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DRAFT JOINT OPINION ON THE REVISED DRAFT AMENDMENTS TO THE ELECTORAL CODE OF ARMENIA

BY

THE EUROPEAN COMMISSION
FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION, COUNCIL OF EUROPE)

AND

THE OFFICE FOR DEMOCRATIC INSTITUTIONS
AND HUMAN RIGHTS (ODIHR) OF THE OSCE

on the basis of comments by

Mr Taavi ANNUS (Venice Commission, member, Estonia)
Mr Hjörtur TORFASON (Venice Commission, member, Iceland)
Mr Jessie PILGRIM (OSCE/ODIHR, election expert)

I. Introduction

1. This Joint Opinion follows the previous opinions on the Electoral Code of the Republic of Armenia provided by the Venice Commission and OSCE-ODIHR. This opinion is specifically based on the most recent opinion and on the draft law amending the Electoral Code, namely:

- *Joint Opinion on the Draft Amendments to the Electoral Code of Armenia by OSCE/ODIHR and the Venice Commission from 6 January 2005 (CDL-AD(2004)049; further referred to as Joint Opinion);*
- *Draft Law on Amending and Supplementing the Electoral Code of the Republic of Armenia, submitted by Mr. Baghdasaryan, version of 14 December 2004, the draft for the second reading in the National Assembly of Armenia (CDL(2005)008).*

2. The comments are based on the version of the Electoral Code as of 3 August 2002 (CDL(2003)052).

3. The following remarks are based upon the Joint Opinion, taking also into account the Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by OSCE/ODIHR and the Venice Commission from 17 December 2003 (CDL-AD(2003)021), and the Additional Considerations on the Electoral Law and Electoral Administration in Armenia based on the round table on electoral reform held in Yerevan between 24/27 February 2004 by Michael Krennerich, Owen Masters and Jessie Pilgrim (Additional Considerations).

4. The draft amendments would implement some of the recommendations contained in the previous OSCE-ODIHR and Venice Commission opinions. Although the adoption of some recommendations constitutes definite improvement, the draft amendments on the whole fall short of meaningful electoral reform. Notably, the draft amendments fail to address serious problems with election administration, voter lists, and the processes for filing election related complaints and appeals. Further, of particular concern, is a new provision requiring political party registration at least one year before an election. Accordingly, the Code still should be improved.

5. The draft amendments would implement several of the recommendations contained in the previous OSCE-ODIHR and Venice Commission opinions. While the Electoral Code would be improved as a result, several areas remain problematic and the Code still should be improved.

II. Draft Amendments to the Electoral Code

6. The Composition of Electoral Commissions. The draft does not change the appointment method for members of electoral commissions. For example, under the current law, the members of the Central Electoral Commission are appointed by the parties having factions in the current or dissolved National Assembly and the President of the Republic. Thus, the members of the Electoral Commission may have (and have had) a strong partisan interest. In particular, there is still no provision enabling a “trusted institution” to appoint members to the Central Electoral Commission. Although the provisions on professional training guarantee some degree of professionalism, the influence of one candidate on the Commission may still be

excessive, especially in the presidential elections. If the aim is to develop an independent, professional, efficient, and non-partisan election administration, changes to the current procedures are necessary. As more extensively noted in the Joint Recommendations, it results from the rule of having the commissions constituted only by parliamentary 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.

7. The failure of the draft amendments to include positive changes for the formation of election commissions is a serious omission. This omission significantly limits the degree to which the draft amendments can be considered as true electoral reform. The election administration determines, to a large extent, whether elections are fair, honest, and genuinely democratic. Thus, the process for composing the election administration is critical to any system of elections. It is necessary that the formation of election commissions be done in a manner that ensures inclusiveness of political and civil interests in order for there to be a sufficient level of public confidence in the election processes and results. This foundational cornerstone must be addressed positively in order for there to be meaningful electoral reform. Authorities in Armenia are once again urged to address this critical issue.

8. Amendments to Articles 41 and 42 delete the text that states that the CEC and Territorial Election Commissions have status as a legal entity. It is not clear why these amendments have been adopted. It should be verified that these amendments will not affect the right to maintain legal actions by or against these commissions. In respect of this issue, attention must again be called to the views expressed in the Joint Recommendations (paragraphs 9 and 10) and the Additional Considerations (Section 1).

9. The provisions on professional training have been improved by way of a transitional provision which specifies that the Central Electoral Commission shall define the procedure for holding training courses for members of electoral commissions within three months of the law becoming effective. As there is no provision to the contrary, it must be assumed that all members of the current electoral commissions need to undergo a training course and become certified in order to continue in their position. Therefore, another transitional provision should be added, specifying by which time the current members of the electoral commissions need to obtain their certification.

10. Electoral constituencies. The amendments to article 17[1] change the level of permissible discrepancy in the constituency size. The amendments would allow a discrepancy of 10% “on average.” Previously, the permissible discrepancy was 15%. It is unclear what the term “on average” means, but perhaps it is intended to signify 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. We could consider this acceptable, and assume that a tighter rule might work unnecessarily against rural constituencies. However, this should be clarified.

11. The law does not regulate more precisely the procedure for drawing and re-drawing constituencies. Although the requirement of territorial integrity of the constituency provides some guidance for the Central Electoral Commission, a provision also prescribing constituencies based on closely neighbouring administrative units, in order to avoid gerrymandering, could be considered.

12. It should be noted that paragraph two of Article 17 has been deleted by the amendments. This removes the requirement for the CEC to publish maps of constituencies. The law should provide some mechanism for informing citizens of constituency boundaries. Requiring publication of maps by the CEC would be a reasonable manner for providing this information. The deletion of paragraph two of Article 17 should be reconsidered.

13. Ineligibility to be elected. The draft still does not take into account the concern that the restrictions on some public officials to stand for election inappropriately differentiate between the majority and the proportional part of the parliamentary elections (Articles 97(2) and (3)).

14. 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, is relatively wide, although it leaves the persons who are not covered by Article 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 co-operatives and labour union leaders.

15. Nomination of candidates. As recommended in the Joint Opinion, Article 112(2) now provides that party alliances may contribute to the candidates' pre-election funds in majoritarian elections to the National Assembly.

16. Electoral deposit. The draft eliminates the requirement of collecting signatures supporting a candidate's nomination and raises electoral deposits. This is acceptable in principle, as noted in our previous opinion. However, the draft (amendments to Articles 71(1), 101(1)(1) and 108(2)), would raise the electoral deposits significantly (in case of presidential elections, from 5,000 to 10,000; in case of proportional elections, from 2,500 to 5,000 and in case of majority elections from 100 to 200 times the minimum salary). We recommend against this rise, as we are not sure that the old amounts of deposits would not be sufficient to deter frivolous candidates. It should be noted that the amounts presidential candidates may contribute to their pre-election funds equals the electoral deposit. It is not appropriate that a major cost of the campaign is the electoral deposit.

17. An unreasonably high electoral deposit also presents a problem under European standards. It is an established principle that wrongful discrimination includes discrimination against a person on the basis of social or property status.[1] Thus, the amount of an electoral deposit must be considered carefully to ensure that it does not

[1] *Article 2 of the Universal Declaration of Human Rights; Article 26 of the International Covenant on Civil and Political Rights; Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Paragraphs 7.3 and 7.5 of the OSCE 1990 Copenhagen Document.*

prevent the candidacy of a serious candidate who happens to be economically disadvantaged.

18. Property declaration. The amendments retain the duty to declare the assets of the candidate's family members (new Articles 72(2)(6), 101(1)(4) and 108(2)(5)), answering to the concern in the Joint Opinions that the proxies should not be made responsible for such declarations. However, the draft eliminates the reference to the Law on the Disclosure of Assets and Income of Senior Officials of Authorities in the Republic of Armenia for the procedure regulating the declaration of assets and income. We were unable to comment on this reference in the Joint Opinion, as we did not have the text of the law. The reason for eliminating the reference to this law is unclear. However, the law should specify the procedure for declaring the income or assets or refer to another law where such procedure is contained.

19. Further, the requirement that assets must be disclosed for "family members" is problematic. First, no legal definition of a "family member" is provided. Secondly, it is of concern that legal liability may result to a candidate if a "family member" provides false information to the candidate concerning the "family member's" assets. Legal liability of the candidate is not appropriate as the candidate has no control over the assets of others and could make an honest mistake in valuing the assets of another person.

20. Withdrawal of candidates. The withdrawal of candidates has not yet been regulated in enough detail. Withdrawal of candidates should be stated as it was in the first draft. More especially, regulation of the *process* of withdrawal should be stated in more detail.

21. Pre-election campaign. It was recommended that the rules on creation of even conditions between candidates be broadened to encompass news coverage of public media institutions. This recommendation has not been included in the draft.

22. Media. The exact changes to Article 20 of the Electoral Code are not clear, even if the intended principle seems to be well founded due to the fact that the translation of the amendments to Article 20(3) and (4) and Article 22(2) do not exactly reflect the text of the English version of the law. Thus, it cannot be said whether privately owned TV and radio stations, as well as newspapers, must ensure equal access to the candidates. It cannot be the aim of these amendments to regulate the behaviour of even small partisan newspapers (even official party publications). However, if this requirement can be deduced from the text, a more detailed regulation, with specific definitions of all forms of media and specific requirements for each defined form of media, is necessary.

23. The amendments would give enforcement powers over the regulations regarding media to the National Television and Radio Committee and the Central Electoral Commission (CEC). Most notably, the CEC would be responsible for applying to a court requesting the ordering of sanctions on television and radio companies (the new Article 20(10)). As noted in our Joint Opinion, this would put the CEC in the position of a prosecutor, which should carefully be considered – the current Code does not contain a similar provision. According to Article 41(1)(24), the CEC applies to the relevant competent state bodies in cases of violation of the Code. It should be

carefully considered whether the CEC should assume functions directly aimed at punishing. The proposal in the new Article 20(10) has 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) which may be due to the sensitivity of the issue. In order to distance the CEC from prosecuting functions, it might perhaps be suggested 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.

24. The amendment to Article 81(2) is not clear. This amendment appears to limit the requirement for equal conditions to “news reporting on the campaign”. However, Article 81(1) is broader. This should be clarified.

25. <u>Voting rights</u>. The draft does not include the recommendation that provision be made for voters to vote who are unable to attend their polling station (e.g. hospitalised persons). Although there may be a greater opportunity for fraud under those circumstances, the right to vote is a very important human right and all possible measures should be used to uphold this right.

26. <u>Voting rights for members of the military and for citizens abroad</u>. The draft does not regulate in detail the voting rights of the members of the military, detained persons, and the citizens abroad. The new Article 10 regulates the procedures for inclusion of such persons in voters’ lists. However, the actual voting procedures are left unregulated. Moreover, Article 2(6) is retained, which prohibits the members of the military to participate in elections of local self-governing bodies and National Assembly elections under majoritarian system. This issue should be given further consideration.

27. <u>Voters’ lists</u>. It appears that the amendments would create a permanent national voter register. However, due to some of the text having been used to describe the roles of various institutions in the creation of the register, several questions have been raised as to what the institutions are actually responsible for and exactly what authority they have over the content of the register.

28. The attempt to provide sanctions for errors in voters lists (new Article 9(9)) is noteworthy. However, it is uncertain against whom the sanctions may be enforced. It is also unclear what the sanctions are. Nor does this provision state the formula, method, or benchmark date for measuring accuracy of voter lists. Obviously, a single death not correctly reflected in a list could result in crossing the 2% threshold. On what date should deaths (or other changes in information) be correctly reflected in voter lists?

29. The voters’ lists by precincts should be compiled by the “Authorized Agency” based on the available national voter register. It is unclear what the role of the community heads in this process is, as the draft (Article 9(5)) provides that the Authorized Agency compiles voter lists by precincts “upon presentation by the community heads.” The community heads and the Authorized Agency should work together to continuously update the National Register of Voters, as provided in paragraph 2. However, the responsibility for the voters’ lists should lie with the Authorized Agency. Nor is the authority of the CEC in this process clearly delineated

as Articles 9(4) and 9(8) state that the CEC "monitors" to ensure that voter lists are compiled and maintained "in accordance with procedures defined by the CEC". The power and authority of the CEC over voter lists should be more clearly stated in these articles.

30. The new Article 10(2) is confusing. The draft provides: "The name and surname of a citizen may be mentioned in the voter list of only one community, only once." If two citizens have the same names, and live in the same community (clearly not an impossibility), then the voters' list will appear to have the same name twice. It should be specified that one citizen may be entered in the voters' list only once. The law further appropriately specifies what data about the citizen should be included in the list (Article 11, paragraph 2). This data is sufficient to ensure the identification of any citizen, and to avoid confusion with other citizens.

31. It is unclear, why the territorial electoral commission should provide voters lists to the polling stations through the community heads (Article 12(1)). In general, the electoral administration should be carried out by the professional electoral commissions without the involvement of political officials who may often be involved in the elections as a candidate or have other political interests. It may be appropriate that the Territorial Electoral Commissions provide the community heads with an additional copy of the voters' lists.

32. The supplementary voters' lists (Article 14[1]) are acceptable. It is, however, unclear, what the exact meaning of section b. of paragraph 2 means. This would provide that "The supplementary voter list of a precinct shall include citizens who are registered in the territory of the precinct in question, but not included in the voter list, provided that they present a statement from the respective territorial electoral division." The general rules in the law foresee a court decision, and the "territorial electoral division" statement is so underspecified that it is questionable how it fits into the system. Then, it is highly questionable whether the voters' lists should be supplemented during the last few days without a court decision. According to the new draft, the court decision may now be substituted by the "statement from the respective territorial electoral division." It has not been specified how this statement can be acquired, and which institution the territorial electoral division is.[2]

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[2]*The Code of good practice in electoral matters, adopted by the Venice Commission in 2002 (CDL-AD(2002)023rev) states on electoral registers (I. 1.2.) that:*

Fulfilment of the following criteria is essential if electoral registers are to be reliable:

> *i. electoral registers must be permanent;*
> *ii. there must be regular up-dates, at least once a year. Where voters are not registered automatically, registration must be possible over a relatively long period;*
> *iii. electoral registers must be published;*
> *iv. there should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of a voter who was not registered; the registration should not take place at the polling station on election day;*
> *v. a similar procedure should allow voters to have incorrect inscriptions amended;*
> *vi. a supplementary register may be a means of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.*

33. Notification of the voters. It was recommended in the Joint Opinion that voters should receive notification of the precinct where they can vote. The current draft would implement this recommendation (new Article 13(8)).

34. "Inking". The draft now includes a provision regarding "inking" of the voters' fingers (amendment to the Article 55(2)). However, the draft includes no provision requiring that each voter be checked for special ink. If the use of special ink is intended to be a true measure against double voting, then the Code must also require that each voter be checked for special ink prior to receiving a ballot.

35. Ballot security measures. The draft introduces perforated ballots, without implementing the recommendation in the Joint Opinion that serial numbers should be printed on their stubs. There is still no explicit provision obliging the publication of the name of the printing house. If it is not assumed that this information is public as the decisions of the CEC are generally public, such an explicit requirement should be added.

36. "Voting against all". The draft would not eliminate the option of voting against all candidates, contrary to the recommendation in the Joint Opinion. This option is unusual among established democracies. It may strengthen political apathy in the population. It may also provide voters with an illusion that they have meaningfully voted whereas their vote really does not make a difference. It is recommended that this option be removed from the ballot.

37. 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.

37. Procedure for marking the ballot. As in the Joint Opinion, it is recommended that a general provision be introduced providing that the ballot paper is valid if the voter's intention is clear and unambiguous. This provision would help prevent manipulation by an electoral commission if it detects a minor violation of the ballot marking rules, and the invalidation of the vote would benefit the candidate whom the commission members support. Such a general rule is especially appropriate as the current draft (new Article 57(1)) would foresee that a voter shall use "the uniform sign designated by the CEC to mark the ballot." There is no specific explanation as to what happens if the voter does not use the uniform sign, but some other marking (e.g. a check-mark instead of a cross or vice versa).

38. The new Article 57 also provides that a voting envelope that has a "redundant" mark voids the envelope and enclosed ballot. However, no definition of "redundant" mark is given. Nor is it clear why a mark on the envelope requires invalidation of the ballot. Further, the new Articles 57 and 59 appear to permit the precinct election commission to disregard "suspicious" voting envelopes and ballots. Again, no definition of "suspicious" is provided. Theoretically, a ballot marked for a candidate who appears to have little support could be considered "suspicious". These articles

require clarification and should be based on a clear rationale intended to prevent fraud, while at the same time not granting power to election commissions to disregard the will of a voter.

39. Electoral observers. The draft still does not treat the rights and responsibilities of proxies, observers, and representatives of the mass media separately but in a single article, and still contains the provision that observers monitor the work of the electoral commission (Article 30(4)). As observed in the Joint Opinion, these provisions are not satisfactory.

40. Violation of voting procedures. The previous draft amendments would have allowed only one member of the electoral committee or one proxy to record a violation of the voting procedure in a register. The Joint Opinion welcomed this development. The current draft, however, returns to the previous rules, requiring two commission members or proxies to record a violation. Only if there are one or two candidates, one person may request such a recording (new Article 57(6)). This change is not appropriate. For example, when there are formally three candidates, and one of them is not serious and has no proxies and the real contest therefore takes place between two candidates, only one proxy must be able to record a violation of the voting procedures. Moreover, the recording of the violation does not yet mean that a violation has actually taken place – it just provides evidence of a possible violation, and thus the right to request a recording of the violation cannot be easily abused.

41. Publishing preliminary results. The draft would clearly and explicitly require the preliminary results of the polling stations to be displayed in front of the polling stations (the new Article 61(7)). Also, the procedures regarding the tabulation, summarisation, and publishing of the results have been refined. This is a welcome development and corresponds to the recommendations in the Joint Opinion. However, the duty of the CEC to continuously update preliminary election results as they become available has disappeared (such a provision was included in the previous draft amendments). This is unfortunate, as this requirement increases confidence in the final voting results among the public. The draft should be amended, requiring the CEC to regularly publish information on preliminary results as they become available, broken down by polling stations. This information should be made available through public broadcasting and internet.

42. Complaints and appeals. The provisions regarding the filing of complaints and appeals concerning the action, inaction, or decision of an election commission set forth greater detail than previously stated in the law. The Joint Opinion recommended that the law provides greater detail for the filing of complaints and appeals. However, these new provisions contain many ambiguities and inconsistencies, and fail to establish a sound framework for consideration of complaints and appeals. These provisions require significant improvement before adoption of the final draft.

43. The process is still very complicated. Moreover, in certain instances it is still unclear to whom the decisions should be directed. For example, the decisions of the precinct electoral commission have to be submitted to a first instance court, but cannot be appealed to a higher electoral commission. However, when the appeal demands the recount of the vote, the appeal has to be submitted to the territorial electoral commission, but cannot be submitted to a court. Yet in many instances, if the

appeal concerns some electoral violations, the recount may or may not be necessary, and the person making the appeal cannot be sure whether the appeal has been made to the correct institution. Moreover, as the deadlines for making appeals are very limited, the authority to whom the appeals should be submitted must be very clear.

44. In certain instances it is not the recount that is sought after, but the invalidation of the results in a certain precinct. This is the case, for example, when ballot stuffing has taken place. A recount cannot remedy the situation. At the same time, the invalidation of the results in the whole country and a corresponding review by the Constitutional Court may not be appropriate. Or is it the intent that the results of the elections (including the results in a specific precinct) have to be submitted to the Constitutional Court? Who is empowered to declare results in a given precinct null, as foreseen by Article 40^{1} paragraph 14? Article 40^{3} seems to suggest that the polling station election results may be submitted to the Territorial Election Commission. However, this article concerns only recounts, and not simple invalidations. The current draft is very unclear on this issue. Finally, it must be noted that these provisions do not specify the legal and factual standards that must be satisfied before results can be invalidated in a given precinct. What type of electoral irregularity and to what extent must it be established in order to invalidate the results in a precinct? Is there any evidentiary standard that must be satisfied before results can be invalidated? These issues should be addressed.

45. The requirement that a proxy may appeal against the polling station election results only if he or she was present in the polling station when the voting results are being finalized, and that the candidate him/herself cannot appeal against the election results (Article $40^{3}(1)$) is inappropriate. Any candidate must be able to appeal against a decision that violates his or her rights, irrespective of whether he or she was present during the violation. Moreover, violations are prone to take place precisely when the proxy is not present. The proxy can present any evidence proving the violations, and his or her own statement is only one type of evidence that may be provided.

46. Article 40^{3} is further unsuccessful because it seems that recounts must be done automatically, without any specific reason. The only condition for a recount is an application by a member of the Precinct Electoral Commission or a proxy. Moreover, those persons do not even have to give reasons for conducting a recount (Article 40^{3}, paragraph 4 last sentence). It is recommended that the person making the appeal should provide reasons for appeal and provide all supporting documentation available to him. Only in this case are the strict deadlines for dealing with the appeals realistic.

47. Electoral violations. The chapter on electoral violations remains unchanged and could be improved as noted in our previous recommendations. The draft would place on electoral commissions under the obligation to report violations of electoral law within a five-day period (new second sentence to the Article 45). It could be considered, as noted in the Joint Opinion, whether such a duty should be extended to all members of the electoral commission, especially considering the possibility that an electoral commission itself could commit a violation.

48. Report on elections. It is strongly recommended that the CEC should be obliged to "provide an analysis of the violations of the Code following each national election, an indication of measures taken against violators, remedies provided to those aggrieved and any legislative improvements that may be required" (see Joint Opinion,

paragraph 38). The draft does not address this issue. The draft gives the CEC the right to "apply to the Republic of Armenia Government with recommendations on how to improve the legislation on the election process" (new Article 41(4)). However, this does not address the issue that all electoral violations should be analysed and reported on.

49. Time frames. Several of the recommendations noted in the Joint Opinion regarding time frames have not been implemented, especially regarding the 30-day deadline to report on the election, the time frame of the Overview and Audit Service, and the deadlines for parties and candidates to submit campaign accounts.

50. Campaign financing. The draft does not improve the regulations on campaign financing.

There are some other notable changes from the previous drafts and the current law that need to be pointed out.

51. The electoral system. The draft would change the electoral system more proportionally (amendment to Article 95). Such an amendment is not contrary to the European standards.

52. The number of women among the candidates. The required minimum proportion of women in the candidate lists would be increased from 5% to 15% (amendment to Article 100(2)). This development is to be welcomed. Obviously, the real increase in the political representation of women cannot be achieved only through mechanical electoral rules. Thus, this initiative needs to be supplemented by additional measures encouraging the increase in women's representation.

53. Public Opinion Polling. The Article 22(3) provides that "it shall be prohibited to publicise results of social polls on the rating of candidates, parties, and party alliances at any time during the 7 days preceding voting day", which involves a rewording of the existing Article 22(3) of the Code. It is not unusual that the results of the social polls may not be publicised. If this decision is taken, it should be specified that this prohibition includes the voting day, and not only 7 days preceding the voting day.

54. Higher education requirement for community heads. The amendment to Article 122(1) would establish the requirement that a candidate for a community head position must possess a "degree in higher education." Such a requirement for a politically elected office is highly unusual and should be thoroughly considered. The reasons for not obtaining higher education may be very different, and for generations this option was neither obvious nor necessary. Many otherwise highly qualified candidates may be disqualified because of this provision.

55. The requirement for a degree in higher education also presents a problem under European standards. It is an established principle that wrongful discrimination includes discrimination against a person on the basis of social or other status.[3] Thus, the requirement for a degree in higher education must be considered carefully to

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[3] *Article 2 of the Universal Declaration of Human Rights; Article 26 of the International Covenant on Civil and Political Rights; Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Paragraphs 7.3 and 7.5 of the OSCE 1990 Copenhagen Document.*

ensure that it does not prevent the candidacy of a qualified candidate who does not possess such a degree.

56. Sample ballots. The amendments to Article 49[1](7) would change the rules for approving sample ballots. The draft foresees that some sample ballots be approved by the CEC, whereas some by the Territorial Electoral Commissions. The reasons for such a change are unknown. The CEC should continue to approve sample ballots for all elections, especially for the National Assembly elections, regardless of the electoral system. It is unacceptable that the ballots in different parts of the country in the National Assembly elections look different.

57. Eligibility of parties. It seems that only those parties that have been registered at least one year prior to the elections have the right to present candidates for the proportional part of the elections (Article 99(1)). This requirement is questionable. The most dangerous part of the requirement is that the officials responsible for registering parties may illegitimately delay the registration in order to prevent a potential new contender in the elections from participating. The same requirement applies to the party alliances. Moreover, the election day is not known one year ahead, allowing for manipulations when the voting day has to be set. The new provision on political party registration could then significantly limit genuine democratic competition in elections in Armenia.

58. Automated Ballot Box. New Article 49 allows the use of “automated ballot boxes”, if available, under procedures defined by the CEC. This would appear to suggest the use of OCR or “scannable” ballots and not to some form of electronic voting. Regardless of the intent, this provision raises many questions. Does this negate the use of ballot envelopes? Does a member of a precinct election commission remove the ballot from the ballot envelope and insert the ballot into the automated ballot box or does the voter? Is a ballot with a “redundant” or “suspicious” mark subject to invalidation by the precinct election commission even though the automated ballot box was able to record the intent of the voter?

59. If the amendment is intended to allow electronic voting, then the amendment fails to require that the electronic voting system produces a permanent paper record with manual audit capacity. As a result, there is no effective mechanism for challenging results or conducting a recount. There must be a physical paper record that can be used for recounts and for challenging the electronic voting results. The law must contain safeguards to protect against the source code failing, errant programmer, sophisticated hacker, hardware defect, or human malfeasance that escapes all initial inspection and testing.[4]

60. The amendment allowing the use of automated ballot boxes should be carefully reconsidered and drafted with sufficient detail to ensure reliability of the system, transparency, and respect for the suffrage right of each voter.

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[4] *It is common knowledge that malicious codes, bugs and viruses often escape close inspection and testing of software. For example, it is possible that the system may contain an undiscovered error, triggered, for instance, by the Nth voter, which then triggers a reallocation of votes from Party B to Party C in some structured fashion.*

Conclusion

61. Although the adoption of some of the recommendations constitutes improvement, the draft amendments on the whole fall short of meaningful electoral reform. The draft amendments fail to address serious problems with:

- election administration, and more specifically the electoral administration formation;
- voters' lists;
- campaign, even conditions between candidates;
- mass media (equality applies more precisely to private media, nothing more precise for public media);
- procedures for inking;
- restrictions concerning the eligibility to be elected;
- continuous updating in the publication of preliminary results;
- and responsibilities of proxies, observers, and representatives of the mass media;
- processes for filing election related complaints and appeals; and
- other aspects of the election processes as have been noted in this Opinion;
- Further, the new provision requiring political party registration at least one year before an election could significantly limit genuine democratic competition in elections.

62. This Joint Opinion does reflect previous joint opinions (and the Additional considerations of February 2004). However, prior opinions, considerations, comments and recommendations of the Venice Commission and the OSCE/ODIHR should also be considered as they do provide additional supportive analysis of the comments made herein.