of the Republic of Armenia, in accordance with procedures set by this Code and by Central Electoral Commission.”

9. The law also included a number of articles specifying how these citizens would be accommodated in terms of voter registration and voting arrangements.

10. All provisions for voting abroad have now been removed from the law. The amendments (Articles 1, 6, 7 and 8 of the amendments) restrict the holding of elections to the territory of the Republic of Armenia and exclude the possibility of voting in diplomatic and consular missions. Such restrictive provisions are not unknown in other electoral legislations. Countries considering arrangements for external voting will have to balance universal suffrage against transparency and security during elections. It is also a matter of costs to what extent large groups can be accommodated. Different countries come to different conclusions in these considerations. Many 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 number of States tend to restrict voting rights of citizens abroad. 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 still not modified its electoral law in this sense.

11. Moreover, the Explanatory Report of the Code of Good Practice states under universal suffrage, when discussing residency requirements:

“Conversely, quite a few states grant their nationals living abroad the right to vote, and even to be elected. This practice can lead to abuse in some special cases, e.g. where nationality is granted on an ethnic basis.”¹

¹ Code of Good Practice in Electoral Matter, Explanatory report, I. 1.1., extract from §6.c.

12. There is in other words no *requirement* within the Code of Good Practice to support external voting; it is rather an option to be considered. It must therefore be up to the legislature of each country to balance the principle of universal suffrage against the requirements for transparency, security and practical considerations.

13. The amendments to the Electoral code of Armenia are not unknown in other jurisdictions; their effect is, however, de-enfranchising certain Armenian citizens (i.e. those living abroad) and reforms that introduce such restrictions of political rights should be carefully justified.

3.2 *Voting Rights of Dual Citizens*

14. Provisions in articles 2, 12 and 13 of the amendments aim at regulating voting rights of citizens with multiple citizenship. These amendments, following the introduction of the possibility of keeping multiple citizenships, differentiate between the voting rights of Armenians with dual citizenship who are residents of Armenia, and those who are not. Article 2.7 of the Code (introduced by the amendments) stipulates that citizens with dual citizenship may vote if they are registered in Armenia, while those who are not registered in Armenia would not be allowed to vote. While for instance a similar provision exists in Bosnia and Herzegovina² this does not seem consistent with normal practice. Articles 12 and 13 of the amendments change Articles 65 and 97 of the electoral code respectively to exclude Armenian citizens with dual citizenship from running as candidates for the Presidency and the Parliament. For local elections there is no such exception.

15. The restriction of passive suffrage (i.e. the possibility of standing as candidate and/or nominate candidatures either for presidential or legislative elections) for dual nationality holders is not very common. Normally, electoral legislation stipulates the same conditions for passive and active suffrage.

16. The Code of Good Practice states that:

“Universal suffrage covers both active (the right to vote) and passive electoral rights (the right to stand for election). The right to vote and stand for election may be subject to a number of conditions, all of which are given below. The most usual are *age* and *nationality*.”³

17. Nationality (citizenship) and residence are two common requirements for eligibility. Other conditions are related to age and some limited rules for suspending electoral rights. The Code of Good Practice even states that the list of conditions is comprehensive.⁴

18. By *nationality* the Code of Good Practice means requirement on citizenship. It states that citizenship requirements may be problematic if the State withholds it from persons who have resided in the territory for generations. The Code of Good Practice also states: “Furthermore, under the European Convention on Nationality⁵ persons holding dual nationality must have the same electoral rights as other nationals.”⁶

19. The Armenian National Assembly has chosen to give full active voting rights (depending on the ability to obtain residency in the Republic of Armenia) to those with an additional

² The Electoral Law states in Art. 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.”

³ Ibid., Explanatory report, I. 1.1., §6.

⁴ Ibid.

⁵ ETS 166, Article 17.

⁶ The ECHR does not go so far: Eur. Comm. HR No. 28858/95, judgment 25.11.96 *Ganchev vs. Bulgaria*, DR 87, p. 130. See also Code of Good Practice, Explanatory report, I. 1.1., §6.b.

citizenship, but not the right to be elected (the passive voting right) for national positions. This is against the Code of Good Practice. The Venice Commission has stated previously that restrictions on the right to vote, both active and passive, should be abolished.⁷ Once the right to dual citizenship has been accepted, citizens with dual citizenship should not have fewer rights than other citizens; such limitations are not common.⁸

3.3 *Voter list responsibilities of the Police*

20. Article 9 of the law has been amended as follows:

“The Passport and Visa Department of the RA Police (hereinafter, the Authorised Agency)” phrase in the point 1 of the Article shall be amended to read as follows: “The Police of the Republic of Armenia under the auspices of the Government of the Republic of Armenia (hereinafter, the Authorised Agency).”

21. This amendment could ensure that future reorganisations within the Police would not affect the electoral code since only the Police is identified in the amended text and not a specific department. The introduction of the role of the Government (“under the auspices of the Government”) could be interpreted in two ways: It could mean the obvious, namely that the police are part of the government structure. This would not have been necessary to regulate in this law. Alternatively, it could be interpreted as the government being given a more active role in giving instructions and defining procedures for voter registration and for production of voter lists.

22. On the right for voters to receive a copy of the voter lists the amendment states:

The phrase “for an appropriate fee” of the point 3 of Article 13 of the Code shall be replaced with a phrase “for a fee established by the Government of the Republic of Armenia.”

23. This is a technical change which should not be applied by the Government as establishing a fee which would make it prohibitive for political parties or others to acquire copies of voter lists.

4. **Conclusion**

24. The amendments enabling dual citizens to vote and preventing candidacies for national elective office by Armenian citizens with dual citizenship were not fully tested during the 2007 National Assembly elections. The CEC did not adopt decisions or procedures that required potential candidates to attest or demonstrate that they were not dual citizens. The full effect and implementation of the new provisions in the amended code remain to be seen.

25. Some of the 26 February amendments should be carefully considered, such as those concerning the right to vote from abroad, since they lead to de-enfranchising Armenian citizens living abroad. The provisions regarding active and passive suffrage should also be carefully considered, since electoral legislation generally provides for the same conditions for passive and active suffrage.

26. As in former opinions, The Venice Commission and OSCE/ODIHR reiterate that good faith implementation of electoral legislation remains crucial.

⁷ 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).

⁸ There are examples in some democracies of limitations beyond the four listed in the Code, but they are not generally recommended.