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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS
(ODIHR)

ARMENIA

JOINT OPINION

**ON DRAFT AMENDMENTS TO THE ELECTORAL CODE AND RELATED
LEGISLATION**

**Approved by the Council for Democratic Elections
at its 78th meeting (Venice, 5 October 2023)
and adopted by the Venice Commission
at its 136th Plenary Session (Venice, 6-7 October 2023)**

on the basis of comments by

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I. Introduction

1. By letter of 12 July 2023, Mr Grigor Minasyan, Minister of Justice of Armenia, requested an opinion by the Venice Commission on Draft amendments to the Electoral Code and related legislation¹ ([CDL-REF\(2023\)028](#)). As this Opinion relates to the electoral field, it was prepared jointly by the Venice Commission and ODIHR.
2. Mr Oliver Kask, Mr Tomáš Langášek and Ms Katharina Pabel acted as rapporteurs for this opinion. Ms Tamara Otiashvili was appointed as expert for ODIHR.
3. On 13-14 September 2023, a joint delegation composed of Mr Kask and Mr Langášek, accompanied by Mr Michael Janssen from the Secretariat of the Commission and Mr Hamadziripi Munyikwa from the Secretariat of ODIHR, visited Armenia and had meetings with the Deputy Minister of Justice and further representatives of the Ministry of Justice, the Central Electoral Commission (CEC), the parliamentary factions, the parliamentary Standing Committee on State and Legal Affairs, several extra-parliamentary parties, the Corruption Prevention Commission, the National Commission on Television and Radio and representatives of USAID/IFES and of several non-governmental organisations. This Joint Opinion takes into account the information obtained during the above-mentioned meetings. The Venice Commission and ODIHR are grateful to the Armenian authorities and the Council of Europe Office in Yerevan for the excellent organisation of this visit.
4. This opinion was prepared in reliance on the English translation of the electoral legislation. The translation may not accurately reflect the original version on all points.
5. This opinion was approved by the Council for Democratic Elections at its 78th meeting, and, following an exchange of views with the Deputy Minister of Justice of Armenia, Mr Karen Karapetyan, it was adopted by the Venice Commission at its 136th Plenary Session (Venice, 6-7 October 2023).

II. Background and scope of the Joint Opinion

6. The current Electoral Code was prepared after the adoption of a new Constitution by a referendum held on 6 December 2015, whereby Armenia moved from a semi-presidential to a parliamentary regime. A new electoral system as introduced by Article 89 and Article 210 of the new Constitution required the entry into force of a new Electoral Code by 1 June 2016. The National Assembly adopted a new Electoral Code on 25 May 2016, which has been subject to several amendments since then. The most recent reform, in 2021, introduced a simple proportional electoral system based on a nationwide constituency.
7. The Venice Commission and ODIHR issued a Joint Opinion on the draft electoral code² and a second Joint Opinion on the final version of the Electoral Code with amendments adopted on

¹ I.e. the Constitutional Law on Political Parties; the Law on Local Self-Government; the Law on Self-Government in the City of Yerevan; the Law on State Registration of Legal Persons, State Record-Registration of Separated Subdivisions, Institutions of Legal Persons and Individual Entrepreneurs; the Law on State Duty; the Law on Civil Service; the Criminal Code; the Code of Administrative Offences; the Constitutional Law on Referendum; the Law on Local Referendum; the Law on Making Supplements to the Law on the Commission for the Prevention of Corruption (revoked); the Constitutional Law on Making Amendments and Supplements to the Electoral Code; the Constitutional Law on Making Amendments and Supplements to the Constitutional Law on Referendum; the Law on Making a Supplement and Amendments to the Law on Local Referendum; the Law on Identification Card; the Law on the Payment of Work of Persons Holding State Positions and Civil Service Positions; the Law on Public Service.

² Venice Commission and ODIHR, Joint Opinion on the draft electoral code as of 18 April 2016, [CDL-AD\(2016\)019](#).

30 June 2016,³ as well as an Urgent Joint Opinion on two sets of amendments to the Electoral Code and related legislation of 2021.⁴ The latter Opinion noted that the package of amendments addressed many of the previous recommendations, but it formulated some further recommendations. Part of them have been followed in the 2021 reform process. In particular, the key recommendation to clarify the notion of “false information” so that it does not interfere with legitimate aims, for example investigative media, or stifle political debates, was taken into account since the lawmakers withdrew the draft provision.

8. However, some other key recommendations have not yet been followed, namely those aimed at reconsidering the provisions relating to electoral thresholds (which are currently very high for alliances of two or more political parties, i.e. 8% to 10% depending on the number of parties involved); extending legal standing to allow for voters to submit challenges against election results; clarifying the meaning of “gross violation” as a ground of early termination of powers of a member of a constituency and precinct electoral commission; and providing for longer timeframes to submit an application for recount.

9. During the interviews, some interlocutors noted that in their view, several issues which needed to be clarified or further regulated were not included in the draft law. In this respect, the Venice Commission and ODIHR emphasise that the scope of this Joint Opinion covers only the draft amendments to legislation officially submitted for review (“the draft amendments”). Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing elections in Armenia. In this connection, it must be stressed that the previous key recommendations mentioned in the preceding paragraph as well as other pending Venice Commission and ODIHR recommendations remain valid.

10. In the “Rationale for adoption of the package of draft laws”, the drafters of the proposed amendments indicate that they are to be seen in the perspective of the ongoing improvement of the electoral system and of addressing problems identified in the most recent parliamentary and local elections of 2021-2022. They cover a number of different specific issues. This Joint Opinion focuses on the main amendments, in particular concerning principles of suffrage; holding elections during emergencies; transparency and accessibility measures; voter lists and registration; party and candidate lists; election campaigns, campaign funding and oversight; misuse of administrative resources; election administration; recount; sanctions; and the participation of women. A number of additional changes are of rather technical nature and will not be commented on in detail.

III. Analysis and recommendations

A. The reform process

11. The Venice Commission and ODIHR have consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:

- 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations;
- 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and

³ Venice Commission and ODIHR, Second Joint Opinion on the Electoral Code (as amended on 30 June 2016), [CDL-AD\(2016\)031](#).

⁴ Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#).

3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.

12. The Minister of Justice of Armenia stressed in his opinion request that the elaboration of the draft amendments was preceded by extensive ten-month long public consultations with different stakeholders including civil society, and that this process was supported by the International Foundation for Electoral Systems (IFES). Various interlocutors met by the rapporteurs confirmed this open and inclusive process involving representatives of relevant state bodies, of non-governmental organisations and international experts. The rapporteurs were informed that many of the recommendations proposed by electoral stakeholders during the consultative exercise facilitated by IFES in late 2022 have been incorporated into the draft. The Ministry of Justice has made available on “e-draft” the draft amendments for the citizens to comment on them,⁵ and the draft legislation has been subject to public debate.⁶ An extensive political debate in the National Assembly with the participation of the opposition political parties is expected to take place after the bill is tabled. However, all political parties, including those that are currently not present in the parliament, have had the opportunity to read and comment on the draft during its preparation, as did the general public.

13. The Venice Commission and the ODIHR welcome these broad consultations and public discussions. As they already noted in the 2021 Urgent Joint Opinion, such processes, when conducted in a meaningful way, increase all stakeholders’ understanding of the various factors involved and enhance confidence and trust in the adopted legislation. It is also noteworthy that the draft amendments were proposed in ample time before the upcoming elections: it is anticipated that the next parliamentary elections in Armenia will take place in 2026.

14. Having said that, the frequency of amendments to the electoral legislation of Armenia in recent years is striking. Also now, it seems that further amendments are expected and indeed appropriate as not all previous recommendations have been addressed. The Venice Commission and ODIHR acknowledge the aim to eliminate at least some of the features of the previous electoral framework ahead of the next elections but regret that this opportunity was not used to address the outstanding recommendations from ODIHR and the Venice Commission. This is particularly important as international good practice highlights the importance of the stability of electoral legislation and the impact that frequent changes can have on public trust.⁷ Frequent amendments furthermore risk confusing voters, parties and candidates, and making it difficult for the competent electoral authorities to apply the law, which may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies. A more comprehensive reform could prevent such risks and provide the opportunity for a more structured and clear process.

B. Draft amendments to the Electoral Code and related legislation

15. The reform package proposes amendments to the Electoral Code and to 17 other legal acts. These different amendments are closely interrelated and are therefore reviewed together.⁸ It must be noted that the current package of amendments is very long, detailed, and hard to

⁵ See <https://www.e-draft.am/projects/5805>.

⁶ The proposed changes to the electoral system have been frequently reported by the Armenian media. See, for example, (in Armenian language): Կառավարությունը հավանություն տվեց Ընտրական օրենսգրքի բարեփոխումների փաթեթին (<https://armenpress.am/arm/news/950988>), Հոկտեմբերի 22-ին ԱԺ արտահերթ նիստ կգումարվի (<https://syuniacyerkir.am/hoktemberi-22-in-azh-artahert-nist-kgumarvi>), Կառավարությունը հավանություն տվեց Ընտրական օրենսգրքում առաջարկվող փոփոխություններին (<http://archive3.ankakh.com/article/105454/karravaruthyune-havanuthyun-tvyets-entrakan-oryensgrqum-arradjarkvvogh-pvopvokhuthyunnyerin>).

⁷ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), para. 63 of the Explanatory Report; see also paras. 58 and 64-67. See furthermore Venice Commission, Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#).

⁸ The Articles referred to in this analysis are those of the Electoral Code, unless otherwise specified.

navigate. Such an elaborate and detailed piece of legislation can lead to difficulties in the application of its provisions; as well as the possibility of repetitions, discrepancies or loopholes occurring. In addition, many changes in the proposed amendments are technical, proposing formatting, wording and terminology solutions;⁹ while it could be an issue of translation, these terms are not always streamlined in the draft. As previously noted by the Venice Commission and ODIHR, the proper implementation of the amended Code and the other revised laws, including the training of election commissioners, will be crucial.

1. Principles of suffrage

16. The draft amendments seek to enhance the principles of suffrage in Articles 2 - 6 of the Electoral Code. They oblige public authorities to take necessary measures aimed at voter accessibility (Article 2 part 5), to show neutrality and provide equal opportunities for contestants during the election campaign period (Article 3 part 4), to establish effective mechanisms for the purpose of legal protection of suffrage rights (Article 6.1 part 3), and to ensure proper implementation of public supervision over elections (Article 6.1 part 4). Article 3 part 5 also protects against the misuse of administrative resources by stipulating that “candidates have no right to use the advantage of their official or work-related capacity to achieve a certain result in the elections.” The secrecy of vote is guaranteed by Article 4 part 2, and Article 4 part 3 prohibits coercion of voters.

17. In addition, new Articles 6.1 and 6.2 are introduced to define the principles of “fair” and “genuine” elections. The principle of fair elections implies the need to ensure (i) universal and equal suffrage, (ii) equal opportunities, including accessibility to mass media and means of telecommunication for each candidate and political party, (iii) lawful and public funding of elections, (iv) honesty during voting and counting of votes and (v) quick and effective examination of complaints. The draft amendments further specify that the principle of genuine elections implies the need to disclose the freely expressed will of the people and its direct implementation. For example, they prescribe the right of a candidate, political party, or alliance of political parties to lodge an appeal, and they condemn illegal activities such as falsifying the counting of votes, use of coercion, or obstructing the free exercise of suffrage.

18. In the view of the Venice Commission and ODIHR, the aim behind including the above principles in the current amendments is positive and can contribute to reinforcing the ideals of universal, equal, free and direct voting and highlighting the values on which the new Armenian electoral system is based. While the aim of reinforcing the principles is welcomed, there are risks with including a non-exhaustive list and duplicating existing legislation (see below). Further, some interlocutors raised doubts as to whether these principles would be truly implemented in practice, it is of course crucial to guarantee that these principles be consistently upheld when applying the Electoral Code in real-life situations.

19. Moreover, it should be noted that it is not common among the Venice Commission Member States to enlist the principles of democratic elections in such detail as proposed in the draft. It would be advisable to reconsider the specific wording of the amendments, especially the new Articles 6.1 and 6.2., as they 1) partly mention aspects of the electoral law which are already included in the law (e.g. the universal and equal suffrage) and thus lead to duplication; and 2) partly spell out very detailed requirements founded on the electoral principles, which raises the question of whether those concretisations are meant to be exhaustive or whether there is room for others. Indeed, there are other elements that may ensure a “fair and genuine” conduct of elections, for example, ensuring freedom of expression for parties and candidates, enabling voters to discuss and cast their vote free of fear of retribution, the organisation of elections by an

⁹ For instance, “the precinct electoral commission” is renamed “constituency electoral commission,” the term “donation” is replaced with the term “contributions.”

independent body, and respect of other fundamental principles.¹⁰ Having only some elements listed and elaborated upon related to what defines “fair and genuine election” may lead to selective and at the same time arbitrary interpretation. The Venice Commission and ODIHR therefore recommend amending Articles 6.1 and 6.2. The Code should recognise fundamental principles of holding genuine and periodic elections with a view to guaranteeing the universal, equal, free, secret and direct suffrage, in line with the Code of good practice in electoral matters.¹¹ All other rights and obligations that underpin principles of genuine and democratic elections would be best placed in the respective sections and articles of the Electoral Code. The principles stipulated in the law should not exclude the application of other principles of suffrage recognised in international good practice.

2. Holding elections during emergencies

20. The amendments address holding elections during emergencies, including epidemics and martial law. This matter has been previously addressed by the Venice Commission and ODIHR in their joint urgent opinion endorsed in July 2021,¹² according to which the current regulation is overall in line with international standards.¹³ The opinion, nevertheless, recommended that specific measures for holding elections during emergencies including pandemic periods be stipulated in law or infra-legal texts well in advance of the forthcoming early parliamentary elections, including at the initiative of the CEC in its regulatory limits. At the same time, it should be noted that according to Article 91 of the Constitution, elections to the National Assembly shall not be held during martial law or state of emergency. In this case regular elections to the National Assembly shall be held not earlier than fifty and not later than sixty-five days after the end of martial law or state of emergency.

21. The present amendments address situations when martial law or a state of emergency is declared *after calling the elections* or *after the voting day before summarising the election results*. The main amendment sets forth that “where the martial law or state of emergency is declared *after calling elections* of the National Assembly or local self-government bodies, including the voting day, the electoral process shall be deemed to be *terminated* by virtue of law from the moment when the martial law or state of emergency is declared.” (Article 7.1 part 3). If martial law or the state of emergency is declared *after the voting day of elections*, the elections may still be *terminated*, if the CEC decides that the process of summarising the results has become impossible (Article 7.1 part 4).

22. According to the Rationale, the martial law or the state of emergency may substantially alter the current situation in the country, including the political one, and therefore it should be prescribed to terminate (rather than suspend) the election processes in case of declaring the martial law or the state of emergency, and to restart the election processes after the end of the martial law or the state of emergency, thus enabling to contend with the new realities.

23. The Venice Commission has, in principle, endorsed the possibility of postponing elections due to the emergency as there is a risk that fundamental electoral principles will be undermined

¹⁰ Cf. Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#).

¹¹ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#).

¹² Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), paras. 28-33.

¹³ Following the derogation clause of Article 4 of the ICCPR, which provides that Member States may take measures restricting rights “to the extent strictly required by the exigencies of the situation” and with General Comment 29, according to which the emergency measures must be limited in geographic and material scope and targeted to the problem. See Venice Commission, Respect for Democracy, Human Rights and the Rule of Law during States of Emergencies: Reflections, [CDL-AD\(2020\)014](#), in particular Section II. K. See also Venice Commission, Interim Report on the Measures taken in the EU Member State as a Result of the Covid-19 Crisis and their Impact on Democracy, the Rule of Law and Fundamental Rights, [CDL-AD\(2020\)018](#), in particular Chapter VI.

during a state of emergency.¹⁴ It has also recognised that there is no general principle to avoid elections during the state of emergency and postpone them until the situation is ordinary, normal again.¹⁵ Nevertheless, it emphasised that suspension of electoral rights is only permitted to the extent required by the situation. Different circumstances have different impacts on other fundamental rights and freedoms, the level of fear, and the extent of factual plurality in society. A pluralistic and democratic discussion is more easily possible in case of natural disasters or pandemics; as a rule, democratic elections are excluded in case of wide armed conflict.

24. A suspension of electoral rights must therefore meet a proportionality test¹⁶ to minimise the risk that elections are postponed for partisan political reasons rather than for the objective needs of the situation.¹⁷ Several measures against such misuse must be put in place (judicial control, broad involvement of political parties and other stakeholders, time limitation of the postponement, broad agreement on the need of postponement).¹⁸ When facing an epidemic, voting modalities like postal voting, mobile ballot boxes and voting by Internet may be taken into account.¹⁹

25. The Venice Commission has also previously underscored the issue of campaign costs. If the electoral campaign had already started before the extraordinary circumstances occurred, the candidates and political parties might already have spent considerable sums on their campaign activities. If this is so, then rather than postponing the elections and so requiring the candidates to begin campaigning from the beginning again, it might be better to continue the electoral processes (if possible) to avoid further adverse effects and monetary duties for the stakeholders.²⁰

26. It should be noted that the rapporteurs' interlocutors from the government of Armenia, and also from several opposition parties and non-governmental organisations, welcomed the changes and clarifications introduced by the draft amendments. Nevertheless, it is imperative to keep a close eye on the potential consequences of states of emergency on electoral processes, bearing in mind the risks of misuse. While the elections may be, in principle, suspended during a time of emergency, it is problematic to suspend or even terminate elections that have already started. Terminating the electoral process after voters have already cast their votes (on or after the voting day) is even more perilous. Once the will of the electorate has been established (although not yet known as the votes have yet to be counted), it should be respected and protected. Even in the event of an emergency, the election process should not be terminated at this stage without sufficient cause. While the authorities may be unable to summarise the votes and determine the results during that time, it is still possible to postpone the vote counting until the state of emergency has ended. If the emergency lasts for a longer period, the counting should even be organised during the state of emergency; depending on the circumstances, it could for example be organised further away from the actual location of emergency, or it could be carried out once the situation has improved (even though the state of emergency has not yet been lifted).

27. The proposed regulation may pose a significant risk of exploiting the declaration of a state of emergency or martial law for political gain rather than as a genuine response to an urgent crisis. To prevent this outcome, the Venice Commission and ODIHR recommend several amendments. Firstly, as a fundamental principle, the law should prioritise the temporary halt of the electoral process (its suspension) over its complete termination, depending on the specific situation and the length of the emergency situation. The electoral process whenever it is possible should resume after the state of emergency is lifted. Fully terminating the electoral process should only

¹⁴ Venice Commission, Respect for Democracy, Human Rights and the Rule of Law during States of Emergencies: Reflections, [CDL-AD\(2020\)014](#), para. 96.

¹⁵ Ibid, para. 97.

¹⁶ Ibid, para. 100.

¹⁷ Ibid, para. 101.

¹⁸ Ibid, para. 102.

¹⁹ Ibid, para. 107.

²⁰ Ibid, para. 104.

be considered as an ultimate option when no other less drastic alternatives are available or when the emergency situation continues for a longer period. Secondly, the suspension of elections after voters have already cast their votes should be avoided, and alternative vote-counting methods should be provided if the usual mechanisms are not feasible due to the state of emergency.

28. With regard to situations in which martial law or a state of emergency is declared *after calling the elections but before the voting day*, more detailed elaboration of the measures to be taken, and time frames both for making such decisions and for how long they would apply are advisable. Some of the processes already carried out before the emergency may need to be repeated if the election day is postponed for a longer period. For example, if the postponement of elections is decided after the registration of candidates, no additional registration should be necessary if the elections are postponed for just a month or two; in case the elections are postponed for an extended period (e. g. due to war), a repeat registration of candidates will be necessary. A new voters' list will also be necessary, but there may be some aspects that do not need to be repeated – e. g. establishing special accounts for campaign purposes. When an election is postponed for an extended period the political environment and landscape may change, the priorities of the electorate may shift and as a result new candidates may emerge, or contestants' platforms and strategies may change. Further, conflicts and war as well as significant natural disasters can result in movement of the voting population. In such cases, there should be a clearly defined point when the elections can no longer be suspended but have to be terminated and restarted at the end of martial law or state of emergency.

3. Transparency measures

29. Several new provisions of Article 8 aim to enhance the transparency of the electoral process. Amendments proposed in Article 8 part 6 oblige electoral contestants to provide their declarations to be posted on the website of the Commission for the Prevention of Corruption. Article 8 part 8 provides that voters must be notified about the compositions, locations, working hours of electoral commissions, the time limits for submission of applications on inaccuracies in the lists of electors, the nomination of candidates and the time limits for registration, the day, venue, time of voting, as well as the results of voting and election. Further, the amendments give a central role to the website of the CEC which publishes information on the main measures of preparing and holding the elections, information concerning deadlines for submission of applications on inaccuracies in the electors' lists, time limits for nomination and registration of candidates, among others. The Venice Commission and ODIHR acknowledge that all of this information will increase the understanding of the electoral process for voters as well as increase voters' confidence in the credibility of the process, in particular the work of the CEC.

30. Amendments also include a more extensive use of video recording and real time transmission (as a simultaneous webcast) of election day proceedings in polling stations, as well as sessions of the constituency election commissions. The framing of the amendments emphasise the observance of the principle of secrecy of the vote during such recordings (Article 8 part 11.1). According to Article 71 part 8 persons having the right to be present at the precinct may photograph or videotape the protocol on the voting results drawn up in the electoral precinct, as well as request a copy. As previously noted by the Venice Commission and ODIHR, video recordings throughout the election-day proceedings, as long as they do not compromise the secrecy of the vote, might increase voters' confidence in the credibility of the process.²¹ However, this should not substitute in-person observation.

30. The government is responsible for selecting the organisation that will undertake recording/teaming services, and video-recordings remain accessible on the relevant website until

²¹ See Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), para. 26.

the publication of the final results, after which their copies may be provided, upon request, to electoral commissioners, representatives of political parties and of observer organisations (Article 8 part 11.1). Copies of these recordings could be obtained after submitting an application to the CEC and after paying a cost of copying. The possibility to obtain video recordings not only enhances the transparency of the process but also facilitates the collection of evidence by electoral contestants to support any challenges of the results. However, as it has already been recommended, it is advisable that a paper record of all interactions done via the website be available for future complaints and appeals as well as research possibilities.²² In addition, while the application process does not appear to be burdensome, it is not clear whether the CEC can refuse the issuance of these recordings. The Venice Commission and ODIHR recall the importance of procedures devoid of formalism and easily accessible for every citizen and political party, which may imply the possibility to maintain a paper-access procedure as well. In addition, if the cost for such service is envisaged, this should be minimal and included in the Code.

31. Article 31 has been modified to regulate the accreditation process of citizen observers. In addition to non-governmental organisations, the draft grants “funds” the right to be accredited to carry out observation activities. It is not quite clear what “funds” represent. If this expands the list of organisations from those which include an explicit reference to democracy and human rights protection in their charter, this would be welcome; however, this is not entirely clear.²³ Previously ODIHR recommended removing this requirement as it places an unnecessary restriction on the opportunity to observe.²⁴ It has been observed that similar provisions have been used in other states to limit the participation of organisations that want to engage in genuine observation. Such provisions have largely had a negative impact on genuine citizen observation and not a positive impact on the prevention of the misuse of observation. International standards make it clear that national and international observers should be given the widest possible opportunity to participate in an election observation exercise.²⁵ The Venice Commission and ODIHR recommend making it clear in Articles 30 and 31 that non-governmental organisations have the right to be accredited as citizen observers during elections regardless of whether they include an explicit reference to democracy and human rights protection in their charter for at least one year prior to the announcement of an election.

32. Article 31 has been supplemented to provide that “members of the electoral commissions, candidates running in the given elections, proxies, specialists maintaining the technical equipment and the mass media representatives may not act as observers.” Respectively, the change was made to enable the CEC to reject the applications for accreditation (part 4) or revoke the accreditation (part 4.1) in such cases. During the interviews held in Yerevan, some interlocutors expressed concerns that the draft provision in its current wording may disproportionately result in organisations rather than individuals being disqualified. It could be made clearer in the draft that the incompatibility of an individual observer disqualifies only that particular observer and does not necessarily lead to the denial of accreditation to the entire organisation. Changes made to Article 35 are largely technical by allowing political parties (and alliances) to have authorised representatives for the elections of head of the community or member of council of elders. This was also possible earlier by paragraph 8 of this Article, which is now repealed.

²² Ibid.

²³ In their comments on the draft opinion, the authorities indicated that under the current national framework non-governmental organisations and “funds” (or “foundations”) are different forms of non-commercial organisations. The draft law by granting “foundations” the right to be accredited to carry out observation activities expands the list of non-commercial organisations but does not expand the list of organisations from those which include an explicit reference to democracy and human rights protection in their charter.

²⁴ See the [Final Report on the 2021 early parliamentary elections of Armenia](#).

²⁵ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), section II.3.2(a). See also paragraph 8 of the [1990 OSCE Copenhagen Document](#), which states that the presence of observers, both foreign and domestic, can enhance the integrity of the electoral process.

4. Accessibility provisions

33. The accessibility of voters is provided in different sections of the draft amendments. The amended Article 2 part 5 obliges public authorities to take measures necessary for voter accessibility. Article 10 part 3.1 enables voters with “mobility (locomotor) difficulties” to be included in the list of voters of the accessible polling station preferable for them and to vote in the polling station accessible to them. The same article allows the submission of such applications both electronically and on paper, to be signed in an acceptable way, including digitally. Article 17 part 2 is also revised to ensure “as much as possible, the unhindered entry and exit and movement of persons with disabilities, those with mobility (locomotor) difficulties in the polling station.” Article 58 provides that “the voting booth shall enable the electors with disabilities and mobility (locomotor) difficulties to exercise their suffrage in an unhindered way, by keeping the secrecy of voting”.

34. Efforts to make the process more accessible for the independent participation of all voters are welcome. At the same time, it must be noted that the above-mentioned mechanism to facilitate voting by wheelchair users does not fully conform to international standards for accommodating persons with disabilities in an electoral process. Paragraph 41.5 of the 1991 OSCE Moscow Document calls on participating States to encourage favorable conditions for the access of persons with disabilities to public buildings and services. Further, Article 29 of the Convention on the Rights of Persons with Disabilities requires state parties to ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.²⁶ These norms aim to ensure that persons with disabilities are able to vote, to the extent possible, in the same manner as other voters.

35. The Venice Commission and ODIHR acknowledge that it may be challenging to promptly guarantee that all polling stations meet international accessibility standards. In many cases, achieving this may involve expensive and costly structural changes and take longer to implement. Therefore, they encourage current efforts to allow persons with disabilities to choose a fully accessible polling station as a temporary step to address the current inadequate situation. However, having said this, it is important to note that requiring a voter to travel to a polling station that may not be the nearest to one’s residence, and potentially a significant distance away and being obliged to apply to change one’s polling station to cast a ballot are unnecessary obstacles that are not faced by other voters. To comply with international standards, states should aim to adapt all polling stations to ensure unimpeded accessibility to voters with mobility challenges.²⁷ While the provision that allows wheelchair users to transfer to an adapted polling station within their electoral district may be a reasonable approach to be used temporarily until all polling premises are made accessible, it cannot be regarded as an appropriate permanent solution. The Venice Commission and ODIHR therefore recommend that the relevant authorities consolidate their efforts toward adapting all polling premises to accommodate voters with mobility challenges. In the meantime, the authorities should ensure that adapted polling stations are close by to those that are yet to be adapted or add some other temporary alternative measures (such as allowing persons with disabilities to request that the Electoral Commission visit them with a portable ballot box in their home or outside the polling station, while maintaining the secrecy of the vote).

36. Positively, Article 57 has been supplemented to provide for accessible working conditions for election commission members “with mobility (locomotor) difficulties, as well as with disabilities.” Article 58 has been amended to decrease the number of voters allocated to each booth from 750 to 600, and to make it clear that the form of the booth must ensure accessibility for persons with “mobility (locomotor) difficulties.” This may ease the overcrowding. Another

²⁶ See the 2006 [UN Convention on the Rights of Persons with Disabilities \(CRPD\)](#).

²⁷ The ODIHR [Final Report on the 2021 early parliamentary elections of Armenia](#) notes that approximately 67 per cent of polling stations were not accessible for persons with physical disabilities, and in 32 per cent, the polling station layout was not suitable for such voters. It was recommended to take into consideration enhanced access for persons with physical disabilities when selecting polling station premises.

welcome amendment aims at ensuring that constituency election commissions are provided “with additional means (braille templates, etc.) for the persons having problems with vision to vote independently during the elections [...] the acquisition of additional means, including the printing of braille templates, and the acquisition of magnifying glasses shall be provided by the Central Electoral Commission” (Article 59).²⁸

5. Voter lists and voter registration

37. Article 10 part 3 has been revised to enable voters having record-registration of another settlement of the same community in the place of their actual location on the day of the election to temporarily withdraw from the list of electors by place of registration indicating the new address where they will be on election day. Temporary registration is also extended to election commission members and specialists working on election day (Article 10 part 4). In addition, according to Article 10 part 5, voters with no registration in the country can apply to the authorised body to be temporarily included in the voter list by indicating their temporary address. In all cases, in addition to paper format, applications are submitted electronically, ensuring easy accessibility, especially for persons with disabilities. In case of doubt on the credibility of online applications, the authorised body may require the electronic application to be certified with an electronic digital signature or submit an application in paper format. This could safeguard against false applications. Generally, the procedures appear simple and avoiding unnecessary bureaucratic steps and reasonably speedy. All these measures aim to ensure the suffrage rights of all citizens.

38. According to Article 13, the authorised body shall post the initial list of electors by electoral precincts on the Internet.²⁹ In addition, according to part 7 “signed lists of electors having participated in voting shall be posted on the website of the Commission [...]” The Venice Commission and ODIHR thoroughly examined the reasons for this legislation. They acknowledge that these amendments aim to prevent election fraud (i.e. ineligible voters casting ballots or voters voting in areas where they are not registered or on behalf of others) and ballot box stuffing which was observed in Armenia in past elections. However, while measures leading to greater transparency of electoral processes are generally to be welcomed, it is necessary that these are applied cautiously with regard to certain documents and information. It is not clear from the amendments which measures will be implemented in order to guarantee the secrecy of the vote and prevent voter harassment and pressure when the signed voter lists are publicly available. The Code of good practice in electoral matters considers abstention as a political choice and recommends that voter’s lists should not be published if the secrecy of that choice can be breached.³⁰ Furthermore, the Interpretative Declaration to the Code of good practice in electoral matters recommends that “[s]uch access to the list of voters having voted should be meaningful, should be granted for a sufficient period of time and should take place under controlled conditions.”³¹

²⁸ Article 29 of the CRPD calls on states to ensure that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use. See also paragraph 2.3 of the [Recommendation CM/Rec\(2011\)14 of the Council of Europe’s Committee of Ministers](#) on the participation of persons with disabilities in political and public life.

²⁹ www.police.am

³⁰ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), para. 54 of the Explanatory Report.

³¹ Venice Commission, Interpretative Declaration to the Code of good practice in electoral matters on the publication of list of voters having participated in elections, [CDL-AD\(2016\)028](#), paragraph IV A. Furthermore, paragraph 10 of the [General Comment 16 to the ICCPR](#) stipulates that effective measures have to be taken by States to ensure that information concerning a person’s private life does not reach the hands of persons who are not authorised by law to receive, process and use it, and is never used for purposes incompatible with the Covenant.

39. In their first Joint Opinion of 2016, the Venice Commission and ODIHR recommended reviewing a similar provision in order to ensure data protection and secrecy of the vote.³² In their most recent Joint Opinion, of 2021, based on the consensus observed on the matter and the necessity to increase trust in voter registers in Armenia, the Venice Commission and the ODIHR acknowledged that publishing the signed voter lists could participate in the overall transparency of the electoral process, *provided that this measure remained strictly temporary and preferably limited to the next elections*. The ODIHR Final Report on the 2021 early parliamentary elections recommended “safeguarding voter data privacy and secrecy of participation in the vote, including through confidentiality measures”.³³ In line with their previous recommendations, the Venice Commission and ODIHR recommend reconsidering the current and new draft provisions of Article 13 in the light of international standards and best practice on personal data protection. The publication of the list of the voters who actually participated in the elections should be avoided. Other mechanisms to prevent voting on behalf of other voters can be used instead of publication of the list of persons having voted, such as unimpeded access of observers to the polling stations, carefully managing the verification of voters in the polling station, keeping the ballot box visible at all times, having representatives from different political parties present in the polling station etc. These are some mechanisms that can help to avoid voter harassment based on their participation in the elections. Furthermore, as concerns the publication of voter lists before elections, other solutions, which protect voters’ personal data in a better way, should be considered. To allow for sufficient scrutiny of the voter list while still safeguarding the personal data of voters and preventing the misuse of such data for campaign or other unlawful purposes, States have taken a variety of approaches. For example, some States give access to the voter lists only to electoral contestants and under strict supervision and conditions regarding the use, copying and storing of the lists. Other States only give voters access to their own data on the voter lists or remove more sensitive personal data from the lists available for public scrutiny.

40. The draft amendments also introduce the term “unified voter identification document” removing other forms of identification, such as the biometric passport, from various articles (see Article 11 part 3 and Article 14 part 2). This measure has the potential to solve the issue of voter identification and its reliability and corresponds to earlier remarks made by the Venice Commission and ODIHR.³⁴ It could have been problematic with respect to passports issued from 1 January 2008, but the amendments take into account the process and resources required for obtaining new identification cards, by enforcing this provision as of 1 January 2025. Other changes are technical and include timelines for providing the preliminary list of voters for general and early election (Article 10 part 3). This also extends the timeframe for the CEC to preserve the signed list of voters for five years after election day (Article 13 part 17).

6. Political party and candidate lists

41. Under Article 84, a list of documents has to be submitted by political parties for the registration of candidates for election, among them some certificates by other state institutions. The draft amendments further develop current requirements, in particular, a political party has to submit to the CEC “a statement of information on the compliance of the statute of the political party with the Constitutional Law on political parties [...], as well as the copy of the statute of the political party [...]” (Article 84 part 2), and “a statement of information on confirming the submission to the Commission for the Prevention of Corruption of the annual report of the reporting year preceding the elections by the political party (member to the alliance of political parties), and in case the time limit for the submission of the annual report has not expired and the annual report has not been submitted as of the date of submission of the documents necessary for the registration of electoral lists — the annual report of the penultimate reporting year preceding the elections”

³² See Venice Commission and ODIHR, Joint Opinion on the draft electoral code as of 18 April 2016, [CDL-AD\(2016\)019](#), para. 61.

³³ See the [Final Report on the 2021 early parliamentary elections of Armenia](#).

³⁴ See Venice Commission and ODIHR, Second Joint Opinion on the Electoral Code (as amended on 30 June 2016), [CDL-AD\(2016\)031](#), paras. 44-46.

(Article 84 part 2). The same provisions were introduced for political parties contesting in the elections of elders of communities (Articles 130 part 3). Amendments also regulate the deadlines when such statements should be issued by the respective authorities (Article 84 parts 4.1 and 4.2; Articles 130 parts 3.1 and 3.2).

42. In addition, amendments were made to the Law on State Registration of Legal Persons, State Record-registration of Institutions and Individual Entrepreneurs, which define the requirements for a political party to apply for a statement of information on the compliance of the party statute with the Law on Political Parties for the purpose of registering the electoral lists. In particular, a political party shall submit an application to the Agency not earlier than six days and before the calling of the relevant elections and not later than eight days before the expiry of the time limit of nomination of the political parties (alliances of political parties) participating in the elections. The Agency has “a week” to review the documents and issue a statement (Article 66.4 of the Law on State Registration). Parties are also obliged to pay a state duty, which is not defined in this law.³⁵

43. In the view of the Venice Commission and ODIHR, these requirements are too formalistic, as according to the principle of good administration all the necessary documents or data should be requested directly from the competent authorities and transfer of such information should be automatic, not necessitating the political parties to request for additional verification documentation. What would be the consequences if such documents cannot be obtained in time and the competent authority in violation of the law does not provide for the necessary document in time? A court procedure may not solve the issue, being too time-consuming. The Venice Commission and ODIHR recommend that the CEC itself request the documents from other competent institutions and may deregister candidates and party lists if substantive criteria for standing in elections are not fulfilled. In contrast, in case of only minor deficiencies, deregistration of candidates would not be in accordance with the principle of universal suffrage and genuine elections.

44. Political parties can apply for registration with the CEC either electronically or in person. Electronic submission would contribute to the facilitation of the participation of persons with disabilities and of those individuals unable to submit applications in person for other reasons (Article 84 part 6; Article 130 part 4 of the Election Code). That said, it should be ensured that the format is compatible with all forms of disability, including for visually and hearing impaired.³⁶

7. Election campaign regulations and oversight

45. The draft amendments propose several measures concerning election campaigns. *Inter alia*, they include changes related to election campaigns carried out on the Internet, clarifying that mass media must ensure non-discriminatory and non-biased conditions for candidates, parties (alliances of parties) participating in the elections while carrying out free of charge or paid campaign (Article 20.1). Such measures are in line with international standards, including the obligation to ensure equality of opportunities for the different political forces and the obligation to ensure conditions for an equitable campaign environment,³⁷ and are to be commended. That

³⁵ In their comments on the draft opinion, the authorities explained that according to Article 1 of the Draft Law on Making Supplements and Amendments to the Law on State Fees (duty), Article 16, point 1.12 of the Law on State Fees must be supplemented with a new 2.1 sub-point according to which for providing a statement of information on the compliance of the statute of a political party with the Constitutional Law on Political Parties there is a state fee to be charged in the amount of 10-fold of the base fee (i.e. 10,000 AMD/ca. 24 euros). While such provision exists in a different law, for better clarity, a state duty could still be defined in the Electoral Code, or alternatively, reference made to the respective law.

³⁶ See Articles 1, 12 and 29 of the [CRPD](#). See also Paragraph 9.4 of the 2013 [CRPD Committee's Communication No. 4/2011](#).

³⁷ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), section I.2.3. See also, more specifically for campaigning by use of digital technologies, Venice Commission, Principles for a

said, it is not clear whether the new rules apply to all online media or only to those which also operate in traditional media. While there is not an agreed approach on campaigning on social media and the states have sovereign rights in regulating the functioning of social platforms and online conduct of their election campaigns, the Venice Commission and ODIHR recall the general obligation of states to ensure equal opportunities to campaign and fair treatment of the contestants. They recommend further clarifying the regulation of all social platforms including through further defining what platforms fall under Article 20.1, for the sake of legal certainty.³⁸ Moreover, during the interviews in Yerevan the rapporteurs were informed that there is currently no state body competent to control compliance with the (new) rules on online campaigning. In the view of the Venice Commission and ODIHR, these rules can only be effective if independent oversight, by an adequately equipped public body, is introduced.

46. A number of articles contain welcome guarantees of equality of campaign conditions for contestants, including an obligation for election commissions to ensure such equality, in line with international obligations and OSCE commitments.³⁹ Candidates and political parties (alliances) are granted equality of conditions and the possibility to distribute campaign materials and equality of opportunities and conditions for the organisation of meetings with voters. Likewise, organisations disposing *LED* boxboards must ensure equal opportunities for all contestants.

47. The draft amendments further address the problem of improper use of campaign posters which are often not removed and pollute and damage the outer walls of the buildings. They clarify the rules regarding posting and managing campaign posters on billboards. They stipulate that the campaign posters, campaign printed and other materials posted in violation of the law be removed by the decision of the relevant constituency electoral commission with the assistance of the police. The newly stipulated provisions are legitimate and do not hinder free election campaigns.

48. Notwithstanding this positive development, the draft legislation does not change the previous regulation on the control of the procedure for election campaigning, which election commissions exercise. The Venice Commission and ODIHR addressed this issue in their first 2016 Joint Opinion⁴⁰ and reiterated it in their 2021 Joint Urgent Opinion.⁴¹ It was noted that there were only two options in case of violation of the campaign rules. The first was an injunction by the relevant election commission to stop the activity, or a three-day warning, which was considered too rigid by the opinion. If this approach did not work, the next step was an application to the courts to revoke the candidate's or political parties' registration. The Venice Commission and the ODIHR reiterate their recommendations to clarify which authority is in charge of enforcing this provision and to specify by law a range of straightforward and proportionate sanctions for campaign-related offences.

49. Furthermore, the present draft amendments do not affect Article 19 part 8 of the Electoral Code, according to which the competent electoral commission shall apply to the court for revoking the registration of the candidate and the electoral list of the political party running in elections if they violate rules of the election campaign. Such violation must be of "a continuous nature, and

fundamental rights-compliant use of digital technologies in electoral processes, [CDL-AD\(2020\)037](#), paras. 59ff. and 72ff.

³⁸ In their comments on the draft opinion, the authorities indicated, with reference to Articles 3 and 11, part 4 of the Law on Mass media, that only mass media with a domain and hosting registered on the Internet fall under the regulation of the suggested Article 20.1, part 1 of the Electoral Code. In the view of the Venice Commission and ODIHR, this could however be made clearer in the Electoral Code itself.

³⁹ See, for example, Article 25 of the [ICCPR](#), and [General Comment No. 25](#); Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), section I.2.3 and paras. 18ff. of the Explanatory Report; [1990 OSCE Copenhagen Document](#), paragraph 7.6.

⁴⁰ Venice Commission and ODIHR, Joint Opinion on the draft electoral code as of 18 April 2016, [CDL-AD\(2016\)019](#), para. 73.

⁴¹ Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), para. 60.

the committed violation may essentially affect the election results, or it is impossible to eliminate the consequences of the violation committed, and the committed violation may essentially affect the election results.”

50. The Venice Commission and ODIHR have commented on this provision, expressing concern that the cancellation of the registration limits the right to be elected and may not align with international standards. The definition of the violation in Article 19, part 8 is too vague and should be made more specific; determining if a violation of the law affects ongoing elections and the results can be challenging.⁴²

8. Campaign finance regulations and oversight

51. Draft amendments to Articles 26 and 27 regarding the formation of campaign funds do not alter the process substantively, and are mostly technical.⁴³ Importantly, the provisions oblige all political parties and alliances, as well as candidates running for the elections of head of the community and council of elders to set up a campaign fund within five days after registration to run in the elections. Failing to do so may result in revoking the registration. This provision is problematic, as sanctions must bear a relationship to the violation and respect the principle of proportionality.⁴⁴ The Venice Commission and ODIHR have previously recommended that the Electoral Code should not foresee de-registration of candidates for minor violations and that candidate de-registration should be allowed only in extraordinary circumstances, which should be clearly and exhaustively defined in the Electoral Code.⁴⁵ Consequently, they again recommend that de-registration of candidates and party lists be allowed only as an exceptional measure for the most serious, clearly described, violations of finance regulations.

52. While the campaign fund of a candidate can still be formed from his or her own contributions (and those of the respective party) as well as donations from individuals eligible to vote, the draft amendments provide that campaign funds of a political party (or party alliance) are now limited to contributions made by that party (or parties of the alliance), see Article 26 part 3. On the other hand, the amended Article 24 part 2 of the Law on Political Parties provides that a natural person can make a donation to one or more parties. It is not quite clear why contributions by natural persons to election funds of political parties should no longer be permitted.⁴⁶ Bearing in mind that the funding of political parties is a form of political participation and that it is appropriate for parties to seek private financial contributions, within the prescribed limits, this amendment could be reconsidered. At the same time, it is clear that a natural person can still contribute to the political parties, rather than directly to the campaign funds.

53. A new paragraph 6 to Article 26 provides that natural persons making contributions should specify their names, surnames and personal identification document number, which is not subject to publication. While transparency may be increased by requirements to publish identities of donors, legislation should also balance this requirement with exceptionally pressing privacy concerns of individual donors in cases where there is a reasonable probability of threats,

⁴² Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), paras. 62-63.

⁴³ For example, replacing Council of Elders Yerevan with Council of Elders with communities in Article 26; adding alliances and political parties throughout the Code where political party is mentioned.

⁴⁴ Cf. Council of Europe Committee of Ministers' [Recommendation \(2003\)4](#) on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns; Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, [CDL-AD\(2020\)032](#), para. 279.

⁴⁵ See, for example, Venice Commission and ODIHR, Joint Opinion on the draft electoral code as of 18 April 2016, [CDL-AD\(2016\)019](#), para. 76; see also Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), para. 93.

⁴⁶ In their comments on the draft opinion, the authorities indicated that those changes were made in order to ensure the effectiveness of financial control tools and procedures.

harassment or reprisals.⁴⁷ One possible solution would be to stipulate a threshold below which donor data will not be published in order to protect the privacy of smaller donors while still increasing the transparency of campaign donations. Disclosure thresholds should not be too high, as this may circumvent the prohibition of anonymous donations and increase cash donations.

54. Regarding institutional oversight over political financing, the Venice Commission and the ODIHR have previously taken note of plans to concentrate the whole responsibility for overseeing campaign as well as general party financing to the Commission for the Prevention of Corruption in the future.⁴⁸ The current draft amendments do not implement those plans; according to the Rationale, it is believed to be “necessary to separate the oversight over the daily financial activities of the parties from the oversight over the payments, expenses made to the campaign funds and their calculation and to vest only the oversight over the financing of the election campaign to the competence of the Oversight and Audit Service.”

55. While there are no clear international standards requiring a particular institutional set-up, the Venice Commission and ODIHR are of the opinion that oversight of general party finances and campaign funding by the same body would have some advantages in terms of efficiency and consistency. With only one competent institution all the necessary know-how would be located in it and the mechanisms necessary to guarantee fair and equal campaigning could be implemented without loopholes. The draft amendments in this regard should be reconsidered. In case the currently proposed solution is nevertheless maintained, the Venice Commission and ODIHR recommend introducing a clear delineation of responsibilities between the Oversight and Audit Service and the Commission for the Prevention of Corruption.⁴⁹ In any case, the monitoring mechanism must be provided with sufficient tools and resources, including an appropriate number of staff specialised in financial auditing, as well as a clear mandate and obligation to audit financial reports of political parties and electoral contestants, to verify the accuracy of the information submitted, and to initiate investigations of possible irregularities. Several interlocutors of the rapporteurs indicated that the current mechanism lacked effectiveness due to the absence of such provisions.

9. Misuse of administrative resources

56. Article 3 part 5 in its amended form protects from misuse of administrative resources by making it clear that candidates have no right to use the advantage of their official or work-related capacity to achieve a certain result in the elections. Furthermore, amendments to Article 23 provide that the use of administrative resources — during the organisation and conduct of election campaign, including after calling elections until the launch of election campaign — including the use of financial, informational measures, premises, transport and communication, material and human resources provided for performing official duties, except for security measures applicable in respect of high-ranking officials subject to state protection under the Law “On ensuring the safety of persons subject to special state protection”, shall be prohibited to gain advantage during elections.

57. Article 23 generally captures the essence of the abuse of administrative resources provided by international standards.⁵⁰ However, as per good practice, the legal framework should ensure

⁴⁷ See Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, [CDL-AD\(2020\)032](#), para. 265.

⁴⁸ See Venice Commission and ODIHR, Joint opinion on draft amendments to the legislation concerning political parties, [CDL-AD\(2020\)004](#), para. 42.

⁴⁹ See already Venice Commission and ODIHR, Joint opinion on draft amendments to the legislation concerning political parties, CDL-AD(2020)004, para. 42. See also Venice Commission and ODIHR, Joint Guidelines on Political Party Regulation, [CDL-AD\(2020\)032](#), paras. 275ff.

⁵⁰ See Venice Commission and ODIHR, Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes, [CDL-AD\(2016\)004](#).

an effective balance between the realisation of individual rights for participation in political and public life and the collective interests in the integrity of public resources, accountable and ethical electioneering, and equality of opportunity. Allowing high-ranking officials to use resources, for security reasons, during election campaigns might still undermine the principles of equality, especially where the use exceeds the necessity of such security resources. In line with previous recommendations,⁵¹ the Venice Commission and ODIHR recommend that consideration be given to further reviewing the provision to prescribe stricter rules for the use of administrative resources even for the officials requiring state protection. Besides the legal framework, this could be done by increasing political efforts aimed at preventing the misuse of state positions and public resources during electoral processes. In addition, it should be made clearer what sanctions will apply in case these provisions are violated.

58. According to the draft amendments, a transparent list of public premises available for campaigning is provided by relevant local authorities (Article 19 part 3). While this is to be welcomed, it is important to ensure equal and fair access to such premises, as especially the last days of campaigning may be the most relevant to get access to the best located premises. If the possibility to use the premises is not decided fairly, political parties more affiliated to incumbents may benefit from preferential treatment. The draft law should explicitly address such situations, e.g., by foreseeing drawing of lots if more than one political party requests the use of a premise at a certain time.⁵²

10. Election administration

59. The draft amendments propose detailed changes in the provisions on the functioning of the CEC, especially regarding the staff. These changes modify and supplement the current provisions regarding the work of the Commission (Articles 40-45, 48, and 50) and introduce new provisions on the Commission's structure and organisation, in a new chapter entitled "Peculiarities of the civil service within the Staff of the Central Electoral Commission" (Articles 55.1. – 55.5.). The new provisions make it clear that service within the CEC staff is civil service, to which the general regulations of the Law on Civil Service (as complemented by specific provisions of the amended Electoral Code) apply. They reflect the need for stipulating clear rules concerning the work and service of the staff in the CEC to ensure its independence. These amendments are a welcome development, in line with international standards calling for independent election commissions, especially in countries where there is no longstanding tradition of administrative authorities' independence from those holding political power.⁵³

60. According to the draft amendments, the CEC approves the structure of the staff, headed by the General Secretary, as well as all available positions and job descriptions (Article 55.2). The CEC is also vested with a wide range of powers for hiring, training, evaluating of civil servants (Article 55.4), while the General Secretary supports personal policy, appoints and dismisses persons performing civil work, performing technical maintenance, as well as ensures the implementation of organisational activities, among others. Given that the CEC is already vested with managing elections and supervising the work of lower-level commissions, the staff governance and management tasks might be better suited with the General Secretary. This would also avoid the duplication of tasks connected with staffing and training. Either way, amendments would necessitate increasing the resources of the CEC in order to perform all duties timely and effectively.

⁵¹ See the [Final Report on the 2021 early parliamentary elections of Armenia](#).

⁵² In their comments on the draft opinion, the authorities indicated that according to the current regulations, the CEC prescribes the procedure for providing free halls and other buildings during the elections of the National Assembly and the Councils of Elders. *Inter alia*, the procedure stipulates that "if more than one application is submitted with the request to provide the hall included in the list on the same day and time, then it is given to the party participating in the elections, whose application was entered first" (point 8).

⁵³ See Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), section II.3.1.

61. Article 55.5 further states that a vacant civil service position shall be filled either on a competitive or non-competitive basis; however, the draft does not specify the conditions for each choice, except that some positions will be filled non-competitively in the event the position is not filled within the established time limits. Article 10 of the Draft Law on Civil Service also vests the CEC with the powers to adopt the procedure for conducting a competition for holding a vacant civil position. The Electoral Code should provide for clear procedures for recruitment, with timeframes that do not hinder the work of the CEC, especially during the election period. Having clear procedures in place would also contribute to the transparency and trust in the system.⁵⁴

62. Finally, it should also be noted, positively, that the draft amendments foresee an increase of the number of representatives of each sex, from a minimum two to a minimum three (Article 43 part 2), which fosters the participation of women in the Commission. Furthermore, it is proposed to introduce the requirement of an annual certification for Territorial Election Commission members (Article 43 part 8), which may increase the qualification of the members of that body and the quality of its work. That said, the fact that the powers of members who do not pass the test are terminated could lead to situations where members may be removed based on political affiliation, and thus the provision would have a negative effect on the impartiality of the election administrations. In order to prevent such situations, the Venice Commission and ODIHR recommend providing such election commission members a chance for repeat tests; only in case of recurring failure their powers should then be terminated.

11. Recount

63. The draft amendments propose new regulations for recounting voting results in polling stations (Article 50). Currently, the electoral precincts selected at random (by drawing lots) are recounted first, while the electoral precincts where a request for a recount has been submitted are recounted last. The proposed amendment changes this process so that the voting results of the polling stations where a recount application was submitted are recounted first, and the remaining precincts are recounted in the last third turn by drawing lots.

64. While this is a reasonable amendment, it should be noted that the Venice Commission and ODIHR have previously recommended granting broader standing to bring challenges against the voting results in electoral precincts, i.e., to include voters in the categories of persons with legal standing to bring these challenges.⁵⁵ The current regulation has been recognised as not providing for an effective remedy, contrary to international standards and OSCE commitments.⁵⁶ Regrettably, the said recommendation has not been addressed by the present amendment and remains valid. Consideration should also be given to granting legal standing to citizen observers.

65. The Venice Commission and ODIHR have also previously noted that the time limit to apply for a recount remains excessively short.⁵⁷ The Electoral Code stipulates that the application could be submitted “on the day following the voting, from 12:00 to 18:00 or on the second day following the voting, from 9:00 to 11:00” (Article 50 part 1). The present draft adds a new paragraph that extends the time limit for applying for a recount to three days. However, such submission requires a substantiated decision of the CEC. Unfortunately, even though the time limit for requesting a recount has been extended, it only applies when the CEC has given a valid reason for it. The

⁵⁴ In their comments on the draft opinion, the authorities indicated that the Law on Civil Service includes regulations on types and features of the competition held to fill a vacant position in the civil service (Articles 9 and 10) that will also be applicable to CEC. While this is envisaged by the Law on Civil Service, a clear reference should also be made in the Electoral Code.

⁵⁵ Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), para. 101.

⁵⁶ Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), section II.3.3(f); International Covenant on Civil and Political Rights, Article 3(a); European Convention on Human Rights, Article 13.

⁵⁷ Venice Commission and ODIHR, Urgent Joint Opinion on Draft Amendments to the Electoral Code and Related Legislation, [CDL-AD\(2021\)025](#), para. 101.

overall time limit for requesting a recount has not changed, despite a previous recommendation by the Venice Commission and ODIHR, which remains valid.

12. Administrative and criminal offences

66. The draft amendments to the Code on Administrative Offences provide for fines in case of certain electoral irregularities, which also reflect the misdemeanours in the Electoral Code. Article 40.17 of the Code on Administrative Offences foresees fines for failure to submit a declaration of property and income by a political party or a candidate. Article 40.19 stipulates fines for posting campaign posters, campaign printed materials in violation of the law. Article 40.18 provides for fines for the head of the community for incorrect information on the description of a polling station and voting room, as well as for a failure to furnish the voting room. Furnishing the polling station as per the legal requirement may not entirely depend on the head of community, as it may also be contingent of available resources and venues, especially when it comes to the accessibility of polling stations for persons with disabilities. Therefore, such a measure appears to be disproportionate and should be reconsidered. The draft amendments introduced to Articles 254 and 255 of the Code on Administrative Offences are technical and reflect new elements of offences of the Electoral Code.

67. The draft amendments to the Criminal Code establish criminal liability for compelling a candidate to recuse or waive his/her mandate. The punishment is stricter when such an act is committed (1) by use of administrative or official powers or the influence resulting therefrom; (2) by use of violence, and (3) by a group of persons. This is positive.

13. Participation of women in the council of elders of a community

68. Regarding elections to the council of elders of communities, Article 141 part 6 in its current form provides the following: if as a result of the distribution of mandates, more than 70 per cent of the mandates of a political party are distributed among representatives of the same sex, the mandates of the more represented sex exceeding 70 per cent shall be passed on to the candidates under the smallest number from the less represented sex.⁵⁸ By this, a representation of at least 30 per cent of each sex shall be guaranteed. However, according to the Rationale of the draft amendments, in practice this approach led to mass recusal or waiver of the mandate making the requirement of the law merely formal. Therefore, the draft suggests that where there are no representatives of the less represented sex in the electoral list, those mandates shall remain vacant. By this amendment, the legislator aims at helping avoid formal nominations and cases of forced self-revocation taking into account the risk of losing the mandate.

69. Both ODIHR and the Council of Europe recognise that legislative measures can be effective mechanisms for promoting women's participation in political and public life.⁵⁹ Further, Article 4 of the Convention on the Elimination of all Forms of Discrimination Against Women⁶⁰ emphasises that the adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination. While the Venice Commission and ODIHR acknowledge the rationale, it should be noted that both the current and the new approach have as a consequence that elected persons (of the greater represented gender, commonly men) do not obtain the mandate though they have been elected according to their position on the list. In other words, it is the law that changes the order of candidates on the

⁵⁸ In addition, Article 130 part 2 para. 4 of the Electoral Code provides the following: "In the electoral list of a political party (alliance of political parties) and each of the political parties included in the alliance, the number of representatives of each sex, starting from the 1st place on the list, must not exceed 70 per cent in each integer group of 3 (1-3, 1-6, 1-9 and subsequently up to the end of the list)."

⁵⁹ See [OSCE Ministerial Council, Decision No. 7/09 in Women's Participation in Political and Public Life](#), para. 2; Report of the Parliamentary Assembly of the Council of Europe on [Increasing women's representation in politics through the electoral system](#).

⁶⁰ See the 1979 [UN Convention on the Elimination of all Forms of Discrimination Against Women](#).

list (instead of the party deciding on the list in this respect), and the change takes place after the election (instead of the time of the party's decision on the list). This may lead to a conflict with the right to elect and be elected as the voter does not know the final, relevant order on the candidate list when voting. Moreover, the new approach will not increase the participation of women unless additional temporary measures are introduced and where relevant adequately enforced. This could be achieved, for example, by providing incentives to political parties to nominate women candidates and by including sanctions for non-compliance with legal requirements. The Venice Commission and ODIHR recommend reconsidering the current and new draft provisions of Article 141 part 6 of the Electoral Code and considering temporary special measures to encourage political parties to present a gender-balanced representation of candidates for the council of elders of a community.

IV. Conclusion

70. On 12 July 2023, Mr Grigor Minasyan, Minister of Justice of Armenia, requested an opinion by the Venice Commission on Draft amendments to the Electoral Code and related legislation. As this Opinion relates to the electoral field, it was prepared jointly by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR).

71. The proposed draft amendments demonstrate a continued effort by the authorities to bring the electoral legislation in line with international obligations and Council of Europe standards and OSCE commitments. In the "Rationale for adoption of the package of draft laws", the drafters indicate that the draft amendments are to be seen in the perspective of the ongoing improvement of the electoral system and meant to address previous recommendations from local and international organisations as well as lessons learned from previous elections. They cover a number of different specific issues, *inter alia*, principles of suffrage; holding elections during emergencies; transparency and accessibility measures; voter lists and registration; party and candidate lists; election campaigns, campaign funding and oversight; misuse of administrative resources; election administration; recount; sanctions; and the participation of women.

72. The Venice Commission and ODIHR welcome that the reform process has been marked by broad consultations and public discussions. On the other hand, the frequency of amendments to the electoral legislation of Armenia in recent years is striking. Further amendments would be necessary as not all previous recommendations have been addressed. The Venice Commission and ODIHR acknowledge the aim to eliminate at least some of the features of the previous electoral framework ahead of the next election but regret that this opportunity was not used to address the outstanding recommendations from ODIHR and the Venice Commission. This is particularly important as international good practice highlights the importance of the stability of electoral legislation and the impact that frequent changes can have on public trust. Frequent amendments furthermore risk confusing voters, parties and candidates, and making it difficult for the competent electoral authorities to apply the law, which may lead to mistakes in the electoral process and, as a consequence, distrust in the elected bodies. A more comprehensive reform could prevent such risks and provide the opportunity for a more structured and clear process.

73. Regrettably, a number of previous recommendations of the Venice Commission and ODIHR have not yet been followed and remain valid, including several key recommendations of the most recent Joint Urgent Opinion of 2021, namely those aimed at reconsidering the provisions relating to electoral thresholds, extending legal standing to allow for voters to submit challenges against election results, clarifying the meaning of "gross violation" as a ground of early termination of powers of a member of a constituency and precinct electoral commission, and providing for longer timeframes to submit an application for recount. The Venice Commission and ODIHR note that several regulations, both in their current and amended form, fail to ensure respect of the principle of proportionality of sanctions.

74. That said, many of the proposed amendments are positive and a welcome improvement, in particular, with respect to transparency and accessibility of elections, equal campaign conditions for all contestants, as well as the structure and functioning of the Central Electoral Commission.

75. In addition to their previous, pending recommendations, the Venice Commission and ODIHR make the following key recommendations:

- A. Further amending the provisions on elections during emergencies (draft Article 7.1 of the Electoral Code), namely: 1) prioritising the temporary halt of the electoral process (its suspension) over its complete termination; fully terminating the electoral process should only be considered as an ultimate option when no other less drastic alternatives are available or when the suspension exceeds a set period of time; 2) avoiding the suspension of elections after voters have already cast their votes; [paragraph 27]
- B. Reconsidering the current and new draft provisions of Article 13 of the Electoral Code in the light of international standards and best practice on personal data protection; the publication of the list of the voters who actually participated in the elections should be avoided, and regarding the publication of voter lists before elections, other solutions which protect the personal data in a better way should be considered; [paragraph 39]
- C. Making it clear in the law that de-registration of candidates and party lists is allowed only as an exceptional measure for the most serious, clearly described, violations of campaign finance regulations; [paragraph 51]
- D. Reconsidering the proposed architecture of political finance oversight split between two different bodies (the Oversight and Audit Service and the Commission for the Prevention of Corruption); in case the currently proposed solution is nevertheless maintained, a clear delineation of responsibilities between the two bodies should be introduced. In any case, the monitoring mechanism must be provided with sufficient tools and resources, including an appropriate number of staff specialised in financial auditing, as well as a clear mandate and obligation to audit financial reports of political parties and electoral contestants, to verify the accuracy of the information submitted, and to initiate investigations of possible irregularities. [paragraph 55]

76. These and a number of additional recommendations are included throughout the text of this Joint Opinion.

77. The Venice Commission and ODIHR remain at the disposal of the Armenian authorities for further assistance in this matter.