Implementation of Recommendations by Venice commission, OSCE/ODIHR

Stated in the Armenia Preliminary Joint Opinion on the Electoral Code as amended on 30 June 2016[1]

[1] http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2016)008-e

Executive Summary

International Election Observation Missions 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 participation in their drafting process are important indicators of the political will for electoral reforms. The concerns regarding the new electoral code expressed by the Armenian civil society and by the Venice Commission and OSCE/ODIHR are essentially the same and the majority of them have been left without due consideration.

The Draft Electoral Code was included in the Parliament agenda on April 25, 2016. First hearing of the Code was on April 28, 2016, the second hearing was held on May 17, 2016. The code was fully adopted during the third hearing on May 25, 2016. It was signed by the President on the 28th of May and entered into force on the 1st of June as prescribed by the Constitutional amendments.

In the opinion from May 10, 2016, the Venice Commission and OSCE/ODIHR regretted that the timeframe for reform was too short, and advised that "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. (§ 10)

This statement is a clear indication that the Venice Commission and OSCE/ODIHR see significant need for improvements in the Code, acknowledge that it will not be done in time for adoption but approve of working on the Code after it is adopted.

This recommendation should be viewed by the Armenian Authorities as an opportunity for meaningful electoral reforms in collaboration with all relevant stakeholders to ensure an actual consensus on the proposed changes.

HCA Vanadzor has analyzed 66 recommendations issued by the Venice Commission and OSCE/ODIHR in the Preliminary Opinion. According to this analysis 29 recommendations were implemented in the Final text of the Code, 24 recommendations were not implemented and 13 recommendations were implemented partly.

Incorporation of recommendations in the Amended Text of the Code

Incorporation of Key Recommendations (§14)

> *"14.A. It is recommended to reconsider restrictions on the number of participants in a coalition and extend the time period for formation of coalitions after the first round."*

The maximum number of participants in a coalition has not changed. The period for formation was extended to 6 days. (Article 97.1)

> *"14.B. Considering the importance of ensuring a balance between data protection and the secrecy of the vote on the one hand and stakeholders' interest in consulting the signed voter lists on the other, it is recommended, as a confidence building measure, to allow meaningful consultation of signed voter lists by stakeholders under specific conditions."*

The provision regarding accessibility of signed voter lists have been modified. According to the final text, signed voter lists will be available after the voting day. The change was adopted after negotiations between the opposition and the ruling party in 4+4 format. Civil society opinions differed in terms of assessing the change.

> *"14.C. Particularly in light of the short time before the next elections and the need to build trust in the electoral process, it is recommended that a number of issues be thoroughly considered, including harmonising new provisions with existing data protection laws and standards, applying proper procedures for procurement, 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. A gradual approach to the introduction of such technologies through a series of pilots would be a measure to enhance confidence in the system and provide opportunities to address technical issues regarding effective implementation. Initial pilots could take place, for example, during the upcoming local elections."*

There seems to be an intention to test the new code on upcoming local elections in December; however, it is unclear how this will be done and whether the technical equipment will be used then.

Incorporation of Additional Recommendations (§15)

"15.D. It is recommended to remove the mandatory testing and certification of citizen observers, as well as the requirement that the charters of citizen observer organisations be in force for the three years preceding the elections, as this would deprive new organisations of the possibility to observe elections."

The mandatory testing provision was removed and the three year rule was reduced to one year. Nevertheless the rights of citizen observers have been dramatically curtailed allowing observers only to move around the polling station and view electoral documents only in the presence of a commission member. Observers are allowed to voice their opinion to media but not to the Commission chair. If the previous draft allowed for observers "to direct the attention of the Commission Chair to an issue", the final code does not contain any provisions on the interaction between the observer and the Commission Chair (other than permission to consult some of the documents).

"15.E. The code should further guarantee the independence of the electoral administration, notably, by ensuring that presidential powers to nominate members of the Central Electoral Commission in case of a parliamentary stalemate are exercised in consultation with all parliamentary parties and by clarifying the procedure for the early termination of mandate.

Article 42.6 prescribes that the commission members will be nominated by the President after consultation with all parties represented in the Parliament. The current CEC was reappointed, hence no changes were made to actually ensure independence

"*15.F. It is recommended that the draft code provide for a still more effective quota for women's representation, for example by placing women among every two or three candidates."*

Article 83.4 stipulates that the number of representatives of each sex, starting from the 1st place on the list, must not exceed 70 per cent in each integer group of 3 (1-3, 1-6, 1-9 and subsequently up to the end of the list). The code also stipulates that the mandates will be allocated so that the proportion is more or less maintained, thus if an elected candidate from the national list withdraws the candidacy, then he or she is replaced by the next candidate of the same sex if due to the withdrawal of the candidate the representation of one sex drops below 25 per cent.

"15.G. Particularly in light of the extensive changes to the electoral system, the draft code would benefit from simplifying and clarifying procedures for voting, counting and tabulation, as well as the determination of election results. This would also require extensive training for electoral staff and comprehensive voter education well in advance of elections to ensure better understanding of the process and enhanced public confidence."

No changes have been made to simplify and clarify procedures for voting, counting and tabulation, except for adding regulation to ensure publication of signed voter lists.

> *"15.H. Final amendments to the code should ensure meaningful engagement with all relevant stakeholders, so as to encourage broad agreement and support for the new code."*

While the government claims that there has been some consensus over the electoral code. The claim is not supported by civil society or opposition parties. Moreover, the final code imposes even more restrictions on media, hence eliminating any possibility of support from media as well.

Implementation of Recommendations on Background and Procedure (Section A)

> "*19. It is strongly recommended to pursue public consultations and discussions with a view to obtaining political agreement on and support for the new code. These consultations could also find ways to take forward OSCE/ODIHR and Venice Commission recommendations contained in this and previous opinions and reports.*"

The fact that the draft electoral code first became available in English and through the Venice Commission website shows that the government did not have any intentions to discuss the electoral code during the drafting period. The 4+4+4 discussion in April was initiated by the opposition and did not bring any results. In fact, the discussions clearly showed that the Government would not make any meaningful changes to the code and the few meetings held in 4+4+4 format were used to argue that there were discussion and a consensus was reached. The final statement released after the consensus between the political parties about technical measures reads as if civil society representatives engaged in the talks agreed to the changes as well, which was not actually the case. Thus, their participation was manipulated to show a broader consensus on the changes.

Analysis of recommendations of the Venice Commission and OSCE/ODIHR reports show that only a small portion of them has been considered in the Electoral Code.

> *"20. Consultations on the drafting of the new electoral code should include meaningful engagement with groups that represent women, so as to ensure that special measures reflect their needs and wishes."*

While there was no formal information about that, it became known that a group of women's organizations was able to renegotiate the representation of women in the candidate list and to secure guarantees for their representation after elections.

Incorporation of Recommendations on Electoral System (Section B)

> *"21.While any electoral system may be chosen as long as it is in conformity with the standards of the European electoral heritage and it guarantees and gives effect to the free expression of the will of the voters, it should be reminded that "[t]he choice of an electoral system as well as a method of seat allocation*

remain both a sensitive constitutional issue and have to be carefully considered, including their adoption by a large consensus among political parties. While it is a sovereign choice of any democracy to determine its appropriate electoral system, there is the assumption that the electoral system has to reflect the will of the people. In other words, people have to trust the chosen system and its implementation".

It is widely believed that the incorporated national and District lists of candidates are an attempt to ensure votes via District authorities/major businessmen, ultimately candidates receive priority according to the number of votes they have garnered for the party, which essentially is a disguised semi-majoritarian system. The Venice Commission and OSCE/ODIHR seem to believe that the concerns expressed by NGOs and political parties in this regard are not a reason to change the system and there could be other measures taken to prevent misuse of administrative resources (§36). Nevertheless, the code does not seem to provide such safeguards.

"31. Article 98.2 provides that by 18:00 on the second day following the adoption of the corresponding Central Electoral Commission decision on holding a second round of elections, any political party (alliance) which has passed the electoral threshold may form a new alliance with other political parties (alliances) having passed the threshold and come to an agreement on the candidate for the Prime Minister (in view of the second round). This deadline is short and could be extended."

The deadline was extended, the code stipulates that the decision on forming alliances can be made by the by 18:00 on the fifth day following the adoption of the corresponding Central Electoral Commission decision on holding a second round of elections.

"32. Article 95.3(2) states that parties not awarded additional seats will preserve their seats from the preliminary distribution. This provision is understood as meaning that all seats obtained in the first round are kept, including by the parties or alliances that participated in the second round, whatever the results of a possible second round or the minority bonus(es). However, unless it is an issue of translation, the formulation should be made clearer."

The article was modified to provide more details and reference to other articles regulating the distribution.

"37. Vacancies that may occur during the term in office are filled: (1) by the candidate with the next highest number of preference votes not having been elected from the district lists; (2) by the next candidate on the national lists, unless the number of representatives of any gender in the given faction falls below 20 per cent; in that case, the seat shall be given to the next candidate of the less represented gender in the first part of the national list (Article 100.3) Article 100.2 states that if the district list is exhausted, the mandate is given to the next in line on the national list. It would be suitable to make it explicit that this applies both when the initial distribution is done and when filling vacancies at a later stage."

The article stipulates the same provision for early termination of the term which happens after the candidate has assumed the office.

> *"38. A party needs to have at least five per cent of the national vote, and an alliance needs at least seven per cent, like in the present version of the code. It is not obvious that there should be a higher threshold for pre-election alliances, as alliances might provide more cooperation and stable government. Therefore, the threshold for alliances could be the same as for political parties."*

The threshold was not changed.

> *"42. The arrangement of extra seats for national minorities may change the political balance among the parties. Having minority representatives taken within the seats won by the parties and filled from the ordinary candidate lists could be considered."*

The provision was not changed.

Incorporation of Recommendations on Suffrage Rights (Section C)

> *"48. The requirement that candidates have command of the Armenian language is a new constitutional provision and is regulated in Article 80.3 of the draft code. According to the Article, this may be demonstrated either by having secondary or higher education in the Armenian language, or if not, by passing a test. The code should provide that the testing of language should be reasonable, objective, verifiable, and subject to effective review."*

The final text includes requirements for the testing to be reasonably, objectively verifiable and subject to effective control. It further stipulates that the test results can be appealed in court within three days.

> *"49. Contrary to OSCE commitments, [20] the draft code does not provide a possibility for candidates to stand individually in the parliamentary elections and in elections for the councils of elders of Yerevan, Gyumri and Vanadzor. This limitation is not remedied by allowing non-party members to be included on political party lists (Article 83.4), as that decision is ultimately in the hands of the political party. Consideration should be given to allowing nomination of candidate lists not only by political parties but also by groups of citizens."*

The restriction to political parties was preserved.

Incorporation of Recommendations on Election administration (Section D)

> *"51. In line with Article 195.2 of the Constitution, Article 42 of the draft code provides that the CEC is composed of seven members elected by the National Assembly with at*

least three fifths of votes of the total number of deputies, for a term of six years. This election procedure differs from the current code, by which CEC members were appointed by the President upon recommendation of specified bodies. This qualified majority does not of itself ensure representation of the opposition. It is recommended that the process to appoint members of the CEC in the parliament be inclusive, so all parties may have trust in the CEC.

The Electoral Code stipulates that if a party receives over 2/3 of the seats, then other parties will receive bonus seats so their total number of seats in the Parliaments not less than 1/3(Article 96.2). Hence if a party receives 2/3 of the seats then the party has the opportunity appoint CEC members and to make other decision without the participation of the opposition.

"51. ...Article 42.6 states that, if the chairperson or a member of the CEC is not elected by the National Assembly within the prescribed time limit, the President shall appoint the acting chairperson or a member of the CEC, which shall hold the office until the proper election by the National Assembly. The President's power should be properly weighted. Indeed, if the President has the political support of the National Assembly, a simple majority may block the selection of candidates and entrust the appointment of the CEC members to the President. It is recommended that the code provide that the President should hold consultations with all parliamentary parties before appointing the CEC members."

Article 42 stipulates that the President consults all parties before making a decision on appointing the CEC members.

"54. Article 45 provides for the procedure for removal of the deputy chairperson and secretary of the CEC and chairperson, deputy chairperson and secretary of the DEC. In both cases, the decision must be adopted by at least two thirds of the total number of votes of the members of the Commission. Nevertheless, there are no provisions that outline the grounds that could justify such a decision. Dismissal should be based only on a reasoned decision, and be limited to very serious grounds."

In the final text, the article further elaborates on the provisions and grounds for dismissal of Precinct electoral commissions.

"55. Article 45 also establishes the procedure for early termination of powers of members of DECs. Paragraph 6 lists some grounds, and the possibility to terminate the powers of a member of the DEC upon a decision adopted by two thirds of the votes of the members of the CEC. In addition, the DEC may terminate earlier the power of a member of the PEC upon a decision adopted by at least two thirds of the total number of votes of the members of the Commission if the latter has violated a provision of the code. The Article also establishes that "the procedure prescribed by this part may be enforced for unreasonable absence from regular sittings" of the members of DEC and CEC. However, it is not clear if absence is the only possible cause for removal. The ambiguity and lack of clarity of the Article should be revised, since it could endanger the security of tenure and independence of commission members."

The reasons for possible dismissal of CEC are not stipulated clearly. It could be assumed from Article 45.6.5 that a CEC member could be dismissed only if convicted for electoral crimes (Articles 149-154.6) or for willfully committing grave and particularly grave crimes and being sentenced to

detention. According to the same article, DEC members can be dismissed for being conscripted for the army as well. Part 7 of the same article stipulates that a DEC member can be dismissed by 2/3 of the commission member vote in case of 3 unreasonable absences within three months and for gross violation of the Electoral Code.

> *"57. While Article 51.2(14) lists obligations of the CEC to publish training materials for proxies, observers, and PEC members, the law does not refer to publication of training materials for DEC members, as well as any voter education materials. It is recommended that the law specifies that the CEC elaborate and publish training materials for all categories of electoral stakeholders, in particular for DEC members and for voters."*

The provision has been modified to include publication of training materials for all commissions and voters.

Incorporation of Recommendations on Voter Lists (Section E)

> *"60.The translation of Article 68.2(4) is not very clear but, according to the authorities, this provision allows, in practice, candidate proxies and observers to check which voters have actually voted. If this is explicitly stated in the original version, it is a welcome development and a confidence building measure. This measure would however remain incomplete without providing access to signed voter lists in a way that ensures a balance between data protection and secrecy of the vote on the one hand and stakeholders' interest in consulting the signed voter lists on the other. It is recommended that this provision be carefully reviewed to ensure that it provides for meaningful consultation of signed voter lists by candidate proxies and observers under controlled conditions and with a reasonable timeframe. It is also recommended that other measures be adopted, such as initiating independent reviews of the signed lists under confidentiality obligation."*

The provision regarding accessibility of signed voter lists have been modified.

> *"61.The code should also clearly spell out the right to make complaints about any irregularities discovered during review of signed voter lists and ensure their timely consideration. A new provision could be included, stating that in judicial proceedings a party could present grounds for access to the signed voter lists for a specific litigation purpose and that the court could grant such access".*

The right to make complaints about irregularities has been curtailed by an addendum made to the Criminal Code, criminalizing false statement about voting on behalf of others, while the authorities claim that the provision was added to prevent abuse of access to voter lists, it will clearly serve as a preventive measure to ensure that no complaints are filed regarding identified false signatures.

> *"62.Other measures to proactively improve the accuracy of the voter register are considered in the draft code, such as audits of voter lists in advance of the election twice a year, as stated in Article 9.4. Inviting political parties and interested NGOs to participate in this exercise could improve public trust in the process."*

The Article further stipulates that lists are publicly available and any person can submit a complaint about irregularities in the voter lists and the authority in charge should make the correction within 30 days (9.5).

> *"64. The draft code proposes a system of voter identification in Article 66 that serves to improve transparency of voter identification, but it is not sufficient of itself to eliminate the possibility of fraudulent voting on someone's behalf or other forms of multiple voting. The draft code eliminates the stamping of the identification documents of voters. Some interlocutors suggested the inking of voters fingers to prevent multiple voting, at least as a short-term measure. Such a mechanism can be regarded as one of the effective and reasonable safeguards against multiple voting and is used in a number of countries in the European space and OSCE region, including Albania, Georgia, Serbia, and the "former Yugoslav Republic of Macedonia". It is recommended to introduce additional safeguards against potential multiple voting. In the short term, this could include the inking of voters' fingers."*

The provision was not added.

> *"65. The draft code does not clearly define the competences of the various state bodies involved in the collection, storage, and use of this personal biometric data, or the consequences of discovering cases of matching fingerprints."*

The Code does not mention how the fingerprints will be used, including whether they will be crosschecked.

> *"65 (2). In any case, should any new technologies be introduced in the electoral process, a number of issues should be thoroughly considered, including a risk assessment of the costs, benefits and challenges of introducing such technologies, harmonisation of new provisions with existing data protection laws and standards, but also ensuring trust in the process, necessary check-ups and pilot procedures, proper procedures for procurement, public testing and certification of the equipment, contingency planning if the technology fails, sufficient efforts for training electoral staff, and effective awareness-raising among voters and political parties. If new technologies are to be introduced, it is recommended that a gradual approach to the introduction of such technologies be adopted through pilots over the course of several elections, starting from the upcoming local elections. This would serve as an important measure to enhance confidence in the system and provide opportunities to address technical issues and ensure effective implementation.*

The authorities have been trying to legitimize the choice of electronic registration by involving international experts and evaluators. So far it is unclear what the decision has been on the timeline and procedures for installment of the new system. There also has not been a formal decision on testing the new system on upcoming local elections in December.

Incorporation of Recommendations on Registration of Candidates and Parties (Section F)

> *"66. The amounts of electoral deposits provided in Article 84.2(6) for parliamentary elections (10,000 minimum salaries, an increase from the previous 8,000 minimum salaries), as well as electoral deposits for local elections appear to be relatively high. It should be borne in mind that the amount of the electoral deposit should not create an unreasonable barrier to candidacy. The draft code provides that a contestant that receives at least four per cent of the votes qualifies for reimbursement of the deposit. It is recommended that the sum of the deposit and the result valid for refund be not excessive, and in any case, significantly less than the threshold to enter parliament."*

Article 108.3.1 stipulates that no deposit is paid by the candidates for local elections in communities with less than 500 voters. Other provisions were not changed.

> *"67. Since Article 27 regulates the use of the means of campaign funds, Article 88.2 may allow de-registration for minor campaign finance violations. Article 88.1(5) provides that the CEC may revoke the full candidate list if the number of candidates of even one district electoral list falls below three. This provision may be regarded as a disproportionate sanction. It is recommended that the draft code allow de-registration of candidates and party lists only as an exceptional measure for the most serious violations of law."*

The provisions were amended (Article 27.5) to allow for de-registration if financial irregularities such as (exceeding the maximum allowed campaign funds) reach 20%. And Article 88.1.5 was modified to allow for de-registration of a party if it has less than two candidates in 5 districts.

> *"68. Article 104 makes it possible for the time between registration of political parties running in early elections and the election day to be reduced to five days. This deadline is excessively short. It is recommended that all candidate registration deadlines be reasonable and facilitate credible and inclusive electoral processes."*

The provision has not changed.

Incorporation of Recommendations on Election campaign, campaign finance, and media (Section G)

> *"69. The general obligation on the State in Article 19.2 to ensure the free conduct of an election campaign is to be welcomed. Allowed forms of campaigning and canvassing may be described by the concept of 'established procedure' in Article 19.7 but it is unclear what is captured by this. There should be criteria for what the electoral commissions can set out as established procedure."*

The provision was modified to stipulate that the electoral commissions control the observation of electoral campaign procedures established by the Code and other legal acts based on the Code.

> *"70. [a] prior recommendation to narrow the scope of restrictions on the placement of campaign material on privately owned facilities has not been fully addressed and Article 21.2 of the draft code continues to restrict placement of campaign materials on privately*

owned catering or trading facilities, with no clear rationale behind such a restriction. A specific rule on the use of posters or distribution of election material at some public buildings such as administrative buildings and schools should be considered due to allegations of misuse in the past."

The provision was modified to allow for campaign posters and other materials posted on residential buildings in areas owned by a person, for example a balcony, window, etc or in spaces allocated for commercial advertizing.

"72. There should be an effective method of resolving campaign-related complaints during the campaign itself. Article 19.7 states that election commissions control the observance of the "established procedure" for election campaigns. However the Article only allows for two resolution options, an application to stop the activity, or a three day warning, and this may be too rigid. If those approaches do not work, the next step in the draft code is an application to revoke the registration of the candidate or political party list when the criteria in Article 19.8 apply. When conduct during the campaign is prohibited (e.g. Article 21.7), it should be clear who the enforcing authority is. Other provisions should be further specified, mainly concerning what activities are forbidden on election day and on the day before (e.g. Article 21.6 second paragraph). It is recommended that a range of clear and proportionate sanctions for campaign-related offences be provided in the law."

Provisions were not changed.

"73. Campaign finance regulations in the draft code are substantially similar to those of the current code. The OSCE/ODIHR and the Venice Commission have previously recommended that consideration be given to expanding the legal definition of campaign expenditures so that all costs related to a contestant's campaign would be included. This recommendation remains unaddressed. Articles 27.1 and 27.12 make it clear that the draft code's regulations on campaign funds relate only to specific campaign expenses: campaign through mass media, rent of premises, and printed campaign materials. It is recommended that campaign finance regulations cover all campaign-related activities, including organisational expenditures, such as services of marketing agencies, campaign offices, transportation and communication expenses."

The recommendation was not adopted; moreover, the provision was modified to stipulate that campaign offices are not to be covered by campaign funds. Part 12 of the Article was removed but the provision was added to parts 3 and 4.

"74. As in the current code, parties and candidates running in large communities are required by Article 26 to set up a specific bank account for campaign finance purposes. Article 26 provides for use of own funds of candidates and parties as well as donations from individuals eligible to vote; however it does not explicitly address important campaign finance issues, such as the treatment of anonymous donations and the possibility of making in-kind donations. According to the authorities, these issues are addressed by Articles 26.2(3) and 27.2. It would be advisable for the code to regulate them explicitly."

Article 26.4 further clarifies that anonymous donations are transferred to the state budget and Article 27.2 states that in-kind contributions are to be reflected in the campaign funds.

> *"75. Article 27.5 envisages the possibility of revoking candidate or candidate list registration for excessive campaign spending. The formula contained in this Article seems unduly complex and it does not appear that revocation of registration would be a proportionate sanction in this instance. It is recommended that this provision be reconsidered and deregistration be applied only as an exceptional sanction, after other sanctions have been found to be ineffective."*

The article was modified to apply deregistration for exceeding campaign spending by 20% instead of the previously stipulated 10%.

> *"76. Article 29 does not clearly define the status of the Oversight and Audit Service (OAS). The Venice Commission and OSCE/ODIHR have previously emphasised the advantage of independent institutional oversight over campaign financing. It is recommended to clarify whether it is an independent institution or subordinate to the CEC."*

The OAS operates under the CEC and is appointed and regulated by the CEC; however Article 29.1 was modified to specify that OAS is independent from commission and is not accountable to them.

> *"77. Article 29.5 provides that the OAS shall carry out an audit of campaign finance reports, draw up a statement of information on audit results and submit it to the CEC for consideration within two days after receiving declarations on the use of campaign funds. This deadline is unreasonably short to carry out a meaningful audit. It is recommended that the timeframe for campaign finance audits be extended."*

Part 5 of the same article stipulates that the OAS compiles a conclusion based on received declarations within 7 days after receiving them and submits it to the CEC. If the conclusion contains information about violations, the CEC members are to hold a discussion that the OAS is invited to.

> *"78. Article 29.6 does not empower the OAS to receive information from commercial entities, contractors, the police and other institutions that may have information relevant to the OAS audits. It is not clear what "receipts and expenditures not prohibited by the legislation" the OAS is not authorised to receive according to Article 29.6(2). It is recommended that the OAS be empowered to obtain all information relevant to its audits."*

Article 29.6 was modified to allow OAS receive information from banks, parties, vendors and contractors, as well as other companies providing goods and services.

> *"79. Article 8.5 obliges all parties and candidates to submit declarations of their property and income to the relevant election commission and that these declarations be published automatically in the case of parties. The code is ambiguous since it does not establish whether these rules are applicable to all elections or only to national elections. Part 3 of the same Article 8.5 gives the Central Electoral Commission discretion to decide the period for which the declaration of income is to be submitted. In the interests of legal certainty, this period could be established by the law. The declarations about*

candidates are made available to the media under Article 8.6. It is unclear which "other candidates" are covered by this provision."

The article was modified to stipulate that party declarations are submitted for the period of 12 months before the submission month and are posted online. The code further specifies declarations from individual candidates (the word "other' is removed) are not and their copies can be requested from the CEC.

Misuse of administrative resources

"81. Article 22.2 is a further prohibition on state officials using their power to establish unequal conditions among those standing for election by showing partiality. However, the extension of this prohibition to the mass media may go too far in restricting free expression by the media and should be reconsidered."

The provision was removed all together.

"82. Article 23 is a welcome restriction on how candidates who are incumbents or state officials must conduct their campaigns. Essentially, it is a prohibition on campaigning while performing official powers and campaigning using the resources provided for official purposes. See also Article 91.2. It would be suitable to make it clearer what sanctions will apply in case these provisions are violated."

The provisions were not changed.

Media

"85. Article 20.13 contains a new provision, which prohibits the abuse of freedom of mass media during the conduct of the election campaign. This prohibition is too general and may lead to undue limitations on the freedom of mass media. It is recommended that this provision be deleted."

The provision was removed.

Observers

"87. Article 32.1 retains mandatory testing and certification of citizen observers. The Venice Commission and the OSCE/ODIHR have previously recommended that these requirements be reconsidered. Moreover, citizen observers are required to take the same test and obtain the same qualification certificate for carrying out observation activities that Articles 32.1 and 3 prescribe for members of election commissions. Although, according to Article 32.1, national observers "can be present at the sittings of election commissions", they are not members of election commissions. Furthermore, Article 32.2 prohibits observers to make claims or intervene in the activities of election commissions and the voting process. It is clear that the role of observers and of members of the

election commissions during the elections is substantially different. Therefore, the testing and certification requirements for citizen observers should be removed."

The testing requirement was removed.

"88. Furthermore, additional restrictions found in the draft code may impede the activity of citizen observers and undermine transparency of the electoral process. For example, Article 51.2(21) allows the CEC to revoke the qualification certificate of an observer for violating "the requirements of this Code", which could open the door to revoking certificates for any minor violations. As in the current code, the draft code provides that Armenian citizen observer organisations may carry out observation only if their charter includes as one of its aims issues related to democracy and protection of human rights and if they do not support electoral contestants. Moreover, the draft code provides as a new requirement that these charter's aims should have been in effect for at least 3 years preceding the call of elections (Article 30.1.2). The latter requirement deprives new organisations of the possibility to observe elections, and should be reconsidered."

The three year requirement was reduced to 1 year, which still deprives new organizations of observation opportunity during the upcoming parliamentary elections.

"89. In a new provision, Article 65.7 limits the number of citizen observers to one per local organisation per polling station. Article 65.8 provides that the PEC may limit the total number of citizen observers and media representatives at a polling station where their number (but no less than 15) may hinder the smooth voting process. The OSCE/ODIHR has previously recommended that overcrowding be addressed by identifying more appropriate polling location. It is recommended that any measures to address overcrowding in polling stations must be proportionate and safeguard transparency of the electoral process."

The article has been edited but without substantial changes.

"90. Greater clarity of regulation could safeguard observers' rights. The draft code lists the right of proxies and observers to be present in the voting room during the entire voting process, but does not mention the right of observers to be present during the counting of ballots and tabulation of results (in contrast with proxies in Article 34.1(7)). Article 68.2, providing that all persons with the right to attend the commission meeting are allowed to be present during the count, means that observers are not excluded. However, it would be suitable that the right to observe the counting and tabulation of results be listed explicitly. Observers could also be included in Article 67.14."

The final text somewhat clarifies that observers can be present during the count. Article 67.14 includes observers as well.

"91. Article 31 does not provide for a possibility of new observers to be accredited to observe the second round of parliamentary elections. The deadlines for applications for accreditation of observers and media representatives (15 days before election day) and for the CEC to issue certificates to observers and media representatives (within 12 days after request) are overly generous, especially for a potential second round. It is

recommended that the deadlines mentioned be reasonably shortened and possibility for additional accreditation for the second round be envisaged."

The Provisions were not changed.

"92. A previous OSCE/ODIHR recommendation to avoid the possibility of arbitrary withdrawal of accreditation of an observer organisation in case of violation by individual observers has been addressed. [40] However, Article 31.5 now provides for the possibility to deprive an observer organisation of accreditation if it supports any candidate or political party running in elections, but it is not clear how such support could be assessed in practice. As such, this provision creates room for arbitrary decisions regarding the accreditation of observers that may negatively impact the transparency of elections. It is recommended that this provision be reconsidered."

The provision was removed allowing only for individual observer to be removed from the polling station by 2/3 of the commission's vote.

Voting procedures and tabulation of results

"95. Article 69.1 is too general when stating that a ballot paper shall be invalid where it contains an unnecessary entry. This could open the possibility for arbitrarily invalidating ballots. It is recommended to reconsider this provision."

The provision was not changed, moreover Article 68.3 stipulates that if a ballot contains more than one marking on the regional side or no marking at all, or the established way of marking the ballot is evidently not observed then the vote is counted only for the party. This creates ambiguity as to what is considered marking and what is entry.

"96. Article 73.3 provides that the DEC shall immediately post a copy of the tabulated voting results in a place visible to all. The OSCE/ODIHR has previously expressed concerns about overcrowding at DECs, impeding the opportunity to follow the tabulation process. It is recommended that the code provide for the location of DECs in sufficiently large premises and introduce additional measures to enhance the transparency of the tabulation process, such as the prompt posting of tabulated results by precinct online and/or on large boards or screens visible to all those following the tabulation process."

The provision was not changed.

"97. Article 75.1 provides for publication of preliminary and final election results by the CEC, but it is silent on what data should be published. To enhance transparency and confidence in the election results, it is recommended that preliminary and final results be published on the CEC website in a user-friendly format, disaggregated by precinct and district."

Article 75.2 of the final text lists down the information to be posted on the CEC website but without reference to the format.

> *"98. In addition, in line with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), it is recommended to publish sex-disaggregated data on voter lists, candidates, as well as members of election administration at all levels."*

The Code does not contain any provisions for segregating data.

Local elections

The proportional system for the election of Councils in Yerevan, Gyumri, and Vanadzor

> *"105. Political diversity is important at both the local and national levels and it is difficult to justify higher thresholds at the local level than at the national level. The introduction of a majority bonus in local elections, together with the higher thresholds and the current impossibility to establish parties at the local level, may further reduce political diversity and negatively impact the formation of coalitions. It is therefore recommended to reduce the thresholds at the local level and to introduce the possibility of forming coalitions instead of establishing a majority bonus to a single party, like for parliamentary elections. It is unclear why the system for those three cities should have closed lists or why the party or alliance which gets over 40 per cent (but not an overall majority) should be given an artificial 'absolute majority'. It is constitutionally mandated at the national level to give a stable parliamentary majority, but the same logic does not apply at the local level. A better correlation between the voters' will and the actual results of the elections could reinforce the voters' trust at the local level, improving accountability."*

The provisions were not changed.

The mayors

> *"106. According to Article 118.2 of the draft code, the candidate with the highest number of votes is elected. If there is only one candidate, the candidate needs more votes in favour than against. If there is an equal number of votes, the result is determined by drawing lots. A provision for a re-count before such lots are drawn should be included, also in Article 119.2."*

The provision was not added.

Campaign

> *"107. Elections at the community local self-government bodies and Councils of Elders are run by the DECs according to Article 52. The extent to which campaign rules and*

funding rules also apply to local elections should be specifically set out in the code. Weaving such references into some provisions but not others leads to uncertainty."

The Code lists various regulations in general and specific parts, which are still not fully clear.

Complaints and appeals

"109. Article 169.11 of the Constitution provides that parties and party alliances can bring disputes about parliamentary elections to the Constitutional Court. This is not open to candidates and voters. The grounds or timeframes are not set out. This might be in the Law on the Constitutional Court or in another law, but it should be clearly stated and regulated."

The Law on the Constitutional Court has not been updated to reflect the constitutional changes yet.

"111. Article 48.3 regulates who may challenge voting results in electoral precincts. It allows proxies and candidates to do so only if they were present at the precinct concerned. This limitation should be reconsidered. As previously recommended by the OSCE/ODIHR and the Venice Commission, the list of those entitled to bring challenges should also include groups of voters."

The provision has been curtailed even further eliminating the initial provision of allowing CEC members to challenge voting results as well.

"112. Article 48.10 provides that complaints against PEC decisions on voting day, as well as applications to declare voting results in electoral precincts invalid may be submitted to the relevant DEC at the latest by 18:00 on the day following election day. Considering the need to substantiate such applications properly and the formal requirements for legal representation, this deadline is short and should be reconsidered."

The provision has been modified allowing for complaints to be submitted on the day after from 9:00-11:00 a.m.

"113. Article 48.12 provides that applications for revoking or declaring candidate or candidate list registration invalid may be submitted on the second day preceding election day by 18:00. This window is narrow and a longer time period should be allowed. In addition, a possibility to appeal the decision of the DEC on registration of a candidate both to the CEC and the Administrative Court does not exclude conflicts of jurisdiction."

The provision regarding the timeframe remained the same while the possibility to appeal the decision to the CEC was removed.

"114. Article 48.13, paragraph 2, provides that election commissions shall respond to the applications received on the day preceding and on election day within four days following the vote. This deadline is long and does not facilitate provision of an effective remedy to

the applicants. It is recommended that these applications be dealt with by PECs before summarising voting results."

The provision has been modified to allow for all decisions to be made before the announcement of final results. However, it is unclear from the recommendation why it refers to decisions by the PECs, when the Code does not specify it and it is unclear what complaints the PECs would receive.

"115. Article 49.1 provides that where an application is submitted through a representative, a power of attorney issued in the manner prescribed by law should also be submitted. The power of attorney shall be submitted in the original form. This second sentence may lead to excessive formalism and it is recommended that it be deleted. The reference to abuses of the right to appeal seems quite vague and consideration should be given to avoiding possible misinterpretations."

The provision about the power of attorney to be submitted in the original form was removed.

"116. Article 50.12 limits the duration of a recount of election results of one electoral precinct to four hours. This limitation may prevent completion of an ongoing recount. It is recommended that this provision be reconsidered."

The provision was not changed.

Women's representation

"121. It is therefore recommended that the draft code provide a more effective quota for women's representation on candidate lists, such as placing women among every two or three candidates. The draft code should also ensure that the chosen quota is effective not only for the registration of the candidate list, but also when distributing mandates."

The quotas were changed in the final text to at least 30 percent, with at least 25 representation in the elected Parliament and the three proportional councils. However, the transitional articles allow for the quota to be reached after 2021, requiring 25 (20) by 2021.