



ARMENIA POLICY ALERT

Electoral reform in Armenia: always room for improvement

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The Ministry of Justice with the assistance of the Central Electoral Commission of Armenia drafted amendments to the electoral code and other legal acts to improve existing regulations. These reforms cover a wide range of issues and have been discussed with multiple actors from civil society and the Venice Commission. Changes include but are not limited to: holding elections during a state of emergency, modifying CEC's internal structure, safeguarding the gender quota, and revising party and campaign funding and oversight. Even though many changes are set to come into force on January 1, 2024, according to the draft, the bill has yet to pass in Parliament.

Reshaping principles of suffrage: additional guarantees or tautology?

The draft amendments add two new suffrage principles to the existing five. Fair and genuine elections are the new additions to this list. The “Principle of Fair Elections” implies the need to ensure universal and equal suffrage, equal opportunities, lawful and public funding of elections, honesty during voting and counting of votes, and quick and effective examination of complaints. At the same time, the “Principle of Genuine Elections” implies the need to disclose the freely expressed will of the people and its direct implementation. These two principles are intended to ensure and strengthen the other five basic principles. However, the current regulations in the electoral code explicitly and implicitly assign the state responsibility for conducting fair and genuine elections.

Consequently, Venice Commission have raised concerns regarding the added value of the proposed principles. They argue that these principles overlap with existing commitments and principles and that, in effect, ensuring the thorough execution of existing commitments and principles would sufficiently guarantee that elections are fair and genuine.

Holding elections during emergencies: turbulent region and turbulent times

Since 2020, Armenia has been impacted by several global and regional crises: COVID-19, the 44-day war (or Second Nagorno Karabakh war), the May 2021 and September 2022 border invasion of Armenian territories, and the Azerbaijan offensive in 2023 and the resulting forced displacement of Armenians from the Karabakh region. During this span, national and local elections were held. Given the time and tensions in the region, the new draft amendments address the possibility of conducting elections during emergencies or martial law. In case martial law or a state of emergency is declared after calling elections, including on the voting day, the electoral process shall be deemed to be terminated by law. If martial law or a 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 summarizing the results has become impossible.

In general, the clarifying provisions of the new principles for emergencies are an enhancement of existing legislation. Yet, the termination of voting results due to emergencies may be exploited for non-democratic purposes. This could be particularly true when the decision to summarize election results rests with the CEC, a body not directly elected.

Enhancing transparency and accessibility

The draft amendments aim to ensure more transparent and accessible elections with the following changes:

- ▶ Increased utilization of video recording and real-time transmission for election day activities in polling stations, as well as for sessions of the territorial election commissions, which will also be audio recorded. Regulations are also to be established for the maintenance and provision of a recordings archive.
- ▶ The current provisions permit only organizations with non-governmental legal status to observe elections. The right to observe elections is set to become more inclusive, with the amendments granting organizations with the legal status of foundations, specialized in human rights and elections, the right to observe elections.
- ▶ Draft provisions oblige authorities to take measures necessary for voter accessibility. Furthermore, voters with “mobility difficulties” will be able to indicate their preferred polling station online from a list of accessible stations and vote in said location. Although not all polling stations are sufficiently equipped to guarantee accessibility for all voters, the acknowledgment of the issue and proposed measures are encouraging.

One document to vote

Draft amendments reveal that from January 1st, 2025, voters will only be able to vote with one document: an identification card and other documents won't be eligible. Observers assess this positively and note that this change may help increase the credibility of elections and lower the risks of double voting. However, there have

been numerous reports of challenges related to issuing ID cards, due to high demand, long queues, and technical difficulties. Therefore, it is crucial to be fully prepared, both technically and administratively, before the transition.

Political party oversight and campaign funding

Currently, general oversight over political parties and their financial activities is conducted by the Corruption Prevention Commission (CPC), while the oversight over campaign funds is administered by the Central Electoral Commission (CEC). With the current regulations, the campaign funds oversight function is planned to be passed from the CEC to the CPC at the beginning of 2024. However, draft amendments revise the current provisions, suggesting that the CEC will continue to oversee campaign funds. The official reasoning is that it is necessary to separate the oversight over the ongoing financial activities of the parties from the oversight over the payments and expenses made to the election campaign funds. Moreover, both agencies are confident as things stand and there is no conflict concerning redistribution of functions.

Nonetheless, the Venice Commission stresses that the oversight of general party finances and campaign funding by the same body would have some advantages in terms of efficiency and consistency. It advises that the draft be revised to retain oversight function and build necessary capacities in one institution. However, at the current stage, the CPC lacks the capacity to comprehensively execute all the functions, which is acknowledged by all stakeholders. Hence, an interim solution could involve extending the deferral period, allowing the CEC to maintain oversight of campaign finance for a year or two until the CPC develops the necessary capacity.

Another proposed change concerns the eligibility to fund election campaigns. The existing regulations stipulate that campaigns can be funded by contesting candidates, political parties, and natural persons who have the right to vote both for majoritarian (applied in local elections in very small communities) and proportional (applied elsewhere: parliament and larger communities) elections. The proposal suggests that in elections conducted through a proportional system, only contesting political parties fund their own campaigns. The official rationale is to simplify accounting and reporting, thereby facilitating oversight of campaign funds.

Additionally, individuals intending to contribute to the campaign can donate funds directly to political parties, which will then transfer these contributions to the campaign funds. However, this new approach rescinds the right of certain groups to finance election campaigns. The Law on Political Parties specifies that only natural persons holding Armenian citizenship can finance political parties. It's important to

note that in the electoral code, the term 'right to vote' also extends to non-Armenian citizens in local elections. Consequently, the proposed changes would deprive non-Armenian citizens of the right to contribute to campaign funding while still retaining their voting rights. Since the rationale of the draft amendments lacks any clear reasoning concerning this proposal, we can assume that the limitation of rights wasn't deliberate but rather a miscalculation. Before passing the bill in parliament, citizen observers proposed reexamining this issue.

The last noteworthy change in campaign and party finance underlines that natural persons making contributions should specify their names, surnames, and personal identification document number /social security number, which is not subject to publication. This change aims to enhance oversight of campaign funding, reducing the risks of exceeding financial caps by using various personal documents. There are also suggestions from almost all stakeholders to not publish donor data for small contributions, which is acceptable.

Protecting gender quota

The electoral code regulates that if over 70% of a political party's mandates go to one gender, the excess mandates will transfer to candidates of the underrepresented gender, aiming for at least 30% representation for both genders. However, this practice led to many recusals or waivers, making it more of a formality. The proposed amendment suggests leaving mandates vacant if there are no candidates of the underrepresented gender, aiming to prevent forced withdrawals and ensure fair nominations. This proposal presents a highly practical solution to a commonly encountered issue in local elections. However, the draft amendments do not address the other quota requirement during mandate distribution in the electoral code: the 70-30 balance between partisan and non-partisan candidates in party lists. The latter proved to also be an issue based on the evidence from the latest Yerevan municipal elections.

Addressing inner flaws or agency problems?

Furthermore, draft provisions address the inner structure and staff of the CEC. Regarding the topic of gender balance, the CEC addresses the problem of disparity with the increase of the number of representatives of each sex within its own body, from a minimum of two to a minimum of three in the commission (7 members in total). These changes grant the CEC greater independence from the government in its staff recruitment. While the changes are generally positive, there's a concern that they might lead to staff expansion and reduced accountability in staff appointments. These concerns are mainly based on the specific regulation, which grants CEC

officials the right to fill vacant civil servant positions in a non-competitive basis solely by promoting existing staff members.

Recommendations

With the above points in mind, there are multiple recommendations that should be considered in the proposed amendments:

1. Establish suffrage principles that are both mutually exclusive and collectively exhaustive. Ensure that these principles can be effectively implemented in practice.
2. Review the conditions that lead to the termination of elections by virtue of law during emergencies. Ensure that the challenges faced are proportional to the response provided.
3. Grant the authority to determine the impossibility of summarizing elections during emergencies to a democratically elected body, such as parliament, with decisions informed by the opinion of the Central Electoral Commission (CEC).
4. Implement a gradual process to bring all polling stations up to international standards, ensuring accessibility for all voters.
5. Periodically monitor the issuance of identification cards in preparation for the smooth transition to a single voting document.
6. Extend transitional provisions for one or two years to allow the Corruption Prevention Commission (CPC) enough time to build sufficient capacity to effectively oversee both party financing and campaign funding.
7. Review and reinstate the right of non-Armenian citizens with voting rights to participate in campaign funding.
8. Discuss the possibility of not publishing donor data for small contributions to election campaigns.
9. Address and safeguard the 70-30 balance between partisan and non-partisan candidates in party lists using a mechanism similar to that employed to protect the gender quota.
10. Restrict the Central Electoral Commission's authority to fill vacant positions on a non-competitive basis and ensure that this practice is not exploited.



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