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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

SECOND OPINION

ON THE DRAFT AMENDMENTS TO THE CONSTITUTION (IN PARTICULAR TO CHAPTERS 8, 9, 11 to 16)

OF THE REPUBLIC OF ARMENIA

Endorsed by the Venice Commission
At its 104th Plenary Session
(Venice, 23-24 October 2015)

on the basis of comments by

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Mr Christoph GRABENWARTER (Member, Austria)
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I. Introduction

1. This opinion follows up to the First opinion on the draft amendments to Chapters 1 to 7 and 10 of the Constitution of the Republic of Armenia, which was issued on 30 July 2015 (CDL-PI(2015)015rev; CDL-AD(2015)037).

2. The draft amendments to Chapters 8, 9 and 11 to 15 of the Constitution were received by the Venice Commission on 6 August 2015.

3. The Specialised Commission on Constitutional Reforms adjunct to the President of the Republic (hereinafter "the Constitutional Commission") adopted the draft amendments to the Constitution on 20 August 2015. This text (which comprised a revised version of all the draft amendments as well as Chapter 16 on Final and Transitional Provisions) was received by the Venice Commission on 22 August 2015 (CDL-REF(2015)034).

4. On 21 August 2015, the President submitted the draft amendments to the National Assembly.

5. On 24 and 25 August 2015, a delegation of the Venice Commission composed of Mr Christoph Grabenwarter and Mr Aivars Endzins, rapporteurs, as well as Ms Simona Granata-Menghini, Deputy Secretary of the Venice Commission, travelled to Yerevan. It held a working meeting with the Constitutional Commission and further met with the President of the Republic and with representatives of the civil society and of the political parties. Further amendments were agreed with the Constitutional Commission in the light of the recommendations made by the rapporteurs.

6. The Constitutional Commission submitted to the Venice Commission certain additional proposed amendments on 29 August and 1 September 2015 (CDL-REF(2015)036).

7. The present opinion is based on the English translation of the Draft amendments provided by the Armenian authorities. The translation may not accurately reflect the original version and certain comments and omissions might be the results of these problems of translation.

8. The present opinion was prepared on the basis of the contributions of the rapporteurs; it was sent to the Armenian authorities as a preliminary opinion and made public on 11 September 2015. It was endorsed by the Venice Commission at its 104th Plenary Session (23-24 October 2015).

II. Scope of the opinion

9. The present Second opinion covers Chapter 8 (The Prosecution Office and the Investigative Organs), Chapter 9 (Local Self-government bodies), Chapter 11 (The Central Electoral Commission), Chapter 12 (The Television and Radio Commission), Chapter 13 (The Control Chamber), Chapter 14 (The Central Bank), Chapter 15 (Adopting and Amending the Constitution; the Referendum) and Chapter 16 (Final and Transitional Provisions).

10. Chapter 1 (Foundations of Constitutional Order), Chapter 2 (Fundamental Rights and Freedoms of the Human Being and the Citizen), Chapter 3 (Legislative Guarantees and Main Objectives of State Policy in the Social, Economic, and Cultural Spheres), Chapter 4 (The National Assembly), Chapter 5 (The President of the Republic), Chapter 6 (The Government), Chapter 7 (Courts and the Supreme Judicial Council) and Chapter 10 (The Human Rights Defender) were the object of a previous Preliminary opinion (CDL-PI(2015)15rev): they will be addressed in this Second opinion only to the extent that the Constitutional Commission has made further amendments to them in the light of the recommendations contained in the Preliminary Opinion or that further recommendations have subsequently been formulated by the rapporteurs. Therefore, the specific recommendations formulated in the First opinion remain valid, unless they are modified or superseded by the Second opinion.

11. Only the substantive amendments have been analysed. The analysis of the draft constitutional amendments contained in this opinion is not exhaustive.

III. Analysis

A. Chapter I. The foundations of the constitutional order

Article 5. The Hierarchy of Legal Norms

12. The First opinion recommended including constitutional laws in the provision on the hierarchy of legal norms. Article 5 § 1 now reads: "[…] Laws shall conform to the Constitution and constitutional laws, and sub-legislative legal acts shall conform to the Constitution, constitutional laws and laws". This amendment is welcome.

13. Article 5 does not mention agreements of the kind of the special agreement provided in Article 17 for regulating the relations of the Republic of Armenia and the Armenian Apostolic Church. This may cause uncertainty about the determination of the legal validity of such agreements.

Article 6. The Principle of Legality

14. It would seem appropriate to reformulate Article 6 so as to underline the obligatory nature of publication (see Article 129).

Article 17. The Armenian Apostolic Holy Church

15. The First opinion suggested[1] that, despite the importance of the Armenian Apostolic Holy Church in the spiritual life, national culture and identity of Armenia, there was a contradiction between the recognition of its "exclusive" role in the spiritual life of the Armenians (Article 17) on the one hand and the recognition of freedom of activity for the religious organizations (Article 16) and of freedom of thoughts, conscience and religion (Article 40) on the other hand.

16. The Constitutional Commission informed the Rapporteurs that the correct English translation of the Armenian term employed in Article 17 is not "exclusive", but "unique" in the sense of "exceptional". This translation seems more compatible with Articles 16 and 40, to the extent that it expresses the recognition of the special historic mission of the Armenian Apostolic Holy Church in the preservation of the Armenian national identity instead of reserving an exclusive position to it over other confessions.

B. Chapter 2. Fundamental rights and freedom of the human being and the citizen

Article 23. Right to life; Prohibition of the Death Penalty

17. The deletion of former paragraph 2 in Article 23 is to be welcomed. With a view to Articles 78 et seq., in particular Articles 78 and 81, it has to be assumed that interferences with the right to life are admissible under the circumstances provided for in Article 2 ECHR.

Article 26. Right to Personal Liberty

18. In the First opinion it was recommended[2] to add an element of flexibility into paragraph 3 of Article 26, which provided a time-limit of 72 hours for a detention without a court order. The revised text of Article 26 now provides for "a reasonable period but not more than 72 hours", which is welcome.

Article 34. Freedom of marriage

19. The First opinion recommended[3] to remove the second paragraph on the equality of men and women "in marrying, during marriage and in divorce" from this general provision on equality between women and men, and to place it in Article 34. This has been done, which is to be welcomed.

Article 37. Right to education

20. The amendments in Article 37 deserve to be endorsed. In particular, the new wording in paragraph 3 seems important. The new place of the reference to competition in paragraph 2 may now give raise to doubts: it is assumed that there should be competition in the admission procedure. The new wording guarantees education "on the basis of competition". This is something different or leads – at least – to a misunderstanding.

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[1] Preliminary opinion, §§ 32, 33.

[2] Preliminary opinion, § 38.

[3] Preliminary Opinion, § 39.

Article 38. Right of a Human Being to Act Freely

21. Article 38, which enshrines the Kantian principle of human freedom in the context of the rule of law, deserves special appraisal. Its reformulation is to be endorsed, as the provision has now acquired brevity and precision.

Article 47. Right to Vote and Right to Participate in Referenda

22. The First opinion[4] reminded that the exclusion of double citizens from eligibility to be elected and the residence requirement were in breach of international standards. In respect of the residence requirement for being elected to the National Assembly, Article 47 now reduces its length from five to four years. As a consequence, the residence requirement to become Minister is also reduced to four years, and the specific requirement of seven years' residence to become Prime Minister has also been removed (Article 147).

23. Although they do not bring these provisions fully in line with the international and European standards (in particular as concerns the exclusion of double citizenship), these changes represent a clear improvement and should be welcomed.

24. The First opinion also recommended in respect of the ban on the right to vote, to be elected and to participate in referendums for "persons convicted of grave crime"[5] to take into account the case-law of the European Court of Human Rights[6] and introduce an element of proportionality. Article 47 § 4 now limits the ban to "persons convicted and serving sentence for the intentional commission of a grave crime by a court judgment that has entered into legal force". Elements of proportionality have thus been duly introduced and the provision appears to be in line with the most recent case law of the ECtHR as well as with Venice Commission recommendations.[7]

25. Article 47 § 4 disenfranchises "Persons declared by court as legally incapable". This broad formulation is not in line with Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life[8], nor with the interpretative declaration of the Venice Commission's Code of Good Practice in Electoral Matters[9], according to which "1. Universal suffrage - 2. No person with a disability can be excluded from the right to vote or to stand for election on the basis of her/his physical and/or mental disability unless the deprivation of the right to vote and to be elected is imposed by an individual decision of a court of law because of proven mental disability." Article 47 § 4 should therefore refer to the possibility of depriving persons declared as legally incapable only in certain cases (provided by law).

Article 53. Right to Political Asylum; Prohibition of Deportation or Extradition

26. Paragraph 3 of this provision should be amended in order to enable Armenia to ratify the Rome Statute.

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[4] Preliminary Opinion, § 54.

[5] Preliminary Opinion, § 55.

[6] ECtHR, GC, Hirst v. UK (No. 2), No. 74025/01, 18 January 2011; Scoppola v. Italy (No. 3), No. 126/05, 22 May 2012.

[7] Venice Commission, Preliminary Report on Exclusion of Offenders from Parliament, CDL-AD(2015)019.

[8] Adopted by the Committee of Ministers on 16 November 2011 at the 1126th meeting of the Ministers' Deputies.

[9] CDL-AD(2010)036.

Article 58. Right to property and Right to Bequeath property; Tax Obligations

27. The reformulation of the third paragraph of this provision provides more clearly for the need for a legislative basis and a legitimate aim for any restrictions to the exercise of property rights. This is to be welcomed.

Article 73. Retrospective Effect of Laws

28. This provision now reads that "law and other legal acts that aggravate a person's legal situation shall have no retrospective effect", which is a welcome improvement, although some exceptions might be considered acceptable (for example, a certain retrospective effect of tax laws may be justified in order to prevent last-moment speculative acts).

C. Chapter 4. The National Assembly

Article 89. National Assembly Composition and Election Procedure
Article 201. Adopting and amending the Constitution

29. The First opinion[10] recommended enshrining in the Constitution only the main principles of the electoral system, in order to ensure the necessary flexibility in the future development of that system and leaving the possibility of a second round of elections to the Electoral Code.

30. The text of the draft amendments approved by the Constitutional Commission on 20 August and received by the Venice Commission on 22 August 2015 contained a revised version of Article 89, which contained amendments, as well as an additional paragraph.

31. As a result i.a. of the meeting with the Venice Commission delegation on 24 August, Article 89 § 3 has been reformulated as follows: "The National Assembly shall be elected by a proportional electoral contest. The Electoral Code shall guarantee the formation of a stable parliamentary majority. If no stable parliamentary majority is formed as a result of the election or through building of a political coalition, a second round of elections may be held. The restrictions, conditions and the procedure of formation of political coalitions shall be prescribed by the Electoral Code". §§ 4 to 7 of Article 89 have been removed.

32. Compared to the previous system, the possibility of a post-electoral coalition ensuring a stable majority has been added, which opens the way for bargaining between political parties on the basis of the electoral results.

33. The second round of elections is no more prescribed as a necessary feature of the electoral system: it "may" (not "shall") be held (if the Electoral Code provides for it). This solution is in line with the recommendation of the Preliminary Opinion and deserves to be welcomed.

34. In addition, it is now proposed to remove Article 89 from the provisions listed in Article 201 as those requiring amendment through referendum. This is an additional, welcome step against cementing the electoral system in the Constitution.

35. The Electoral Code will have to provide for the electoral system in detail; if it provides for a second round, the Code will have to deal in particular with the definition of "stable parliamentary majority" as the condition not to call for a second round of elections.

[10] Preliminary Opinion, §§ 78-81.

Article 105. Factions of the National Assembly

36. The First opinion[11] recommended the removal of the prohibition to form new factions during the whole term of a legislature (paragraph 2, second sentence). In the latest version of Article 105, this explicit prohibition has been removed. The first sentence of paragraph 2 of Article 105 now reads: "The factions shall include parliamentarians *only* [emphasis added] of the same party or pre-electoral alliance of parties". While there is not, therefore, a broad possibility to form new factions, it appears possible to do so in case of scission of political parties for example. The Armenian authorities have further underlined that pursuant to Article 115, in case of an initiative of no confidence, the vote is taken by majority vote of the total number of parliamentarians, the parliamentary factions thus having no role.

37. The latest version of Article 105 represents an improvement and should be welcomed.

D. Chapter 5. The President of the Republic

38. As has been previously noted, the draft amendments to the Constitution of Armenia under consideration introduce a shift from a semi-presidential to a parliamentary form of government. The powers of the President of the Republic have been drastically reduced, and are almost only ceremonial, compared to the powers of Presidents as guarantors of the Constitution in other parliamentary regimes in Europe.

Article 124. Term of Office and Requirements of the President of the Republic

39. It is proposed to limit the criterion of exclusive Armenian citizenship for candidates to the Presidency of the Republic to "the preceding six years" and to reduce the residence requirement from seven to six years (it is ten years under Article 50 of the Constitution of Armenia in force). This is to be welcomed.

E. Chapter 6. The Government

Article 151. Program of the Government

40. Article 151 paragraph 2 has been modified and now the parliamentary approval of the programme submitted by the Prime Minister requires the vote of the majority of the total number of the parliamentarians. Approval without this reinforced majority (as is the case for the adoption of the State budget – see Article 110) could have given some flexibility to the developments of the relations between the Government and the Assembly, even if the refusal by Parliament to approve the programme implies in any case an early dissolution of the Assembly.

Article 154. Armed Forces

41. The proposed amendments to Article 154 considerably strengthen the position of the Prime Minister. It should be noted in this respect that, unlike the President of the Republic, the Prime Minister does not represent the nation, but a political majority.

Article 156. Question of Confidence in the Government

42. This provision requires the majority of the total number of MPs for a non-confidence resolution to be adopted.[12] The non-confidence vote and the confidence vote therefore require

[11] Preliminary Opinion, §§ 96-97.

[12] The absolute majority is required e. g. in Germany- Article 68, Moldova - Article 98, Romania - Article 103, Hungary – Article 21, Croatia – Article 110, Albania – Article 104.

the same majorities in parliament. As the confidence vote aims at increasing the stability of the government, it would seem appropriate to require the simple majority. Otherwise, the adoption of a law under the question of confidence becomes more difficult instead of easier compared to the ordinary procedure, which may make the confidence vote counter-productive for the government.

F. Chapter 7. Courts and the Supreme Judicial Council

Article 163 – The Status of a Judge

43. The First opinion[13] recommended removing the role of the National Assembly from the procedure of dismissal of judges (including of the judges of the Court of Cassation).

44. The need for a decision of the National Assembly has now been removed, and Paragraph 9 of Article 163 now provides that "the powers of a judge shall be terminated by a decision of the Supreme Judicial Council in cases of violation of the incompatibility rules; enduring illness, which renders the discharge of his powers impossible, as well as in case of grave disciplinary violation". This amendment deserves to be strongly supported.

45. The First opinion[14] recommended, in order to safeguard the independence of the judiciary, to list in the Constitution (instead of leaving it to the law) the grounds for dismissal of judges. Paragraph 8 and paragraph 9 of Article 163 now list the grounds for termination of powers of judges, which deserves to be strongly supported.

46. Former paragraph 9 provided for the principle that the remuneration of judges had to correspond to the remuneration of persons holding other commensurate public offices. The First opinion considered that it was positive to provide some leverage to the Constitutional Court to annul legislation providing for inadequate levels of remuneration, but that this formula was excessively vague. This paragraph has now been removed, and paragraph 10 of Article 163 only provides that "the amount of remuneration of judges shall be prescribed by law". The element of adequacy of the remuneration is therefore totally absent, which is regrettable. It is recommended to reformulate this paragraph.

Article 164 – Appointment (or Election) Procedure and Term in Office of Judges and Chairmen of Courts (Cassation Court Chambers)

47. The First opinion[15] further recommended removing the role of the National Assembly from the procedure of appointment of judges and chairpersons of the Court of Cassation. As concerns the election of judges of the Court of Cassation, the required majority has now been increased to three fifths, which is an improvement. As concerns the appointment of the Chamber Chairmen, the role of parliament has been removed, which is to be welcomed.

Article 165 – The Constitutional Court

48. In article 165 paragraph 2, besides the Constitution, the Law on the Constitutional Court should be included.

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[13] Preliminary Opinion, § 152, 153.

[14] Preliminary Opinion, § 156.

[15] Preliminary Opinion, § 158.

Article 166. Composition and Formation Procedure of the Constitutional Court

49. The introduction of the new requirement of a qualified majority of at least three-fifths of the total number of votes of the parliamentarians for the election of Constitutional Court judges in paragraph 2 is highly welcomed.[16]

50. Article 166 provides that from the nine members of the Constitutional Court, three are elected upon nomination by the President of the Republic, three upon nomination by the Government and three upon nomination by the General Assembly of Judges. The revised version of Article 166 § 3 now correctly specifies, as recommended by the rapporteurs, that the three nominees by the General Assembly of Judges must be chosen "from among the judges". This provision could be placed in paragraph 2.

Article 167. Powers of the Constitutional Court

51. The power to "render decisions on the termination of the powers of a parliamentarian" has been added to Article 167, which is welcome. This power however would imply the assessment of facts, which might be left to the Court of Cassation.

52. The Constitutional Court should have the power to cancel a parliamentary or presidential mandate or a general election, if it is proven to be unconstitutional or done *contra* or *extra legem*.

Article 169 – Acts of the Constitutional Court

53. It might appear from the wording of paragraphs 2 and 3 that the Constitutional Court cannot declare unconstitutionality *ab initio* or enact decisions having retroactive effect. However, these provisions already exist in the current Constitution and Article 68 paragraphs 12 and 13 of the Law on the Constitutional Court provide for an ex-tunc effect. The possibility of ex-tunc effect of the decisions of the Constitutional Court is therefore guaranteed.

G. Chapter 8. The prosecution office and the investigative organs

Article 175. The Prosecution Office

54. The hierarchical nature of the Public Prosecutor's Office could be reflected in Article 175. The unified nature of the Prosecutor's Office will prevent the establishment of specialized Prosecutors (for example on anti-corruption matters), as is being done in several European countries.

55. Article 175 paragraph 2 should specify that the functions listed in subparagraphs 2 to 5 relate only to the prosecutorial tasks of the Prosecutor's Office. Point 4 ("Initiate a claim in court for the protection of state interests") has now been qualified with the formula "in certain cases"; this is a welcome improvement, which might be improved further with the addition of "exceptional".

Article 176. The Prosecutor General

56. Article 176 provides for a maximum of two consecutive six-year terms of office for the Prosecutor General. Article 164 paragraph 5 provides for a single six-year term for the Chairman of the Court of Cassation. The Armenian authorities have explained that this

[16] Preliminary Opinion, § 163.

difference is explained by the fact that the Court of Cassation Chairman does not leave the judiciary at the end of the mandate, while the Prosecutor General does.

H. Chapter 9. Local self-government bodies

Article 180. Bodies of Local Self-government

57. Article 180 paragraph 1 should specify that community councils are directly elected.[17]

58. Article 180 paragraph 3 lays down that "the community mayor shall be accountable before the council". It remains unclear how this accountability is supposed to be realised. Does it for instance include the council's right to dismiss the mayor?

Article 181. Powers of local self-government bodies

59. Article 181 paragraph 1 divides the functions and powers of communities in three groups: own mandatory functions, own optional functions and powers delegated by the state. The distinction between mandatory own functions and powers delegated by the state is unclear and its justification is questionable. As regards state oversight (Article 187), the need for more extensive than merely legal oversight even in the tasks now called mandatory own functions could be warranted.

Article 185. Financing of Local Self-government Powers

60. It is unclear under Article 184 paragraph 3 and Article 185 paragraph 1 if the local authorities are free to determine the local taxes or if they are bound by their determination by the national law.

I. Chapter 10. The Human Rights Defender

61. The Human Rights Defender is an institution provided in Article 83.1 of the current Constitution of Armenia. The amendments under examination devote a whole chapter to this institution, and provide extensive guarantees and the basis for its activities.

Article 191 – Independence of the Human Rights Defender

62. The First opinion welcomed the provision according to which the Human Rights Defender shall be irremovable as a very strong guarantee for the Human Rights Defender's independence. A provision on the (exceptional) recall of the Defender's mandate appeared, however, to be missing. Article 191 now provides that "The powers of the Human Rights Defender shall be terminated prematurely from the moment a convicting court judgment in respect of him enters into force". This provision appears excessively broad: the disqualifying conviction should only relate to a limited number of more serious crimes defined by the Constitution.

J. General remarks on Chapters 11 to 14

63. Chapters 11 to 14 provide for constitutional entrenchment of the Central Electoral Commission, the Television and Radio Commission, the Control Chamber and the Central Bank. The constitutionalisation of these institutions should receive a positive appraisal since their existence and functions have been guaranteed and parliamentary majorities might regulate them within the constitutional limitations.

[17] See Article 7.

64. It is understandable and even welcome that the Draft emphasizes the non-political, professional nature of the membership / presidency in the Central Electoral Commission, the Television and Radio Commission, the Control Chamber and the Central Bank. This qualification is related to a heightened requirement of independence and neutrality. However, the ban on engaging in political activities and the obligation to exercise restraint in public speeches, proposed for the members or presidents of all the bodies at issue, may entail such legal vagueness which creates a new risk for independence, in particular, as a violation of the ban or the obligation may lead to dismissal.

K. Chapter 11. The Central Electoral Commission

Article 194. Formation procedure and composition of the Central Electoral Commission

65. It would appear appropriate to provide in the Constitution for the procedure for nomination of candidates for the post of Chairman of the Central Electoral Commission and its members, as well as to indicate what subjects have the right to nominate the relevant candidates.

L. Chapter 12. The television and radio commission

Article 195. Functions and Powers of the Television and Radio Commission

66. It could be made clear in paragraph 2 that the decisions delivered by the NTRC shall be properly reasoned in accordance with the finding of the ECtHR in the case of Meltex Ltd and Mesrop Movsesyan / Armenia.[18]

67. According to paragraph 5, in the cases and procedure stipulated by law, the Television and Radio Commission shall adopt sub-legislative normative legal acts. It is recommended to state in the Constitution that these acts should be made public.

Article 196. Formation Procedure and Composition of the Television and Radio Commission

68. Article 196 contains a number of safeguards that are aimed to ensure protection against influence of political forces and economic interests. Similar criteria can be found in the relevant legislation of other Member States of the Council of Europe, in particular in Germany or Austria. One can also conclude that the guidelines laid down in Recommendation R (2000) 23 on the Independence and functions of regulatory authorities for the broadcasting sectors are respected. Of course infra-constitutional legislation will have to provide for additional legal framework. The wording in para.5 second sentence can only be a guideline that has to be elaborated in practice and in the political culture of Armenia.

69. It would appear appropriate to provide in the Constitution for the procedure for nomination of candidates for the post of Chairman of NTRC and its members, as well as to indicate what subjects have the right to nominate the relevant candidates.

[18] ECtHR, Meltex Ltd and Mesrop Movsesyan v. Armenia, No. 32283/04, 17 June 2008.

M. Chapter 13. The Control Chamber

Article 197. Formation Procedure and Composition of the Control Chamber

70. It would appear appropriate to provide in the Constitution for the procedure for nomination of candidates for the post of Chairman of the Control Chamber and its members, as well as to indicate what subjects have the right to nominate the relevant candidates.

71. A system of interim conclusions is common in States and may be necessary under certain circumstances. It seems adequate to delegate this decision to the legislature.

72. The Control Chamber is empowered to conduct inspections of legal entities only when the state has a significant participation in such entities or when the latter have received financial resources from the state, or the state has issued guarantees for their liabilities. The words "significant participation" are vague. It is also unclear why the inspecting power would be limited according to state participation only, given that the Control Chamber supervises the lawful and efficient utilization not only of state budget funds, but also of municipal budget funds.

N. Chapter 14. The Central Bank

73. It would appear appropriate to provide in the Constitution for the procedure for nomination of candidates for the post of Chairman of the Central Bank, as well as to indicate what subjects have the right to nominate the relevant candidates.

O. Chapter 15. Adopting and amending the constitution; the referendum

Article 201. Adopting and Amending the Constitution

74. According to Article 201, a referendum would no longer be needed for all constitutional amendments but only for, in addition to a new constitution, certain chapters and provisions (see paragraph 34 above). That would make constitutional change more flexible and is to be welcomed.[19]

75. The Draft proposes introducing a popular initiative for constitutional amendments, both for those requiring a referendum and those lying in the power of the National Assembly. The number of signatures needed is relatively high – 200 000 resp. 150 000 – and even in the case of a referendum a qualified majority in the National Assembly supporting the initiative is necessary. This reduces the risk of political instability which frequent popular initiatives might otherwise engender.

Article 202. Unamendable articles of the Constitution

76. Article 202 declares that Articles 1, 2, 3, and 202 of the Constitution are unamendable. The system of "unamendable constitutional law" exists in other systems as in Germany (Article 79 paragraph 3 Basic Law).

Article 203 Referendum on Law Draft submitted on Popular Initiative

70. A new Article 203 (which needs some redaction in the English version) provides for a Referendum in case a draft law submitted to popular initiative is rejected by the National Assembly. The position of this Article does not fit in Chapter 15 ("Amending the Constitution") as this regime explicitly does not apply to constitutional laws (para. 3 No. 1).

[19] On the need for more flexibility, see Venice Commission, CDL-AD(2004)044, § 70.

Article 204. Referendum on Membership of the Republic of Armenia in Supranational International Organisations and on Questions concerning the territorial integrity of the Republic of Armenia

77. The term "supranational" in Article 204 might need a definition.

Article 205. Referendum set by the President of the Republic

78. Article 205 sets a time-limit for the President's calling of the referendum of no earlier than 50 and no later than 65 days of the adoption of the respective *decision*. It should be made clear that the time limit is not only relevant in cases of "decisions", but also in cases of a *draft* (Article 206). On the other hand the majority requirements are valid also in cases of a "decision" to accede a supranational International Organisation.

Article 206. Adoption of drafts put to a referendum

79. Under Article 206, a draft (an act?) put to referendum shall be adopted "if it is voted for by more than half of the referendum participants, but no less than one quarter of the citizens that have the right to participate in referenda".

80. Pursuant to the Code of Good Practice on Referendums,[20] "It is advisable not to provide for a) a turnout quorum (threshold, minimum percentage) because it assimilates voters who abstain to voters who vote "no"; b) an approval quorum (approval by a minimum percentage of registered voters), since It risks involving a difficult political situation if the draft is adopted by a simple majority lower than the necessary threshold". Article 206 is not in line with these recommendations.

P. Chapter 16. Final and transitional provisions

Article 208. Entering into Force of Separate Provisions on the Constitution

81. It seems problematic in Article 208 paragraph 4 to make the entry into force of an Article of the Constitution dependent on a (non-constitutional) law. With a view to Article 209 paragraph 2, it should be referred directly to June 1, 2016 as date of entry into force.

Article 209. Harmonization of Laws with the Amendments to the Constitution

82. In Article 209 paragraph 1, a clear time limit is preferable to the notion of "reasonable terms", e.g. "one year".

83. Should Article 209 paragraph 4 refer to "organic laws" instead of "constitutional laws"? Reference to taking of Office of the new President for the entry into force of a constitutional provision does not seem appropriate.

84. Similar considerations are valid for paragraphs 5 and 6.

[20] Venice Commission, Code of Good Practice on Referendums, CDL-AD(2007)008, Point 7.

IV. Conclusions

85. The work carried out by the Constitutional Commission of Armenia is of extremely high-quality and deserves to be supported and welcomed. The atmosphere of genuine dialogue and fruitful exchanges with the Venice Commission has continued and has enabled the Constitutional Commission to produce a text which is now in line with international standards.

86. The First opinion contained four main recommendations which have all been taken up, fully or in part, by the Constitutional Commission:

- As concerns the removal of the limitations to the right to be a candidate for the National Assembly (Article 47 § 2), the residence requirement has been lowered from five to four years, which represents an improvement; the exclusion of double nationals from running for the National Assembly, however, has not been lifted.
- Article 89 does not provide any more that a second round of elections *shall* be held, but only that is *may* be held. In addition, Article 89 has been removed from the list in Article 201 of constitutional provisions which require a referendum in order to be amended. The recommendation contained in the Preliminary Opinion in this respect has therefore been followed, which deserves to be commended.
- The explicit prohibition to form new factions during the whole term of a legislature has been removed from Article 105, which represents an improvement, although the possibility of forming new factions remains limited.
- The role of the National Assembly in the procedure of appointment of chairpersons of the Court of Cassation Chambers has been duly removed. As concerns the election of judges of the Court of Cassation, the required majority has now been increased to three fifths, which is an improvement.

87. The present Second opinion contains certain further recommendations for improvement which will be hopefully be taken into account by the Constitutional Commission and by the National Assembly.

88. The Venice Commission stresses once again the importance of an open and continued dialogue with all the political forces and with the civil society of Armenia in order for these constitutional amendments to be adopted by parliament and, subsequently, by referendum, which would represent a further important step forward in the transition of Armenia towards democracy.