



American University of Armenia

A master essay:

Voter registration and voter lists. Correction of inaccuracies before and on Election Day

Prepared by the LLM 2nd year student

Tigran Harutyunyan

Yerevan, Republic of Armenia

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“...that government of the people, by the people, and
for the people, shall not vanish from this earth.”

*President Abraham Lincoln
Gettysburg, 1863*

1. Transaction Description. Public Policy/Private Interest clarification

The right of all adult citizens to participate in the affairs of their government is one of the cornerstones of democracy. Perhaps the most fundamental form of participation is the right to vote in free and fair elections. Among the number of international instruments, such as conventions or covenants, the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR) provides this essential right also. In particular, article 21 of UDHR provides that “everyone has the right to take part in the government of his country, directly or through freely chosen representatives”. The ability to exercise the democratic right to vote is based on the existence of a comprehensive and inclusive voters list, which is maintained to ensure that each eligible citizen is registered to vote once and only once.

Voter registration in some democracies requires citizens to check in with some central registry before being allowed to vote in elections. In other countries, registration is the responsibility of the government, either local or national. Whatever the requirement, the primary purpose of registration is to prevent the perpetration of fraud during elections. With an authentic list of qualified voters, election officials can prevent unqualified voters from voting, or from voting more than once in the same election. Once a voter’s name is registered, it is usually not removed from the registration lists unless some occurrence necessitates the removal of the person’s name from the list. The typical reasons for removing or excluding an individual’s name from the registration lists include the voter’s death, declaration of insanity or mental incompetence, conviction for a crime, change of name upon marriage, and change of address¹.

The recently intensified worldwide struggle of people for free and fair elections, often at great personal risk, demonstrates how important this right has become to individuals everywhere. The notion of democratic elections may be said to be rooted in the fundamental concept of self-determination. The principal concerns underlying the concept of democratic elections are expressed variously as the rights of people freely participate in the political life of their country and the right of all members of society

¹ Alexander J. Bott – Handbook of United States Election Laws and Practices (p. 43)

to active participation in defining and achieving development goals for themselves and for their country. This approach is echoed also in the ICCPR, which provides that by virtue of their right to self-determination, all people have the right freely to determine their political status².

In a democratic system a high degree of political legitimacy is necessary because elections divide the population into 'winners' and 'losers'. Free and fair elections are essential in assuring the consent of the governed, which is the foundation of democratic system. They are at once provide with both, power and legitimacy, just as unfair and sham elections may spread doubt on a leader's claim to office and diminish the ability to govern. Elections that lack legitimacy can serve for instability and provide an environment in which corruption can quickly raise. Thus, free and fair elections, being an important concept for the members of democratic society to exercise their right to govern, are also important instrument for government, because they provide the government with legitimacy to operate, as officials are chosen through the popular will.

2. Armenian Legal Framework

In the Republic of Armenia (RA), the legislative framework for elections consists mainly of the 1995 Constitution, as amended by the referendum in November 27, 2005, the 1999 Electoral Code, as amended in 2005, the Civil Procedural Code, the Criminal Code, decisions of the Central Election Commission (CEC) and decisions of the Constitutional Court.

The articles 9 – 14 of the Electoral Code³ provide the main regulation of the voters' lists registration related issues. In particular, article 9, which is titled "*Compilation and Maintenance of Voter Lists*", provides that voter lists are compiled and maintained by the *Passports and Visas Department of RA Police*⁴ ("The Department"). The important provision in this article is that The Department is compiling and maintaining voters' lists by the marzes and communities as a one unified list – that is the RA voters' register. Article 10 and 11 of the Electoral Code, which are titled respectively "*Inclusion of Citizens in Voter Lists*" and "*Requirements for the Voter Lists*", encapsulate the main requirement for someone to be included in the list - that is to be registered in a given community. These articles also regulate the situations when citizens are not registered in the given

² Article 1 of the ICCPR

³ Amended on 07.06.2005

⁴ 13a Mashtots str., Yerevan, Armenia. Head of the Department – Alvina Zaqaryan.

community, but live there temporary or permanently, or in the event of the State elections citizens that registered in the other community, but live temporary or permanently in another community. In the latter situation, all these citizens should fill out an application, but not later than five (5) days prior to Election Day, to The Department or to its branch requesting inclusion of their names in the voter lists. According to the article 11 voter lists are compiled as a journal and the maximum number of voters in each list should be no more than one thousand (1000). An important provision stipulates the article 13 – “*Publicity of voter lists*”, that is the department allocates the RA voter’s list in the Internet. Another important article from this chapter is Article 14⁵ – “*Procedure for the Consideration of Applications about the Inaccuracies in Voter Lists and the Correction of the Lists*”, provides for the procedures concerning requests of citizens regarding inaccuracies in voter lists, to include or withdraw from the list himself/herself or other citizens. According to this article applications should be submitted to the head of the community no later than seven (7) days before the Election Day, or to The Department or the respective branch no later than five (5) days prior to Election Day. The Department or the head of the respective branch of The Department, during one day after receiving an application from the head of the community, considers it and informs citizen about decisions in writing. The important provision of this article is that disputes over inaccuracies in voter lists can be appealed to the court, which shall examine the complaints within three (3) days.

These prior provisions also provided citizens with the fundamental right to vote, to be included in voter lists, and in the cases of inaccuracies to effectively restore their rights. However, a number of

⁵ **Չորված 14.** *Ընտրողների ցուցակների անճշտությունների վերաբերյալ դիմումները քննարկելու եւ ցուցակները ճշտելու կարգը*

1. Յուրաքանչյուր անձ իրավունք ունի քվեարկության օրվանից մինչեւ 7 օր առաջ ընտրողների ցուցակներում տեղ գտած անճշտությունների, իրեն ընտրողների ցուցակում ընդգրկելու կամ ընտրողների ցուցակից հանելու մասին դիմում ներկայացնելու համայնքի ղեկավարին, իսկ քվեարկության օրվանից ոչ ուշ, քան մինչեւ 5 օր առաջ՝ նաեւ լիազոր մարմնի կամ նրա համապատասխան ստորաբաժանման ղեկավարին:
2. Համայնքի ղեկավարը դիմումը ստանալուց հետո՝ 2 օրվա ընթացքում, դիմումը եւ նրան կից՝ հարցի վերաբերյալ իր կարծիքը ներկայացնում է լիազոր մարմնի համապատասխան ստորաբաժանման ղեկավարին:
3. Լիազոր մարմնի կամ նրա համապատասխան ստորաբաժանման ղեկավարը դիմումը ստանալուց հետո՝ մեկ օրվա ընթացքում, սույն օրենսգրքով սահմանված բավարար հիմքերի առկայության դեպքում ընտրողների ցուցակում կատարում է անհրաժեշտ փոփոխություններ կամ ուղղումներ այդ մասին գրավոր տեղեկացնելով դիմողին:
4. Լիազոր մարմնի համապատասխան ստորաբաժանման ղեկավարը ընտրողների ցուցակներում կատարված փոփոխությունների մասին տեղեկություններ է հաղորդում լիազոր մարմնին՝ Հայաստանի Հանրապետության ընտրողների գրանցամատյանում անհրաժեշտ փոփոխություններ կամ ուղղումներ կատարելու համար:
5. Ընտրողների ցուցակներում անճշտությունների վերաբերյալ վեճերը կարող են բողոքարկվել առաջին ատյանի դատարան: Դատարանը եռօրյա ժամկետում կայացնում է վճիռ, որը վերջնական է եւ բողոքարկման ենթակա չէ:
6. Քվեարկությանը նախորդող հինգ օրվա ընթացքում եւ քվեարկության օրը ընտրողների ցուցակներում ընդգրկվելու մասին դիմումների վերաբերյալ վճիռները կայացվում են այն ժամկետներում, որ ընտրողը հնարավորություն ունենա մասնակցելու քվեարկությանը:
7. Քվեարկությանը նախորդող հինգ օրվա ընթացքում եւ քվեարկության օրը ընտրողների ցուցակներում ընդգրկվելու մասին կայացված վճիռների հիման վրա ընտրողների ցուցակներում լրացումներ կատարում է համապատասխան տեղամասային ընտրական հանձնաժողովը՝ քվեարկության օրը, սույն օրենսգրքի 14՝ հոդվածով սահմանված կարգով լրացուցիչ ցուցակներ կազմելու միջոցով:
8. Ընտրական հանձնաժողովներն իրավունք չունեն սեփական նախաձեռնությամբ որեւէ փոփոխություն՝ ճշտում կամ լրացում կատարելու ընտրողների ցուցակներում, այդ թվում՝ լրացուցիչ ցուցակներում:»:

shortcomings were revealed and reported during 2003 Parliamentary elections by the Office for Democratic Institutions and Human Rights (OSCE) and the International Election Observation Mission (IEOM) regarding procedures related to the registration in voter list. For example “voter lists were locally compiled and there were no centralized civil or voter registry to check for potential multiple entries across country borders.” Another example is that records of deceased persons were not efficiently deleted because of imperfect cooperation between institutions. It should be noted here that the old Electoral Code was in force during the Parliamentary Elections in 2003.

3. Case studies

Inaccuracies in voter lists are among the most frequent types of violations during the election process. Examples of violations presented by the OSCE or IEOM are supported by the number of court cases, and also by the report of “It’s Your Choice” (IYC) - a nonpartisan NGO, which is the largest domestic election monitoring institution. Based on analyses of cases and interviews of the IYC practitioners⁶, the most common issues are absence of voters’ names from the list and obsolete voters’ lists in a number of communities.

For example, there were several cases brought before the Constitutional Court of RA by candidates for Deputy to the National Assembly of RA. In these cases applicants argued results of elections in the given electoral precincts, and among other violations during Election Day they mentioned that there were inaccuracies in voter lists, occasions when a person had voted in the place of another and discrepancies between the lists’ handed in the territorial precincts and those used by the Territorial Precinct Commissions (TEC). Particularly, in the case brought to the Constitutional Court by the candidate to Deputy Shavarsh Kocharyan he pointed out that in the 0345, 0351, and 0367 Territorial Electoral Precincts because of these inaccuracies several citizens were forced to request restoration of their rights through the court decisions⁷. The mere facts that the Constitutional Court held to satisfy the applicant’s demand means that these violations have taken place and were among the most common violations regarding the voters’ registration during the Election Day.

⁶ See attachment A

⁷ See <http://www.concourt.am>

Another example is the IYC's report⁸ after 2003 Parliamentary elections, which states the following inaccuracies in voters' lists:

- ✓ As of May 1, voters' lists of Vrgavan village in Ararat Marz were obsolete;
- ✓ As of May 9, voters' lists of Lanjasar community of Ararat Marz were obsolete;
- ✓ In some electoral precincts (precincts # 36/7, 36/9, 36/12, 36/15) of Vanadzor, not all the pages of voters' lists were stamped and signed;
- ✓ More than ten names of voters were not included in the voters' lists in Precincts # 36/2, 36/5, 36/11, 36/14 of Vanadzor;
- ✓ The voters' lists in Gyumri contained more inaccuracies compared to the recent Presidential Elections.

To summarize the IYC's report it is worth mentioning that according to the IYC voter lists were relatively accurate. This is also confirmed by the few who voted through court authorization. However, IYC recommended developing and implementing effective methods of forming and updating voter lists.

4. Step-by-step description of the transaction

Putting aside the data brought above the main steps for a citizen⁹ to be included in the voter list are as follows:

1. Citizens must be registered (by the respective branch of The Department) in the given community;
2. Citizens, who are not registered in the given community, but leave there temporary or permanently should fill out an application, not later than five (5) days prior to Election Day, to The Department or to its respective branch requesting inclusion of their name in the voter list. They are included in the voter lists based on the certificate of place of residence;

⁸ See <http://www.iyc.am/parliament.htm>

⁹ It would not be considered here procedures regarding inclusion of names in voter lists for military personnel and for citizens that are under detention.

3. Citizens that are registered in the other community but leave there temporary or permanently should fill out an application, not later than five (5) days prior to Election Day, to The Department or to its respective branch requesting inclusion of their name in the voter list. These citizens should produce certificate that they are not included in the voter lists of that community.

Further are given steps that should be taken by citizens to restore their names in voter lists:

1. A citizen not later than 7 days before the Election Day should produce an application to the community head about inaccuracies in voter list regarding himself/herself. A citizen can also, not later than 5 days before Election Day, produce an application to The Department or to the its respective branch¹⁰;
2. Disputes over inaccuracies in voter lists may also be challenged in the First Instance Court. The Court during three days makes decisions which are not a subject to appeal¹¹.

Above described steps represent description of the transaction based on the amended Electoral Code. To provide an anecdotal analysis of the transaction it was decided to gather materials from courts and from interviews with peoples engaged in the 2003 Election process. Four identical letters were written¹² to the Central Electoral Commission (CEC), First Instance Courts of districts of Ajapnyan - Davidashen and Kentron - Nork-Marash districts and also to the Cassation Court of the Republic of Armenia asking them to provide with data, including cases brought to the First Instance Courts by citizens regarding inaccuracies in voters lists which took place during Parliamentary elections in 2003. CEC answered that based on the law all applications should have been brought to the community heads and all disputes should have been brought to the First Instance Courts. No answers were received from two First Instance Courts. And only Cassation court provided with¹³ the overall number of inaccuracies taken place during 2003 Elections (Presidenciarry, Parliamentary and Local Self-Governance) in those two districts: 1518 in the Kentron – Qanaqer and 1669 in the Ajapnyak – Davidashen. The next source of information was director of IYC Mr. Harutyun Hambardzumyan. But

¹⁰ After receiving an application the head of the department or its branch, when there are enough reasons according to the Code, during one day makes changes or corrections in voter lists and informs in writing to the applicant.

¹¹ Applications about inclusion of citizens into voter lists brought 5 days prior to or on the Election Day are considered in such a timeframe that to make it possible for citizen to participate in the voting.

¹² See Attachment B (a copy of a latter).

¹³ Khandilyan Lusine- statistic's department specialist.

he also provide only with general information such as about 3000 voters voted with court decision or that many people could not find their names in the voter lists, most of which left the precincts without voting and did not go to the courts.

5. International Best Practice (IBP)

This section will provide the summary of key features of international best practice in respect of regulation of voters' lists issues. This summary is based on the analyses of the respective legislation of the United States of America (USA), Canada, Sweden and the Russian Federation.

In common law jurisdictions, such as Canada and the USA, a voter must be registered before she/he is eligible to vote. Unless a civil registry is used as the basis for voters' lists, registration is the responsibility of both the voter and the electoral management body. The electoral management body provides the means for registration, but the voters usually must make the effort to register and provide proof of their eligibility.

For instance, Canada keeps a permanent National Register of electors from which preliminary lists of voters are drawn up. The National Register of Electors is maintained using a number of different sources, including federal income tax returns. Returning officers¹⁴ update the preliminary voter lists during the revision period of an election. Elections Canada¹⁵ officers carry out door-to-door revision in targeted areas where elector information needs updating, such as in new subdivisions. There are several ways to add citizen's name to the voter list for the federal election:

- ✓ Contact local returning officer;
- ✓ Citizens can register at the advance poll. They must show a "valid official document" with name, address and signature, such as a driving license, or two valid official documents, one with name and address such as an electricity bill, and one with name and signature, such as a library card. The deputy returning officer will complete a registration form which person must sign;

¹⁴ Returning officers are the election officers responsible for the conduct of a Canadian federal election in each federal riding.

¹⁵ Elections Canada is an independent, non-partisan agency set up by Parliament which reports directly to Canada's Parliament. Its ongoing concern is to fulfill its responsibility to ensure Canadians can exercise their choices in elections and referendums in an open and impartial process.

- ✓ They can also register at the polling station on Election Day. The person must show valid identification as described above for registering at an advance poll. He/she must also make a sworn statement of his/her identity and residence, and have another elector registered in the same polling division make a sworn statement to vouch for him/her.

Similarly, in the USA once a prospective voter satisfies all the qualifications¹⁶ there may still be one additional prerequisite to voting – the need to register with State officials as a voter. Registration laws require individuals to demonstrate to the appropriate election official that they possess all the qualifications for voting. The procedure may require that individuals take an oath or sign an affidavit stating, for example, that they are citizens of the USA, residents of the State, and eighteen years or older. Some States require individuals to apply in person, while other States permit individuals to register by mail. Another aspect of the registration process is to require individuals to register a number of days before a primary or general election. For example, Arizona requires a person to register fifty days before the general elections, Alabama, on the other hand, has a requirement that a person register on the day before the general elections¹⁷. It can be stated that in the USA, a State's constitutional provisions or statutes put the burden of registering on the individual voter. By contrast, in Canada the government maintains the National Register of electors as described above.

In common law and civil law jurisdictions the key features of regulation of voter lists' issues are basically the same except one major difference – responsibility of registration. In Sweden the National Tax Board, which is the central election authority, is responsible for planning and coordinating the holding of elections. The tax authority is responsible for compiling electoral rolls and printing voting cards. To be entitled to vote, a person must be included on an electoral roll. An electoral roll is compiled for each constituency prior to every election, and includes only those persons who are qualified to vote at that particular election¹⁸.

Whether a person is qualified to vote is determined by the details held in the Civic Registers of the tax authorities 30 days before the Election Day. This means that voters, resident in Sweden, are included on the electoral roll in the electoral district where they are registered as resident 30 days before Election Day. Voters are entitled to vote in the county or municipality where they are already registered as resident. The electoral rolls may be analysed on computer medium at the tax authority

¹⁶ All States, either in their constitutions or statutes, require that a voter be a citizen of the USA. Every state requires in its constitution and/or its statutes that a person must be a resident of a State in order to vote in an election in that State.

¹⁷ Alexander J. Bott (1990) – Handbook of United States Election Laws and practices (p. 43).

¹⁸ <http://www.legislationline.org/>

(the local tax office). Anyone who considers that the electoral role contains inaccurate information about themselves must send a request in writing to have the information corrected. It is provided that such a request must be delivered to the tax authority no later than on the Monday before Election Day. The electoral rolls are then printed and delivered to the Election Committees on the Thursday before Election Day. Voting cards are dispatched at such time that they may be expected to reach voters 18 days before Election Day. Anyone who has lost his or her voting card may receive a duplicate from the municipal Election Committee, the County Administrative Board or from the Swedish Election Authority.

The key features regarding voters' lists in the Russian Federation are regulated by the Chapter III of the Federal Law on the Election of Deputies of the State Duma of the Federal Assembly of the Russian Federation (2003). Particularly article 15, which is entitled "*Compilation of Voter Lists*", provides that voter lists shall be compiled by appropriate election commissions separately for each electoral precinct in accordance with the form established by the Central Election Commission of the Russian Federation. In the second part of the same article it is stated that a territorial election commission shall compile voter lists not later than 21 days prior to voting day on the basis of voter data furnished by the head of a municipal unit (if the charter of a municipal unit does not provide for this office, then by a person authorized to do so by the representative body of local self-government), the commanding officer of a military unit, or the head of an institution where voters are temporarily staying. In the part 9 of article 15 it is provided that the compilation of voter lists may be made by use of the State Automated Information System. Further, Article 16 ("*Procedure for including citizens on the voter lists*") provides that all citizens of the Russian Federation who are eligible to vote in accordance with Article 4¹⁹ shall be included in the voter lists. The grounds for including a citizen in

¹⁹ **ARTICLE 4. Electoral Rights of a Citizen of the Russian Federation in the Election of Deputies of the State Duma**

1. A citizen of the Russian Federation who has attained to the age of 18 years on voting day shall be entitled to elect deputies of the State Duma in the federal electoral district.
2. A citizen of the Russian Federation who has attained to the age of 18 years on voting day and permanently or currently resides in the territory of the given electoral district shall be entitled to elect a deputy of the State Duma in a single-mandate electoral district.
3. A citizen of the Russian Federation who has attained to the age of 18 years shall be entitled to participate in the nomination of candidates (lists of candidates), election campaigning, monitoring of the conduct of the election and the work of election commissions, including determination of voting returns and election results, and in the performance of other electoral actions in accordance with the procedure established by this Federal Law, other federal laws.
4. Eligible for election as a deputy of the State Duma shall be a citizen of the Russian Federation who has attained to the age of 21 years on voting day.
5. A citizen of the Russian Federation who resides or stays outside the Russian Federation during the period of the preparation and conduct of the election shall have the same electoral rights as other citizens of the Russian Federation in the election of deputies of the State Duma.

the voter lists in a certain electoral precinct shall be the fact of his/her permanent or current residence in the territory of the given electoral precinct as established by bodies in charge of registration of citizens of the Russian Federation at the place of their stay or residence within the Russian Federation in accordance with the federal law regulating the procedure for realization by Russian Federation citizens of the right to the freedom of movement, choice of the place of stay or residence within the Russian Federation. In the fourth part of the same article it is provided that citizens of the Russian Federation who reside outside of the territory of the Russian Federation or stay abroad on prolonged business trips shall be included on voter lists on the basis of his/her application submitted not later than one day before the Election Day to the Territorial Electoral Precincts.

There are other differences that might be explained on the *developed v. developing* counties approach. In developed countries there are greater resources, established practice and well-financed institutions on which the regulated event can be based. In developing countries lack of resources and established practice, and newly established institutions hamper or undermine the process of regulation of issues related with voter lists. As a consequence, the IBP in developing countries tends to be criticized by the international community, as for example in Belarus. However, while most of the key issues and mechanisms are the same for both common and civil law systems, the main difference between their handling of the regulated event is that in the common law systems the burden of registration is usually born by the individual voter while in civil law systems governmental agencies take initiative.

6. Procedure Evaluation

It is without doubt that provisions of the Electoral Code should ensure that an objective, unbiased, independent and effective structure is in place for administering elections. Whatever the structure of administration of elections in the country, legal guarantees should be in place to isolate electoral administration from bias or corruption.

The policy behind the regulated event (voter lists/voter registration) is to prevent the perpetration of fraud during elections, and this matches with the general policy of the law – the right of all adult citizens to participate in the affairs of their government. The Code of Good Practice in

6. A citizen of the Russian Federation found incapable by a court or kept in places of confinement under a court sentence shall have no right to elect or be elected.

Electoral Matters, adopted by the Venice Commission in 2002²⁰, states that fulfillment of the following criteria is essential if electoral registers are to be reliable:

- ✓ The registration should not take place at the polling station on Election Day;
- ✓ There should be an administrative procedure - subject to judicial control - or a judicial procedure, allowing for the registration of a voter who was not registered;
- ✓ A similar procedure should allow voters to have incorrect inscriptions amended;
- ✓ A supplementary register may be a mean of giving the vote to persons who have moved or reached statutory voting age since final publication of the register.

The amendments to the Electoral Code, that created a permanent national register of voters, constitute positive change in this regard²¹. The Commission²² also noted changes in the law regarding provisions on supplementary voters' lists (Article 14¹) and stated it as an improvement to the law. The law in the second chapter provides for a clear definition over the content of the National Register of the respective responsibilities of the Central Election Commission (CEC), The Department and the community heads. In general, the electoral administration should be carried out by the professional electoral commissions without the involvement of political officials who may often be involved in the elections as a candidate or have other political interests²³. Concerning this the provision of the Article 14.2, which provides that community head sends the application with his/her opinion over the matter, can be considered as fulfilling the above stated requirement and thus, it can be argued as meeting the policy requirement of the regulated event. The final amendments to the law eliminated the role of the CEC and the TEC over the compilation of voter lists almost completely. Also, according to the adopted amendments, the CEC would not adopt procedures regarding the publication or distribution of copies of the voters' lists. It is assumed that such procedures are adopted by The Department. All mentioned improvements are considered as steps to fulfill the policy requirements - to prevent the perpetration of fraud during elections and to insulate electoral administration from bias or corruption.

²⁰ Preliminary joint opinion on the revised draft amendments to the electoral code of the Republic of Armenia by the Venice commission and OSCE/ODIHR (March, 2005).

²¹ Final opinion on the amendments to the electoral code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR (October, 2005).

²² European commission for democracy through law (Venice commission).

²³ Preliminary joint opinion on the revised draft amendments to the electoral code of the Republic of Armenia by the Venice commission and OSCE/ODIHR (March, 2005).

However, it should be stated that the Electoral Code in spite of the listed improvements has some deficiencies. One of the issues within the regulated event deserving attention is the provision of the amended Article 13, which provides that voter's lists compiled in the military units, institutions of keeping a person under arrest and signed voters' lists are not free for public review. This intention might be understood in regard to military units considering the need for secrecy, but it is not clear for what purposes such is required regarding to the institutions of keeping a person under arrest and signed voters' lists. It should be stated that previously there was a practice of checking the signed voter's lists in TEC²⁴. One of the risks of this limitation might be creation of a situation for falsifying final results of the elections by electoral authorities. Activities of this character, namely creation of corrupted environment, would in its turn obliterate completely the policy requirement of the law.

In respect of the Electoral Code's shortage it is worth mentioning also the Venice Commission's opinion regarding the amendments, which in summary states that:

- ✓ Although the amendments to the Electoral Code constitute overall improvement, good faith implementation of the Code remains crucial for the conduct of genuinely democratic elections. Electoral rules facilitate fair elections and democratic results only if they are not neglected nor abused by the authorities responsible for their implementation. Most international observers have pointed out that the biggest shortcoming in the conduct of elections in Armenia lies in the implementation of the Electoral Code, not in the Electoral Code itself. Among the most important concerns has been the failure by authorities to take measures against those violating the election law. Therefore, the success of the amendments depends on the implementation of them in practice;
- ✓ Additionally, the Electoral Code could still be improved, particularly in the areas of electoral administration and election complaints. Of particular concern for the Commission are the provisions for filing election complaints and appeals, which fail to create a sound legal framework for the adjudication of election disputes and protection of suffrage rights. (Final opinion on the amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR (October, 2005)).

²⁴ The information gained during a private conversation with Avet Grigoryan – a deputy of the National Assembly till 1999.

In general, the voter registration process would benefit from greater transparency. The Department could consider establishing contacts with representatives of the political parties and the civil society in order to explain the methodology of compilation of voters' lists. Such an approach has the potential to raise confidence in the accuracy of future voter lists. The reform might further benefit if experience is exchanged with those local government units which developed their voter lists successfully under previous legal arrangements. The cooperation issue is stressed also by the Commission. Particularly it stated that: "cooperation between the CEC and The Department is still necessary, and the provisions eliminated from the Electoral Code should not be an obstacle to such cooperation".

7. Recommendations for reform.

As previously stated, the main shortcomings in the Armenian Electoral Code are: (a) the provision of Article 13, which provides that voter's lists compiled in the military units, institutions of keeping a person under arrest and signed voters' lists are not free for public review; (b) implementation of the Code in general; and (c) procedures for submitting complaints and appeals. However, as far as the last issue is not directly related to the compilation of voter lists, it would not be discussed here and recommendations would be given in regard first two issues.

a) Paragraph 1 of the Article 13 provides that provides that voter's lists compiled in the military units, institutions of keeping a person under arrest and signed voters' lists are not free for public review. It is recommended here that all language which prohibits public review of the lists be deleted. Moreover, it should be added that within two (2) days after the end of the Elections those lists should be kept in the Territorial Electoral Precincts in a place accessible to the public so that anyone wishing to check his/her signature can approach and do so. This recommendation is made with the view of enhancing the public control over the election administration processes. Particularly, it would be practically impossible to falsify the results of the elections by the election officials, for example by signing instead of citizens who choose not to vote. Thus, having this provision in the Electoral Code it would be able to decrease the potential level of inaccuracies and to lessen the possible environment for corrupt activities during elections.

In the event of noticing by citizens that there is a signature in front of their names in the voter lists, which means that they have voted, they should have a right to fill an application about the accident and submit it to the First Instance Court. It is recommended to submit to the Court and not to the TEC, the Department or to the Police, because all these three offices are considered as officials administering the election process. By virtue of the law the TEC and the Department are directly involved in the process and the Department is the branch within the Police. Thus, granting regulation of a situation created by member(s) of one of the mentioned institutions to the same institution would be meaningless. Moreover, considering that the Judiciary, as a separate branch of government, and already involved in the regulation of the issues related to inaccuracies in voter lists makes it logical to have them to handle this situation as well.

It might be argued by opponents to this recommendation that there are corrupt practices within the Judiciary as well, and it would be ineffective to designate the solution of the problem to them. Although there is logic to this argument, it should be stressed that in comparing the Judiciary and the mentioned three institutions in the handling the situation the probability to have more positive results is much higher with the Judiciary. Despite of the desire to eliminate completely the corrupt practices during election processes, it should be stated that one must be more realistic, and that is why it was stated in the beginning that the recommendation was done with the intent not to eliminate but to lessen the possible environment for corrupt activities during elections.

b) As it was stated above the next issue to be addressed is the importance of implementation of the Electoral Code, and particularly the provisions of the second chapter. Particularly, persons who initiate or commit fraud or severe violations during election processes such as not providing the necessary information to the Department for compiling voter lists (requirement of Article 9.4) or providing the voter lists less than forty (40) days prior the Election day by the Department to the TEC (requirement of Article 12.1) should be punished. Article 143 of the Criminal Code²⁵ regulates these activities; however the main problem is enforcement of the law. For this

²⁵ **Article 143. Breach of citizens' legal equality.**

1. Direct or indirect breach of the human rights and freedoms of citizens, for reasons of the citizen's nationality, race, sex, language, religion, political or other views, social origin, property or other statuses, which damaged the citizen's legal interests, is punished with a fine in the amount of 200 to 400 minimal salaries, or with imprisonment for up to 2 years.
2. The same action committed by abusing official position, is punished with a fine in the amount of 300 to 500 minimal salaries, or by deprivation of the right to hold certain posts or practice certain activities for 2 to 5 years, or with imprisonment for up to 3 years.

purpose it is recommended to create an independent monitoring group, one like the VLAC²⁶ that was created during the 2003 elections, the main purpose of which would be to ensure compliance with the law's requirements by the election officials. It might consist of one representative from all political parties, Prosecutor's Office and one member of the Judiciary. Their responsibilities would include, but not limited to, discovery of violations and follow up with step by step implementation of the legal requirements. They would issue reports of their activities and work on raising public awareness of rights envisaged by the Electoral Code to citizens/voters. Taking into consideration the group's nature of being independent it is recommended not to be financed from the State budget but rather be a voluntary body and work not permanently but during elections only. It is recommended also for successful accomplishment of their duties to cooperate with other monitoring missions, NGO's and individuals, such as OSCE, IYC, etc.

It should be noted here that the provision of the Criminal Code that is designed to regulate issues of violations during election processes stands ineffective. The problem here is the implementation of the article. The second paragraph of the Article 143 provides for regulation of "direct or indirect breach of the human rights and freedoms of citizens" by abusing official position. In this context it might be argued by the official that, for example, delay for one day by The Department to provide the voter lists to the Precinct or Territorial Electoral Commissions (requirement of Article 12.1) does not constitute breach of human rights and freedoms within the meaning of Article 143, because there is no particular person whose rights were violated and moreover, it does not constitute violation of Article 143 because lists are anyway provided to the precinct or territorial electoral commissions. Thus, he/she might escape from the punishment, and there would be the same picture of elections administration that exists. For improving this situation and having an effective result it is recommended here to have incorporated in one article for each chapter of the Electoral Code defined all violations of respective articles in chapters. Additionally, these articles should have reference to Article 143 of the Criminal Code stating that these defined violations are subject to regulation by the Article 143 of the Criminal Code. In this case it would be impossible for election officials like in abovementioned example to argue their innocence and stay unpunished.

²⁶ A **VLAC** is a Voters Lists Advisory Committee. A VLAC is made up of various members of the community who believe that accurate voter lists are important for their community and who want to work with the municipality and help it to fulfill its legal obligation to review, verify and update voters lists for each election precinct in the community. VLACs work in communities where local authorities have both expressed an interest in working with their community residents to verify and update voter lists and agreed to update the voter lists with the information gathered by the VLACs.

Next recommendation, which goes parallel with the Commission's opinion and also with the IYC recommendation, is to increase transparency of electoral procedures by protecting the rights of monitors and the media. Particularly, to incorporate in the Article 30 provision that states the right of observers and the media to free movement in the observance of vote counting. The recommendation above would also provide guarantee for implementation of this provision.

In conclusion it should be stressed once again that for meeting the policy requirement of the Electoral Code there must be produced appropriate changes and the most important thing is that there must be a will among population to enforce the law. Citizens have to be motivated, and for this reason it is obvious that some kind of work should be done particularly by NGOs. They should conduct pre-election education of voters, who will have to understand the importance of voter registration. By these means the population would learn about their fundamental rights, thus they would be more prone to exercise them at large.

8. Conclusion

The objectives of this paper were to evaluate issues regarding the regulation of the voter lists compilation and inaccuracies, to assess the precision of meeting the policy requirements of the Electoral Code and in particular of the regulated event by relevant articles of the law, to compare relevant provisions of the Electoral Code with the international standards and finally if there are drawbacks in the law to provide with recommendations for reforms. It is worth mentioning once again that the policy behind the regulation of inaccuracies in voter lists is to stop the perpetration of fraud during elections and prevent unqualified voters from voting.

The new amended Electoral Code implemented many recommendations contained in joint OSCE/ODIHR and the Venice Commission opinions and as to them it constitutes positive improvement in the legal framework for elections. However, it should be noted that some deficiencies are still present in the Electoral Code and the Commission in its report also stated it. These problems are hindering to meet the policy requirements of the law and to go in accord with the international best practice. Of particular concern of this paper are the provisions for free public review of voter's lists compiled in the military units, institutions of keeping a person under arrest and signed voters' lists and good faith implementation of the Code, that remains crucial for the conduct of genuinely democratic elections. To overcome them it was recommended to revise the Article 13 and to provide free access of

the public to the voter lists after elections, to create an independent monitoring group that would look for violations during elections and ensure implementation of the legal requirements. There were made some recommendation to fill the gap and to make effective implementation of the Criminal Code's provision, and to NGO sector to concentrate on the voters' pre-electoral education and raising their awareness. It is obvious that by fulfilling these recommendations it would be met one of the main goals of this paper – that is to lessen the possibility for corrupt activities during the electoral process and provide with the healthy environment for construing the democratic country.

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Attachment A

Today on March 22, 2006 I am (Tigran Harutyunyan “T.H.”) in the Office of the “It’s Your Choice” (IYC) NGO and my interlocutor is IYC’s director Mr. Harutyun Hambardzumyan (H.H.). IYC is a nonpartisan NGO and the largest domestic election monitor in Armenia with 4,000 volunteers, and offices and chapters in all Marzes and communities of Yerevan. From the day of its inception in 1996 IYC monitored Parliamentary by-elections due to vacancies in 1997 and 2004, Parliamentary elections in 1999, 2003, Elections of Local Self Governing Bodies in 1999, 2002 and 2005, Presidential Elections in 2003 and Referendum for Constitutional amendments in 2005. IYC’s mission is to:

- ✓ Promote transparent elections and democratic processes in Armenia;
- ✓ Establish true self-governance and accountability within the government;
- ✓ Encourage citizen participation in community governance;
- ✓ Provide objective, reliable and timely information to Armenian voters.

As far as Mr. Hambardzumyan and the NGO itself were very busy with the upcoming elections in the Ukraine (some of the IYC’s leaders will depart Yerevan on 24 March) we agreed to have a short and more conversation-like interview. My first question:

T.H. As I know Mr. Hambardzumyan, organization that you are leading participated in the monitoring of 2003 Parliamentary Elections. Is it true?

H.H. Yes, IYC was authorized by the Central Electoral Commission (CEC) to conduct a monitoring mission for the May 25, 2003, Parliamentary Elections and Referendum.

T.H. Taking into consideration number of NGO’s volunteers and that it has offices in all Marzes and communities of Yerevan; let me ask you in how many regions of the country IYC provided monitoring?

H.H. IYC monitors observed the Parliamentary Elections and Constitutional Referendum in 16 Territorial Electoral Commissions (TEC) and 700 Precinct Electoral Commissions throughout the country.

T.H. Mr. Hambardzumyan, pursuant to our agreement not to take plenty of your time let me go forward and ask you about violations regarding voter lists during 2003 Parliamentary Elections. Did the IYC’s observers register facts of inaccuracies in the voters’ lists and if yes then what kinds there were?

H.H. Yes, IYC's observers among other violations that took place during the 2003 Parliamentary Elections registered also number of violations regarding voter lists. During pre-election period we found obsolete voters' lists in Mrgavet village and Lanjazat community of Ararat Marz. On the voting day in some precincts (# 36/7, 36/9, 36/12, 36/15) of Vanadzor, not all the pages of voters' lists were stamped and signed. More than ten names of voters were not included in the voters' lists in Precincts # 36/2, 36/5, 36/11, 36/14 of Vanadzor. According to our information as of May 25 about 3000 voters voted with court decision, which speaks about number of inaccuracies related with voters' lists.

T.H. And at the end of our conversation let me ask you about IYC's overall assessment of Elections and recommendations in regard to voter lists.

H.H. In spite of the positive developments observed within the short period between Presidential and Parliamentary Elections, the numerous and various law violations, including abovementioned, detected by our observers testify that these Parliamentary Elections are far from being perfect, do not meet the criteria of democratic elections and were not conducted in accordance with the international standards. Regarding voters' lists inaccuracies we recommended and you can find it in our report which I'll give you, to prosecute those performing election violations and also develop and implement effective methods of forming and updating voter lists. Taking into consideration the mere fact that in 2005 Electoral Code was amended and the voter lists management was changed to one uniform list that maintained by the Passports and Visas Department of the RA Police it assumed that we will have less inaccuracies in voter lists. However, results of 2005 Constitutional amendments referendum do not confirm our assumptions. But I guess it is another theme for conversation.

At the end of our conversation I have thanked Mr. Hambardzumayn for valuable and interesting information provided to me, as he promised I get copies of IYC reports of 2003 Parliamentary Elections and Referendum on Constitutional amendments, 2005 Municipal Elections and 2005 Referendum on Constitutional amendments, and agreed to cooperate in the future.

Attachment B



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Հայաստանի
Հանրապետության
Վճռաբեկ դատարանի նախագահ՝
պ-ն Հովհաննես Մանուկյանին

Հայաստանի Ամերիկյան Համալսարանի
Իրավաբանական ֆակուլտետի
Դասախոս՝ պ-ն Վահան Բուռնազյան
Ուսանող՝ Տիգրան Հարությունյան

Հարգելի պարոն Մանուկյան,

“Ընտրություններ, ընտրական ցուցակների կազմում և նրանցում փոփոխություններ կատարելը” թեմայով ավարտական դիպլոմային աշխատանք գրելու նպատակով դիմել ենք Կենտրոն և Նորք-Մարաշ, և Աջափնյակ և Դավիթաշեն համայնքների առաջին աստիճանի դատարաններ խնդրանքով տրամադրել 2003 թվականին Ազգային Ժողովի ընտրությունների ընթացքում ընտրացուցակներում անճշտությունների հետևանքով քաղաքացիների, նշված համայնքների առաջին աստիճանի դատարաններ, բողոքների ընդհանուր քանակը, եթե այդպիսին տեղի են ունեցել: Տեղեկացված լինելով

տվյալների տրամադրման կարգի մասին խնդրում ենք Ձեր համաձայնությունը տալ վերոնշյալ դատարաններին բավարարելու մեր խնդրանքը:

Հարգանքներով,

թեմայի ղեկավար՝

Վ. Բուռնազյա

ուսանող՝

S. Հարությունյան