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IMPROVEMENTS IN THE ELECTORAL PROCESS WITHIN THE
CONTEXT OF AMENDMENTS TO THE ELECTORAL CODE OF THE
REPUBLIC OF ARMENIA

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List of Abbreviations

NA – National Assembly

OSCE – Organization of Security and Cooperation in Europe

CEC – Central Electoral Commission

CoE - Council of Europe

ODIHR – Office for Democratic Institutions and Human Rights

RoA - Republic of Armenia

TEC – Territorial Electoral Commission

MP – Member of Parliament

Abstract

After the breakdown of the Soviet Union in 1991, Armenia was under the demand to completely reform its legislation. Election legislation is key to legal reform, given that all new democracies begin with the development of a new Electoral Code, based on which election processes are further developed and applied. Armenia's first Electoral Code was adopted in 1999, following which consecutive national elections were held. Since then, the Electoral Code of the RoA underwent a serious evolution that stemmed from practical implementation. Almost all national elections in Armenia within the 15 years of its independence had shortfalls provided that the country's institutions were still nascent and required time and effort for complete formation. The international community led by OSCE/ODHIR observation mission by and large labeled the elections preceding the latest 2007 parliamentary elections (except the ones in 1991) as either free but not fair or not free and not fair, and thus falling short of internationally accepted norms and standards. In response to the OSCE criticism, the Government of Armenia took charge to improve the Electoral Code and a series of laws as part of the Council of Europe obligation and as measure to improve its institutions and systems that constitute an integral part of a democratic society. Changes in the latest version of the Electoral Code passed in March 2007 lead to a significant improvement of the overall election process manifested during the May 2007 parliamentary elections which according to the OSCE/ODHIR report, lays a solid and comprehensive foundation for free and fair elections. However, there is still room for procedural improvement to ensure smooth implementation of the electoral processes.

Taking into account the above-written, the purpose of this Policy Internship Project paper is to:

- analyze to what extent have these changes contributed to the improvement of the electoral processes.
- underline the dynamics of improvement of the Electoral legislation and the Electoral process, the derelictions and omissions
- make proposals in the direction of the further improvement of the Electoral Legislation.

Introduction

The Policy Internship Project paper will address Improvements in the electoral processes within the context of amendments to the Electoral Code based on the content analysis of Armenian Legislation and official documents of international expert and observer groups and in-depth interviews with experts and policy-makers in the field of electoral administration.

Until February 18, 1999 there was no single legal act regulating electoral legal relations. The relations in the field were regulated by different laws, among them RoA Law on election of the president; the deputies of National Assembly; and local self-government bodies. In essence, these three laws were basically regulating the same legal relations with the exception to those legal relations which were stemming from peculiarities of electing this or that elective body. Taking this into consideration, later on these three laws were combined into one single legal act and on February 5, 1999 the NA of the RoA adopted the Electoral Code of the RoA which became effective on February 18. One must mention that the adoption of the Electoral Code has had substantial significance on the establishment of the young electoral system of the RoA since evolutionary development of the electoral process and the election system of the RoA was to be based exactly on this legal act. The Electoral Code of 1999 was an attempt to regulate all those legal relations to their maximum that would come out of the electoral process starting with the election right of the citizens and ending with summarization of election results, their official announcement and resolution of electoral disputes. However, after the first test of the Electoral Code, parliamentary elections on May 25, 1999, shortcomings came into sight, which were existent almost in all phases of the electoral process. We will talk about these shortcomings and about the achievements and improvement of the election legislation according to the phases of the electoral process in order to ensure the logical sequence of both the electoral process and our work.

Literature review

It is impossible to overestimate the role of elections in the functioning of a democratic system. Many scholars and practitioners highlight that elections are important pillars of democracy through which people exercise their right of governance. James N. Danziger asserts that “democracy must entail the relatively equal capacity of all citizens to influence the allocation of values” (James N. Danziger, 1998: p. 158). Refraining to use the term in the classical sense, i.e., government of and by the people, Danziger uses the term representative democracy “wherein the citizens elect people to represent them in the political process and to allocate values on their behalf for the society” (James N. Danziger, 1998: p. 158).

While democracy still stays an ideal, many countries have developed quite elaborate system of elections and checks and balances. Even if we exclude the ideal situation when the people exercise direct governance, elections remain an important element of a democratic system as a pillar for its functioning. Robert A. Dahl prefers to use the term “polyarchy” viewing elections as a means for competing elites. He specifies some requirements for a democracy among a large number of people. In his words, citizens must have the opportunity to formulate preferences, signify preferences and have preferences weighted equally in conduct of government. He points to the “right to vote” as an institutional guarantee for all the three (Robert A. Dahl, 1971: p.3).

Giovanni Sartori uses the term “electoral democracy” noting that “elections do not enact policies; elections establish, rather, who will enact them” (Giovanni Sartori, 1987: p. 108). This means that voters never exercise full governance. Instead, they only exercise their right to choose who will govern. However, Sartori points out that voters can vote for the candidate or party that appears closer in issues standing under “issue voting” model (Giovanni Sartori, 1987). Under the “party identification model” voters “vote for the party one identifies with,

i.e., closer on the relevant spectrum” (Giovanni Sartori, 1987). No matter if people vote under “issue voting” or “party identification” model, we keep to our assumption that elections pave the grounds for representation of masses through elected delegates. Therefore, Sartori asserts that “the burden of rationality does not rest – in the electoral democracy – on electorates: It is shifted on to their representatives and, thereby, on the theory of representative democracy” (Giovanni Sartori, 1987: p. 109). However, Sartori continues that the rationality of voters may reside only in specific issues with their narrow circle of interests. More important is the “autonomous” nature of public opinion that expresses itself freely. “The electoral theory of democracy argues – let it be recalled – that (a) democracy postulates an autonomous public opinion, (b) which sustains, via elections, consented governments, (c) which are in turn responsive to the opinions of the public.” (Giovanni Sartori, 1987: p. 110).

After the collapse of the Soviet Union, many post-Soviet states faced the challenge of building democratic state, Armenia among them. While the first elections were conducted under massive euphoria for having an independent statehood, later elections came to prove that Armenia has to go a long way to reconstruct its institutions in order to have a functioning state close to democracy. In his study on post-communism, Leslie Holmes identifies six aspects for elections to be democratic. First, the author says that suffrage should be universal. This means that “all citizens other than criminals and perhaps the insane should have the right to vote.” (Leslie Holmes, 1997: p. 150). The second precondition Leslie forwards is that elections should be equal, meaning that everyone should have the right of only one vote. Third, Leslie Holmes highlights that the balloting should be secret, i.e., confidentiality must be ensured, although, he mentions that many in communist states feared the consequences of exercising their right to enter an election booth. Of course, the memories of the past sometimes have their effects in the present day reality with many people doubting about the confidentiality of their votes. Fourthly, Leslie Holmes says that elections should be conducted

fairly. He writes: “For instance, there should be no intimidation or vote rigging. More controversially, it can be argued that there should be no undue privileging of some parties over others.” (Leslie Holmes, 1997: p. 151). As a fifth point Leslie says that elections should be direct – that is, voters should be able to vote directly for their representatives and not vote for representatives who then choose the leaders. The author rightly mentions that this is a controversial point and that its exercise is by no means necessary. Finally, he raises the question whether voting should be compulsory or not. “It is widely accepted that it should be a basic right, but not a duty, of citizens formally to express political preferences,” he concludes. (Leslie Holmes, 1997: p. 151)

Perhaps no less important is to mention the concept of “beliefs, attitudes and values.” Defining the three as “cognitive ideas”, “ideas which are laden with effect,” and “evaluative and normative ideas about the political world,” Larry Johnson rightly points out that “these categories are not idle labels, but imply an orientation to the political system that may well have consequences for political participation.” (Larry Johnson, 1955: p. 161).

This is an important aspect to bear in mind while speaking about the elections in post-communist countries and Armenia in particular. The beliefs and values are rigged elements of mass memory. They are habitual elements of the political culture which may shape the political outcome in a very predominant manner. We would like to mention that our work is the study of the Electoral Code of the Republic of Armenia. We will show in our work that Armenia has made a big progress in terms of legislative improvements in the electoral process. However, time is needed for the societal layers to develop habits of democratic governance and this is true both in terms of the theory of representative democracy and in terms of political culture.

In his book “Political Man” Martin Lipset says “between 1896 and 1932 over 70 percent of all American counties did not change the majority of their presidential vote from one election

to the next, the need to include a historical dimension can be seen.” (Seymour Martin Lipset, 1963: p: 271). Lipset refers to two studies conducted in Sandusky, Ohio and Elmira, New York. The first area reported a Democratic community while the second one reported a Republican city. “The only way to explain why the cities differed is by their varying histories,” Martin Lipset concludes. Similarly, the Soviet past and a long lasting history of foreign rule have an impact on voter behavior and generally how elections are conducted.

Democracy is sometimes identified with freedom. Sometimes the two are even “used interchangeably.” The important factor here to emphasize is that democracy consists “of a set of practices and procedures that have been shaped through a long, often tortuous history.” (International Information Program, 1998) “Democracy is the institutionalization of freedom. For this reason, it is possible to identify the time-tested fundamentals of constitutional government, human rights, and equality before the law that any society must possess to be properly called democratic.” (International Information Program, 1998) The issue of majority rule is very controversial. It is often argued that “rule by the majority is not necessarily democratic.” The consideration to the concerns of minorities and their human rights protection is mostly seen as a greater value to the practice and theory of democracy (International Information Program, 1998).

Jeane Kirkpatrick, who was cited by International Information Program, offered this definition for the democratic election: "Democratic elections are not merely symbolic....They are competitive, periodic, inclusive, definitive elections in which the chief decision-makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their criticism and to present alternatives." (International Information Program, 1998)

Our study will show that the Armenian Electoral Code complies with this definition in many ways. The legislation has paved ground for the elections to be competitive, periodic, inclusive and definitive. This is especially true under the amendments made in the Electoral

Code from 1999 to 2007. While some modifications still needed, the current Electoral Code has reported a big step forward in terms of safeguarding basic principles of both the electorate and the candidates. However, the full scale implementation of these provisions still remains one of the major problems in Armenia in the way of establishing a democratic state.

We close this part of our work with a quote from Aristotle. In his book “The Politics” Aristotle states “A social instinct is implanted in all men by nature, and yet who first founded the state was the greatest of benefactors. For man, when perfected, is the best of animals, but when separated from law and justice, he is the worst of all.”

Electoral process. Concept and main phases.

The electoral right and the electoral process are closely linked with the political aspect of the state and civil society. The electoral right regulates specific aspects of public and state life concerning acquisition and transfer of power to elective bodies in case when the electoral process, as an organizational-legal method of exercising the “subjective electoral right”¹ of citizens, expresses the technology of direct participation of the electoral subjects in the formation of elective bodies.” Taken together, they form the legal and political mechanism for the formation of major institutions of modern representative and electoral democracy (Большаков С.В., et al. 2003).

As a legal-political and concurrently a category of electoral legislation, the electoral process is perceived in "wide" and "narrow" meanings the existence of which in the legal practice is predetermined in certain time frame (start and end). (Большаков С.В., et al. 2003).

¹ In accordance with the manual “On electoral legislations and electoral administration” by H. Tovmasyan, V. Poghosyan, A. Avetisyan, the subjective electoral right enables a person to elect national and local self-government bodies, members of such structures. The subjective electoral right includes the right to vote (active electoral right) and the right to be elected (passive electoral right).

According to the logic of the electoral legislation of the Republic of Armenia, "the wide" meaning starts with the date of publicly announcing the decision on holding elections issued by a respective authorized body and ends with the effective date of the legal act on the results of elections, in this particular case, the decision of the Central Electoral Committee or, in case of disputes, the decision of the Constitutional Court.

The electoral process in the "narrow meaning" is integrity of phases of organizing and conducting elections as stipulated by law that ensures comprehensiveness and legitimacy of the voting process and the election results; each of the phases is integrity of respective electoral procedures (Большаков С.В., et al. 2003). The main part of our work aims to study specifically that "narrow" meaning of electoral process, i.e. the phases of organizing and conducting elections and respective electoral procedures.

Major phases of the electoral process:

The international practice considers the following as major phases of the electoral process:

- the calling of elections (adoption of a legal act on calling the day of the elections issued by a respective authorized state body or an official);
- the registration of voters, creating voter lists according to their registration addresses as well as setting up electoral precincts and electoral precinct centers;
- nomination of candidates (candidates' lists) and registration;
- ensuring awareness about elections and conducting pre-election campaign;
- voting, counting and tabulation and official announcement of election results (B. A. Strashun, 1996, page 340).

The practical significance of the stages of the electoral process is that they ensure timely and sequential execution of electoral actions and procedures which in themselves guarantee the legitimacy of elections of deputies and respective elective bodies. We must mention that a

large portion of elements of organizing the electoral process have "serving and supporting nature" (Большаков С.В., et al. 2003). As an evidence of what is said we must mention that it is impossible to think about the organization of democratic elections without, for example, timely and full funding of elections or without effective mechanisms for solving electoral disputes.

One must mention that the timeline of the actions for organizing and implementing the elections has functional and legal significance in the structure of the electoral process. The emergence, changes and end of respective electoral legal relations are related to this timeline. The deadlines set in this document are viewed as a legal fact and a subject for legal regulation. It is also a resource for election campaign. In case of failure to keep to this timeline or its improper and ineffective management may significantly restrict the potential opportunities of the actors of the legal process (Большаков С.В., et al. 2003). Thus, the timeline of organizing and conducting major events of the elections legally and factually regulates the implementation of major events within specific periods of electoral process. This comes to prove that major technology elements of organizing the electoral process come to serve respective phases of the electoral process with their functional significance. Summing up the abovementioned, we must also mention that the Electoral Code of the Republic of Armenia has undergone changes many times for consistent improvement of the electoral process which will be detailed below.

Research Questions:

The aim of this study is to research the following questions connected with the major phases of the electoral process:

1. To what extent did the Electoral Code adopted in 1999 regulate the electoral legal relations arising in the field?
2. What regulations does the Electoral Code of RA stipulate for calling elections?

3. How was the active electoral right of subjects regulated in the Electoral Code from 1999 to 2007?
4. How much did the amendments to the legislation norms on compilation and maintenance of voter lists contribute to the improvement of that stage of electoral process?
5. What changes were made in the Electoral Code in relation to nomination and registration of candidates?
6. What additional guarantees were created in order to ensure the principle of confidentiality of voting as a result of amendments to the electoral legislation?
7. To what extent did the amendments made in the electoral legislation contribute to publicity and efficiency of the process of recapitulation of voting and election results?
8. Which are the possible recommendations and changes that may contribute to further improvement of the electoral process?

Methodology:

1. Content analysis of Armenian Legislation and official documents of international expert and observer groups.
2. In-depth interview with experts and policy-makers in the field of electoral administration.

Analysis

Calling elections as the first stage of the electoral process

As already mentioned above, the electoral process starts with the official announcement of the legal act on calling the day of the elections. This means that a whole cycle of election events and consequent electoral legal relations start with the calling of elections. Calling of

the elections supposes that a state authorized body or an official must set the date of the elections within the time frame stipulated by the constitution or the laws.

The Electoral Code (1999-2007) of the Republic of Armenia sets different deadlines and different compositions of authorized subjects for setting the date of elections for different elective bodies and public officials. Particularly, in accordance with Article 88 of the Electoral Code of the RoA *“Presidential elections shall be held fifty days before the end of the President’s term.”* The same article mentions that *“The Chairman of the Central Electoral Commission shall announce the date for presidential elections on Public Radio and Public Television, no later than 100 days before the election day.”* The Electoral Code of the RoA stipulates new and extraordinary elections of the President of the Republic in case of respective grounds.² In accordance with articles 90-91, new or extraordinary elections are conducted on the 40th day after the President’s post becoming vacant. The Chairman of the CEC announces the date of new or extraordinary presidential elections on Public Radio and Public Television no later than 39 days before the election day.

As far as the procedures and timeframe of calling and conducting NA elections are concerned, article 117 stipulates that regular NA elections are held no earlier than 40 and no later than 30 days before the end of its term. The President of the Republic issues an order about holding the elections no later than 100 days before the voting day.

The president issues an order about holding regular elections, no later than 100 days before the voting day. The Electoral Code set similar timeframes for conducting extraordinary elections of the NA. The president of the republic issues an order about holding extraordinary elections together with an order to dissolve the NA. As far as by-elections of the NA are concerned, they are hold by the decision of CEC of the RA.

² Announcing election invalid or annulled resignation of the president of the republic, death, and for other reasons.

In accordance with article 135 of the Electoral Code, “regular local self-government elections shall be held no later than 30 days before the end of the term of local self-government bodies”, and “local self-government elections shall be called by the appropriate Marzpet (Governor) no later than 90 days before the end of the community leader's term.”

The Electoral Code also provides an opportunity for holding extraordinary elections for community leaders which are held within 30 days of the community leader's post becomes vacant. The government of the RA adopts the decision on holding such elections also dismissing the community leader or terminating his/her power early.

Summing up the above-mentioned, we may note that little changes have been made in calling the elections as the first phase of the electoral process from 1999 until 2007 concerning the timeframe of elections of the National Assembly and local-self government bodies of the RA.

Before studying the peculiarities of the electoral process we think it is necessary to reflect on some of the vivid shortcomings of 1999 Electoral Code.

While analyzing The Electoral Code (1999) we may conclude that it had a limited approach in regulating “active electoral right” ascribing that only to the citizens of the RA. The EC (1999) stipulated “*The citizens of the Republic of Armenia who have attained the age of 18 years have the right to vote*” (Article 2). During one interview with Sevak Hovhannisyan, the head of legal experiment division of legal and program and methodology department of the Central Electoral Commission, Sevak Hovhannisyan mentioned:

“In my opinion, this legislative norm did not reflect the situation in the Republic of Armenia after the independence to its full extent. I am speaking about the events ³ which are quite well known to everybody as a result of which a mass of thousands of refugees were formed in the Republic of Armenia. It would be a serious mistake to ignore their rights and interests, especially if we take into consideration that some communities of the Republic of Armenia if not fully then predominantly were inhabited just by refugees.”

³ The events of Sumgait and Baku, Karabakh war.

This condition supposed a respective change in the Electoral Code which did not wait long. However, since the international practice and internal state legislation did not provide for active election right with its full scale to refugees, the RA Law “On making changes and amendments to the Electoral Code” adopted by the legislative on April 5, 2000, solved the problem partially. Article 2 of the Electoral Code 2000 stated that citizens of the RA above 18 years old have the right for election in the RA and persons above 18 with the status of refugee in the RA or registered in the family of refugee as mentioned in a certificate issued according to law have the right to vote during the elections of local self-government bodies. (RASB N 8, (106), 28.04.2000). As we see, the legislative body enlarged active election right to also refugees who could participate, only in the elections of local self-government bodies. The amendment had a positive impact in terms of ensuring further active participation of refugees in the electoral process of the RA and significantly contributed to their full integration into the Armenian society. Later, the content of this article further enlarged on January 18, 2007 and was formulated accordingly:

“ Citizens of the Republic of Armenia, who have attained the age of 18 years, shall have the right to elect in the Republic of Armenia. In Local Self-government elections, the right to elect shall also belong to persons who are registered in and have been actually living in the respective community for at least one year.” (RASB N 4, (528), 17.01.2007).

This means that the legislature grants the right to vote as well as to aliens of the RoA that have at least one year of registration and reside in a community for at least one year in addition to refugees during the elections of the local self-government bodies. *“The rights and obligations of citizens of the Republic of Armenia, accorded by this Code during local self-government elections, shall also apply to persons who do not have citizenship of the Republic of Armenia, and who have the right to elect.”* (Electoral Code (2007), Article 2,(2)). There is one more important point to note about the provisions of Electoral Code 1999. By providing for a mixed form of the electoral commissions (CEC was formed by 3 members

appointed by the president and one member each from the political fractions in the acting National Assembly), only the state was considered responsible for preparing, organizing and conducting and generally for lawfulness of the elections. Article 1, (4) of Electoral Code 1999 provided: *“The state holds responsibility for the preparation, organization and conduct of elections, and for the legality of elections.”*

During the interview, S. Hovhannisyan mentioned:

“In our opinion, under the conditions of such general regulations, the addressee of responsibility is not defined which created fruitful grounds for faults in the preparation, organization and conduct of elections committed by the participating state structures and public officials, and why not, also by political parties.”

This issue was also resolved in the Electoral Code adopted on October 10, 2005.

Particularly, Article 1;(4) stipulates:

“The state, the government and local self-government bodies, as well as bodies and officials forming the Central Electoral Commission, shall bear responsibility, within the framework of the powers given to them by the legislation , for the legality of preparation, organization and conduct of elections” (HO-101-N, RASB, N36 (408), 10.06.05.

This amendment has defined which state bodies and public officials are responsible for the legality of preparation, organization and conduct of elections and to what extent.

Voter registration, compilation of voter lists by the addresses of their residence

The second phase of electoral process includes such important electoral procedures as voter registration and voter list compilation, formation of precincts and precinct centers.

Voter registration is one of the important electoral procedures of preparation for elections. The accuracy and comprehensiveness of voter lists have basic significance for any electoral system. Civil trust in the electoral process is largely determined by the objectivity of voter registration and compilation of voter lists. (Большаков С.В., et al. 2003). Compilation of voter lists is a difficult, responsible process requiring hard work. It is considered one of the

most important documents of the electoral process and is used in the precinct centers during identifications of the voters. It is also used to ensure the right to vote, to give an opportunity to elect as well as to protect oneself in case of transgressions on the electoral right of citizens. (S. A. Avagyan, 1999).

The international practice in voter registration is rather diverse and depends on who is responsible for the registration – the state in the face of a respective body or the citizens?

There are two basic types of voter registration:

- Public (compulsory)
- Individual (voluntary). (S. A. Avagyan., et al. 1999)

Compulsory registration means that the state implements the registration of all citizens with the right to vote. In countries (Canada, Russia, RoA,) where there are regulations on registration of population according to the place of residence and in case respective bodies have information on citizens residing in a certain area, voter registration is made based specifically on that information. In those countries where such registration of population migration is not conducted, special public employees walk from house to house in order to compile voter lists and this is done before the elections or once in a year.

For example, Hungary has a special legislation on population registration. Here Central Bureau of Voter and Population Registration affiliated to the Interior Ministry deals with specific issues relating to preparation and conduct of elections. This bureau bears the responsibility for voter list compilation. It also decides the border of electoral precincts and makes the list of citizens who have no right to vote (S. A. Avagyan., et al. 1999).

Voluntary registration means that citizens must deal with their inclusion in the voter list themselves. For that purpose, they must appear with required documents to respective bodies and get registered as voters. In some countries with voluntary registrations citizens do not have to re-register after getting registered one time in case they do not change their place of

residence. USA is a vivid example of a state practicing voluntary registration. (S. A. Avagyan., et al. 1999)

The RoA practices compulsory procedure of voter registration, which supposes, as mentioned, that the state itself registers all those persons that have right to vote

The community administration heads were compiling and maintaining voter lists in the RA until the year 2005 within the framework of powers delegated to them by the state whereas the central and territorial electoral commissions were supervising the compilation and maintenance of voter lists. (Electoral Code(1999 – 2002) Article 9).

During the interview, S. Hovhannisyan mentioned:

“The experience of years showed that such legislative regulation does not justify itself, ... moreover, compilation and maintenance of voter lists were considered as weak points Of the electoral process as a result of which discrepancies existed in the lists. There were names of dead or persons striped of their right to vote or without right to vote, or else, persons registered at the electoral precincts were left out of the voter lists. This could have been caused by a number of reasons:

***First**, in our opinion, this could be the results of uncoordinated work of state structures and public officials who participated in the compilation of voter list to this or that extent or it could be improper attitude. We know that compilation of voter lists and their quality largely depend on courts, citizen registration departments, passport divisions, military unit commanders and heads of detention establishments. Any incorrect action or fault in any of these made a direct consequence in the voter lists...*

***Second**, having the authorities for compilation and maintenance of voter lists, community leaders did not possess the data on registered citizens in the community. Such data existed in passport divisions and community leaders could be able to compile and maintain voter list only if they cooperated with passport divisions.”*

Having studied the peculiarities of preparation, organization and conduct of presidential and parliamentary elections in 2003, the OSCE/ODIHR and European Commission For Democracy Through Law (Venice Commission) in 2004 submitted a whole package of suggestions on improvement of voter list compilation and maintenance, trough creation of a “permanent national voter registry.” (OSCE/ODIHR 2004).

Taking into consideration the problems and suggestions it was stipulated within the context of the amendments in the Electoral Code in 2005 that “The Republic of Armenia voter lists

shall be compiled and maintained by the passport and visa department of the police of the Republic of Armenia according to the place of residence of citizens” (hereinafter “the Authorized Agency”) (HHSB N 36 (408), 10,06,05). It was also envisaged that the Authorized Agency shall compile and maintain voter lists of the RoA by the marzes and communities as a single voter list, that is, the RoA Voter Register (National Voter Register). To ensure the publicity of voter lists, the code also stipulated that the “The Authorized Agency shall post the Republic of Armenia Voter List on the Internet. The list shall be broken down by marzes and communities and, in cases stipulated by this Code, also by electoral precincts” (Article 13). In fact, by ensuring the publicity up to this level, the legislature created an opportunity for citizens to freely search internet and find out if their names are in the voter lists, or not. In case of absence of their names, they may get their names into the voter lists or correct the discrepancies using the procedures stipulated by the code. (Article 14). And finally, in order to make this chain final, Article 14; (4) of the Electoral Code (2005) put responsibility in front of the head of the appropriate division of the Authorized Agency to inform the Authorized Agency of changes made in the voter list in order for the Authorized Agency to make appropriate changes or corrections in the RoA Voter Register.

This chain of amendments in the Electoral Code opened an opportunity to create a flexible system of voter list compilation and maintenance in the RoA with the help of which, *first of all*, the access of persons with the right to vote was ensured to voter lists up to the maximum, meantime, excluding double voting. *Second*, discrepancies in voter lists were resolved more efficiently and one more thing, which is no less important, an opportunity was created to maintain accurate statistics on the number of persons with the right to vote at different levels of elections in the Republic of Armenia.

The abovementioned amendments that were made from 2005 to 2007, were tested a number of times during constitutional reforms, referendum and the elections of several local

self-government bodies. They served as a serious legislative base for the parliamentary elections of May 12, 2007. The above said is also supported by OSCE/ODIHR (2007)

The report says:

“The police, through the Passport and Visa Office was charged with the compilation of the voter list under Election Code amendments enacted in 2005. Considerable effort has been undertaken in order to computerize the residential, passport and other registration records on which the voter list is based. For the 12 May elections, additional efforts are being made to correct inaccuracies (mainly surplus names and voters registered at incorrect addresses).” (Interim Report 2; March 29-April 17)

Formation of electoral precincts and precinct centers

One of the important procedures of the electoral process is the formation of electoral precincts and precinct centers. Electoral precincts are formed and numbered consecutively for organizing the voting and summarizing the results of the vote (Article 15). After the adoption of the law on making amendments to Electoral Code in February 26, 2007, the electoral precincts are formed exclusively in the RoA and “have territorial inclusion.” (Tovmasyan H. 2007)

Until the year 2004, the community heads were in charge of forming electoral precincts. However, following the amendments of the legislative norms on compiling and maintaining voter lists, it was logical that the subject responsible for forming electoral precincts must be changed. In accordance with article 15; (2), of the Electoral Code

“The Authorized Agency or its appropriate regional division shall, with the participation of community heads and a representative of the Territorial Electoral Commission, form election precincts no later than 45 days before the voting day taking into consideration local and other conditions, with the purpose of creating the most favorable conditions for voters to exercise the electoral rights.”

One of the important standards for the formation of the electoral precincts is the number of voters included in specific election precincts. In this relation, article 15;(6)of the Electoral code fixed that *“each electoral precinct shall include no more than 2,000 voters...”*

It was logical to assign compilation of voter lists and formation of electoral precincts to one body since the Authorized Agency is in hold of all information necessary for forming electoral precincts, which enables to implement the operation as efficiently as possible.

Unlike electoral precincts, “Precinct centers are formed by community leaders no later than 45 days before the voting day.” (Article 17). A precinct center is the building or venue where there is a room or site specially furnished for organization, conduct and summarization of voting results. The Electoral Code makes a restriction to those buildings where precinct center may not be formed. In accordance with article 16; (3) of the Electoral Code (2007) *“precinct centers may not be formed in buildings occupied by national or local self-government bodies, military educational institutions, military units or healthcare facilities...”* The abovementioned means and that is also proved by experience that the precinct centers in the RoA are created in the buildings of pre-school, educational, scientific, cultural, sports and other establishments.

Nomination and registration of candidates.

Nomination of candidates is the electoral action with which the realization of the “passive electoral rights” of citizens starts. (Большаков С.В., et al. 2003). This “component” of the electoral process considerably determines its further process. Here important becomes the issue of subjects who have the right to be nominated. The Electoral Code (2007) of the RoA stipulates different composition for the nomination of different elective bodies. Article 66 of the Code ascribes the right to nominate candidacy for the President of the Republic to political fractions and citizens. “Parties and party alliances shall have the right to nominate MP candidates under proportional system” and the nomination of citizens, community leaders and members of elders may be also done via self-nomination under the majority system. (Electoral Code 2007, articles 99, 105, 123).

As far as the registration of candidates is concerned, it is considered a legal fact on one side, and has organizational nature on the other hand. “The registration of a candidate may be viewed as a process of checks of respective factual conditions stipulated for the nomination of a candidate” (S. A. Avagyan., 1999: p. 325). On one side the registration of a candidate must be documented up to maximum, on the other hand, it must not cause unnecessary difficulties on the way to exercise passive electoral right.

Until 2005, the electoral legislation of the Republic of Armenia was rather difficult and complex in terms of nomination and registration of candidates. Particularly, in order the citizen could get nominated and registered, it was necessary, among other documents of registration, to submit an official paper supporting the nomination of a candidate that was to have signatures of necessary number of citizens (in case of a president it was 35,000, proportional system of the National Assembly – 30,000 and 500 signatures for the majoritarian system). The experience of foreign countries shows that specific number of signatures or electoral deposit or any other measure is taken as a warrant for the nomination of a citizen. Until the year 2005, the Electoral Code of the RoA required signature and an electoral deposit at the same time, which caused difficulties during the exercise of passive electoral right of citizens. Taking this into consideration, Electoral Code 2005 excluded the supporting official document from the list of documents required for registration of candidates.

Until 2005 the Electoral Code did not provide for corrections within set time in case inaccuracies and mistakes were detected in the documents submitted for registration, which again created additional difficulties in the exercise of passive electoral right of citizens. Taking into consideration this problem the legislature made necessary amendment in 2005 in respective articles of the Electoral Code. Particularly, Article 73 stipulates:

“If inaccuracies are discovered in the documents submitted for registration of a citizen nominated as a presidential candidate or the documents are incomplete, the Central Electoral Commission shall give 48 hours to correct the inaccuracies or supply the missing documents. The registration shall be refused if the inaccuracies are not corrected or the missing documents are not supplied within that period of time.”

The same principle was applied also to the candidates for deputy of the NA, community leaders and members of elders. This was an important amendment for the continuity of the electoral process and effective exercise of passive electoral right of citizens.

An important improvement in the electoral legislation was considered also that the political fractions were required to provide 15 percent places to women in the proportional lists during the elections under proportional system of the National Assembly. The requirement was that every 10th in the electoral list must be a woman (Electoral Code, 2005; Article 100). OSCE/ODIHR observation mission also pinpoints to that. In its report, OSCE/ODIHR (2007) says: “According to the Election Code, women shall now make up at least 15 per cent of a party’s or bloc’s list in the proportional election and hold at least every tenth position on the list. This is an improvement from the 2003 parliamentary elections.” (Interim Report N1). In fact this was an improvement in the electoral process with the aim to keep to sexual balance and to raise political activism of women.

Pre-election campaign

One of the central phases of the electoral process is the pre-election campaign, without which it is impossible to think about modern electoral campaign. The pre-election campaign is conducted by different political parties, separate candidates and their supporting forces with the aim to advocate large masses of voters to participate in elections and to vote “for” or “against” for this or that candidate, who have been nominated according to order stipulated by law and have been registered by a respective electoral committee.

Pre-election campaign is considered the most politicized part of the electoral process. Using different methods of pre-election campaign, candidates, political fractions stage resolute combat for the mandates of deputies and other elective bodies. Since the pre-election campaigns have a significant influence on the will expression of voters, the political future of candidates and political parties largely depends on how correct the campaign is organized.

The state has the responsibility to create such a legislative field in the area that will enable the candidates, political parties and party alliances to organize the pre-election campaign in the conditions of freedom and equality using methods not banned by law. In accordance with Article 18; (6) of the Electoral Code of the RoA

“Pre-election campaign may be carried out through the mass media, election-related public events (pre-election meetings and meetings with voters, public discussions debates, rallies, marches, demonstration), by printing various materials and disseminating audio and video materials.”

Further, the Code regulates the order of implementing each of these methods of pre-election campaign in separate articles. Article 18; (1) stipulates that

“the state shall ensure the free exercise of citizens’ right to campaign before elections. Pre-election campaign shall be carried out on the basis of equality. It shall be ensured by state bodies, upon the request of electoral commissions, by providing halls and other premises for pre-election meetings, meetings of voters with candidates and other election-related events. These shall be provided to candidates and parties, running in elections, on an equal basis and free of charge, in accordance with the timetable and procedures defined by the Central Electoral Commission.”

The Electoral Code also regulated free and paid air time on Public Television and Public Radio given to political parties and candidates running for the President of the Republic and stipulated that the price per minute of paid air time will be set no later than within ten days of setting the date for elections which may not change during pre-election campaign. In this aspect, one more important amendment was made in the Electoral Code (2005) with which the supervision of the regulations set for the pre-election campaign by the Television companies was assigned to an independent body – National Commission of Television and

Radio. The latter may apply to court in case of detecting violations of the regulation whereas the Central Electoral Committee may only express an opinion on those breaches (Electoral Code 2005-2007, Article 20;(9)). Further several important amendments were made in the Electoral code for ensuring equality of campaign. First, article 22.1 was introduced suggesting restrictions for candidates who occupy political and discretionary positions or are state servants. In accordance with this article, such candidates are prohibited from campaigning in the process of performing their official duties or abuse their official positions in order to gain advantage in elections. They are also prohibited from using premises, vehicles, means of communication, material and human resources which are provided for the performance of their official duties during the campaign.

Later in 2007 similar restrictions were imposed also on reporters. Particularly, in accordance with Article 22: *“Journalists and editorial staff of Public Radio and Public Television, as well as of other radio and television companies, who are registered as candidates, shall be prohibited from covering the elections and hosting radio and television programs.”*

Summing up the abovementioned we may say that the Electoral Code 1999 managed to regulate a whole specter of pre-election campaign to the possible level. Therefore, until today the norms regulating the pre-election campaign of the Electoral Code have not undergone significant amendments except for some technical and editorial corrections. However, it must be noted that the implementation of those legislative norms have been different during the organization and conduct of different levels of elections in the RoA which reached its proper level during the pre-election campaign of the parliamentary elections 2007. It became possible to ensure real conditions for free and equal pre-election campaign due to the political will displayed by the authorities of the country and organization work of the bodies managing the elections.

Voting, counting and tabulation and official announcement of election results

Voting, counting and tabulation and official announcement of election results are the last and the most responsible phase of the electoral process. After all, the preparatory works are practically directed towards effective organization of this stage. Taking into consideration the importance of procedures implemented in this stage of the electoral process and their special significance, the legislature has regulated them in detail creating a legal mechanism for the expression of free will of citizens during the secret ballot.

The procedures of voting, summarization of voting and voting results have undergone significant changes from 1999 to 2007 which have contributed to the organization and conduct of free, fair and transparent elections in the RoA. Before referring to these changes, we must mention that the Electoral Code of the RoA stipulates a single order in terms of procedures for all types of elections.

In accordance with article 6 of Electoral Code (1999-2005), *“Voting is by secret ballot. Oversight of the expression of voters' free will is prohibited and is prosecuted by law.”* The study of this article of the Electoral Code did not provide to find out the following: after all, is the confidentiality of voting the right of the citizen or a principle of its electoral right. This ambiguity in practice resulted in double meaning interpretation of this legislative norm. The amendments made in 2007 proved that confidentiality of voting is the principle of the electoral right, and an important principle, by violation of which public trust will be significantly undermined towards the electoral process. Later article 6 of the Electoral Code (2007) stipulated: *“In elections voting shall be confidential. Confidentiality of the vote is not only a right, but also a responsibility of the voter...”* This was an important amendment in strengthening the principle of confidentiality of voting. Later on, another important

amendment was made in the Electoral Code to ensure full exercise of this principle in practice, i.e., by introducing the idea of voting envelope in the procedure of voting. Article 57; (3) of the Electoral Code (2007) stipulates:

“After marking the ballot, the voter shall fold the ballot while in the voting booth, put it in the voting envelop and then approach the ballot box. The commission member, who is responsible for stamping the voting envelopers and watching over the ballot box, shall stamp the voting envelope, open the ballot box slot and allow the voter to drop the voting envelope into the ballot box...”

In fact, by making changes in the legislative norms concerning the confidentiality of voting, the legislature has provided additional guarantees for effective application of this principle. Until 2007, the Electoral Code provided that the voting will take place exclusively in “precinct centers...” (Electoral Code 1999-2005, article 46). During the interview the head of legal, program and methodology department of CEC staff Nune Hovhannesyan said:

“However, it is known to everybody that on the day of voting many citizens cannot go to precinct centers due to illness. The legislature demonstrated democratic attitude for the exercise of active electoral right of such citizens and assigned to organize voting outside precinct centers. However, everything must be done in a way that the process would be possible to organize and the situation would not get out of control.”

Taking this into consideration, the legislature restricted only by providing such opportunity to citizens under medical treatment in in-patient medical establishments. In accordance with article 46: *“For citizens, who are undergoing in-patient treatment in medical institutions that provide in-patient treatment and who are unable to visit their precinct center on the voting day on their own, voting can be organized in the in-patient medical institution.”* By providing such an opportunity, it was also necessary to regulate the organizational order of voting in the mentioned premises. In this relation, the CEC of the RA adopted Decision N 28 on February 1, 2007 *“On definition of voting order for citizens, who are undergoing in-patient treatment in medical institutions that provide in-patient treatment and who are unable to visit their precinct center on the voting day on their own during the national elections,”* which regulates in detail the order of preparation and conduct of voting in the mentioned premises. The legislature, in

fact, enabled wider circles of citizens with the right to vote in the RoA to participate in the voting of national elections with this amendment.

Since 1999, after almost all national elections organized and conducted in the RoA, those political forces that were defeated in the elections pointed to double voting of military servants in the military establishments as a serious violation of electoral legislation. It is right, the electoral legislation has not made this a subject for special regulation, since Electoral Code provided a general order for military servants just as civil persons (with the exception of some peculiarities defined for military servants) within which double voting was prohibited. However, in order to avoid further abuse of this issue and taking into consideration its significance, a respective amendment was made to Electoral Code 2007 in accordance of which the committee member responsible for making records in the voter list was putting a stamp in the military ticket or military certificate in the order stipulated by the CEC after registering military servants in the military establishments (Electoral Code, article 55; (2)). This was the most important amendment to the Electoral Code which, in fact, excluded double voting by military servants.

We believe there is a certain deficiency in Article 56; (4) as well. Its analysis shows that a member of a commission has a right to assist citizens, who have no opportunity to mark ballots on their own, which we believe is incorrect and does not stem from the interests of conducting free, fair and transparent election. However, we will talk about it at the end of our work.

The procedures of both *voting* and *vote counting and summarization of voting results* are regulated in the Electoral Code in detail. Fair and honest vote counting is a cornerstone of democratic elections. In accordance with OSCE (1990) Copenhagen document “...*votes are cast by secret ballot or by equivalent free voting procedure... they are counted and reported honestly with the official results made public.*” This requires that votes be counted and

presented at the presence of observers and the whole process, during which the winner is decides, must be transparent. The norms in the electoral legislation of the RA related to vote counting and summarization of election results, especially in the results of the amendments made in the course of recent years, fully reflect the requirements of Copenhagen document.

In accordance with Article 60:

“At 20:00, the Chairman of the Precinct Electoral Commission shall forbid the entry of voters into the precinct center, allow the voters already at the precinct center to cast their votes, after which he or she shall close the ballot box slot, ask all the persons, who have no right to be present at the session of the Precinct Electoral Commission, to leave, and close the precinct center. The Precinct Electoral Commission shall then start its session for summarizing the voting results...”

As a result of amendments to the Electoral Code in 2007 proxies, observers and representatives of mass media are given an opportunity to freely tape, record the process of summarizing the voting results with the purpose of ensuring transparency and publicity of voting results at the precinct electoral commissions which created a serious resource for trust in those procedures.

Another improvement of the electoral process was that until 2005 the TECs were **summarizing** the initial results of the elections at the precinct centers based on the protocols of precinct electoral commission, i.e., the number of votes cast for each political party and candidates, total number of voters who have participates and the amount of inaccuracies. (EC 1999. Article 62). As a result of amendments in the Electoral Code 2005, TECs were restricted only to inputting protocol data on the results of voting at precinct centers into computers (Article 63; (2)). According to the Article 63,

“...The Commission shall regularly, but not less frequently than ever three hours, tabulate the voting results by precincts with the help of the computer. The Territorial Electoral Commission shall complete the input of data from precinct protocols on voting results into the computer within no more than 18 hours of the end of the voting.”

In fact, by this amendment, TEC transformed from a body summarizing the voting results during national elections only into an interim unit with the help of which the data of protocols on voting results of the PECs must be presented to CEC in time and completely. Later, the Article 63;(3) of the Electoral Code stipulated that “A copy of tabulated precinct voting results... shall be posted immediately in a visible place in the Commission” and in case of request “the tabulated precinct voting results, verified by signatures of the Commission Chairman (Deputy Chairman) and Secretary” shall be provided to “proxies and observers.”

Following the amendment in the Electoral Code on tabulation of voting results in the precincts, a large-scale preparatory work started aimed to create necessary conditions for the implementation of the idea. In these relations, CEC adopted Decision N 39 “On the order of computer data input of protocols on voting results submitted by Precinct Electoral Commissions to Territorial Electoral Commissions.” Point 3 of the decision stipulates that the data input of protocols on voting results will take place by automated computer program “**Elections.**” The system is a special computer network through which connections are made between the CEC and TECs outside Yerevan. The circulation of documents was to be conducted through that system, including tabulation by precinct voting results. The system also enabled to connect to more than 10 television companies that were able to broadcast in live air the data that CEC was receiving from TECs. Besides, the introduction of the system enabled to ensure more operatively the summarization of voting and election results, as a result of which, the CEC was able to summarize the results of national elections no later than 24 hours after the end of voting instead of past 28 hours. OSCE/ODIHR (2007) observation mission referred to the aims and peculiarities of the program. Point A the report mentions:

“In accordance with amendments to the Election Code concerning publicizing election results by precinct, on 12 April the CEC made a public presentation of a new networked computer system linking the CEC to the 28 TECs. The system is chiefly intended to increase the transparency of the electoral process, and tabulation of voting results in particular: notable features include the CEC’s ability to remote view real-time input of

election results into the tabulation system by a TEC, and the facilities for a live feed to up to 10 TV channels, as well as the internet.” (Interim Report 2)

OSCE/ODIHR (2007) election observation mission in its report mentioned that CEC has put significant efforts to create a transparent system in reporting voting results posting voting results by precincts in CEC web portal. (Post-election Interim Report 1)

In our opinion, the legislative amendments in vote counting, summarization of voting results significantly improved the electoral process of the RA and raised it to a proper level of transparency, publicity and operativeness.

Conclusion

If we try to sum up the amendments made in the electoral legislation from 1999 to 2007, we may notice that the years 2005 and 2007 were decisive both in terms of chronology and content. The amendments made specifically during those years in the electoral legislation significantly contributed to the establishment of the electoral system in the RoA and created a strong ground for the organization of May 12, 2007 parliamentary elections freely, fairly and transparently. This is also evidenced by the final conclusion of OSCE/ODIHR observation mission on the parliamentary elections in the RoA. According to that, May 12, 2007 parliamentary elections displayed improvement and were mainly conducted in compliance with the commitments in front of OSCE and other international standards on conduct of democratic elections.

Recommendations:

Taking the improvements in the electoral legislation of the RA for granted, I am not inclined to assert that the electoral legislation of RA has reached a perfect level. I believe the Electoral Code still needs improvement in some areas. First, in my opinion, several important

concepts need clarification in the Electoral Code, such as “pre-election campaign”, “electoral documents” and so on.

The Electoral Code clearly stipulates the start and the end of the pre-election campaign; however that does not enable to call this or that actions as “pre-electoral.” In this relation, I suggest the following:

- to explain the term “pre-election campaign” in the Electoral Code which will enable to differentiate pre-election, as a phase of electoral process, from other political processes proceeding voting.

The Electoral Code enables proxies, observers and other participants of the electoral process to get introduced to all electoral documents at different phases of the electoral process. They can also make copies of or citations from these documents. However, the Electoral Code does not define the circle of these documents as a result of which disagreements arise between the electoral commission and proxies and observers in the period ahead of voting as well as on the day of voting. For example, a proxy may require seeing the voter ID. I would **suggest** the following to avoid such situations:

- to define the list of documents in the Electoral Code that are considered electoral documents.

In accordance with article 25; (1) of the Electoral Code, charity organizations have no right to make payments in the pre-elections funds of candidates and political parties. This is necessary but not sufficient measure for the elimination of the influence of charity organization on the electoral process. In the period proceeding voting charity organizations and foundations become more active that carry out actions which contain elements of campaigning under the cover of charity programs and actions. These considerably affect the free will expression of voters. I would **suggest** the following to avoid such situations:

- to make amendments in RA law “On charity and charity organization” that will ban charity at least in the period of pre-election period or that charity may be conducted upon detailed scrutiny by a respective committee that will exclude the relation of the charity action with the electoral processes.

In accordance with Article 25,(7) “if candidates and parties use other resources for their campaign, in addition to pre-election funds, then a court may annul the registration of that candidate or party list on the basis of an application by the CEC.” Other provisions of the same article do not provide for application of measures of responsibility. Particularly, in accordance with article 25;(11) *“Candidates and parties running for National Assembly submit declarations about contributions to their pre-election funds and the ways they were used; the declaration shall be submitted to the electoral commissions that had registered the candidates or parties, no later than six days after the end of elections.”*(Elections are considered over after the effective date of CEC decision, or, in case of disputes, ruling of the Constitutional Court). The commissions send the declarations to the CEC’s Oversight and Audit Service. The latter checks the materials within 20 days and submits them to the discussion of the CEC. The CEC sends its decision on detected violations to a first instance court within 3 days.

It becomes clear from the abovementioned that if a candidate or a party spends other resources in addition to the funds of pre-election foundations, that violation will come out at least 32 days after the elections when the electoral process is over⁴. In that case, the first instance court has to annul the registration of the President of the Republic or the Deputy of the NA and not a MP or a president candidate, which is practically impossible. To come out of the situation, I would **suggest**:

⁴ Electoral process is considered over after CEC summarizes the results of national elections (no later than 7 days after the day of voting)

- Candidates and parties shall submit declarations about the contributions to their pre-election funds and the ways they are used to the commissions that register them immediately next day after the end of Pre-Election campaign. The latter during one day submit the declarations to the Oversight and Audit service that will check them and within two days submit the materials on detected violations to the CEC. After getting the information on violations the CEC shall discuss the issue during its session agenda and send its decision on detected violations to a first instance court within 2 days.

In accordance with item 4, article 56 “*citizens, who are unable to mark the ballots on their own, shall have the right to invite another person (but never a proxy) into the voting booth with them, after notifying the Commission Chairman...*” The analyses of the article shows that precinct electoral commission member may have the right to help citizens that are unable to mark the ballots on their own, which , we believe, is not right since the commission members appointed by political parties are persons interested in the outcome of the elections. Helping such citizens by the commission members may have prompting nature and that will harm the principle of free will expressions of voters. In this relation, I **suggest** the following:

- to prohibit the member of precinct electoral commissions to help voters that are unable to mark the ballots on their own.

Questionnaire

1. Could you tell me did the Electoral Code of 1999 regulate the electoral right of subjects to a sufficient level?
2. Please also tell if the issue of responsibility of preparation, organization and conduct of elections was sufficiently regulated in Electoral Code of 1999?
3. According to you, what were the reasons for faults in the voter lists?
4. Please tell me what steps did the legislature take to ensure the active electoral right of citizens who had no opportunity to take part in voting?

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