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## Helsinki Citizens' Assembly - Vanadzor

# Reflection of Recommendations by International Election Observation Missions in the RA Electoral Code

Vanadzor 2016





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# REFLECTION OF RECOMMENDATIONS BY INTERNATIONAL ELECTION OBSERVATION MISSIONS IN THE RA ELECTORAL CODE

Vanadzor 2016

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The views expressed herein can in no way be taken to represent the official opinions of the European Union and Council of Europe.

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# **Abbreviations**

NA – National Assembly

OSCE - Organization for Security and Cooperation in Europe

PACE - Parliamentary Assembly of the Council of Europe

CEC - Central Electoral Commission

IEOM - International Election Observation Mission

TEC - Territorial Election Commission

ODIHR - Office of Democratic Institutions and Human Rights

RA - Republic of Armenia

REC - Regional Electoral Commission

PEC - Precinct Electoral Commission

LSG - Local Self- government

# Introduction

First Presidential elections in independent Armenia were held on October 16, 1991, following the September 1991 Referendum for Independence. Since then, there have been several presidential, parliamentary, and local elections and referenda held in Armenia.

In the past 25 years the legislation regulating electoral processes in the Republic of Armenia changed regularly. On May 25, 2016, the RA National Assembly fully adopted the third new electoral code which derives from the Constitutional Amendments adopted with the December 6 2015 referendum. The negotiation on amending the Electoral Code continued afterwards with domestic and international stakeholders resulting in packages of amendments adopted on June 30, 2016, one of which entered into force on July 30, 2016. According to the RA CEC the reason for the other package to not enter into force was that no company agreed to provide the necessary technical support within the set timeframe. Initially, however the conditionality for the package to enter into force was the possibility of securing funds for it.

As a result of ongoing negotiations between the authorities and the opposition a new law on amendments to the RA Electoral Code was adopted on October 20, 2016 and entered into force on November 14, 2016. The main change prescribed by the law was publication of signed voter lists.

It should be noted that initially civil society representatives also participated in the negotiations on the Electoral Code in "4+4+4" format; however, the consensus was reached and signed only between the authorities and the opposition as civil society representatives did not have the opportunity to have essential impact on the negotiation results.<sup>1</sup>

International Election Observation Missions (IEOM) have had a most significant role in pushing for electoral reforms, and particularly in terms of

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<sup>1</sup> Statement on the Electoral Code of Armenia and the recent developments related to it, <https://transparency.am/en/news/view/1600>

revising the electoral legislation. In 2015, Helsinki Citizens' Assembly – Vanadzor conducted a thorough analysis (Helsinki Citizens' Assembly-Vanadzor, 2015), assessing the implementation of recommendations submitted by International election observation mission in 2003-2013 in legislation and practice.

The goal of this research is to revise the above-mentioned report by Helsinki Citizens' Assembly-Vanadzor and to study the recommendations and observation made by the international observation missions, namely, OSCE/ODIHR and PACE and others and their reflection in the Electoral Code, as well as the reflection of the comments and recommendations by the European Commission for Democracy through Law (Venice Commission) on the drafting of the Code in order to assess the role in electoral reforms.



# **Chapter 1. Electoral Legislation of the Republic of Armenia**

During the 25 years of independence Republic of Armenia held 6 presidential elections, 5 parliamentary elections, 3 referenda, numerous local elections and by-elections. During this period, the electoral legislation constantly changed: in 1999, Armenia adopted the first comprehensive electoral code, which was replaced by the second electoral code adopted in 2011. The latter was replaced by the third electoral code which entered into force on June 11, 2016 as prescribed by the RA Constitutional Amendments.

Until the adoption of 1999 Electoral Code, elections were regulated by different laws.

## **RA Law on the Elections of the President, 1991**

First Presidential elections in independent Armenia were held on October 16, 1991. The first presidential elections were held in accordance with RA Law on the Elections of the President.<sup>2</sup> The Law comprised 24 articles covering: the bases of presidential elections; suffrage rights; administration of elections by commissions; publicity of election preparation and holding; candidate registration; financial and material resources provision; responsibility for electoral violations; election timeline; activities of proxies; voter lists; ballot paper regulations; voting and tabulation procedures; and publication of results. As stipulated by the law the elections would be administered by commissions operating on three levels: Central Electoral Commission, county or town commission, precinct commission. None of the commissions would be operating permanently. The law did not envisage participation of observation missions. Although the law stipulated a 10-year residency requirement for candidates, it did not require presentation of any documented proof of it for candidate

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<sup>2</sup> RA LAW ON THE ELECTIONS OF THE PRESIDENT (the law was repealed on 30.04.96 by HO-58), <http://www.arlis.am/DocumentView.aspx?DocID=76759>

registration. The law set a maximum number of 50 proxies per candidate, who would be registered by the Central Electoral Commission (CEC). The law did not stipulate provisions for pre-election campaigns or campaign funding, but required that the CEC provide candidate information to the voters at its expense. Voting procedure was an elaborate process, which required voters to have certificates verifying their voting right.

The ballot paper included the phrase "I agree" before each candidate (as well as "I do not agree" in single-candidate elections), and the voters were required to strike off the candidates they did not approve and leave only the preferred candidate. The winner was the candidate who received most votes or the number of votes was higher than the number of votes against. The law did not specify a minimum percent of votes for the election of a candidate, yet it stipulated that a second round of elections would be held if none of the candidates received "enough" votes.

Despite the vagueness of the law regulating the first presidential elections, these elections are traditionally considered to be the only fair elections in the history of the Republic of Armenia.

## **RA Law on the Elections of the Members to the National Assembly, 1995**

First elections to the National Assembly of the Republic of Armenia were held on July 5<sup>th</sup>, 1995 along with the Referendum to adopt the Constitution of the Republic of Armenia. The Elections were regulated by the RA Law on the Elections of the Members to the National Assembly adopted in April 1995. The National Assembly consisted of 190 members of which 150 were elected on a majority order and 40 on proportional electoral order. The new law restricted suffrage to those citizens who were over 18 years old and had lived in Armenia for at least one year before the elections. Suffrage was not granted to legally-incapable for mental illness, convicts, those who were declared wanted for criminal offences, as well as those in detention, whose voting registration was not approved by the Supreme Court or the CEC. Meanwhile, detainees could register as candidates and their rights would be represented by their proxies.

The law stipulated the right to use personal or donated money for campaigning; however, it required the CEC to provide voters with basic information about candidates and their campaign programs, as well as free airtime for all candidates and parties on an equitable basis using the joint election fund available to the CEC. The law did not stipulate how and where individual campaign donations could be collected or used, but it set a maximum allowable amount and required the candidates to declare their expenditures.

The law allowed for observation of the electoral process by registered observers, but did not clarify the procedure and requirements for registration of observers. The RA Law on the Elections of the Members to the National Assembly prescribed equal representation of all competing parties in the election commissions. All decisions of precinct and territorial electoral commissions could be appealed to the CEC by candidates, proxies, observers, and citizens within three days.

The decisions of the CEC could be appealed to courts by candidates, proxies, observers, and citizens within three days. Candidates were required to submit a fixed election pledge (deposit) of 10 X minimum salary and a minimum of 10000 signatures for registration.

## **RA Law on the Elections of the President of the Republic, 1996**

Second Presidential Elections were held on September 22<sup>nd</sup>, 1996. The elections were regulated by the Law of the Republic of Armenia on the Elections of the President of the Republic of Armenia, adopted in April 1996<sup>3</sup> The new law detailed the election process in 49 articles adding clearer provisions on the electoral system, creation and use of pre-election campaign funds, verification procedure for supporting signatures required for registration, cancellation of candidate registration, pre-election

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<sup>3</sup> Law of the Republic of Armenia on the Elections of the President of the Republic of Armenia  
(the law was repealed on 05.02.99 HO-284),  
<http://www.arlis.am/DocumentView.aspx?DocID=44938>

campaign, publication and verification of voter lists, handover of election documents by electoral commissions, tabulation of voting coupons by community electoral commissions, summarization of results by regional commissions, publication of the CEC decision, set up of regular or early presidential elections. The new law stipulated that the presidential elections would be administered by electoral commissions operating on 4 levels; Central Electoral Commission, regional electoral commissions, community electoral commissions, and precinct electoral commission. The Central Electoral Commission consisted of 20 members appointed by the parties represented in the National Assembly. The law allowed for the RA citizens to vote abroad at diplomatic missions of Armenia. International Election Observation Missions and domestic organizations have repeatedly recommended that this provision be restored. At the same time, the new law temporarily revoked the right of detainees to vote or run for the office. Hence the potential candidate in detention would have to apply to the CEC, which in its turn would apply to the Supreme Court about altering the restraining order.

The law stipulated that presidential candidates could use own and campaign fund means. In case of establishing a campaign fund, the law set a maximum amount to be donated by a natural or a legal person; however, it did not restrict campaign spending to a certain amount. The law did not provide for any local observers but allowed for international observers to be present at all commission meetings and follow election procedures and to receive copies of the protocols. Nomination of candidates by civic initiatives and political parties included collection of 1000 signatures. Registration of candidates required a minimum of 25 000 supporting signatures and an electoral deposit of 2 million Armenian Drams (approximately 4960 USD). According to the National Statistical Service of the Republic of Armenia, the average salary at the time was 9469 (23 USD).<sup>4</sup>

The new law did not limit the total number of proxies, but restricted the number of proxies per commission to two, only one of which could be

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<sup>4</sup> Earnings, labour cost, National Statistical Service of the Republic of Armenia, [http://www.armstat.am/file/article/trud\\_09\\_5.pdf](http://www.armstat.am/file/article/trud_09_5.pdf)

present at a commission meeting at a time. Proxies also had the right to sign the back of the ballot papers for verification. The law prohibited distribution of money or goods to voters, but prescribed on cancellation of candidate registration if the allegations were confirmed by the Supreme Court.

Voting procedure included signing an easily detachable coupon of the ballot paper which would include the number of the voter in the list and would be counted by the community electoral commissions for verification. The ballot-marking was significantly simplified with voters not having to cross off candidates but rather mark the candidate they approved of. As concluded by the OSCE/ODIHR, the law was an improvement on previous electoral legislation and included provision to increase the transparency of the process. They stated, however, that it is how the law is implemented that is crucial and not just the stipulation. (OSCE/ODIHR, 1996)

The 1998 early Presidential Elections were regulated by the 1996 Law of the Republic of Armenia on the Elections of the President of the Republic of Armenia. The law prescribed the right to run for office to persons, who were at least 35 years old, were citizens of the Republic of Armenia for the last ten years and had resided permanently in the Republic of Armenia for the last ten years. Acting President of the Republic of Armenia, Robert Kocharyan, was the President of the Nagorno-Karabakh Republic until March 1997 when he was appointed Prime Minister of the Republic of Armenia. This means that according to the legislation he was not eligible to run for the office. Nevertheless his registration was approved and the CEC did not take any steps to verify the validity of the documents he had submitted.

During these elections, there were numerous violations, which were pointed out by the OSCE/ODIHR mission as well. The mission stated that although these elections were an improvement over the 1995 and 1996 elections, they were not in line with OSCE standards.

## **RA Electoral Code, 1999**

The National Assembly of second convocation was elected on May 30<sup>th</sup>, 1999, in accordance with the newly adopted Electoral Code (131 Parliament Members: 75 majoritarian and 56 proportional electoral order). The Electoral Code adopted in February 1999, was a comprehensive document covering parliamentary, presidential and local elections. In the final report on Parliamentary Elections 1999, OSCE/ODIHR expressed concern over a number of provisions in the Code: the composition of election commissions at all levels, the status of commission members, the continuity of the work of the commissions, and the appointment of technical staff to the Central and Regional Election Commissions; the lack of transparency in a number of election procedures; the presence of unauthorized persons in election commission premises during electoral procedures; the registration of and voting by military personnel; the complexity of election procedures; the vague provisions regarding the filing of complaints and resolution of disputes; and the inadequate protection of due process of law. (OSCE/ODIHR, 1999): With regards to the actual administration of elections, OSCE/ODIHR restated that while the 1999 electoral process in Armenia generally showed an improvement over the flawed elections of 1995, 1996 and 1998, the previous elections are not an adequate basis for comparison. We should note that the main part of issues identified by international missions continued through the subsequent the elections.

The first Electoral Code established a three-tier election administration including a Central Election Commission (CEC), Regional Election Commissions (REC) for each of the ten regions and Yerevan, and Precinct Election Commissions (PEC). The new code established a different mechanism of CEC and REC formation: three members appointed by the Government; members appointed by parties that had parliamentary factions in the outgoing Parliament and had collected at least 30,000 valid signatures; and members appointed by 5 parties without parliamentary factions that collected the highest number of signatures above the minimum 30,000 in support of the nomination of their party for the

upcoming parliamentary election. The Venice Commission found the composition of the CEC to be problematic and argued that there should not be any control over the CEC by political parties or the executive branch.

The 2003 Armenian Presidential elections had two rounds that took place in Armenia on 19 February and 5 March 2003. The Electoral Code had several changes that, according to international observation mission, could be a basis for the conduct of proper elections, be there political determination. (OSCE/ODIHR, 2003)

The Election Code addressed some recommendations by the OSCE/ODIHR and the Venice Commission. According to the amendments, the 11 Regional Election Commissions were replaced by 56 Territorial Election Commissions (TECs), which provided for more efficient election administration. Nevertheless, the overall assessment of the elections was not satisfactory by most of the domestic and international observation missions and the post-election protests confirmed the distrust of the population.

The elections (131 Parliament Members: 75 proportional and 56 majoritarian electoral order) of the National Assembly of the Republic of Armenia of the third convocation were held on May 25, 2003. OSCE/ODIHR observation mission assessed the parliamentary elections as an improvement over the 2003 Presidential Elections, but did have a positive opinion of the counting and tabulation of votes. Perpetrators of electoral violations were not held accountable, which reinforced the atmosphere of impunity. As in all previous elections, women were seriously underrepresented as candidates and political party activists. OSCE/ODIHR assessed election administration as ineffective due to a general lack of consistency, transparency and professionalism. (OSCE/ODIHR, 2003)

The fourth convocation of the National Assembly was elected in May 2007. While the total number of deputies was maintained, the ratio of deputies elected on proportional and majoritarian basis changed to 90 proportional and 41 majoritarian. For the first time, there was a central

computerized voter register under the authority of the police.

*"The Election Code, considerably amended and improved since the 2003 parliamentary elections, provided a sound basis for the conduct of democratic elections, although shortcomings remain. These pertain largely to the absence of clear provisions on early and indirect campaigning and to campaign finance regulations leaving scope for electoral contestants to exceed campaign finance limitations. In addition, the complaints and appeals process revealed inconsistencies in the legal framework. Sanctions related to possible vote buying were not implemented and publicly identified concerns generally not acted upon in the absence of formal complaints."* ( OSCE/ODIHR, 2007)

Acknowledging that the newly amended Election Code provided bases for democratic elections, the IEOM noted that the Code did not clarify distinction between party activity and campaign activity, did not regulate campaign fundraising properly, and did not address the inconsistency in the complaints and appeals procedures. The amendments also eliminated the possibility of out-of-country voting and voting by dual citizens. Appointment of election commission members was amended: the CEC nominated one member to each TEC, who in turn nominated member to each of the PECs under that TEC. The amended Election Code provided that one member of the CEC was nominated by the President of the Republic, one member was nominated by each parliamentary faction and the People's Parliament Member parliamentary group and one member was nominated by the judiciary.

Domestic and international observers reported of numerous cases of vote buying; however it was difficult to confirm the allegations as the Criminal Code prescribed responsibility for accepting bribes and not for giving, which meant the voters receiving bribes could themselves be held liable and therefore would not provide such information.

The 2008 presidential election was held in Armenia on February 19.



2008 presidential elections were observed jointly by OSCE/ODIHR, OSCE PA, PACE, European Parliament. The OSCE/ODIHR reported that the shortcomings that took place during these elections devalued the overall election process. (OSCE/ODIHR, 2008)

Observers acknowledged that shortcomings in the 2008 electoral process were due to lack of political will to implement the legal provisions effectively, although the legal framework still required improvement regarding suffrage rights, campaign provisions and complaint procedures.<sup>5</sup>

## **RA Electoral Code, 2011**

On May 6, 2012 the elections (131 Parliament Members: 90 proportional and 41 majoritarian electoral system) of the National Assembly of the Republic of Armenia were held.

The elections were held under the new 2011 Electoral Code, which was a significant improvement over the previous code, but failed to ensure equity in campaigning and protecting voters from intimidation. The Code required all observers to take a knowledge test on the Election Code and to receive a certificate in order to observe the elections.

As stipulated by the new Electoral Code CEC members are appointed by the President, upon nominations made by the Human Rights Defender (3 members), the head of the Chamber of Advocates (2 members) and the head of the Court of Cassation (2 members). TECs are permanent bodies whose members are appointed by the CEC, from citizens, applying for membership. PECs are temporary bodies, composed of 2 members appointed by the respective TEC, and 5 members appointed by each party represented in the National Assembly. According to the new code PEC members are required to pass CEC-administered test and receive a CEC qualification certificate.

As observed by the OSCE/ODIHR

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<sup>5</sup> Earnings, labour cost, National Statistical Service of the Republic of Armenia, [http://www.armstat.am/file/article/trud\\_09\\_5.pdf](http://www.armstat.am/file/article/trud_09_5.pdf)

*"A positive feature of the new Electoral Code is the requirement that administrative due process be applied by election commissions in handling of complaints. However, the Electoral Code unduly limits the right to file complaints to those whose personal electoral rights are at stake, essentially denying voters, accredited observers, and civil society groups the right to seek judicial remedy for breach of general electoral rights. In addition, first instance court decisions on electoral rights may not be appealed, further limiting the opportunity to obtain effective legal redress. Moreover, the legal framework for complaints and appeals is unduly complex."*(OSCE/ODIHR, 2012)

Most domestic observers noted that the overwhelming abuse of administrative resources, coerced participation of state employees, campaign rallies of the ruling Republican party, voter intimidations, numerous reports of vote buying by several parties, including through "in-kind" assistance and charitable activities, provided ground for considering 2012 Parliamentary elections unfair and non-democratic. During the elections, many OSCE/ODIHR EOM observers raised the issue of vote buying as a major and widespread problem. Another major issue was ineffective adjudication of complaints.

The last Presidential elections were held on 18 February 2013. The 2013 Presidential Elections were also regulated by the RA Electoral Code adopted in 2011. These elections also failed to meet democratic standards, as they were marred by lack of genuine competition, wide use of administrative resource throughout the campaign, numerous cases of violations during the voting and ballot count and other negative factors that led to a low level of Armenian public's trust toward the official results.

The changes that took place in the electoral legislation during the recent years significantly improved the quality of the election administration; however, more sophisticated methods of bypassing the law were created.

In the course of the drafting of the 2011 Electoral Code the OSCE/ODIHR suggestions were partly taken into consideration, however certain recommendations were not properly incorporated, including the suggestion to enable the right to be elected of the citizens holding dual citizenship, reduction of the number of voters in election precincts, securing the transparency of donations, as well as the introduction of the obligation on the part of the CEC and precinct election commissions to inform law-enforcement bodies on cases of violations.

Also the suggestions on reforming “The Law on Television and Radio” regarding the more inclusive and diverse composition of the Council of the Public television and radio company, inclusion of diverse interests in the process of licensing, transparency of financing, etc., were not duly taken into consideration.

OSCE/ODIHR recommendation made after the 2012 Parliamentary elections were not implemented at all, even though it was suggested to address them before the Presidential elections of 2013. They mainly referred to the efficiency of investigation of appeals and complaints, criminal liability for the facts of abuse of administrative resources, filing complaints regarding vote buying, as well as verifying voter lists.

Citizens residing outside of Armenia were still deprived of the opportunity to take part in the elections by law; however, special conditions were created for a limited group, persons working in Armenia’s diplomatic and consular missions and foreign branches of corporate bodies registered in Armenia, as well as members of their families. The majority of polling stations were not equipped for wheelchairs. Bedridden people or elderly citizens, who were unable to reach polling stations, were deprived of an opportunity to exercise their constitutional rights. The sign language interpretation of the programs and propaganda materials of the candidates for voters with hearing disabilities was not available. Many polling stations failed to use special magnifying glass for visually impaired voters.

The Presidential Elections were assessed as generally

well-administered and characterized by a respect for fundamental freedoms, including those of assembly and expression, in the initial statement by the joint international observation mission. (OSCE/ODIHR, 2013)

Domestic observers believed that the widespread vote-buying, voter intimidation, abuse of administrative resources, and tabulation forging did not constitute proper elections and the IEOM statement encouraged the falsification of elections and impunity for electoral violations, and the conclusions of domestic observers should be considered properly. General dissatisfaction with the falsified results was expressed in mass protests and strikes that broke out throughout the country.

Considering the post-election developments, OSCE/ODIHR final report substantially changed the assessment of the electoral processes and clearly took into consideration the reports by domestic observers. (OSCE/ODIHR, 2013)

## Chapter 2: RA Electoral Code, 2016

The Republic of Armenia moved from a semi-presidential to a parliamentary system of governance in accordance with Constitutional amendments adopted by the referendum held on December 6 2015 (proportional system with a minimum of 101 MPs). The numerous concerns regarding the contents of the Constitutional Amendments and the Constitutional Referendum<sup>6</sup> were largely ignored.

The requirement of “stable parliamentary majority”, was stipulated in the parliamentary system regulations (Article 89), which reads that “If no stable parliamentary majority is formed by election or a political Coalition, a second round of the elections shall be conducted with the participation of party alliances. In case a second round is held, it shall be allowed to form new alliances.” This regulation of stable majority on constitutional level stipulates one-party rule, which allows discretionary formation of judiciary and executive powers by extending the scope of its powers. The restrictions, conditions and the order of forming political alliances determined by the RA Electoral Code will be discussed later.

Article 89 part 3 prescribes that the National Assembly is elected on a proportional basis. At the same time, Article 78 of the RA Electoral code defines 13 electoral districts- 4 in Yerevan, 9 in marzes (regions). Vayots Dzor and Syunik are combined into one electoral district. Article 78 of the RA Electoral code defines 13 electoral districts- 4 in Yerevan, 9 in marzes (regions). Vayots Dzor and Syunik are combined into one electoral district.

Thus parties and party Alliances nominate one national and 13 district lists. The voter receives one ballot paper per running party or party Alliance, which includes the name of the party and the names of the first three candidates from the national list on the first page and the district list on the second page. The maximum number of candidates in a district list of a

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<sup>6</sup> HCA Vanadzor report on Adoption Process of Imposed Constitutional Amendments, January 2016, <http://hcav.am/publications/21-01-2016-555879/>

party/Alliance is defined by the RA CEC decision, based on the district population.<sup>7</sup> After selecting the ballot of a party or party alliance, the voter puts a tick before the name of a district candidate on the other side of the ballot paper. Hence, with the district lists, a 100% majoritarian system is introduced, as voters mainly vote for individual candidates irrespective of their partisan affiliation, and this vote essentially forms the portion of mandates of the party in the National Assembly. Article 7 of the Amendments defines suffrage principles, whereby, "Elections of the National Assembly and community councils shall be held on the basis of universal, equal, free and direct suffrage, by secret vote." At the same time, Constitutional Amendments provide that local elections shall be stipulated by the Electoral Code and can be direct or indirect: where elections are direct the principles of Article 7 shall apply. The Electoral Code stipulates that indirect elections of the mayors of Yerevan, Vanadzor and Gyumri are conducted through proportional party lists elected to the city council.

According to Constitutional Amendments the composition of the RA Central Electoral Commission is confirmed by the RA National Assembly. The composition of the new Central Electoral Commission was confirmed on October 6, 2016. The RA Authorities restated the old composition of the RA Central Electoral Commission and thus proving that the claims about improving the electoral processes were only declarative and exclude the opportunity for significant changes in the election administration.

The RA Electoral Code stipulated a number of changes. (RA Electoral Code, 2016)

Voter registration at the polling station is conducted through Voter Authentication Devices, which contain the list of all voters of the precinct with data from all identification documents the voter may have. Thus, a person can turn out to vote with an identification card, Biometric passport, regular passport or in certain cases a temporary document. The Voter authentication devices do not contain data on military voters. Moreover,

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<sup>7</sup> CEC Decision on establishing the maximum number of candidates in the district lists of parties and party alliances for the April 2, 2017 National Assembly Elections in the Republic of Armenia [http://res.elections.am/images/dec/16.156\\_A%20.pdf](http://res.elections.am/images/dec/16.156_A%20.pdf)

besides the confidentiality of the number of voters in military units, the number and location of polling stations where military voters would vote has also been classified (Article 8.12, EC). These provisions are rather problematic in terms of preventing multiple voting.

Before and during the development of the new electoral code, the oppositional parties and civil society representatives involved in the electoral processes stressed publication of signed voters lists to rule out absent voter impersonation. The initial negative attitude of international organizations towards this demand changed later for the purpose of increasing public trust towards electoral processes.

With regards to releasing the data of participated voters, Article 68.2.3 of the RA Electoral Code as adopted on May 26, 2016, stipulated:

*3) where during the voting the technical equipment has worked without failures, a statement of information shall be printed by means of technical equipment during elections of the National Assembly, which includes, without indicating the number of the electoral precinct, the record number of electors, registered by means of technical equipment, in the list of electors of the relevant electoral precinct.*

*One proxy of each political party running in elections shall, upon request, be given one copy of the statement of information. One copy of the statement of information shall be glued to a blank sheet of paper, after which persons having the right to be present at the precinct electoral commission shall be provided with an opportunity to photograph it. During the recount, this statement of information shall not be printed again, but the right to photograph it is preserved. Proxies shall be given 20 minutes in total so that they randomly compare data of the statement of information with the list of electors having participated in the voting.*

*In case of impossibility to print statement of information, a*

*relevant record thereon shall be made in the registration book.*

In case of impossibility to print the statement, the same article stipulates that the proxy of the political party running in elections who has been present at the electoral precinct on the voting day may, from 12:00 to 18:00 of the day following the voting day or, on the 2nd day following the voting, from 9:00 to 9:30, submit an application for getting acquainted with the lists of electors having participated in the voting. Two hours shall be provided for getting acquainted with the list of each electoral precinct, without an opportunity to photocopy, photograph, or video-record it.

The amendments that went into force on July 30, 2016 added 10 minutes to the time allocated for proxies to study the signed voter lists. And in case of impossibility to print the statement, the time for submitting an application to get acquainted with the voter lists from 12:00 to 18:00 of the day following the voting day or, on the 2nd day following the voting, from 9:00 to 11:00,

Final amendments, which entered into force on November 14, 2016, prescribed scanning and publication of signed voter lists on the CEC website (Article 73, EC). At the same time, the RA Criminal Code was amended to prescribe 2-5 years of imprisonment for intentional false reporting on voter impersonation and a 200-500 fold minimum salary fine and up to two years of imprisonment for false reporting by neglect.

The RA Electoral Code significantly limited the possibilities for citizen monitoring of the electoral processes. Article 30 of the Code prescribed that election observation could be conducted by those non-governmental organizations of the Republic of Armenia whose charter objectives include — for minimum 1 year preceding the day of calling elections — issues related to democracy and protection of human rights. Application for accreditation of observers should be submitted to the CEC by the organizations 15 days before the voting day (2011 Electoral Code set 10 days). Foreign diplomatic and consular missions to the Republic of Armenia lost the right to conduct observation missions. They received the status of a “visitor”.



If the 2011 Electoral Code did not restrict the number of media representatives and did not require their accreditation, The new Electoral Code stipulated that an entity carrying out media activities may accredit up to 15 representatives 15 days before the voting day, if it has been disseminating on its behalf mass media for at least one year.

The 2011 Electoral Code did not restrict the total number of observers and media representatives from different organizations in a polling station. The new code initially stipulated that only up to 8 observers and media representatives could be at a polling station at once and the final edition of the Code reads that where the number of observers, mass media representatives present in the voting room is such that it hinders the work of the commission, the precinct electoral commission can ask media representatives and observers to leave by at least 2/3 of the votes of the the commission, but only in case their number is more than 15. Provision of the right to remove observers or media representatives from a polling station by vote is in itself troubling. The 2011 Electoral Code prescribed tha observers could be removed from a polling station only if arrested or detained (Article 31.4).

The Code brought the rights of observers to the minimum while the version adopted on May 25, 2016 maintained the requirement about knowledge test on the electoral legislation. The requirement was removed with later amendments.

The Code stipulated a three-level system of electoral commissions to conduct election administration, where the territorial electoral commissions are replaced with a maximum of 41 territorial election commissions, with the exact number being defined by the CEC. Territorial election commissions carry out only an administrative function.

The amendment regarding the composition of the precinct electoral commissions removed the prohibition of involving city council members in the commissions. However, there were several city council members in precinct electoral commissions during the constitutional referendum and

previous elections when the prohibition was still in place.

The Electoral Code extended the right to vote electronically at the diplomatic and consular missions of the Republic of Armenia to military servicemen studying abroad. This aggravate the discriminatory treatment of RA citizens in terms of enjoying their suffrage rights as other citizens residing abroad do not have the opportunity to vote.

The Electoral Code envisaged full change of the voting procedure. After registering with the voter authentication device, the voter receives a voting slip which the voter presents to the commission member responsible for the voter list and receives ballot papers after signing the voter list. After voting in the booth, the voter approaches the commission member responsible for the ballot box. The latter posts an adhesive sticker on the ballot paper in the envelope after checking the voting slip and the voter drops it in the ballot box. The envelope is not stamped. For the RA National Assembly Elections voter receives a separate ballot paper for each party and throws the unused ballots into a designated box in the voting booth. On the second page of the respective ballot, voter votes for a district candidate of the party.

The maximum representation of one sex was revised in the Electoral Code. The Code stipulates that representatives of either sex cannot exceed 70% in national or district lists. The 2011 RA Electoral Code prescribed 80%. Unlike the 2011 Code, the new Code provides guarantees for representation of both sexes after the elections for the RA National Assembly, Yerevan, Vanadzor, and Gyumri city councils. Thus, if an elected candidate withdraws the mandate goes to the next candidate of the same sex if as a result of the withdrawal, the ration of the underrepresented sex is less than 25%. Until 2022 the requirement toward lists is 25%, and 20% toward elected factions.

To carry out the constitutional requirement for representation of national minorities in the RA National Assembly, the new Electoral Code stipulated that the national candidate lists of parties should have a second part that shoud include candidates from the 4 largest national minorities

according to the last population census.

The maximum donation from natural persons to the campaign funds of parties and party alliances running for the RA National Assembly elections multiplied by five reaching 500-fold minimum salary. The ceiling for campaign spendings was established at 500 000—fold of minimum salary, which is five times more than the amount allowed by the 2011 Electoral Code, although no amendments or addenda were made to the list of campaign expenditures to be reported. The amount still does not include overhead, transportation and other organizational expenses that occurred during the pre-election campaign, including rental of campaign offices and salary payments for the temporary staff that are not in any way taxed or accounted for.

Regarding the RA National Assembly elections, the Code stipulates that National Assembly is elected and the decision on distributing mandates is made as result of the voting one party (party alliance) receives at least 51 mandates. A complicated system is set up that takes into consideration the total votes received by the party, the district coefficient and the number of mandates distributed to national minorities. If any of the parties receives over 50% of the mandates but less than 54%, then the party receives additional mandates so that the share of its mandates is 54%.

If any of the parties (party alliances) receives over 2/3 of the votes, then the others receive enough additional mandates so that the sum of their mandates equal to 1/3 of the total.

According to Article 97 of the Code, the political parties or political alliances that reach the threshold (5% and 7% respectively) in the RA National Elections can form a coalition with a maximum of 2 other parties (party alliances) in order to receive the majority of total mandates. If the newly formed coalition has the majority of mandates but less than 54%, then the coalition receives enough additional mandates to bring the total number of mandates to 54%.

Restricting the number of parties (party alliances) in a coalition

excludes the possibility of more than 3 parties with fewer votes joining in a coalition and “forming a stable political majority”.

If no coalition is formed in the stipulated 6 days, a second round of elections is held with the two parties (party alliances) that received most votes. The parties (party alliances) can form new alliances before the vote in the second round. If the two parties that receive most votes form an alliance then the third party (alliance) that received most votes, has the right to participate in the second round.

According to Article 141, the mandates for the city councils of Yerevan, Gyumri and Vanadzor are distributed among the parties and party alliances that receive a minimum of 6% and 8% respectively. If up to 3 parties (party alliances) participate in the elections, the mandates are distributed among all. If one of the parties (party alliances) receives over 40% of the votes but not the absolute majority, then the absolute majority is given to the party.

## **Chapter 3: Reflection of Recommendations by International Election Observation Missions and International Standards in the new Electoral Code**

IEOMs often emphasize that adequate legislative provisions, though important, are not sufficient for concluding that elections are well administered. The determination of the authorities to conduct fair and democratic elections and to increase public trust toward electoral processes is what counts as most essential.

Nevertheless, electoral regulations and ensuring public participation during their development is a most significant indicator of political will for electoral reforms. In this respect, the opinions and concerns by the Armenian civil society and the Venice Commission regarding the RA Electoral Code generally coincide.

On May 10, 2016 several representatives of civil society disseminated an opinion about correspondence of the provisions of the new electoral code to international standards. (Non-governmental organizations, 2016)

The Opinion specifically states that the Draft Electoral Code (hereinafter the Draft) failed to be submitted to the National Assembly in due time and was not published, and the fact of it being ready was kept secret from the public by the responsible state bodies for a long time. The code was first available on February 22, 2016 on the official website of the Venice Commission in English, then the Armenian version appeared on the website of the RA Government as it was included in the agenda of the Cabinet meeting on March 3, 2017.<sup>8</sup> During the drafting of the Code, the requirements on regulatory impact assessment of legal acts as stipulated by the Law on Legal Acts,<sup>9</sup> organizing and conducting public discussions provided by Government decision,<sup>10</sup> and submitting issues to the

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<sup>8</sup> March 3, 2016 agenda of the RA Cabinet meeting  
<https://www.e-gov.am/sessions/archive/2016/03/03/>

<sup>9</sup> RA Law on Legal Acts, Article 27.1, part 2

<sup>10</sup> RA Government Decision N296-N on Organization and holding of Public hearings from March 25, 2010, and RA Government decision N 296-N of 25 March 2010 "On approving the order of organizing

Government's session prescribed by presidential decree were were not met.<sup>11</sup> The authors of the document avoided participating in the discussions organized by non-governmental organizations before the draft was approved by the RA Government. To reach consensus on the main issues of the Code, NGO representatives with an extensive experience in the elections and a mandate from more than 200 civil society organizations, took part in discussions in 4+4+4 format (government coalition, non-ruling political parties and NGOs) initiated by the opposition. However, due to unyielding position of the representatives of state bodies the discussions failed to give any essential results. Despite the recommendations put forward in the final report of OSCE/ODIHR referendum expert team and the previous respective recommendations made by OSCE/ODIHR, the amendments to electoral legislation were not carried out inclusively, and the stakeholders were not given an opportunity to make every effort for reaching possible consensus on the reforms.

Civil Society indicated the following as the main issues:

- Discriminatory provision of voting rights of those, who are outside of the Republic of Armenia,
- Issues related to uptading the voter registers and existing inaccuracies and potential use of votes of absent voters,
- Ineffectiveness of mechanisms for ensuring equal voting rights and eliminating multiple voting,
- Abuse of administrative resources and unequal opportunities,
- Absence of opportunities for certain groups of voters to form an opinion without access to campaign information (e.g. military servicemen or inmates),
- Effective mechanisms for preventing election violations,
- Issues related to maintaining secrecy of voting,
- Restriction of rights of observers and mass media representatives,

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and conducting public discussions" and N 13 Protocol decision "On repealing RA government decision of 5 April 2012 on approving methodical instructions for elaborating draft legal acts and N 42 protocol decision of RA Government of 28 October 2010"

<sup>11</sup> RA President decree N NH-174-N of 18 July 2007 on "Procedure of organizing the activities of the Government and other agencies under its jurisdiction"

- Absence of opportunities and mechanisms for effective appeal against violations and voting results,

The Preliminary Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Electoral Code (as of April 18, 2016) was published on the same day with that of civil society. (VENICE COMMISSION and OSCE/ODIHR, 2016) On July 19, 2016 the Second Joint Preliminary Opinion was published regarding the Electoral Code adopted on May 25, 2016 and the amendments from June 30, 2016.

Restating their previous recommendations and opinions regarding the electoral process in the Republic of Armenia, the Venice Commission and OSCE/ODIHR noted in their preliminary joint opinion published on May 10, 2016, that the timeframe for adopting the Electoral Code was rather short. While the stability of the electoral system is a key principle, it is equally important to have sufficient time for a thorough, inclusive, and public discussion in order to build consensus and confidence around major changes in electoral legislation.

The international entities stated that the Code had addressed one of the previous recommendations by the Venice Commission and the OSCE/ODIHR; namely, improving the voter identification system, enhancing the Central Electoral Commission regulatory powers, strengthening the quota for the participation of women as candidates, removing provisions that could lead to the arbitrary withdrawal of observer accreditation, and systematising the rules on campaigning.

However, they identified concerns with regard to the accuracy of voter lists, the restrictions on the rights of observers and a lack of clarity about the use of new technologies. According to the Venice Commission and OSCE/ODIHR, the draft code does not address recommendations related to the effectiveness of complaints and appeals procedures, the transparency and accountability of campaign finance, safeguards against potential abuse of state resources, and the role of media during elections.

The regulations for ensuring "Stable majority" were found rather complex. In general, international entities recommended:

- to reconsider the undue restrictions on the formation of coalitions,
- to allow meaningful consultation of signed voter lists without violating privacy to address suspicions about voter impersonation,
- to ensure effective and gradual introduction of new technologies, including their procurement, testing, training of the staff and public awareness,
- to remove mandatory testing for observers and the three-year requirement for the charter,
- to ensure independence of the Central Electoral Commission prescribing that the President consult with all parliamentary parties if nominating member of the CEC,
- to revise the quota for representation of women ensuring more effective placement in the candidate list,
- to simplify the process of voting, counting, tabulation, and determination of election results,
- to ensure meaningful engagement with all relevant stakeholders in the process of amending the code

In the Second Joint Opinion published on July 19, 2016, the Venice Commission and the OSCE/ODIHR assessed the implementation of recommendations given in the previous document and noted that most of them were taken into account: namely, the time-period for the formation of political coalitions after the first round of elections was doubled (from 3 days to six), and the time-period for forming alliances to participate in the second round changed from two to five days; access to signed voter lists was made possible; the mandatory test for observers was removed and the term for specific provisions in the charter was reduced to 1 year; the requirement for the President to appoint the acting chairperson or a member of the CEC “in consultation with parliamentary factions” was added; the independence of election administration officials has been strengthened by adding an exhaustive list of grounds for the early termination of their mandate; women’s representation was changed by increasing the minimum quotas for each gender on candidate lists from 25 to 30 per cent, and extending quotas for the first part of the list to each integer group of 3 instead of 4; the CEC is obliged to develop and publish



training materials for the members of all electoral commissions, specialists, candidates, proxies, observers, and voters; important regulations addressing recommendations related to campaign and campaign finance, candidate de-registration processes, and complaints and appeals procedures were adopted. International organizations also found it important that there was a possibility of testing the new technologies during the LSG elections in fall 2016, which was prescribed by the Code. They also emphasized the necessity to further address a number of other issues, including harmonising new provisions with data protection laws and standards, ensuring public testing and certification of the equipment, guaranteeing contingency planning, providing sufficient training for electoral staff, and ensuring effective awareness-raising among voters and political parties.

It should be noted, however, that the testing of the new voting system was not conducted during the 2016 local elections and it would be done during the local elections in February 2017, which would not allow for sufficient time before the RA National Assembly Elections.

The Venice Commission and the OSCE/ODIHR also noted that a number of recommendations were not taken into consideration or were partly followed. In Particular:

- to fully remove the requirement about charter provisions on democracy and human rights for observer organizations;
- to reconsider the restriction on the number of parties in a coalition;
- to reconsider the different threshold for political parties and for alliances;
- to consider having minority representatives on ordinary candidate lists, to avoid the possibility of the minority vote to change the political composition of parliament;
- to allow nomination of candidate lists also by groups of citizens;
- to include grounds that may lead to removal of the deputy chair and secretary of the CEC and chair, deputy chair and secretary of a DEC in Article 45 of the Code;

- to reconsider the deadlines for submitting the documents for registration of candidate lists in case of early elections;
- to provide for general prohibition of the misuse of administrative resources;
- to set reasonable deadlines for accreditation of observers and media representatives, including for the second round of elections;
- to include additional measures to enhance the transparency of the tabulation process;
- to lower the electoral thresholds for elections of the Council of Elders of Yerevan, Gyumri and Vanadzor and for returning electoral deposits after the elections;
- to reconsider the additional seats awarded to the winner of the elections of Council to Elders of Yerevan, Gyumri and Vanadzor.

In the document, the Venice Commission and the OSCE/ODIHR noted that the Electoral Code was adopted with a significant majority and was followed by a broad political agreement between the governing and opposition parties on additional measures to enhance the preconditions for democratic elections. Civil society was constructively involved in the negotiations, although it eventually did not sign the final agreement.

Note that in their last statement,<sup>12</sup> civil society representatives clearly indicated threasons and justifications for not signing the Agreement, which prove that there was no large public consensus formed around the electoral processes.

Since 2003, international organizations issued over 250 recommendations, over 60 of which referred to the current code.

This research assesses the relevance and implementation of the recommendations issued since 2003.

**Accessibility:** Recommendations on accessibility of polling stations were issued by the PACE, OSCE/ODIHR, and the Venice Commission. It was recommended that the government of the Republic of Armenia make

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<sup>12</sup> Statement on the Electoral Code of Armenia and the recent developments related to it, <https://transparency.am/en/news/view/1600>

polling stations and ballot boxes accessible for people with disabilities. It was also recommended that those who are at a hospital or are physically unable to get to the polling station have to opportunity to exercise their voting right through mobile ballot boxes or other means. The Code stipulates only the possibility of voting for persons receiving inpatient treatment at a hospital. Majority of polling stations are inaccessible for voters using wheelchairs. Before the second reading of the Electoral Code, it was proposed that the Code stipulates taking into account independent voting of people with mobility issues when selecting locations for polling stations; however, the Government rejected it arguing that it would be impossible to ensure accessible polling stations in the entire territory of the Republic. The body responsible for accessibility of polling stations is the local government; however, the mechanisms for setting criteria and control are unclear.

On November 22, 2016, the RA CEC adopted a decision about creating additional opportunities for making voting accessible for people who have difficulties voting. The decision, however, did not have for mandatory implementation mechanisms.<sup>13</sup>

**Adjudication of Electoral Disputes:** OSCE/ODIHR and the Venice Commission issued several recommendations regarding adjudication of disputes. The recommendations referred to clarification of complaints and appeals procedure, including who and how could submit applications and complaints, time-periods for appeals, proper investigation of all complaints and provision of grounded decisions, criminal and/or administrative liability for electoral violations, and intensification of collaboration between relevant authorities for increasing the effectiveness of investigation. The missions called for the CEC to take a more active stance in investigation of complaints.

As a general rule, the RA CEC, TECs and law-enforcement bodies took only formal measures in regard to reports on violations of the Electoral Code and those measures were in fact targeted at denial of those reports, rather

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<sup>13</sup> [http://res.elections.am/images/dec/16.136\\_N.pdf](http://res.elections.am/images/dec/16.136_N.pdf)

than proper investigation and prosecution of perpetrators.

Despite the recommendations about allowing domestic observers submit complaints and applications, the new Code did not provide the right either and observer can only submit complaints in relation to violation of their individual rights.

Some Venice Commission and OSCE/ODIHR recommendations regarding timeframes and conditions for appeals presented in the First Joint Opinion were taken into consideration in the 2016 Electoral Code. However, the recommendations regarding giving citizen groups the right to appeal and the timeframes for submitting recount requests were not implemented.

**Campaign Finance.** OSCE/ODIHR and Venice Commission issued a number of recommendations that propose prescribing clear regulations for campaign financing, including expansion of the list of expenditures to report in more detail, clarification of reporting requirements and indicators for proper oversight. The Code multiplied the maximum donation from natural persons to the campaign funds of parties by five and the ceiling for campaign spendings became five times more as well. However, the list of campaign expenditures to be reported does not include salary payments for the staff overhead, office rent, or transportation.

**Candidate Registration:** A number of recommendations were issued on candidate registration, including on the requirements toward candidates (signatures, deposit, and terms) and on the process of cancelling the registration of a candidate. The requirement to submit collected signatures for registration was abolished in 2003; however the size of the electoral deposit is still problematic. The threshold for returning the deposit has been reduced but not sufficiently. The requirement for permanent residency in the Republic of Armenia was reduced as well but the stipulated four year requirement is still considered unjustified. The time-period for registration of candidates for special elections is extremely short and limits the competitiveness. OSCE/ODIHR addressed the regulations for cancelling the registration of a candidate to avoid forced resignation of candidates. Although the grounds for registration of

candidates is clear, the possibility of self-withdrawal is more open and is particularly common during local elections due to unfair competition.

**Central Electoral Commission:** The OSCE/ODIHR and the Venice Commission have issued several recommendations regarding the CEC. The formation of the CEC was changed by the Constitutional amendments and the latest Electoral Code. The CEC members are appointed by the majority of the National Assembly and the international observation missions find that the trust of all parliamentary parties toward the newly formed CEC is important. The other recommendations by the CEC were implemented.

**Citizen observer:** There were several recommendations regarding observation by independent observers.

International observation missions and the Venice Commission believed that the mandatory testing of observers and the provision allowing disqualification of the organization because of the partiality of an observer should be removed. With the amendments adopted on June 30, 2016, the requirement for mandatory testing of observers was removed at the same time it was stipulated that in case an observer supports any candidate, political party running in the elections, as well as violates the requirements of this Code in such a way that essentially hinders the smooth operation of the election commission or the smooth voting process, the chairperson of the election commission may remove the observer from the session of the commission, and from the polling station on the Election Day, upon a decision adopted by at least 2/3 of the votes of the total number of members of the election commission.

It should be noted that previously the Venice Commission supported the idea of fewer rights for observers and rejected any opportunity for observers to interfere in the voting process in any way. In its later remarks, the Commission recommends giving more rights to observers including applying to courts with electoral disputes including challenging the election results. Nevertheless, the Electoral Code restricted the involvement of observers by stipulating the requirement for observer organizations to have

a charter goal for democracy and human rights for at least one year. The Code deprived observers of the right to submit remarks and recommendations to the commission chair and stipulated that the observer can be removed by the vote of the commission, allowing the observer only to register their remarks in the registration book of the commission.

In their Joint Opinion, the Venice Commission and the OSCE/ODIHR did not speak positively of the charter requirement, considering it an uncalled for restriction, while they commended the reduction of the time period for the requirement.

**Coalitions and Alliances:** OSCE/ODIHR and the Venice Commission presented recommendations on the alliances and restrictions of the number of members and timeframes for forming coalitions after the elections. In particular, they proposed revising the maximum number (three) of coalition members, extend the timeframe for forming coalitions after the first round of elections and the timeframe for forming alliances before the second round of elections. It was also recommended to reduce the election threshold and allow parties form coalitions for local elections. The Code adopted only the recommendations on the timeframes for forming coalitions and forming pre-election alliances before the second round.

**Election Campaign:** There were several recommendations made on election campaign regulations, including on dissemination of campaign materials, the need for prohibition of campaigning on the Election Day and particularly, close to the polling stations, responsibility for campaign violations and for distribution of libelous material, and clarification of the campaigning period. Relevant legislative amendments were carried out; however, their implementation is not effective. The Code stipulates that it is not mandatory to remove campaign posters on the eve of the elections or on the Election Day, which contradicts the provision prohibiting campaigning on those days. Moreover, campaigning during the period not prohibited by the Code is not regulated in any way.

**Electoral Commissions:** A number of recommendations were made by the Venice Commission and OSCE/ODIHR on the election administration

by the commissions. Recommendations concerned the composition of electoral commissions, dismissal of commission members, liability of commission members for electoral violations, continuous training, transparency in decision making, fair distribution of commission management positions, and separation of TEC premises from the central and local authority buildings.

In terms of PEC composition, domestic observers report that despite the seemingly diverse appointment, PECs generally serve the ruling Republican Party, and are reluctant to act upon violations.

In the context of the complete change in the voting procedures, stipulated in the New Electoral Code, the training of commission members is particularly important.

**Fairness and Integrity of Electoral Processes:** Seven recommendations were presented by the OSCE/ODIHR, Venice Commission, and PACE addressing general fairness and integrity of electoral processes, particularly demonstration of political will for democratic elections. In terms of fairness and integrity of the electoral processes, we should note that the Electoral Code essentially fails to address the underlying problems causing lack of trust toward electoral processes.

**Implementation of Recommendations:** OSCE/ODIHR, Venice Commission, and PACE encouraged the Armenian authorities to address their recommendations and to work with civil society and political parties, to ensure their participation and to cooperate with the Venice Commission and PACE for monitoring the implementation of recommendations. Neither of recommendations was implemented. The lack of inclusion during the initial drafting of the new Electoral Code and the ineffectiveness of further participation showed that the recommendations were ignored even though the international organization put much effort into the collaboration between the authorities, opposition, and civil society and found it to be unprecedented and successful.

## **Incorporation of Constitutional Court Decisions and Legal**

**Conformity:** Two recommendations from the Venice Commission and OSCE/ODIHR addressed reflection of the decisions of the Constitutional Court in Electoral Code and elimination of legal discrepancies. Neither of recommendations was implemented.

**Media:** Several recommendations were made by the Venice Commission, OSCE/ODIHR, and PACE on media regulations, including guarantees for media freedom, allocations of media time, impartial coverage, independence of regulating bodies, fair licensing, as well as more coverage of women's participation.

Aside for some online media, few print media, and one regional TV station, all media is controlled by the authorities. Independence of journalists cannot be ensured if they are dependent in between elections, and the use of violence against them is not prosecuted. Balanced media coverage during campaign is not consistent and largely depends on pressure from IEOMs. Further media and related provisions were introduced with regards to private media, for instance through the NCTR. A new challenge for media is the requirement of the Electoral Code for preliminary accreditation of media representatives and the limit on the number of representative by each media.

**Military:** Recommendations made on military and referred to the free will of military voters and their duties during the electoral processes. Although the new Code, just as the last one, stipulates that military servants do not enter the polling station in a marching manner, their free will is not ensured as they are brought to the polling station in groups under the control of a commander. The Electoral Code also prohibits publication of the number of voters registered in military units and the polling stations where they vote.

**Participation of Women:** The recommendations made by OSCE/ODIHR referred to encouraging participation of women through quotas as well as providing corresponding mandates. The Electoral Code revised the maximum representation of one sex in the party lists. It



stipulates that the representation of one sex in lists of parties/Alliances should not exceed 70%. The 2011 Electoral Code prescribed 80%. Unlike the 2011 Electoral Code, the new Code provides guarantees the representation of both sexes in the RA National Assembly and city councils of Yerevan, Gyumri, and Vanadzor. Hence, in case of a withdrawal of an elected candidate the mandate shall be given to the next candidate of the same sex where, as a result of withdrawal, the number of representatives of that sex in the given faction results in less than 25%.

International organizations state that to ensure meaningful participation of women, a higher quota should have been established.

**Police:** Two recommendations were made by OSCE/ODIHR on training of police officers and clarifying their role on the Election Day at the polling stations. The Code clarified the role of police officers at a polling station, which is also reflected in the guidebook developed for police officers. The guidebook, however, does not concisely and clearly present the full volume of police duties and functions in preventing largescale electoral violations, idenfying and holding perpetrators liable.

**Polling Stations:** The 3 recommendations on polling stations covered the presence of unauthorized persons, use of transparent boxes and identification of proper premises for official control over the process. All 3 recommendations were implemented but only the setup of transparent ballot boxes was effective.

**Prevention of Violations:** One recommendation was made on the prevention of violations urging to take immediate action against identified violations. The recommendation was not implemented.

**Proxies:** OSCE/ODIHR and PACE made 2 recommendations about proxies urging to address their undue interference in the work of electoral commissions and development of a manual for their training. The issue of undue interference by proxies, particularly of the incumbent or ruling party, has been reported by domestic observers. The Electoral Code stipulates that a proxy can be removed from the polling station by 2/3 of the vote of

the precinct electoral commission for obstructing the electoral processes. The implementation of this provision can be assessed only after its application.

**Publication of Results:** Five recommendations regarding publication of results were presented by PACE, Venice Commission, and OSCE/ODIHR. The recommendations included posting election results at polling stations, publication of disaggregate result per district and timely completion of protocols. In terms of the New Code, it was recommended that the initial and final results are posted on the CEC website in a user-friendly format indicating the precinct and district. These recommendations we implemented previously and are reflected in the 2016 Electoral Code as well.

**Recording of Violations:** In terms of recording violations the Venice Commission and OSCE/ODIHR recommended registration of violation of the voting procedure upon the request of one commission member or proxy. The law reflects the recommendation and the new Code adds observers, but commissions are reluctant to carry it out. It is also unclear whether the registered violation is investigated further.

**Suffrage Rights:** Recommendations on suffrage rights referred to allowing military voting for majoritarian candidates, voting for citizens, living abroad, voting rights of prisoner and dual citizens. The new Electoral Code extended the opportunity to vote outside of Armenia to military servicemen studying abroad. As a result of Constitutional Amendments, voting rights were restored for those convicted for not very grave and medium gravity crimes. Dual citizens who are in Armenia on the Election Day are allowed to vote but cannot be elected.

**Tabulation of Results:** A number of recommendations were made on tabulation of result, including transparency, efficiency, consistency, and simplification of the tabulation process. However, the tabulation process became more complicated with the new Electoral Code considering the new system for voting and tabulation.

**Use of Administrative Resources:** Several recommendations were

made on the use of administrative resources, including separation of party and the state, campaigning and official duties, fair use of local and central government resources for campaigning, and expansion of the powers of the Oversight Service. Implementation of recommendations in this area has so far been ineffective. The regulations of the Code have somewhat expanded but its effectiveness is yet difficult to measure.

**Vote Buying:** Recommendations on vote buying were its criminalization and prevention measures, which have been implemented ineffectively. It is particularly problematic that vote-buying is prohibited only during the campaign period stipulated by the Electoral Code.

**Voter Education:** It was recommended to conduct continuous voter education, particularly on the legislative changes regarding the voting procedures.

**Voter List:** Several recommendations were made on voter lists, including determination of the constituencies, maintenance of computerized voter lists, proper mechanism for ensuring their accuracy, and establishment of a reasonable option for their accessibility. Rejecting the opposition's demand to clean up the voter lists, the authorities agreed that should the opposition take on the task the information about absent voters would be added to the data in the voter authentication devices. The Code stipulated also publication of signed voter lists after the elections, which was the result of a long-term struggle by the opposition and civil society.

**Voting Procedures:** Several recommendations were made on voting procedures, including ballot security, inking of voters' fingers, marking the ballot, assisted voting, stamping of passport, and mechanisms against multiple voting, and simplify the voting procedure. According to the RA Government the electronic registration system prevents the possibility of multiple voting, which in its turn justifies the complication of the voting process. However, it is unequivocal that the voting and tabulation procedures have been unduly complicated.

## **Conclusion**

International Election Observation Missions observe Armenian elections since 1996 and election legislation and administration have changed significantly with the assistance of these missions.

The new Electoral Code includes several recommendations by OSCE/ODIHR, yet many recommendations have not been properly adopted.

Nevertheless, the lack of open discussions during the drafting of the code that would help increase public trust toward electoral processes is unfortunate. It is particularly important to ensure effective adjudication of inaccuracies and fraud regarding participation of voters identified through published data, to eliminate the restrictions on civil oversight over elections and to ensure effective examination of electoral disputes.

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## **About Helsinki Citizens' Assembly - Vanadzor**

Helsinki Citizen's Assembly-Vanadzor NGO (HCA Vanadzor) is a nonpolitical, non-religious, non-profit, NGO, which unites individuals who support the supreme principles of Democracy, Tolerance, Pluralism, and Human Rights, as values.

The Vision of HCA Vanadzor is a society formed with the supreme values of Human Dignity, Democracy and Peace.

The Mission of HCA Vanadzor is the promotion and support of civil initiatives, the strengthening of human rights protection, and peacebuilding activities on national and regional levels.

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