



Office for Democratic Institutions and Human Rights

**ASSESSMENT OF THE ELECTORAL CODE
OF THE REPUBLIC OF ARMENIA**



**Warsaw
10 January 2001**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXECUTIVE SUMMARY	2
III	THE FOUR AGREED POINTS.....	3
IV	ELECTORAL COMMISSIONS.....	6
V	COMPLAINTS, APPEALS AND VIOLATIONS	7
VI	VOTER LISTS	8
VII	TRANSPARENCY SAFEGUARDS	9
VIII	NOMINATION AND REGISTRATION OF CANDIDATES.....	10
IX	CAMPAIGN.....	12
X	CAMPAIGN FINANCE.....	12
XI	GENERAL VOTING ARRANGEMENTS.....	13
XII	SPECIAL VOTING ARRANGEMENTS	14
XIII	COUNTING AND PROCESSING OF RESULTS	15



Office for Democratic Institutions and Human Rights

**OSCE/ODIHR ASSESSMENT
OF THE ELECTORAL CODE OF THE REPUBLIC OF ARMENIA**

Warsaw, 10 January 2001

1. INTRODUCTION

- 1.1 This report provides brief comments on the Armenian Electoral Code (“the Code”). It includes suggestions on possible amendments, some of which are needed to promote compliance with relevant international standards and OSCE commitments; others are of a more technical nature. It is based on an unofficial English translation of the Code, the accuracy of which has not been verified.
- 1.2 In November 2000, a team from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) travelled to Armenia to gather information on the election reform process.¹ This report draws on comments and observations made during meetings with Mr Artak Sahradyan (Chairman of the Central Electoral Commission), Mr Victor Dallakyan (Chairman on the Parliamentary Commission for State and Legal Affairs), and representatives of the President’s office, the political factions in Parliament and non-governmental organisations. The report also draws on written proposals and observations obtained from Mr Sahradyan and from two NGOs, the Women’s Republican Council and the Civil Society Union.
- 1.3 The report is presented as a working document. It is hoped that it will serve as a source of constructive comment at a roundtable with the CEC, parliamentarians and other interested persons to be held shortly in Yerevan.
- 1.4 Prior to the November visit, Mr Dallakyan had invited comments on four specific areas: the distribution of majority and proportional seats in Parliament, the formation of electoral commissions, voter lists and military voting. A detailed paper setting out some comparative guidance on how these issues can be addressed was prepared by the International Foundation for Election Systems (IFES).

¹ The team consisted of Andrew Bruce, ODIHR Election Adviser, and Joseph Middleton, an independent election consultant, who was commissioned to prepare these comments for the ODIHR. He has previously worked on elections in and the election laws of Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia including Serbia, Georgia, Romania, the Russian Federation including Chechnia, Tajikistan, Turkmenistan, Ukraine, the United Kingdom and Uzbekistan.

- 1.5 The report sets out and comments on four priority reforms which have been agreed in principle by the parliamentary factions. It then provides observations and recommendations on various themes arising in the Code, both generally and in relation to particular elections, although the focus is on rules and procedures common to all elections. It is noted that the Code does not deal with the conduct of referendums, which continue to be regulated by a 1991 law.
- 1.6 A number of defects and internal contradictions in the Code have been set out in two documents provided by the chairman of the CEC. In general these have not been reproduced in this report.

2. EXECUTIVE SUMMARY

- 2.1 In general terms, the Code is a comprehensive, largely cohesive body of regulations which provides a sound foundation for the conduct of elections. It has many strong qualities and has obviously been drafted to address the specific circumstances arising in the Armenian political environment. It is clear from the OSCE/ODIHR reports on recent elections in Armenia that the main concern has been failure to implement the existing legislation rather than defects in the legislation itself. However, there are numerous areas where the Code could be improved.
- 2.2 There are four priority reforms which have been agreed among the political factions: (1) a 94/37 split between proportional and majority seats in Parliament; (2) the CEC to be formed by each faction in Parliament appointing one member and the government appointing three members; (3) conscripts to be prevented from voting in local and majority elections; and (4) refugees not to be permitted to vote if they have not obtained citizenship. There is nothing in these proposals which gives rise to objections. On the contrary, they address legitimate and important concerns and have been reached by a process of broad political consensus.
- 2.3 There are various areas where amendments to the Code would enhance election transparency, promote equality among candidates and help to ensure the security of the ballot. These include the following:
- Nominating bodies should not enjoy the power to withdraw their nominees from electoral commissions, either during an election period or at any other time.
 - The registration of a candidate or list should not be revoked except for serious breaches of the Code according to well-defined criteria.

- There appears to be an extremely large number of voters who will be unable to vote for purely practical reasons, given the absence of early, proxy, mobile and other forms of special voting. Mechanisms should be found to reduce the number of voters excluded in this way.
 - The protocol arrangements provide little by way of transparency safeguards if superior electoral commissions are not required promptly to publish summary tables of all the results from the next inferior level of electoral commission. Such tables should form part of each superior commission's protocol of results.
 - The procedures and criteria for verifying signatures in support of candidates should be set out in the Code.
- 2.4 Given that many of the rules governing the conduct of referenda will be common to the conduct of elections, it is recommended that such rules be brought into the Code itself rather than being set out in a separate law.

3. THE FOUR AGREED POINTS

- 3.1 Shortly before the November visit, the parliamentary factions reached consensus on four priority reforms in the Code. It now seems very likely that these amendments will be adopted in the near future. It is noteworthy that consensus on these issues appears to extend to the CEC, the President's office and the NGOs consulted during our visit. The issue of how to improve the voter lists does not appear to have formed part of this agreed position.

Issue 1: distribution of seats in Parliament

- 3.2 The Constitution provides that there are 131 seats in Parliament. The method of filling them is regulated by the Code, which currently allocates 75 seats to single-mandate constituencies by a majority vote. The remaining 56 seats are allocated by proportional representation (PR) among party lists.
- 3.3 It is now agreed that there should be 94 seats filled by PR and 37 by majority vote. The mechanics of how seats are to be distributed under each system do not yet appear to have been agreed.
- 3.4 It is understood that Parliament has already approved the 94/37 division of seats on a first vote.

Comment

- 3.5 It is understood that this reform has two underlying motives. The first is that a larger number of PR seats will help to promote the development of political parties in Armenia. The second motive addresses concerns about the way in which some majority seats have been won. In particular, it is felt that a

number of majority seats have been occupied by persons who have relied on money and local influence to secure victory in the majority vote.

- 3.6 In general terms, the choice of election system is a constitutional choice rather than an issue of election law as such. Where, as in the present circumstances, the proposed change emerges from broad political consensus, it seems unlikely that any principled objection could be taken. The mechanism adopted should, of course, reflect the commitment in paragraph 7.5 of the Copenhagen Document to allow independent candidates to seek public or political office. With 37 majority seats, it seems likely that this commitment will continue to be implemented in the Code. Otherwise, there appears to be nothing inherently objectionable or problematic about the proposed amendment.

Issue 2: composition of electoral commissions

- 3.7 It appears to be agreed that each faction within parliament will appoint one member to the CEC with the government appointing a further three members. This would mean that the Parliamentary factions appoint about two thirds of the members of the CEC. The present rules allowing the CEC to elect its own chairman, deputy chairman and secretary would remain. Similar rules would apply to the formation of the regional electoral commissions (RECs).

Comment

- 3.8 As far as the agreed proposal is concerned, none of the political factions consulted appeared to suggest any particular concern that the government should appoint as many as three members.
- 3.9 To a significant extent the CEC must reflect competing political interests in the election process. Opposition parties and candidates should be confident that they have played a full part in the work of the CEC and have been able to scrutinise everything done by the CEC. Whilst the proposed amendment no longer affords representation on the CEC to parties not represented within Parliament, it does appear to secure the general objective of ensuring political plurality in the administration of elections.
- 3.10 A number of interlocutors suggested that the CEC should comprise civil servants whose activities and impartiality would be monitored by proxies acting on behalf of the political parties. However, it seems to be agreed that such an arrangement is premature at the present stage.

Issue 3: military voting

- 3.11 It is proposed that conscripts should not be permitted to participate in majority (as opposed to PR) voting for the national Parliament or in local elections.

Comment

- 3.12 This proposal seeks to address two concerns about disproportionate and improper influence. The concerns arise because conscripts are often concentrated in relatively large numbers as compared to the local civilian population. The first concern expressed by our interlocutors was that it is unreasonable that conscripts should effectively be able to determine the results of majority voting in a particular constituency or the results of a local election when they have no long-term connection with that locality. The second concern is that the voting power of conscript populations and their vulnerability to manipulation creates the risk that their votes will be abused in favour of an influential local candidate.
- 3.13 As a matter of principle, the Code should ensure universal and equal suffrage for all adult citizens.² As far as the majority vote for the national Parliament is concerned, the argument that conscripts lack a lasting local connection is not entirely persuasive. Candidates elected by majority vote are not merely delegates of their constituency; they are also deputies in the national parliament. In much of their work they will seek to promote the national interest as well any local interest. Conscripts are as entitled to have their preferred candidate promote the national interest as any other voter. However, it is clear that the proposed reform addresses legitimate, substantial and real concerns. Moreover, this reform would only impose temporary restrictions on the conscripts' right to vote. In fact for many conscripts, depending on the timing of elections, this restriction may have no effect. For these reasons, this proposal is reasonable. It would therefore comply with Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which prohibits unreasonable restrictions on the right to vote.

Issue 4: refugee voting

- 3.14 It is agreed that refugees who by definition have not obtained Armenian citizenship should not be permitted to vote except in local elections.

Comment

- 3.15 Obviously this issue has achieved prominence in Armenia given the relatively large number of refugees in the country. Despite simplified procedures for obtaining citizenship, most have declined to do so.
- 3.16 International standards do not require that persons should be permitted to vote if they are not citizens. Both the ICCPR and the Copenhagen Document specifically refer to the right of citizens to participate in elections. Therefore, since citizenship is available to those refugees who want it and since this issue has been controversial in previous elections, this is a positive proposal in the Armenian context.

² Paragraph 7.3 of the Copenhagen Document

4. ELECTORAL COMMISSIONS

4.1 System of electoral commissions

4.1.1 The Code presently provides a three-tier system of electoral commissions headed by the CEC. A precinct electoral commission (PEC) is formed for each polling station. The only commission operating between the PEC and the CEC is the regional electoral commission (REC), of which there is one for each *marz* (province) and one for the city of Yerevan. In practice this causes significant organisational problems, particularly in Yerevan. It is difficult for the Yerevan REC to exercise effective control over all of the city's PECs and to conduct the processing of votes efficiently.

4.1.2 The chairman of the CEC has proposed that intermediate electoral commissions (IECs) should be formed between RECs and PECs. The IECs would operate for one month prior to the election. One would be created for each 50-60 PECs. This is clearly a desirable development. It would require consequential amendments throughout the Code. The main obstacle to such a reform would be budgetary constraints. However, it seems clear from our interlocutors that there is a significant problem with the present system of electoral commissions and that additional provision in line with the CEC proposal would be entirely appropriate.

4.2 Method for formation of CEC

4.2.1 The new rule on the formation of the CEC, which seems very likely to be incorporated into the Code, has been considered above.

4.2.2 At present the Code allows political parties who have put forward a member of the CEC to dismiss that candidate.³ A number of interlocutors suggested that this rule be removed. This seems to be a very positive suggestion. The present arrangements have seen electoral commission members removed in the middle of an election period causing serious disruption to the administration of elections. Once appointed, it is desirable that members of electoral commissions commit themselves to promoting elections which are fair for all participants. The pursuit of partisan interests with the threat of dismissal permanently hanging over members is not conducive to such an objective and tends to undermine the professionalism of electoral commissions.

4.3 Timing for formation of CEC

4.3.1 The present rules envisage the formation of the new CEC about 40 days prior to the parliamentary election. The majority of interlocutors expressed strong and understandable concerns about such arrangements. It is inevitable that such a fundamental change in personnel will have a damaging and

³ Article 35(4); 38(2)(2)

destabilising effect on the administration of an ongoing election process. It has therefore been suggested that the CEC should be formed shortly after elections to parliament and should remain in office until after the subsequent parliamentary elections. OSCE/ODIHR agrees.

4.4 Rights and powers of electoral commissions and their members

4.4.1 The chairman of the CEC has proposed that members of the CEC should enjoy the protection from prosecution envisaged in Article 33(2) of the Code throughout their period of office, not just during the period of national elections. This appears to be an appropriate measure to protect the integrity of CEC members. It is recommended that the expression “during the period of elections”, which appears in various parts of Article 33, is more clearly defined. In other respects, Article 33 provides essential safeguards to protect and promote the full participation of electoral commission members in the work of the commissions.

4.4.2 Numerous interlocutors expressed concerns about the implementation and non-observance of the existing electoral legislation. It is strongly recommended that the CEC’s obligations should include a duty to provide an analysis of violations of the Code following each national election and an indication of measures taken against violators and remedies provided to those aggrieved.

4.4.3 The Code should set out clear deadlines by which the CEC must adopt the various regulations envisaged in the election process.

5. COMPLAINTS, APPEALS AND VIOLATIONS

5.1 Article 40 sets out rules for appealing the acts and omissions of electoral commissions to a court. It is recommended that these rules include an indication of the particular level of court to which appeals may be made. Article 40(5) provides that polling day is deemed a working day for court employees and the procurator’s office. Given that elections will usually be held on a Sunday and the need for the availability of a prompt remedy in the period immediately preceding the election, it is recommended that this rule also extends to the day before polling day.

5.2 Chapter 31 of the Code establishes liability for violations of the Code’s provisions. As indicated above, non-enforcement of sanctions for breaking the election law has been a serious problem in recent elections. This part of the Code should be the subject of careful review. A number of the violations identified appear to be far too loosely defined (such as “hindering the free expression of the voter’s will” and “hindering the election functions”), and as such can be subject to abuse or arbitrary interpretation.

- 5.3 It is a matter of concern that the Code seeks to impose liability for dissemination of false information about candidates or parties. It is strongly recommended that the ordinary rules on defamation should apply to elections. The relevant rules on defamation must establish clear burdens and standards of proof. It is undesirable that political parties should have a reputation which can be protected by criminal or administrative sanctions, as this creates an unjustifiable threat to freedom of expression.

6. VOTER LISTS

- 6.1 The existing rules on voter lists within the Code appear to be fully compliant with relevant international standards. They are meant to be regularly updated and voters should have effective opportunities to make any necessary corrections. However, international reports on recent Armenian elections suggest that defective voter lists were perhaps the single most important and prevalent problem. Numerous reports suggest that on polling day, large numbers of voters were found to have been omitted from the voter lists, in many cases even when these voters believed they had submitted corrections to the provisional lists. Furthermore the overall framework for civil registration which is regulated by a governmental resolution does not appear to be harmonious with the Electoral Code.
- 6.2 One of the problems facing the authorities in Armenia is ascertaining the number of citizens entitled to vote in the country. The issue is not so much the arrival of refugees, most of whom have not taken on citizenship and are therefore not entitled to vote in any event. Rather, the problem arises from the number of Armenians who have left the country in recent years. The last census, in 1989, put the population at nearly 4 million, yet the present population is now thought to be much lower.
- 6.3 Voter lists are compiled on the basis of residence registration (*propiska*). However, only a small fraction of those who leave the country go to the trouble of de-registering. Therefore, the official number of voters is probably inflated.
- 6.4 A separate problem is that *propiska* data is either out-of-date even in respect of those who have remained in Armenia or is not being conveyed to the local mayor or community head, who is responsible for maintaining the lists. Furthermore, according to Government Resolution number 821 of 25 December 1998, *propiska* data is registered by the Ministry of Interior. There are no legal provisions for the Ministry of Interior to share this data with the mayors or to assist in any other manner with compilation of voter lists.
- 6.5 It is understood that the Armenian authorities have done a great deal of work with UNDP to computerise the voter lists. The procedures involved in computerisation and the status of the computerised lists should be fully set out in the Code. It would appear that the main priority on this issue is to forego ad

hoc and widely varying methods of compiling voter lists and set out a clear, detailed and perhaps centralised procedure on the maintenance of voter lists. Practice suggests that the detailed rules do need to be set out in the Code rather than in CEC regulations.

- 6.6 The reference in Article 10(3) to “the nearest settlement” should presumably be to “the nearest precinct”.⁴
- 6.7 It is not clear why voter lists are paginated for up to 1,000 voters⁵ when there can be up to 3,000 voters in a precinct. It may be that this is an error in translation.
- 6.8 As pointed out by the Civil Society Union, Article 15(2) appears to reproduce Article 17(1).

7. TRANSPARENCY SAFEGUARDS

- 7.1 The Code contains numerous provisions designed to enhance transparency in the election process. It sets out rights and functions for candidate/party proxies, domestic and international observers and representatives of the media.
- 7.2 It is worth spelling out in clear terms that proxies, observers and representatives of the media are entitled to monitor the processing of the results at the REC (and the IEC if IECs are to be created).
- 7.3 One serious deficiency relates to protocols of results. Interested parties are entitled to obtain a copy of the protocol from the PEC. However, the value of such a protocol is fundamentally diminished if the superior commission is not obliged to prepare and issue copies of a summary table, showing a full breakdown of results for each polling station. Without such a breakdown of results, it is not possible to track the election results from one level to the next. In practice such tables would obviously be prepared on a computer and could simply and cheaply be reproduced for all interested parties. The CEC should also produce such a table. Such an amendment should be introduced to the Code.
- 7.4 If IECs are set up as recommended by the CEC, corresponding provisions will be required in relation to IEC protocols.
- 7.5 An organisation involved in election observation can be stripped of its observer accreditation if its accredited observers “support any candidate or party”. This is a draconian rule which could be subject to abuse. Obviously, “support” can be provided in very many different ways. For instance, the fact that one observer says something which might conceivably be interpreted as supporting a candidate or party in some way could lead to the whole

⁴ cp. Article 16(3)

⁵ Article 11(3)

organisation losing its accreditation. Stringent definition and safeguards should be introduced in this provision.

- 7.6 Article 30(1) provides that observers, proxies and media representatives may attend sessions of electoral commissions. Again, this may benefit from clearer definition: for instance, presumably there will be limits on who can attend sessions of the CEC, and a proxy for a majority candidate in one constituency should not be attending polling stations in a different constituency. A similar point applies to Article 30(3). Also, the rights and responsibilities of proxies with a consultative vote should be set out more clearly.⁶
- 7.7 The rights of proxies, observers and media representatives should extend to accompanying election materials from one commission to another. They should also be permitted to observe the verification of signatures in support of a candidate or party list.
- 7.8 Article 30 prohibits restrictions on the rights of proxies, observers and media representatives; presumably, the words “otherwise than in accordance with the present Code” are implied, and might usefully be added.
- 7.9 The code does not appear to address the question of scrutiny of military voting on military bases by civilian personnel, including domestic and international observers.

8. NOMINATION AND REGISTRATION OF CANDIDATES

- 8.1 Article 18(8) allows a court to revoke the registration of a candidate or party on the basis of a breach of established campaign procedures. It is recommended that this provision refer specifically to breaches of the campaign rules contained in the Code rather than, for instance, provisions in CEC regulations. In any event, the revocation of a candidate’s or party’s registration is a draconian response and should only be available where there are serious breaches of the legislation, defined in the Code. As a general rule, the Code should distinguish serious violations from those of a technical nature.
- 8.2 Nominations for president require 35,000 signatures in support. Article 70(3) provides that the CEC randomly selects 2% of the signatures and verifies them. It is not clear whether the signature list is verified on the face of the document (for instance, ensuring that the same signature does not appear more than once) or is subject to more penetrating analysis (for instance, contacting the person named on the list to ensure that s/he really did sign it, or subjecting the document to handwriting analysis). It is essential that the Code sets out very clearly the procedure and criteria for verification. Otherwise, there is obvious and dangerous scope for discretionary and potentially discriminatory practice.

⁶ Article 30(3)

- 8.3 Article 70 should indicate the maximum number of signatures which may be submitted for verification. Also, if the CEC identifies sufficient signatures to take the number of valid signatures just below 35,000 (the Code could identify the exact figures), a candidate should have an opportunity to make up the missing numbers rather than have the entire registration dismissed. Alternatively, there should be streamlined procedures for re-submitting lists in a second application for registration.
- 8.4 The above concerns apply equally to verification of signatures in support of parliamentary candidates.⁷ For all elections, the Code should make clear that those seeking registration of a candidate or list must have an opportunity to correct any minor errors in their registration documentation.
- 8.5 The Code also requires aspiring presidential candidates to pay an election deposit of 5,000 times the minimum salary.⁸ There is a risk that the combination of these requirements will limit the presidential race to a very small number of individuals who enjoy both substantial public support *and* significant financial backing. Therefore, the deposit required should be reduced to a more reasonable level.
- 8.6 For parliamentary elections, it may be expedient to clarify that a citizen may be nominated for only one PR list *or* one majority constituency.⁹
- 8.7 The Code should also identify the court to which a refusal to register a candidate can be challenged.¹⁰ It should also require the court to consider the decision without delay.
- 8.8 Article 104(1) permits parties to nominate candidates for the majority vote. It should make clear whether this right extends to party alliances, and if so, whether the parties which have formed such an alliance lose the right to nominate candidates in their own right.
- 8.9 Article 72(2)(6) should identify the members of a candidate's family (i.e. which relatives) whose income must be disclosed.¹¹
- 8.10 It is not clear why Article 107 requires 2,000 signatures to be collected in support of a nomination for a majority seat yet Article 108(2)(1) requires at least 2,500 signatures to be submitted in support of the candidate.

⁷ See Articles 100(10), 102(1), 107.

⁸ Article 71(1)

⁹ Article 96(2)

¹⁰ See Articles 75(1), 102(7).

¹¹ See also Articles 106(1)(6), 123(5)(4).

9. CAMPAIGN

- 9.1 In general terms the Code appears to promote unimpeded access to the media on a non-discriminatory basis in accordance with paragraph 7.8 of the Copenhagen Document. However, it is not clear to what extent the rules identified in the Code extend to private media. Article 20(3) refers to candidates and parties having the right to airtime on local television and radio stations on equal conditions but does not make it clear whether this rule applies to state, private or all media companies.
- 9.2 Article 23(3), which prohibits assemblies in groups within 50 metres of a polling station, would benefit from redrafting. First, the term “group” obviously requires definition. Second, this appears to be an unwarranted restriction on freedom of association; the provisions in Article 23(1) already prohibit campaigning in the vicinity of polling stations.
- 9.3 The Code does not appear to provide any special rules on campaigning on military bases or a prohibition on such campaigning. Given the general concerns about the role of the military in elections, this is clearly an issue which ought to be addressed.

10. CAMPAIGN FINANCE

- 10.1 Article 25(1) permits “candidates and parties” to create an election fund. This provision must make clear whether “candidates” includes candidates on a party list for parliamentary elections.
- 10.2 Article 25(3) permits the CEC to establish the procedure for voluntary contributions to election funds. It is suggested that such procedure might usefully be set out in the Code itself, at least in outline.
- 10.3 Article 25(7) permits a court to revoke the registration of a candidate or party which has used funds other than those in the campaign fund “for the pre-election campaign”. Again, this is a draconian measure which must be very carefully defined. If such a rule is to be included, the Code should define much more clearly what is meant by spending “for the pre-election campaign”. For instance, if a candidate uses premises during the campaign paid for by his party, makes a telephone call or uses a party-owned vehicle, and does not offer to meet the costs of each item from his campaign fund, has he violated this Article? A more obvious objection is that the rule does not appear to address at all the issue of campaign spending by someone other than the candidate or the party. The present position may allow the court considerable discretion in determining what amounts to spending “for the pre-election campaign”. This means that participants in the electoral process may not know where they stand and that the law may be applied in a discriminatory fashion as between different candidates and parties.

- 10.4 Article 26 envisages an oversight and audit service to audit both the organisational costs of elections and campaign spending. As the chairman of the CEC has pointed out, the Code would benefit from including clear procedures on the organisation and timing of this body's activities.

11. GENERAL VOTING ARRANGEMENTS

- 11.1 As indicated by the chairman of the CEC, there are obvious discrepancies between the rules on ballot paper format in various parts of the Code which need to be resolved.
- 11.2 Article 53(1) provides that all the ballot papers must be signed by 20:00 on the day before the election by three specially identified members of the PEC. Observer reports suggest that there were serious problems in meeting this deadline during the last election. Moreover, the point of signing ballot papers is to enhance security of the ballot. This is rather undermined if the signed ballot papers are left in storage for at least 12 hours, even if they have not yet been stamped. It may therefore be more effective to have the ballot papers stamped and signed (by one or two members of the PEC) immediately before they are issued, in the presence of the voter.
- 11.3 The fixed assignment of roles to PEC members established in Article 53 may be over-rigid. If PEC members are allowed to perform varying functions during the course of polling day this helps to reduce tedium (and thus enhance concentration) and allows members to cover for each other when someone needs a break.
- 11.4 The Code should indicate that the specimen ballot papers to be displayed at polling stations are to be specially provided by the CEC.
- 11.5 Article 54(1) should clarify that all military voters, *including* officers, should leave the polling station as soon as they have voted. Equally, any person who has brought arms into a polling station at the request of the PEC chairperson in order to restore public order must be required to leave as soon as order is restored.
- 11.6 The Code should indicate what documents may replace a passport as valid ID for voting.¹²
- 11.7 Where more than one ballot paper is being issued (for instance, the two ballot papers issued for parliamentary elections), the Code should also indicate whether both ballot papers are issued at the same time, whether separate ballot boxes are to be used, and which ballot papers will be processed first.

¹² Article 55(3)

- 11.8 A number of interlocutors have suggested that voters should be required to make a specific mark, such as a cross, on the ballot paper. This stems from reports about corrupt candidates who had provided voters with an incentive, such as money, to vote for that candidate. It was said that such voters were required to make a specific mark on the ballot paper (such as a 'V') so that the candidate would know that the corrupted voter had indeed voted for him.
- 11.9 The appropriate response to such allegations is to enhance measures to protect the security of the ballot and ensure that more corruption in election practices is detected and punished. There are good reasons not to require all voters to use the same mark on the ballot paper. First, voting procedures should be kept as simple as possible. Many voters will undoubtedly misunderstand instructions on the precise mark to be used and their votes will accordingly be lost. Moreover, the task of the PEC will be made much more difficult, as each ballot will have to be scrutinised with great care to make sure that any mark conforms with the rules. This can massively extend the scope for discretion and disagreement.
- 11.10 Following on from this point, Article 58 should clarify that a ballot is deemed invalid if the intention of the voter is unclear.

12. SPECIAL VOTING ARRANGEMENTS

- 12.1 The present Code has broken with established practice by dispensing with most special voting procedures. There no longer appears to be any provision for the use of mobile ballot boxes; this appears to be the effect of the Code, notwithstanding Article 2.4, whose meaning is not entirely clear. Nor is there any provision for proxy or postal voting or early voting. This is clearly designed to deal with past abuses. As a result, a number of citizens will effectively lose the right to vote for a particular election. This will include all those who are sick and infirm, to the extent that they cannot physically attend the polling station, those such as police officers and election officials whose official duties take them away from their home areas for polling day, and those who for any other business or leisure reason, or for purpose of medical treatment, are away from their home areas on polling day.
- 12.2 The Armenian authorities are clearly well-aware of the restrictions on voter rights that this state of affairs creates. Our interlocutors point to a single reason for such restrictions: the fear of abuse. The present rules therefore represent a difficult balance between ensuring universal suffrage and reducing the risk of fraud. It is certainly true that any system which allows for early, mobile, proxy or postal voting gives rise to a greater risk of abuse than arises in the ordinary course of voting; most of the usual transparency safeguards cannot effectively be applied to such alternative methods of voting.

- 12.3 If enforcement and implementation procedures were more effectively implemented, the risk of abuse in practice could be significantly reduced. However, this would require commitment and significantly greater efforts than in the past by government authorities, the courts and the Procuracy. With such commitment, it should be possible to restore the right to vote to a large number of those who would otherwise be excluded from the franchise. Whilst the specific mechanisms for doing so are of perhaps secondary importance, there are certainly a number of examples of special voting procedures which are employed elsewhere in the region with reasonable success.
- 12.4 Article 52(1) appears to provide that persons in detention pending criminal investigation and trial are to be conveyed to their home constituency in order to vote. This is a most surprising rule in the light of the preceding paragraphs. It was apparently not implemented in the last election and, as the Civil Society Union has suggested, it should be removed. This may mean that such persons lose the right to participate in the majority vote if they are not being held in their home constituency.

13. COUNTING AND PROCESSING OF RESULTS

- 13.1 Article 60(2) provides that the PEC chairman takes one ballot at a time and declares the validity of the ballot and who the voter has voted for. Practice suggests that this is an extremely slow method which might be replaced with a system allowing all members of the PEC to participate in sorting the ballots, acting subject to the scrutiny of observers, proxies and the like.
- 13.2 Articles 61(7) and 62(8) should require protocol copies to be issued ‘without delay’. Equally, copies of the summary protocol must be displayed at the precinct ‘immediately’.¹³ There is no justification for waiting for the superior electoral commission to ‘approve’ the results of the PEC before the results are displayed.
- 13.3 The Code should spell out the detailed procedures for cancelling and packaging unused ballots.

¹³ Article 62(8)