

# Globethics Repository

The logo for Globethics, featuring the word "Globethics" in white, sans-serif font centered within a solid blue rectangular background.

## Joint final opinion on the electoral code of Armenia

This page was generated automatically upon download from the Globethics Repository. More information on Globethics see <https://www.globethics.net>. Data and content policy of Globethics Repository see <https://repository.globethics.net/pages/policy>.

Item Type	Preprint
Authors	Venice Commission;Office for Democratic Institutions and Human Rights (ODIHR)
Rights	With permission of the license/copyright holder
Download date	2026-06-29 10:27:46
Link to Item	<a href="http://hdl.handle.net/20.500.12424/225389">http://hdl.handle.net/20.500.12424/225389</a>



Strasbourg, 17 October 2011

Opinion No. 611 / 2011

CDL-AD(2011)032

Or. Engl.

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**  
**AND**  
**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**JOINT FINAL OPINION**  
**ON**  
**THE ELECTORAL CODE**  
**OF ARMENIA**

**Adopted on 26 May 2011**

**Adopted by the Council for Democratic Elections**  
**at its 38<sup>th</sup> meeting**  
**(Venice, 13 October 2011)**  
**and by the Venice Commission**  
**at its 88<sup>th</sup> Plenary Session**  
**(Venice, 14-15 October 2011)**

**on the basis of comments by**  
**Ms Maria Teresa MAURO (Expert, Italy)**  
**Mr Kåre VOLLAN (Expert, Norway)**  
**Mr Jessie PILGRIM (Expert, OSCE/ODIHR)**

**Table of contents**

I.	Introduction .....	3
II.	General principles .....	5
III.	Constituencies.....	5
IV.	Election administration .....	6
V.	Voter registration.....	8
VI.	Candidate nomination procedures.....	8
VII.	Restrictions on candidacy.....	9
VIII.	Representation of women on candidate lists .....	9
IX.	Election campaign regulations.....	10
X.	Campaign finance .....	11
XI.	Observers.....	12
XII.	Voting.....	13
XIII.	Counting of ballots.....	14
XIV.	Exhausted lists in the proportional race .....	14
XV.	The criteria for being elected President of the Republic.....	15
XVI.	Recounts, invalidation of results, and repeat elections .....	15
XVII.	The complaints and appeals procedure .....	17
XVIII.	Role of the police.....	18
XIX.	Concluding remarks.....	18

## I. Introduction

1. In a letter dated 22 June 2011, the President of the National Assembly of Armenia requested the Council of Europe's European Commission for Democracy through Law (Venice Commission) and the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) to provide an assessment of the recently adopted Electoral Code of the Republic of Armenia (CDL-REF(2011)029rev).<sup>1</sup>

2. This joint opinion comments on the most recent version of the Electoral Code, adopted 26 May 2011. Earlier opinions of OSCE/ODIHR and the Venice Commission as well as the numerous election reports from previous OSCE/ODIHR and Council of Europe observation missions to Armenia provide an excellent background for understanding the historical development of electoral legislation in Armenia.

3. Previous joint opinions of the Venice Commission and OSCE/ODIHR have underscored that the conduct of genuinely democratic elections depends not only on a detailed and solid Electoral Code, but on full and proper implementation of the legislation. Although the Electoral Code addresses a number of the previous recommendations made by the Venice Commission and OSCE/ODIHR, there are still areas where the code could benefit from improvement. These areas include: candidacy rights, ensuring the separation of state and party structures, allocation of seats to the *Marzes* (parliament), new voting technologies, the determination of election results, and the complaints and appeals procedure.

4. This joint opinion should be read in conjunction with the following documents and previous joint opinions provided to the authorities of the Republic of Armenia:

- Joint opinions issued by the Venice Commission and OSCE/ODIHR on the Electoral Code of the Republic of Armenia and its amendment, as listed in paragraph six below.
- OSCE/ODIHR reports on elections observed in the Republic of Armenia.
- The Council of Europe's Parliamentary Assembly's reports on elections observed in the Republic of Armenia.
- The Code of Good Practice in Electoral Matters, Guidelines and Explanatory Report, adopted by the Venice Commission at its 52nd session (Venice, 18-19 October 2002), CDL-AD(2002)023rev.
- The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (29 June 1990).

5. This joint opinion does not take into consideration other laws which have provisions that may relate to elections. Notably, this joint opinion does not include a review of the Administrative Procedural Code, whose provisions are incorporated by reference in several articles of the Electoral Code. Nor does this joint opinion include a review of the Law on Political Parties, the Broadcasting Law, or the Criminal Code.

---

<sup>1</sup> This joint opinion is based upon an English translation of the Electoral Code. It is possible that certain inconsistencies may arise due to the quality of the translation.

6. Since 2001, the Electoral Code of Armenia has been the subject of extensive scrutiny by the Venice Commission and OSCE/ODIHR.<sup>2</sup> The following joint opinions have been issued previously by the Venice Commission and OSCE/ODIHR:

- Joint Interim Opinion on the new Draft Electoral Code 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 37th meeting (Venice, 16 June 2011) and the Venice Commission at its 64th plenary session (Venice, 17-18 June 2011), CDL-AD(2011)021.
- Joint Opinion on the Electoral Code of the Republic of Armenia as amended through December 2007 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), adopted by the Venice Commission at its 76<sup>th</sup> plenary session (Venice, 17-18 October 2008), CDL-AD (2008)023.
- 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), CDL-AD(2007)023.
- 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.
- Joint Opinion on Draft Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 17th meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67th plenary session (Venice, 9-10 June 2006), CDL-AD(2006)026.
- Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and 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.
- Joint Opinion on the Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR adopted by the Council for Democratic Elections at its 10th meeting (Venice, 9 October 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004), CDL-AD(2004)049.
- Joint Recommendations on the Electoral Law and the Electoral Administration in Armenia by the Venice Commission and the OSCE/ODIHR adopted by the Council for Democratic Elections at its 7<sup>th</sup> meeting (Venice, 11 December 2003) and the Venice Commission at its 57<sup>th</sup> plenary session (Venice, 12-13 December 2003), CDL-AD(2003)021.
- Joint Assessment of the Amendments to the Electoral Code of the Republic of Armenia adopted in July 2002 by the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE and European Commission for Democracy through Law (Venice Commission, Council of Europe) adopted by the Venice Commission at its 52nd plenary session (Venice, 18-19 October 2002), CDL-AD(2002)029.

---

<sup>2</sup> Previous Joint Opinions and Legal Reviews are available at [www.venice.coe.int](http://www.venice.coe.int) and <http://www.osce.org/odihr/elections/armenia>

7. The OSCE/ODIHR has also commented on the legal framework as a part of its election observation mission election reports.<sup>3</sup>

8. The present opinion was adopted by the Council for Democratic Elections at its 38<sup>th</sup> meeting (Venice, 13 October 2011) and by the Venice Commission at its 88<sup>th</sup> Plenary Session (Venice, 14-15 October 2011).

## II. General principles

9. In conformity with the Constitution, Article 1.1 of the Draft Code provides for the election of the President (Article 50 of the Constitution), of the National Assembly (Article 63 of the Constitution) as well as of local self-government bodies (Council of Elders and Heads of Communities, Article 107 of the Constitution) by universal, equal and direct suffrage.

10. An exception to the principle of direct suffrage is made for the elections of the mayor of Yerevan, who is indirectly elected by the municipal council. The Constitution allows for either indirect or direct election (Article 108). International standards do not impose the direct election of the mayor. According to the European Charter of Local Self-Government, the local executive organs have to be responsible to the local council.<sup>4</sup>

11. As concerns the principle of universal suffrage, Article 2.3 of the Electoral Code - in line with Article 30 of the Constitution - provides that "citizens sentenced by a final court judgment to imprisonment and serving the punishment in a penitentiary institution shall not be entitled to vote and be elected", but omits to specify the cases in which a convicted prisoner's right to vote is withdrawn. As stated by the European Court of Human Rights, the deprivation of the right to vote of all convicted prisoners is contrary to Article 3 of the First Additional Protocol to the European Convention on Human Rights.<sup>5</sup>

## III. Constituencies

12. Article 17 specifies the method of drawing the constituencies under the plurality system of the National Assembly elections. The forty-one constituencies are first distributed to the ten *marzes* (provinces) and the city of Yerevan in accordance with the number of registered voters using the largest remainder method. After that, the constituencies are drawn up within the *marzes* with the condition that the variation of size from the average within each *marz* should not be more than ten per cent. The possibility exists, however, that variation across *marzes* exceeds ten per cent.

13. The method of the largest remainder has side effects which are undesired. A *marz* may get fewer seats if the total number is increased. It is suggested to consider a division method which would more clearly yield the desired outcome for the purpose.

14. Article 17.3 provides that, inside each *marz*, the number of voters for each constituency must not exceed or be less than ten percent of the ratio of the total number of voters in the *marz* (and the city of Yerevan).

15. Pursuant to Article 17.3 "the number of constituencies formed in each *marz* (and the city of Yerevan) shall be changed only in case of a change in the number of mandates of deputies of the National Assembly under the majoritarian electoral system". Such a provision would lead to "passive electoral geometry", arising from protracted retention of an unaltered territorial

<sup>3</sup> All reports on elections in the Republic of Armenia are available on the OSCE/ODIHR Website: <http://www.osce.org/odihr/elections/armenia>.

<sup>4</sup>ETS No. 122, Article 3.2.

<sup>5</sup> ECtHR *Hirst v. United Kingdom*, 6 October 2005, 74025/01; *Frodl v. Austria*, 8 April 2010, 20201/04; cf. the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), I.1.1.d.

distribution of seats and constituencies<sup>6</sup> and could result in increasing inequality of voting rights over time. A revision of the Electoral Code (Article 17.3) would be necessary to provide for a new allocation of seats to *marzes* at least every ten years, preferably outside election periods.<sup>7</sup>

#### IV. Election administration

16. Article 34 of the code provides that the primary responsibility for organising, supervising, and conducting elections for president, deputies of the National Assembly, and the local self-government bodies is vested in a three-tier system of electoral commissions. The Central Electoral Commission (CEC) has overall responsibility and is assisted on the provincial (*marz*) and community (*hamaynk*) levels by the Constituency Electoral Commissions (CSEC) and the Precinct Electoral Commissions (PEC).

17. In addition, the Electoral Code directs other governmental agencies to participate in the electoral process. According to Article 1.2 of the Electoral Code, officials of public administration and local self-government bodies shall be responsible for the legality of preparing, organising, and holding elections. It is implied that these officials and governing bodies designate a polling station, maintain the State Population Register (SPR) from which voter lists are drawn, and provide lists of electors to the electoral commissions. Officials mentioned in various articles of the code with specified responsibilities include the categories of head of community, election commissions, military officials, heads of penitentiary institutions, the public administration body authorised by the Government of the Republic of Armenia maintaining the SPR (“the authorised body”), councils of elders, and the Yerevan Council of Elders. Article 10 contains language concerning the “person possessing the premises of a polling station...”. Who the person “possessing” the polling station is could be made clearer.

18. Article 40 establishes a new procedure for the appointment of the seven members of the CEC. It changes its composition from a partisan to a non-partisan one. The President of the Republic of Armenia appoints the seven members of the CEC from a list of nominations submitted by the following officials: three nominees are made by the Human Rights Defender of the Republic of Armenia, while two nominees each are proposed by the Chairperson of the Chamber of Advocates of the Republic of Armenia, and the Chairperson of the Court of Cassation.

19. The Draft Electoral Code submitted to the previous expertise of the Venice Commission and OSCE/ODIHR provided for the nomination of five candidates by each nominating body, therefore giving discretion to the President of the Republic to choose seven candidates amongst the fifteen nominations. The new version strongly limits the discretion of the President, who has to follow the nominations of the three bodies. This is a positive step towards ensuring full independence and impartiality of the CEC.

20. In addition, Article 40.2 requires that at least two of the seven CEC members are women and that at least two members have a legal education or a scientific degree in Law. These are positive developments. In particular, the Electoral Code’s CEC appointment process and its requirements for professional experience as a public servant, higher education, and recusal from social and political activities aim at a professional and impartial mechanism. On a positive note, the possibility to become a member of the CEC – and the CSECs – is no longer limited to civil servants.

21. The Venice Commission and OSCE/ODIHR remind that for this professional model formed by presidential appointment to function successfully, it is crucial that the appointees enjoy the trust of the electorate. The nominating institutions therefore bear responsibility for choosing

---

<sup>6</sup> CDL-AD(2002)023rev, par. 13.

<sup>7</sup> CDL-AD(2002)023rev, par. 16.

candidates who enjoy the trust of the society. It is equally essential that the Armenian authorities abstain from any intervention and interference in the nomination process. The Venice Commission and OSCE/ODIHR encourage the Armenian authorities and society to use this change in the composition of the CEC as an opportunity for ensuring a fair and balanced conduct of elections.

22. Under Article 17 constituencies are created in a number equal to the number of deputies to the National Assembly under the majoritarian electoral system. Each constituency must be a unified territory and may not include communities from different *marzes*. In each constituency, a CSEC of seven members appointed by the CEC for a term of six years is formed, in accordance with Article 41. Article 41.2 states that at least two members must be women. This is a positive facilitation of women's representation in election administration. However, further increases in women's representation on the CSECs would be welcomed.

23. The method of appointment for members of the CSECs in the Electoral Code has changed from a partisan model to a model of appointing professionals by the CEC. While the English translation of the code uses the name "Constituency Election Commission", the Armenian term for the CSEC remains the former name "Territorial Election Commission (TEC)". Remarks made above about the choice of such model for the CEC also apply to CSECs.

24. Article 41.6 and 41.7 specify that appointments made to the CSEC by the CEC under Article 41.2 and 41.3 utilise the method of preferential voting, also known as the single transferable vote (STV) system, outlined in Article 166 of the code, unless the CEC makes a unanimous decision on the composition. A STV system should ensure that the whole composition of the CSECs is not decided a narrow majority in the CEC. The gender rule and the fact that fewer than seven candidates for CSEC positions may need to be elected make STV a good fall-back procedure in cases of disagreement. The application of this method to establish CSECs and the resulting composition of CSECs will have to be tested in practice.

25. Article 42.2 provides that PECs are appointed through a primarily partisan model. The President of Armenia does not appoint one of the PEC members any more, but political parties or an alliance of political parties having a faction in the National Assembly appoint one member each. This is an improvement from the draft where the party of the president could have been given an unreasonable advantage. The chairperson does not appoint members of the PECs; it is now left with the CSEC as a body.

26. The code (Article 42.9) establishes that where no member of the commission is appointed by a political party or alliance of political parties in the manner and within time limits prescribed by the code for the formation of PECs, or the number of candidates nominated by the members of the CSEC is less than two, the vacant positions of the commission shall be filled by the chairperson of the relevant CSEC. However, if the chairperson of the CSEC has a bias, a party could be given an unfair advantage. It would be suitable that this task is given to the CSEC as such, not just to its chairperson.

27. The selection process for PECs leadership positions (chairpersons and secretaries) is quite complex. However, the new code now introduces a rather clear formula (Art. 42.5) to distribute those positions in proportion to the strength in the National Assembly.

28. Article 43 provides for the dismissal of leadership of the CEC and CSECs if they "do not properly exercise the powers conferred upon them." This is an improvement over the previous code which allowed for dismissal on unspecified grounds upon a vote by two-thirds of the commission's total membership. However, dismissal should be based only on a reasoned decision and be limited to very serious grounds. The Armenian authorities informed the Venice Commission and OSCE/ODIHR that this has to be the case under the Law on Legal Acts.

29. In conclusion, the Venice Commission and OSCE/ODIHR welcome the improvements introduced in the new Electoral Code, which follow up on previous recommendations and discussions between the Venice Commission, OSCE/ODIHR and the Armenian parliament. Although the new code has the potential to ensure the conduct of democratic elections, the Venice Commission and OSCE/ODIHR wish to emphasise, as underlined in previous Joint Opinions, that legislation alone cannot guarantee that members of election commissions will act professionally, honestly and impartially. Full and proper implementation of the existing and possible new provisions on electoral commission formation and administration remains crucial.<sup>8</sup>

30. Proper training of all election commissions on the provisions of the new Electoral Code and, in particular, of the CEC has to be ensured, as well as proper equipment. In its turn, the CEC should be responsible for the training of lower-level electoral commissions.<sup>9</sup>

## **V. Voter registration**

31. Article 2.1 of the Electoral Code provides that a foreign national may vote in local self-government elections if he or she has been registered for at least one year in the population register of the community where the elections are held. Article 7.1 states:

32. Citizens having no registration in the Republic of Armenia as well as persons not holding the citizenship of the Republic of Armenia but having the right to vote at elections of self-government bodies, shall not be included in the Register of Electors of the Republic of Armenia, which does not restrict their right to be included in the list of electors.

33. Article 8.4 describes how citizens not registered in the Republic of Armenia can be included in the list of electors, but there does not seem to be a specified procedure for those without citizenship to be given the right to vote in a local election according to Article 2.1. The Venice Commission and OSCE/ODIHR recommend that the Electoral Code be revised to include a specific procedure for their registration.

34. The provisions in the law (Article 7 ff.) appear sufficient to establish a basic framework for creating and maintaining accurate voter lists. The Venice Commission and OSCE/ODIHR recommend that all relevant authorities in Armenia take all necessary steps, according to an integrated approach, to continue their efforts to compile an accurate voter register.

## **VI. Candidate nomination procedures**

35. In the previous draft version of the Electoral Code (January 2011) the right to nominate candidates was restricted to political parties for presidential elections and to political parties and alliances for other types of elections.<sup>10</sup> The adopted Electoral Code provides for the candidacy of independent candidates through the “right of citizens to be elected by way of self-nomination.” (Articles 78, 114, 133). This is a positive change that incorporates previous recommendations of the Venice Commission and OSCE/ODIHR. However, in the English translation, this right does not appear to have been extended to allow for independent candidacy to the Yerevan Council of Elders in Article 155. This should be corrected.

36. The Electoral Code requires all candidates to pay an electoral deposit that is a number multiplied by the “minimum salary as defined by the legislation of Armenia.” (Articles 80, 108(3)(5), 115(2)(2), 134(3)(1)). The code does not provide for signature support as an alternative mechanism for registration. For this reason, the amounts of the electoral deposits are important as deposits should not be arbitrary obstacles to candidacy. The Venice

---

<sup>8</sup> CDL-AD(2008)023, paragraph 19 and CDL-AD(2007)013, paragraph 24.

<sup>9</sup> Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), II.3.1.g.

<sup>10</sup> See Articles 78, 106(1), 106(7), 134(1), and 155(1) of the January 2011 draft Electoral Code.

Commission and OSCE/ODIHR reiterate that the amount of an electoral deposit must be considered carefully since every citizen should be provided a meaningful opportunity to stand as a candidate. The Venice Commission and OSCE/ODIHR recommend, as was recommended in the 2007 Joint Opinion,<sup>11</sup> that careful consideration be given as to whether to consider signature requirements for parties and candidates in lieu of a deposit. Allowing for the choice of either signatures or a deposit would avoid making the possibility to stand for election dependent on candidates' financial situations.

## **VII. Restrictions on candidacy**

37. The Venice Commission and OSCE/ODIHR have previously recommended that Article 77.1 of the Electoral Code be amended to remove restrictions on the rights to stand as a candidate. These recommendations have only been very partially addressed in the adopted Electoral Code. Article 77.1 was amended to read: "Anyone having attained the age of thirty-five, not being a citizen of another state, having been a citizen of the Republic of Armenia for the last ten years, permanently residing in the Republic for the last ten years and having the right of suffrage, may be elected as the President of the Republic." That means that a person with double citizenship may now stand for elections after abandoning the second citizenship, which is an improvement. None of the issues for presidential candidacy related to age or permanent residence have been addressed, despite international standards and recommendations of the Venice Commission and OSCE/ODIHR. Albeit enshrined in Article 50 of the Constitution, the age requirement of 35 years to stand for the presidency, although not without precedent in other countries, could be considered high. Moreover, the requirement of 10 years residence and 10 years citizenship is disproportionate. Except in very specific situations, which do not appear to be present in Armenia, these restrictions are not justified by the need to protect national or democratic interests.<sup>12</sup>

38. Article 105 of the Electoral Code – following Article 64 of the Constitution - also establishes an age requirement (25 years), provides for a 5-year residency requirement for candidates, as well as the requirement of 5-year Armenian citizenship, and excludes dual citizenship for election as a deputy to the National Assembly. Even if the requirement not to have been a dual national in the last five years has been deleted, this is not in conformity with the European electoral standards. The Code of Good Practice in Electoral Matters states that "a length of residence requirement may be imposed on nationals solely for local or regional elections."<sup>13</sup> Further, the UN Human Rights Committee has stated: "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as... residence or descent."<sup>14</sup>

39. Articles 132.1, 132.2 and 151.1 of the Electoral Code lower the residency requirement for election to head of community, community Councils of Elders and the Yerevan Council of Elders to six months before voting day, from the previous requirements of two-year's and three-year's residency, respectively. This is a positive change that incorporates a previous recommendation of the Venice Commission and OSCE/ODIHR.

## **VIII. Representation of women on candidate lists**

40. Article 108.2 of the Electoral Code represents an improvement of gender balance requirements compared to earlier codes and draft legislation. A list of candidates must now have both genders represented among the first six candidates on the list, starting with candidate number two, and further for each interval of five candidates. The guaranteed

---

<sup>11</sup> CDL-AD(2007)013, par. 25.

<sup>12</sup> See, e.g., ECHR *Py v. France*, 11 January 2005, Application no. 6289/01.

<sup>13</sup> Code of Good Practice in Electoral Matters, CDL-AD(2002)03rev, 1.1.1c.

<sup>14</sup> UN Human Rights Committee General Comment 25, para. 15.

women's representation is improved but parties just passing the threshold may still theoretically return five candidates without a woman among them. If this article had started the requirement with the interval one to five instead of two to six, then all parties winning seats in the proportional race would have at least one woman elected in the National Assembly. It is recommended that this be changed in the code.

41. Article 155.2 of the Electoral Code has a similar provision for women candidates on the lists for elections to the Yerevan Council of Elders.

42. These provisions are to be welcomed. The current legal provisions could nevertheless be strengthened to ensure an increase in the election of women to the National Assembly.

## **IX. Election campaign regulations**

43. Previous restrictions on the rights of charitable and religious organisations to express opinion during the electoral campaign, as well as similar restrictions on the rights of foreign nationals who could not vote in local self-government elections, have been removed from the Electoral Code. These changes are positive and incorporate previous recommendations of the Venice Commission and OSCE/ODIHR.

44. Changes in Article 18 of the Electoral Code also allow more time for candidates and political parties to campaign. This is a positive change, in accordance with a previous recommendation of the OSCE/ODIHR and Venice Commission.

45. The Venice Commission and OSCE/ODIHR have previously recommended that Article 18.8, which allowed for a candidate's registration to be revoked after a warning and a court decision for any violation of the campaign regulations, should be revised to satisfy the principle of proportionality.<sup>15</sup> This provision has been amended to provide for revocation of candidacy on the basis of a violation "that may essentially affect the results of the election". The revocation may come after a warning by an electoral commission giving a "reasonable period which shall not exceed three days" for stopping the violation. It would be suitable to give the electoral commission the possibility to extend such period beyond three days. In the case of failing to stop the violation within the prescribed timeframe, the commission shall file a claim with a court for repealing the registration of the candidate, party or alliance. The Venice Commission and OSCE/ODIHR continue to recommend the imposition of a monetary fine for minor violations of campaign regulations, in conformity with the principle of proportionality (this applies also to Article 113.2, 119.2 and 159.2).

46. The new Electoral Code does not include the former version of Article 20.5, which required that a campaign poster be "submitted to the electoral commission" before it is posted and according to which the campaign poster could be posted only "in case no decision on prohibiting the posting of a poster is taken by the electoral commission within a three-day period". Repeal of this provision is a positive change that incorporates a previous recommendation. "Campaign posters may be posted only in places envisaged by this Article" (Article 20.2), and the head of community decides upon designating free places for posting campaign posters (Article 20.3). These provisions should be interpreted broadly.

---

<sup>15</sup> Any limitation imposed on an individual's rights must be proportionate in nature and effective at achieving the specified purpose. Particularly in the case of suffrage rights, given their fundamental role in the democratic process, proportionality should be carefully weighed and prohibitive measures narrowly applied. The only restrictions imposed should be those that are necessary in a democratic society and prescribed by law. If restrictions do not meet such criteria, they cannot rightly be deemed as proportionate to the offence. The cancellation of candidacy is the most extreme sanction available and should never be imposed unless such measure is proportionate and necessary in a democratic society.

47. The new Electoral Code amends Article 21.3 to clarify the prohibition on publication of opinion poll findings. The amended article reduces the restriction from the publishing of polling results by unspecified media sources seven days prior to voting day to a more specific directive of “radio or television companies exercising terrestrial broadcast transmission shall be prohibited to publish by – 20:00 of the voting day – the findings of an opinion poll.” This is an improvement in the Electoral Code.

48. The Venice Commission and OSCE/ODIHR previously recommended that Article 19 of the Electoral Code be clarified so that there is no question as to what conditions and treatment each candidate and political party (alliance) is entitled to under Article 19 and that “proportional equality” should be expressly defined. Previous opinions of the Venice Commission and the OSCE/ODIHR have additionally recommended that prior versions of this article be amended to provide guidelines for ensuring its implementation.<sup>16</sup> Article 19.3 has been amended to read: “The Public Radio and Public Television shall be obligated to ensure non-discriminatory conditions for candidates, as well as for political parties, alliances of political parties running in elections under the proportional electoral system.” Further, Article 19.10 has been amended to require “equal conditions” for all candidates and electoral contestants. Thus, it would appear that the Electoral Code now requires strict equality, alleviating concern over implementation of the “proportional equality” provision.

49. Article 22 of the Electoral Code addresses issues of resources available to incumbent officials and their use in the election campaign. A candidate who holds a political or discretionary position, as well as a candidate who is a state or community official, is prohibited from: conducting an election campaign while performing official duties, abuse of an official position to gain advantage at elections, as well as the use of premises, means of transport and communication, material and human resources of the candidate’s official position in the election campaign. Full and proper implementation of Article 22 is critical to ensuring the Article 19 requirement of non-discriminatory conditions for all electoral contestants and establishing the necessary conditions for genuinely democratic elections.

50. The separation of state resources from party and candidate resources has been a problem cited in every OSCE/ODIHR election report since 1996. The governing party network exercises influence on national government, but also the governors' offices and local self-government in most regions. During a national election, the resources under the control of these offices are called on to campaign on behalf of the government candidates. This creates a disparity in resources available with the added problem of creating the perception that employees are obligated to work for, attend rallies on behalf of and vote for the government candidates for fear for their employment. This practice is neither in conformity with the Code of Good Practice in Electoral Matters, where the principle of equality of opportunity entails a neutral attitude by state authorities,<sup>17</sup> nor with OSCE commitments which call for a separation of party and State and campaigning on the basis of equal treatment.<sup>18</sup> The changes to Article 19 and 22, if implemented fully and properly, could contribute significantly to address problems noted in past elections.

## **X. Campaign finance**

51. Articles 25 through 28 of the Electoral Code govern the establishment, use, and reporting requirements of campaign fund accounts, and the Oversight and Audit Service of the CEC. These articles include previous recommendations of the Venice Commission and OSCE/ODIHR to provide greater detail on acceptable expenditures for the campaign and more

---

<sup>16</sup> CDL-AD(2008)023, par. 34; CDL-AD(2011)021, par. 45-46. See also Recommendation of the Committee of Ministers to member states on measures concerning media coverage of election campaigns (CM/Rec(2007)15) (Adopted by the Committee of Ministers on November 2007 at the 1010th meeting of the Ministers' Deputies).

<sup>17</sup> See CDL-AD(2002)023rev, I. 2.3.

<sup>18</sup> See the 1990 OSCE Copenhagen Document, paragraphs 5.4 and 7.7.

information on services or goods that are donated. Consideration should be given to also implement recommendations of the Council of Europe's Group of States Against Corruption (GRECO) from its most recent report, dated 3 December 2010.<sup>19</sup> However, the list of acceptable expenditures in Article 26.12, is still somewhat limited.

52. As previously recommended by the Venice Commission and OSCE/ODIHR, the text in Article 25.2(2) has been amended to remove the distinction between "funds provided by the political party that has nominated the candidate" and the "funds of the political party". Article 25.2(2) is now clear: the referenced funds are funds provided by the political party that nominated the candidate as the latter phrase has been deleted from the article.

53. Article 26.12 identifies the following as acceptable campaign expenditures: "mass media, funding for renting halls, premises, preparing (posting) campaign posters, acquiring print campaign and other materials, funding for all types of campaign materials (including print materials) to be provided to electors". The Venice Commission and OSCE/ODIHR continue to recommend that Article 26 be revised to provide for all costs related to the campaign, including: use of services for marketing, campaign offices, external campaign strategy support, travel costs, and any cost incurred in an effort to be elected.

54. Article 28 designates the CEC's Oversight and Audit Service as supervisor of the use of campaign funds and "over financial activities of political parties". Previous opinions of the Venice Commission and OSCE/ODIHR discussed the negative aspect of relegating these responsibilities to the CEC, as opposed to an independent agency without general election administration responsibilities. While the Venice Commission and OSCE/ODIHR recognise the CEC's competence, both reiterate that good practice has shown that an independent commission focusing only on campaign finance is an important means of both increasing public trust in and ensuring the proper functioning of the campaign finance system.

## **XI. Observers**

55. Articles 29 through 33 of the Electoral Code establish the rights of observers and candidate representatives and the procedures for their accreditation. Although these articles provide broad rights for observation, there remain areas where the rights of observers could be improved and strengthened.

56. Article 29.2 prohibits election observation missions of international organisations from employing Armenian citizens as observers. The text has been amended and this provision should not apply to drivers, interpreters, and necessary support staff that are usually relied on by international election observation missions. However, it would be suitable to make it clear - possibly in regulations adopted by the CEC - that employment by international election observation missions of drivers, interpreters, and necessary support staff who do not form substantive conclusions about the elections is permitted.

57. Article 30 of the Electoral Code establishes an accreditation process for election observers. The CEC is responsible for the observer certification process. Article 30.4 requires the CEC to "reject the application on accreditation of observers where the tasks enshrined by the statute of the organisation do not meet the requirements" for foreign and domestic non-governmental organisations outlined in Article 29. Article 29 requires that the statute of the non-governmental organisation include "issues relating to the democracy and protection of human rights".

58. Article 31.1 (1), as amended by the adopted Electoral Code, allows observers of a non-governmental organisation to be:

---

<sup>19</sup> The report can be found at:  
[www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)4\\_Armenia\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)4_Armenia_Two_EN.pdf).

present at the sittings of electoral commissions, and during voting – also in the voting room, if they have a qualification certificate to be included in the electoral commissions, or have received through testing a certificate granting them the right to carry out an observation mission.

59. The article further provides that courses be offered annually in Yerevan and in the *marzes*, that qualification certificates be granted based on a computer-based or standard test, that persons can be tested “notwithstanding whether he or she has participated in the courses”, and that representatives of mass media and non-governmental organisations can monitor the courses and tests. These revised provisions do not address OSCE/ODIHR and Venice Commission concerns over legal provisions under previous codes that could limit transparency by restricting the pool of potential observers through the training, testing, and certification process.<sup>20</sup> The Venice Commission and OSCE/ODIHR previously recommended that any training should be the responsibility of the observer organisation. Even if the training is not, the tests organised by the CEC are mandatory. The Article also does not specify who would issue the required ‘qualification certificate’ - this has been settled by a decision of the CEC according to which the CEC organises the training and issues the qualification certificate. Provisions for accreditation and certification of observers should not be applied in any way to limit the possibility for observers to observe election processes. These provisions do not apply or require the training and qualification of observers by international non-governmental organisations.

60. The adopted Electoral Code keeps the provision, which provides that “proxies, observers, mass media representatives may photograph and videotape the sittings of electoral commissions as well as the voting process without violating the principle of secrecy of ballot”. (Article 6.12)”. A previous recommendation of the Venice Commission and OSCE/ODIHR to delete this provision has not been followed. The implementation of Article 6.12 could result in some voters being intimidated by the recording of activities in the polling station regardless of whether the provision was intentionally abused, even though the stated intention is to create more transparency and control and most electoral actors are against repealing this provision.

61. The new version of Article 33 provides for the possibility of proxies of each candidate and each political party running in the proportional elections to be present at the sitting of the electoral commission. This is a positive addition.

## **XII. Voting**

62. Article 60 of the Electoral Code provides for electronic voting by electors who are – on voting day – on diplomatic service in diplomatic and consular representations of the Republic of Armenia, as well as members of their families residing abroad with them and having the right to vote. The introduction of electronic voting – especially when conducted in an uncontrolled environment, as indicated by the CEC – should only be an alternative means to voting in a controlled environment.<sup>21</sup> Remote electronic voting is particularly controversial because it cannot guarantee secrecy and it cannot be observed through the methods commonly applied to observation of voting in the controlled environment of a polling station. The adequacy of electronic voting in situations where confidence in the impartiality of the election administration is limited should be carefully evaluated. Should there be a decision to implement electronic voting, its legal basis should be drafted in an equally detailed and accountable manner as for

---

<sup>20</sup> CDL-AD(2011)021, par. 57.

<sup>21</sup> See standard 4 of the Recommendation Rec(2004)11 of the Committee of Ministers to member states on legal, operational and technical standards for e-voting (Adopted by the Committee of Ministers on 30 September 2004 at the 898th meeting of the Ministers' Deputies) which reads “[...] remote e-voting [...] shall be only an additional and optional means of voting”.

traditional voting in a controlled environment.<sup>22</sup> The Armenian authorities should carefully examine the need for Internet based voting against the alternative of organising polling stations at the consular offices on election day for this small group of voters.

63. Article 62.1(4) of the Electoral Code states that there shall be “at least one (PEC) member holding the voting through a mobile ballot box.” This provision disregards the previous recommendation of the Venice Commission and OSCE/ODIHR that safeguards be adopted to reduce the opportunities for fraudulent voting through the mobile ballot box including, at a minimum, the use of two PEC members who are not members appointed by the same nominating person or institution.<sup>23</sup> The Venice Commission and OSCE/ODIHR again recommend the inclusion of such safeguards in the Electoral Code.

64. Article 65.4 of the Electoral Code allows for a voter, who is unable to complete the ballot papers, to be assisted by another person, who shall not be a proxy. The person assisting is limited to providing assistance to only one voter who needs such assistance in filling out the ballot paper. This provision adopts previous recommendations of the Venice Commission and OSCE/ODIHR and is, therefore, to be welcomed. This article also requires that the name of the person assisting shall be entered in the record book of the PEC. This amendment is another positive inclusion of a previous recommendation of OSCE/ODIHR and the Venice Commission and should equally be welcomed.

65. Articles 66.4 and 66.5 provide a procedure for filling in the ballot paper and sealing the ballot envelope. After the voter casts the ballot, the PEC member is required to put a stamp on the elector’s identification document. Article 55.5 provides that this seal shall disappear after approximately twelve hours which would address concerns about possible intimidation of people based on the existence of a stamp in the ID document.

### **XIII. Counting of ballots**

66. The draft Article 68.2(5) (now 68.1(5)) of the Electoral Code has been amended to provide that a ballot is invalid if “it is not signed, stamped or sealed by a member of the electoral commission”. This revision incorporates a previous recommendation of the Venice Commission and OSCE/ODIHR for clarification of the ambiguous text in Article 68.2(5), which could have been interpreted in the prior English translation to require the voter to sign the ballot.

67. Article 68.1(6) provides that a ballot is invalid if “the defined manner of marking the ballot paper is breached apparently.” This subsection continues by stating: “An insignificant breach shall not serve as a basis for invalidity of the paper ballot, if the elector’s intention is clear and unambiguous.” The Venice Commission and OSCE/ODIHR previously recommended revision of this provision because, in the English translation, the article did not provide guidance as to ballot validity. Inserting the word “defined” and the phrase “insignificant breach” in the original text of this provision, arguably provides additional guidance. However, full and proper implementation of this provision is necessary to ensure that valid ballots are not refused because it is determined by the PEC that the “breach” is “significant” as opposed to “insignificant”. Regardless, these changes are an improvement in the text.

### **XIV. Exhausted lists in the proportional race**

---

<sup>22</sup> For guidance on regulating electronic voting see also the recently published CoE guidelines on certification (at [http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial\\_Nov\\_meeting/Guidelines\\_certification\\_EN.pdf](http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial_Nov_meeting/Guidelines_certification_EN.pdf)) and transparency (at [http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial\\_Nov\\_meeting/Guidelines\\_transparency\\_EN.pdf](http://www.coe.int/t/dgap/democracy/Activities/GGIS/E-voting/E-voting%202010/Biennial_Nov_meeting/Guidelines_transparency_EN.pdf)).

<sup>23</sup> CDL-AD(2011)021, par. 61.

68. For proportional list elections, it is common to regulate the number of candidate names which a political party or alliance list must contain. With 90 contested seats, such regulation could for example stipulate that each list should have a minimum of 25 candidates and a maximum of 110. The purpose of instituting a minimum is to reduce the risk for a list to win more seats than they have candidates, or for not being able to fill in vacancies during the term of the National Assembly. An upper limit would be kept only for practical reasons.

69. Article 108.2 of the Electoral Code has been amended to require every electoral list of candidates submitted by a political party or alliance of political parties, under the proportional electoral system, to contain at least 25 candidates. This article further states: “the number of candidates included in the electoral list of a political party may not exceed three times the number defined by this code for mandates of deputies of the National Assembly under the proportional election system.” This amendment for a minimum and maximum number of candidates on the list is consistent with previous recommendations of the Venice Commission and OSCE/ODIHR. These changes should reduce the risk for a party or alliance list to win more seats than they have candidates or for not being able to fill vacancies during the term of the National Assembly. However, even with the revised minimum number of candidates, it is still theoretically possible for a party to win more seats than it has candidates, unless the minimum is set at 90 candidates.

70. Article 125 of the Electoral Code describes the distribution of seats among lists in the proportional part of the election. The method used is the largest remainder formula using Hare’s quota. It should be reminded that this method could theoretically result in a party having fewer seats despite a higher total number of votes (see above).

71. Article 125.7 states that if a list has fewer candidates than they win seats the remaining seats are allocated to the other lists. This should secure that there are no vacancies at the outset of a new National Assembly. The rule is, however, insufficient. It states that “such mandates shall be allocated among the electoral lists of the other political parties, alliances of political parties having obtained the right to participate in the allocation of seats, as per the sequence of the remainder values, with the principle of one mandate to each”. There may not be a sufficient number of remainders and the rule would not provide a proportional result for the rest of the seats. Instead new calculations would have to be made based upon all seats minus the ones given to the list with too few candidates.

## **XV. The criteria for being elected President of the Republic**

72. Article 92.1 states that a candidate is elected President if he or she receives more than half of the votes cast for any candidate but paragraph 2 states that if there is only one candidate one needs more than half of the votes of those participating in the voting. The latter means that it is not sufficient to have more ‘for’ than ‘against’ votes but even invalid votes will effectively be counted as against. The language is similar to that of Article 51 of the Constitution and the inconsistency should be resolved both in the Constitution and in the Electoral Code. The same applies to Articles 126.2 and 3 and 143.2.

## **XVI. Recounts, invalidation of results, and repeat elections**

73. Article 48 of the Electoral Code establishes the procedure for recounts of voting results by the relevant CSECs. Changes have been made in this article, which incorporate some previous recommendations of the Venice Commission and OSCE/ODIHR.

74. Article 48.1 specifies that an application for the recount of voting results be submitted to the CSEC between 12:00 and 18:00 on the day following the voting. Article 48.6 provides that recounts begin at 09:00, two days after election day and that the “deadline for recount” will be at 14:00 on the fifth day following election day. During the recount CSECs, shall work without rest

from 09:00 to 18:00, and shall extend the working time after 18:00 if it is not possible to complete the stated recount for the electoral precinct. This provision contradicts Article 48.12 which states that “the duration of the recount of the voting results in each electoral precinct may not exceed four hours.” An ongoing recount should not be arbitrarily limited to four hours and should always be completed. The Venice Commission and OSCE/ODIHR recommend that Article 48.6 be revised accordingly.

75. Article 48.7 in the previous version of the Electoral Code provided that the withdrawal of the recount application by the applicant would not serve as a ground for not carrying out the recount and Article 48.6 arbitrarily limited the number of recounts by a CSEC to seven precincts. Consistent with previous recommendations of the Venice Commission and OSCE/ODIHR, these provisions have been removed from the Electoral Code.

76. Article 48.7 of the Electoral Code states that the CSEC shall recount voting results where “substantial proof on erroneous summarisation of the voting results has been submitted.” This standard is difficult to meet before the recount. The Venice Commission and OSCE/ODIHR recommend that this provision should be amended to require a recount where there is evidence of *possible* wrong summary of results.

77. As already noted,<sup>24</sup> when there are several candidates, no “vote against all” is envisaged, and the terms of “affirmative vote” could be simply transformed into “vote” in the whole code (e.g. in Articles 21.3, 24.2, 92, 143.2).

78. The Venice Commission and OSCE/ODIHR have previously recommended that Article 125.8 (formerly Article 126.8) should be clarified so that the legal principles applicable to invalidation of election results should be the same for both proportional and first-past-the-post elections.<sup>25</sup> An amendment to Article 125.8 incorporates this recommendation so that the legal principles for invalidation of parliamentary elections apply to both majoritarian and proportional races. This is to be welcomed.

79. According to Article 46.10 of the Electoral Code, the CSEC should declare the voting results invalid after an appeal if the violations could *significantly* have affected the result. The word “significantly” is subject to different interpretations. Article 46.10 should clearly state that if there are reasons to believe that the violations could have changed the election results then the result should be invalidated. Any violations should be reported to the CEC who may invalidate the elections based upon the CSEC reports. Secondly, the CSEC should take this action even if there is no appeal. The CSEC should take this action on its own initiative should it be aware of facts justifying such action. Finally, consideration should be given to revising the code so that the CSEC only makes the recommendation for invalidation and the decision on invalidation is made by the CEC.

80. Articles 125, 126, 143, 144 and 165 all state that election commissions may take decisions “on calling a revote in certain electoral precincts”. This is a positive change which enables irregularities to be remedied locally without taking the costs of re-votes in the whole constituency or, in the worst case, in the whole country. That would make it easier for the commissions to invalidate a result which could affect the result since the costs are limited. However, in Article 91 regarding the presidential election, this option is not included. This should be revised. Even if the Constitution states that if “a President is not elected, there shall be new elections on the fortieth day after the first round of elections” (Article 51) this provision must be read in the context of the paragraph before where a single candidate does not win a majority. It does not deal with partially invalid elections.

---

<sup>24</sup> CDL-AD(2011)021, par. 86.

<sup>25</sup> CDL-AD(2011)021, par. 87.

## **XVII. The complaints and appeals procedure**

81. The Venice Commission and OSCE/ODIHR have commented numerous times on the need to improve the complaints and appeals process.<sup>26</sup> Insufficient mechanisms for addressing complaints and appeals have been identified as key factors undermining citizens' confidence in election results. In the 2008 presidential elections, the Constitutional Court noted the CEC's failure to discharge its duty in respect of its mandate to monitor and adjudicate on complaints and appeals and called for a new legal framework to adjudicate complaints and appeals.<sup>27</sup>

82. Articles 45 through 47 of the Electoral Code discuss "applications (complaints)", "appeals", and applications that result in "administrative proceedings" within an election commission. The Venice Commission and OSCE/ODIHR had previously recommended that Articles 45 through 47 of the Electoral Code be revised to outline an understandable process for each type of complaint and appeal in order to clarify and define the complaint and appeals process for voters, candidates, and political party proxies.

83. Article 46 was substantially revised, providing a procedure for each type of appeals against decisions, actions, and inaction of electoral commissions concerning invalidation of voting results.

84. "Administrative proceeding" is not defined in the Electoral Code and the Administrative Procedure Code was not reviewed. The Venice Commission and OSCE/ODIHR repeat the recommendation that "administrative proceeding" be expressly defined in the code or a clear reference made to the Law "on fundamentals of administrative action and administrative proceedings".

85. Article 46.1 provides that a decision of an electoral commission that constitutes a violation of rights generates an appeal. Actually, all decisions of electoral commissions relate to the implementation of the Code, which is based on the rights to elect and be elected (suffrage rights).

86. Article 46.3 lists those authorised to submit an application for declaring voting results in a precinct invalid. This list should include voters or a group consisting of a stipulated number of voters.

87. Article 46.4 of the Electoral Code states that where the commission finds an appeal that does not comply with the requirements of Article 46 it "shall reject the instigation of an administrative proceeding."

88. Articles 46.6 and 46.7 now ensure that all decisions related to elections are subject to a final appeal to a court of law. This is a positive development.<sup>28</sup>

89. Article 46.8, which puts the difficult burden of proof on the applicant, may restrict the ability of applicants to seek effective remedy, even if "the electoral commission examining the appeal may ex officio seek proof". It should be made clear that the election commission may not use discretion in order to decide whether or not to seek proof, but must seek it if necessary. As stated previously, "the procedure must be simple and devoid of formalism".<sup>29</sup>

---

<sup>26</sup> See the OSCE/ODIHR reports on elections in the Republic of Armenia (<http://www.osce.org/odihr-elections/14350.html>) as well as the previous joint opinions such as CDL-AD(2007)013, par. 31 ff; CDL-AD(2006)026, par. 55; CDL-AD(2005)027, par. 4 and 27-30; and CDL-AD(2003)021, par. 39 ff.

<sup>27</sup> Constitutional Court decision of 8 March 2008 in respect of appeals filed by candidates Levon Ter-Petrosian and Tigran Karapetyan challenging the decision of the CEC on the election of the president, 24 February 2008.

<sup>28</sup> Cf. Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev, II.3.3.a.

<sup>29</sup> CDL-AD(2002)023rev, II.3.3.b.

90. Article 46.11 provides for the appeal of a decision by a CSEC on invalidating the registration of a candidate to the CEC, but there is no explicit provision for the appeal of the administrative decision of the CEC to a judicial body. It is understood that appeal to the Administrative Court (Article 46.7) is possible in that case. A CEC decision to invalidate a registration of candidacy for President of the Republic, under Article 84.1, may be appealed to the Administrative Court of the Republic of Armenia in the manner and time limits defined by the Administrative Procedure Code. Similar provisions for appeal are found in Article 112 for the invalidation of candidate registration for the National Assembly elections.

91. The Venice Commission and OSCE/ODIHR again suggest the need to provide a detailed procedure concerning the measures to be taken “with regard to issues requiring urgent solution” or specify in Article 47.6 processes contained in the Administrative Procedure code.

92. The Venice Commission and OSCE/ODIHR previously recommended harmonising the dates for deadlines of decisions by the CEC on election results for President of the Republic and the appeal process for such actions. Article 75.6 commands the CEC to issue a decision “on the seventh day after voting.” Article 91.2 of the Electoral Code provides for an appeal challenging the CEC’s decision on an election for President of the Republic to be submitted to the Constitutional Court by 18:00 on the fifth day following the official announcement of results by the CEC. Article 93, however, states that, when required, a second round of elections of the President shall be held on the fourteenth day after the voting. If a decision by the CEC is taken directing a second round of elections and an appeal submitted to the Constitutional Court on the last day allowed by law, then time for hearing and deciding the appeal in the Constitutional Court is compressed and a decision may not be made before the date of the second round election. Although this scenario is only a possibility, it is a possibility that should be addressed by harmonising the current deadlines in these articles.

### **XVIII. Role of the police**

93. Article 53 of the Electoral Code deals with co-operation of electoral commissions and law enforcement authorities. The Venice Commission and OSCE/ODIHR recommend to include, that police should, however, intervene in polling stations only in case of unrest and not interfere in the electoral process.

### **XIX. Concluding remarks**

94. The new composition of election commissions, which shifts from a partisan to a non-partisan model at the level of the CEC and the CSECs, is a step towards a fully independent and impartial election administration. In particular, the strong limitation of the President of the Republic’s discretion in the appointment of the CEC is a positive development.

95. There have been a number of positive amendments made to the law, which address previous Venice Commission and OSCE/ODIHR recommendations. Amendments, such as the provision of a judicial remedy for all electoral disputes, inclusion of quotas for women in the CEC and CSECs, clarification on providing assistance to voters in the polling station, and broadening the definition for what may be cause for an election to be invalidated, all improve the legal framework for elections.

96. It is also positive that the Electoral Code has been amended almost a year before the next election, scheduled for May 2012. This should allow sufficient time to ensure that electoral stakeholders can become familiar with the provisions of the new Electoral Code prior to the next elections.

97. Although the new code has the potential to ensure the conduct of democratic elections, legislation alone cannot ensure this. It is the exercise of political will by all stakeholders that

remains the key challenge for the conduct of genuinely democratic elections in the Republic of Armenia. The Venice Commission and OSCE/ODIHR have long stated that the Electoral Code of the Republic of Armenia could provide a good basis for democratic elections, if implemented fully and properly.

98. It is also of particular importance that legislation regulating fundamental rights such as the right to genuinely democratic elections be adopted openly, following debate, and with the broadest support in order to ensure confidence and trust in electoral outcomes. A public process, with the inclusion of all stakeholders, encourages trust and confidence in electoral outcomes. All parties, both in the government and the opposition, have a responsibility in this regard. This has been lacking in previous Electoral Code revisions but has been improved in the process leading to this revised code.

99. The Electoral Code would benefit from further improvement in order to ensure full compliance with OSCE commitments, Council of Europe and other international standards for the conduct of democratic elections. Areas which could be addressed include:

- Removing excessive restrictions on candidacy rights;
- Ensuring a separation of state and party/candidate structures;
- Allocation of seats to *marzes*;
- Critically assess the use of new voting technologies for out-of-country voters;
- Improving provisions for the count and tabulation process, including the determination of election results; and
- Improving complaint and appeal procedures to better ensure an effective remedy.

100. The Venice Commission and OSCE/ODIHR stand ready to assist the authorities in Armenia in their efforts to improve the legal framework for elections.