CEU CENTRAL EUROPEAN UNIVERSITY

ELECTORAL RIGHTS: COMPARATIVE ANALYSIS OF RESIDENCY REQUIREMENT FOR CANDIDATES IN INTERNATIONAL, ARMENIAN AND GEORGIAN PERSPECTIVES

BY MARGARITA GALSTYAN

LL.M. H.R. LONG THESIS
SUPERVISOR: Zsolt Kortvelyesi
Central European University
1051 Budapest, Nador utca 9.
Hungary

Executive summary

This paper is focused on the elaboration of the right to free elections and particularly limitations to the right to stand for elections. The objective of the research is to discuss the residency requirement as a criterion for candidates to national elections and to show the way it can be invoked for hindrance of the right to free elections.

For the purpose of this research comparative analysis of the international, Armenian and Georgian electoral legislations and regulations has been conducted. Inter alia to international binding documents and case laws of the European Court of Human Rights and UN Human Rights Committee, relevant international requirements, standards for democratic elections and commentaries are presented. In addition to the theoretical discussion, Armenian and Georgian electoral practices and relevant cases from Armenia have been discussed.

The comparative analysis of the international, Armenian and Georgian electoral legislations has enabled me to present and to evaluate the right to free elections in the light of three jurisdictions, to discuss the contradictions and inconsistences among the relevant pieces of legislations regarding residency requirement for candidates. Further, the consideration of presented cases has shown that in Armenian reality the residency requirement has become a tool for the hindrance of electoral rights, which has its implications on the creation of real democracy.

Table of Contents

Introduction

Right to free elections is one of the first generation of human rights and stands in the core of civil and political rights. This right has an important role not only in the human rights dimension but also in the creation a democratic state and rule of law. This approach is also stated in the UN Universal Declaration of Human Rights, Article 21.3 of which states that the authority of the government of the state shall be based on the will of people, which shall be expressed by genuine and periodic elections.[1]

Right to free elections is also stated in the UN International Covenant on Civil and Political Rights and the European Convention of Human Rights. According to these documents right to free elections consists of voting rights and right to stand for elections (active and passive electoral rights). Under both these instruments electoral rights are not absolute rights and may be subject to limitations imposed by states. Such limitations may be age, citizenship, permanent residence, criminal conviction, etc. Each of these limitations may have its implications on the full enjoyment and implementation of the electoral rights. Beside the mention major human rights instruments, rights to vote and stand for elections are also elaborated in different documents adopted by universal and regional international organizations.

In 1993 and in 2001 Armenia has ratified respectively the International Covenant on Civil and Political Rights and the European Convection on Human Rights. According to the Constitution of Armenia these documents are constituent part of its legal system.[2] According to the Armenian legislation (Constitution and Electoral Code), a citizen to be eligible for standing as a candidate for the elections, inter alia to the citizenship and age requirements, must have a

[1] United Nations Universal Declaration of Human Rights, art. 21 part 3, Dec. 10, 1948

[2] RA Constitution, art. 6 part 4, Jul. 05, 1995, amended as of Nov. 25, 2005, RA O.P.S. 1426

permanent residency in the country. This means that a citizen of the Republic of Armenia can be registered and stand as a candidate for the President or for the Member to Parliament if he/she has permanently resided in the country for the last 10 and 5 years respectively. When drafting the relevant provisions of the Armenian Constitution, there were debates, whether it was justified to have such requirements. The rationale behind such high residency requirement was to ensure thigh link of the high level officials with the country. However, residency requirement has become a deliberate tool in the hands of the Armenian authorities. The residency requirement is also stated in the Electoral Code of Armenia, which was adopted in 2011. Before the adoption of the Electoral Code the European Commission for Democracy through Law (Venice Commission) and the Organization of Security and Cooperation in Europe/Office of Democratic Institutions and Human Rights have issued their joint expert opinion on the Code. The comment on the residency requirement considered it disproportionate and unjustified.[3]

The actuality of the research is driven from the Armenian experience of election administration and the arbitrary implementation of the residency requirement by the authorities. This paper will focus on the implications of the residency requirement on the right to stand for elections. Particularly it will address the issue of how the permanent residence requirement for candidates can be invoked for hindrance of the right to free elections. To answer this question the sub questions will be addressed:

- whether the residency requirement for the candidates eligibility may be considered as legitimate limitation under international law
- what is the current state of political rights under national legislations
- how the residency requirement is addressed in national legal framework

[3] European Commission for Democracy Through Law (Venice Commission) &OSCE/Office of Democratic Institutions and Human Rights *Joint Final Opinion on the Electoral Code of the Armenia* chap. 7, points 37-38, Op. No611/2011 (2011)

- what are the practical implications of the residency requirement on the candidacy rights
- whether there are effective remedies for the restoration of violated electoral rights

For the research the analysis of Armenian legislation is conducted. Simultaneously, the relevant international requirements, standards, commentaries as well as Armenian case law, case law of the European Court of Human Rights and UN Human Rights Committee are analyzed. The comparative analysis of the Armenian and international legislation will allow me to present and to evaluate the right to free elections in the light of two jurisdictions, to discuss the contradictions and inconsistences among the relevant pieces of legislations.

As a third jurisdiction Georgian electoral legislation is discussed. The choice of the third jurisdiction is based on the similarities of the start of democratization processes in two countries and differences of approaches that these countries have adopted two decades later. The comparative analysis of the third jurisdiction will enable me to elaborate and contrast the effectiveness of the implementation of the right to universal and equal suffrage.

The structure of the paper is based on the questions that the research is addressing. First the paper shows electoral rights under international law. It discusses both binding and non-binding international requirements, their comparison and contradictions that exist between these regulations. Then it covers national legal frameworks of electoral rights with the focus of residency requirement for candidates to national elections. To give an understanding on current state of electoral rights in Armenia and Georgia a short overview of election processes after the independence of these countries is presented. Further the practical implementation of the residency requirement through cases and its implications on the candidacy rights are presented.

At the end available remedies for the protection of electoral rights and their effectiveness is discussed. The outcomes of the research are summarized in the conclusion.

For the elaboration of this research paper primary and secondary sources are analyzed. For the theoretical background, as well as for defining the nature and the scope of the right to free elections a reference is made, inter alia, to the "Theory and practice of the European Convention on Human Rights"[4], "The European Convention on Human Rights"[5],"The International Covenant on Civil and Political Rights"[6] and other academic sources. International, Armenian and Georgian legislations on the right to free elections are discussed. Relevant cases from the mentioned jurisdictions, as well as number of commentaries and reports are considered. The comparative analysis of the researched sources has enabled to address the problems and questions defined in the paper.

[4] PIETER VAN DIJIK, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (F. Hoof, et al.eds., 4th ed, Antwerp, Intersentina 2006)

[5] FRANCIS GEOFFREY JACOBS, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (Jacobs, White and Ovey eds., 5th ed. Oxford University Press 2010)

[6] SARAH JOSEPH, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS* (Schultz,J. et al., 2nd ed., Oxford University Press, 2004)

Chapter 1: Right to free elections under international law

Introduction

Right to free elections is considered as one of the important rights in creation of democratic state and assuring democratic society. Under international law right to free elections is provided by the international instruments, such as the European Convention of Human Rights and the International Covenant on Civil and Political Rights. It is also elaborated in a number of documents and guidelines adopted by different international organizations and bodies.

This chapter will present the right to free elections under international law. First, the right to free elections will be discussed under UN instrument as generally applicable international law. Further, the discussion will go from the general to more specific regional regulations, the right to free elections will be elaborated, specific and regional international law will be presented, (European Convention on Human Rights and different international documents and guidelines). The emphasis will be given to the right to stand for elections. Limitations of the right and particularly residency requirement as an eligibility criterion for candidates will be discussed.

1.1. Right to vote and stand for elections under United Nation instruments

Article 25 of International Covenant on Civil and Political Rights (hereinafter referred as ICCPR)[7] stipulates that:

"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions […]:

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; […]. [8]

[7] United Nations International Covenant on Civil and Political Rights Dec. 16. 1966, MTDSG chp. IV, 4

It can be seen that Article 25 of ICCPR quite explicitly provides for individual rights and stating all elements that should be guaranteed under these right, such as universality and equality of vote and secrecy of ballot. Universality and equality of vote means that every citizen has right to vote and votes are equal. Secrecy of ballot means that voting should be done in secret. This is considered as one of the guarantees of free expression of will. What is also notable, that Article 25 clearly states not absolute nature of right to vote and stand for elections. Particularly saying that the rights should be provided without unreasonable restrictions, it infers that these rights can be limited.

Right to vote and stand for elections under Article 25 of the ICCPR is elaborated in the first paragraph of the UN Human Rights Committee General Comment No. 25 which has been adopted as an explanatory document. Though it is non-binding, it has an important role for the interpretation of the mentioned article. It recognizes the importance of the rights of every citizen to vote and to stand for elections.[9] These rights are considered essential for citizens to participate in public life of the state. The Committee acknowledges the importance of electoral rights for creation of democratic government. It states obligation of member states to ensure effective implementation of these rights by adopting necessary legislative and regulatory measures.

As it can be inferred from the wording of the Article 25, it is providing right only to citizens. Paragraph 3 of General Comment No. 25 states that: "In contrast with other rights and freedoms recognized by the Covenant (which are ensured to all individuals within the territory and subject to the jurisdiction of the State), Article 25 protects the rights of 'every citizen'".[10] Though limiting the scope of subjects to given right only to citizens, Article 25 of ICCPR states

[8] *Id*, art. 25

[9] UN Human Rights Committee ,*General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25),* para.*3*, CCPR/C/21/Rev.1/Add.7, 1996, http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb

[10] *Id.*

that no discrimination between citizens is permissible in the enjoyment of these rights. Particularly referring to Article 2 of ICCPR, Article 25 prohibits any discrimination based on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Moreover, the Committee states that distinctions on the ground of how citizenship has been acquired (by birth or naturalization) may also be reason for considering its compatibility with Article 25.[11]

According to paragraph 3 of the General Comment 25:"[s]tate reports on the national implementation of ICCPR should outline the legal provisions which define citizenship in the context of the rights protected by Article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Distinctions between those who are entitled to citizenship by birth and those who acquire it by naturalization may raise questions of compatibility with Article 25".[12]

Further in General Comment No. 25, the Committee stated the responsibility of states to take necessary measures to ensure the effective implementation of the right to vote and to be elected. These measures include reducing illiteracy, poverty, ensuring freedom of movement, dissemination of information on voting rights, which will be also in minority languages, etc.[13]

However, the right to free elections provided by the ICCPR is not an absolute right and can be subject to limitations.[14] In General Comment No. 25 the Human Rights Commission has stated that though the right to free elections in not an absolute right and it can be limited, these limitations should be reasonable and justifiable. According to paragraph 15 "[a]ny restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and

[11] *Id.*
[12] *Id*. Para. 3
[13] *Id*. Para. 12
[14] *Id*. Para. 4

reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy. States parties should indicate and explain the legislative provisions which exclude any group or category of persons from elective office."[15]

In case *Gillot et al v. France*, the UN Human Rights Committee (hereinafter referred to as Committee) considered compatibility of limitations of right to vote prescribed by France legislation with rights under Article 25 of ICCPR. [16] The Committee stated that the right to vote under Article 25 of ICCPR is not an absolute right, thus reasonable and non-discriminatory limitations may be imposed on it. The Committee further stated that the restrictions should be evaluated on a case by case basis, considering the purpose of the limitation and the principle of proportionality.[17]

In the present case the Committee found that it was reasonable to set 10 year residence requirement for eligibility to participate in referendum. Considering the purpose of this requirement the Committee looked to the context of the referendum. The rational of such requirement was to show the 'strength' of the links of person to the particular territory thus the involvement and concerns of that person in the future of that place. The Committee also noted that the length of residency can be one of the criteria for eligibility and other reasonable criteria may be established. In considering proportionality of the requirement the Committee stated that it was proportional as had a limited 'ratione loci'. The territorial application of this requirement was strictly limited to that specific territory and was not extended to other national or local

[15] *Id*., para 15
[16] Gillot et al v. France (Communication No 932/2000 France. 26/07/2002. CCPR/C/75/D/932/2000)
[17] *Id*.

elections or other referendums.[18] From this reasoning it can be noted, that residency requirement met the proportionality test because of limited territorial application. Thus it can be inferred that such requirement would be incompatible with Article 25 of ICCPR if it was eligibility criteria for national or other local elections.

1.2. Right to vote and stand for elections: European Convention on Human Rights

1.2.1. Development of the right to vote and stand for elections

The right to free elections under the European Convention on Human Rights (hereinafter referred as Convention) is provided by Article 3 of Protocol No. 1 of the Convention. According to this Article: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."[19] Provisions of this Article are the only instruments related to democratic elections which are legally binding and have Europe-wide applicability. As of August 5 of 2013 out of 47 member states 45 have ratified the protocol.[20]

The fact, that the right to free elections is included in the Protocol No1 to the Convention and not in the main body of the Convention has its rational. Discussions on the inclusion of 'Convention's clause politique' into the main body of the Convention were not unequivocal. [21] During the drafting process of the Convention several draft Articles had been discussed. The politically sensitive nature of the provision made the Committee of Ministers reluctant to include such right into the Convention. It found, that statement of such a right would interfere

[18] *Id*.

[19] European Convention of Human Rights and Fundamental Freedoms, Nov. 04, 1950, CoE T.O. 005

[20] Only Switzerland and Monaco have not ratified the Protocol No1, Status of the Protocol No1, see: http://www.conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=009&CM=8&DF=05/08/2013&CL=ENG

[21] Sergey Golunok, *Right to free elections: Emerging guarantees or two layers of protection*, 27/3, NETH. Q.H.R 361, .364 (2009)

with the sovereignty of states in establishing their governmental structure. The Committee of Ministers' position against inclusion of 'democratic elements' into the main text of the Convention was explained by the statement that inclusion of this provision in the Convention "would be outside the scope of the Convention which aim is to provide guarantees to individual rights, rather than to define the States parties' political structure."[22]

However, this position was not accepted unanimously by the Consultative Assembly. The Chairman of the Assembly's Committee on Legal and Administrative Questions, Sir David Maxwell-Fyfe stated, that the exclusion of any reference to the democratic institutions in the Convention would weaken it. He also found that such provision was aimed to the protection of political rights and liberties, which was of a high importance.[23]

Nevertheless, the text of the Convention, which was signed on November 4, 1950 in Rome, did not include any clause on right to elections. Provisions on right to free elections were introduced by the above mentioned Article 3 of the Protocol No1 to the Convention. The text of this Article can be considered as "a relatively modest account of the role of elections as regards the relationship between government and the people."[24] This can be explained by the text of the Article, which does not contain any explicit individual right and any requirement for the universal suffrage.

From the wording of the Article 3 Protocol No. 1, it looks like it stipulates an obligation for Member States to hold free elections and does not provide a right to individuals. At first, this approach was presented by the European Commission of Human Rights (hereinafter referred as Commission). Its general conclusion was that Article 3 does not provide for individual rights to

[22] *Id*. at 365

[23] Martinus Nijhoff , *Council of Europe, Collected Edition of 'Travaux preparatories' of the European Convention on Human Rights*, V, The Huge/Boston/London, 194 (1979)

[24] Susan Marks, *The European Convention on Human Rights and its 'Democratic society'* 66 Brit. Y.B of Int. Law, 224 (1996)

vote and stand for elections.[25] In its judgment on *X v Belgium* case the Commission stated: "such exclusion [consideration that Article 3 does not provide individual rights] does not prevent the free expression of the opinion of the people in the choice of the legislature."[26]

However this position had been changed later. In later case law the Commission stated the individual nature of the right provided under Article 3 of Protocol No. 1. In the case of *W, X, Y and Z v. Belgium* the Commission stated the following: "…it follows both from the preamble and from Article 3 of Protocol No. 1 that the rights set out in the Protocol are protected by the same guarantees as are contained in the Convention itself. It must, therefore, be admitted that, whatever the wording of Article 3, the right it confers is in the nature of an individual right, since this quality constitutes the very foundation of the whole Convention."[27] Stating that Article 3 provides for universal suffrage, in the same judgment the Commission said: "Article 3 guarantees, in principle, the right to vote and the right to stand for election to the legislature."[28] With these judgments, the Commission recognized individual nature of rights stated in Article 3. Despite not explicit wording of the mentioned Article, it stipulates subjective individual rights to vote and stand for elections, which are enforceable as other rights of the Convention. However, as many other rights provided by the Convention, rights under Article 3 are not absolute, and can be subject to limitations. The implied limitations of right to vote and right to stand for elections will be discussed in the following subchapter.

Right to vote and right to stand for elections are determined by the European Court of Human Rights (hereinafter referred as Court) as "active" and "passive" rights respectively. Under Article 3: "active"-right is right to vote and "passive"-right is right to stand for elections.[29] As

[25] DIJIK, *supra* note 4 at 916-917
[26] *X v. Belgium*, appl.no 1065/61, ECHR, Yearbook IV, 1961, p. 260
[27] *W, X, Y and Z v. Belgium*, appl.no 6745/74; 6746/74, ECHR, Yearbook XVIII 1975, p 236
[28] *Id.*
[29] *Mathieu-Mohin and Clerfayt v. Belgium*, 2 March 1987, § 51, Series A no. 113

it has been established further by the case law of the Court, passive electoral rights are applicable not only to individuals but also to legal entities, such as political parties. In contrary, active electoral rights may be exercised only by individuals. Though the Court gives this separation of right to free elections, it has acknowledged the interconnection of active and passive electoral rights. This link has been stated by the Court in the case of Russian Conservative Party of Entrepreneurs and others v. Russia. In its judgment the Court stated that "voters are entitled under Article 3 of the Protocol No1 to have possibility to choose from a broad gamut of political views and platforms."[30] This statement shows that the right to stand for elections is derived from the right to vote. However, for the effective implementation of the right to vote individuals should be provided with the choice of political alternatives.

Another element that can be discussed is the scope of application of Article 3. It is important to define the scope of the application of rights provided by the Article as it does not have general application to any elections. Particularly, according to the wording of the Article, Member States should guarantee rights under Article 3 'in the choice of legislature'. In determining the scope of the application of Article 3, the nature of the elected body should be examined. It should be examined whether that body can be considered as a 'legislature'. Such analysis should be done in the light of the constitutions of Member States.[31] In its case law, the Court has taken 'case-by-case' approach in determining if certain elected body can be considered as a 'legislature'. This principle has been established in the case of Vito Sante Santoro v. Italy where the Court also stated that it should be examined if the legislation of the State designates certain bodies as law-making authorities. [32] The Court has recognized that regional parliaments

[30] *Russian Conservative Party of Entrepreneurs and Others v. Russia*, nos. 55066/00 and 55638/00, § 79, ECHR, 11 January 2007

[31] Golunok, *supra* note 21, *at 367*

[32] *Vito Sante Santoro v. Italy* , no. 36681/97, § 52, ECHR 2004-VI

or councils may fall within the scope of application of Article 3 if they are vested with sufficient competences and powers to enact legislation.

More complicated is the issue of determination whether the elections of the president of the State fall within the scope of Article 3. Here again the Court referred to the principle established by Vito Sante Santoro and restated that the competences of the president in law-making prescribed by the constitution of the State should be examined. However, if in the case of regional elected bodies the Court extended the scope of application of Article 3 to cover them, in case of presidential elections, it took the opposite position. Irrespective the fact that most of the constitutions of Member States prescribe wide competences in law-making for the presidents, the Court seems reluctant to extend guarantees of Article 3 to presidential elections.

This position has been confirmed in the case of Guliyev v. Azerbaijan, where the Court found that Article 3 was not applicable to the presidential elections of Azerbaijan.[33] The Court stated that under the Constitution of Azerbaijan, the president has not 'pure power to legislate'. Based on the separation of powers stipulated by the Constitution, the office of president cannot be considered as legislature under Article 3.[34]

Nevertheless, in its further case law the Court stated that it did not "exclude, however, the possibility of applying Article 3 of Protocol No. 1 to presidential elections "[…] Should it be established that the office of the Head of State had been given the power to initiate and adopt legislation or enjoyed wide powers to control the passage of legislation […] then it could arguably be considered to be a 'legislature' within the meaning of Article 3 Protocol No. 1."[35] It can be inferred from the above mentioned, that the Court has not adopted clear position on the application of Article 3 to the presidential elections.

[33] *Guliyev v Azerbaijan*, no 35584/02, ECHR, 27 May, 2004
[34] Golunok *supra* note 21 at 369
[35] *Boškoski v. "the former Yugoslav Republic of Macedonia*" (dec.), no. 11676/04, ECHR 2004-VI

1.2.2. Limitations and derogations of the right to free elections: European Court of Human Rights

As it was mentioned the right to vote and stand for elections stipulated by the Article 3 of Protocol No. 1 is not an absolute right. In its judgment on the case of Mathieu-Mohin and Clerfayt v. Belgium, the Court stated that: "The rights in question are not absolute. Since Article 3 […] recognizes them without setting them forth in express terms, let alone defining them, there is a room for implied limitations."[36] As there is nothing in the text of the Article 3 of Protocol No. 1 on limitations of rights stipulated thereof, it is left to the Court to define the scope and elaborate criteria of 'implied limitations'.

The Court has explicitly stated not absolute nature of rights under Article 3 of Protocol No. 1. In the meantime, it has recognized that States have a wide margin of appreciation in making the rights to vote and stand for elections subject to certain conditions. However these conditions should be set in such a way as not to curtail the rights or "…to impair their very essence and deprive them of their effectiveness; that they are imposed in pursuit of a legitimate aim; and that the means employed are not disproportionate."[37] From the wording of the judgment, it can be concluded that the Court has applied general limitation test established by the Convention while considering cases under Article 3 of Protocol No. 1. This means that for determination of alleged violations of electoral rights, the Court would have to look first to the legitimate aim of the applied limitation and then apply the proportionality test.

The scope of regulations compatible with Article 3 of Protocol No. 1 is wide as its wording does not stipulate specific limits or certain aim which a measure must pursue.[38] In the application of general limitation test to the limitations on electoral rights, the Court emphasizes the legitimate aim pursued in justifying the limitations.

---

[36] *Mathieu-Mohin and Clerfayt v. Belgium* , A no. 113, para. 52

[37] *Gitonas and Others v. Greece* , 1 July 1997, § 39,Reports of Judgments and Decisions 1997-IV , *Podkolzina v. Latvia*, appl 46726/99, ECHR 09 July, 2002, para. 33

[38] Golunok, *supra* note 21 at 372

According to the Court's position the revocation (temporary loss) of the right to vote can be considered legitimate when imposed by a judge as a penalty for a specific offence. This approach is also mentioned by the Council of Europe's European Commission for Democracy Trough Law (the Venice Commission) in the "Code of Good Practice in Electoral Matters." It is stated that: "withdrawal of political rights may only be imposed by express decision of a court of law."[39] More detailed discussion of the mentioned document will be done later.

In the *Hirst v. United Kingdom* case the blanket ban for prisoners to vote has been found in violation of Article 3 of Protocol No. 1.[40] Based on its case law the Court once more stated the principle of universal suffrage. At the same time the Court stated that states have a wide margin of appreciation in choosing electoral system, running and administrating elections based on their historical background, cultural and political diversity. Nevertheless, the Court has to assess in each case that compatibility of the measures with the purpose and essence of the right. It is important that the imposed limitations pursue legitimate aim and they are not disproportionate. Such measures should not curtail free expression of will and universality of suffrage. As in cases of protection of other Convectional rights, such as prohibition of torture (Article 3), fair trail rights (Article 6), right to privacy (Article 8), rights under Article 3 also cannot be deprived only because of the status of the person (convicted). Referring to the recommendation of the Venice Commission the Court stated that: "the withdrawal of political rights should only be carried out by express judicial decision. As in other contexts, an independent court, applying an adversarial procedure, provides a strong safeguard against arbitrariness."[41] Applying mentioned principles to the present case the Court found that the State went beyond its margin of appreciation and that the revocation of the voting rights is not

[39] Council of Europe's European Commission for Democracy Trough Law (the Venice Commission) *Code of Good Practice in Electoral Matters*, CDL-AD (2002) 23 rev, 2002, para. p. 1.1 d.,
[40] *Hirst v. United Kingdom* (No 2), no 74025/01, ECHR 6 October 2005 [GC]
[41] *Id*. para. 62

a part of sentencing process. The Court couldn't find a rational link between criminal punishment and deprivation of the right to vote. The Court also did not accept the argument of the United Kingdom that the measure was aimed to enhance "civic responsibility".[42] In this judgment of Hirst, the Court set a precedent, considering that the automatic or general ban on voting of prisoners, which is not a punitive measure but an administrative one (to maintain order and security), is in violation of Article 3 of Protocol No.1.

The Court found as a permissible limitation the deprivation of the right to vote of persons not in the territory of their country of nationality. In case of *X v. United Kingdom* the Court found that in regional (local) elections specific residency requirements to right to vote, may be legitimate under Article 3, when they are aimed to protect minorities of that region from the risk of "dilution".[43] The Court found that the regulation in the Netherlands, based on which persons sentenced to imprisonment for more than a year were deprived of right to vote for three years, was legitimate and did not exceed the States margin of appreciation.[44] However, in practice, this kind of measures can result in an exclusion of a certain group of people from the public participation.

With respect to other measures, such as duration of the temporary suspension of the voting rights, the Court considered important to determine if the measures were disproportionate or arbitrary.[45] For determination of 'arbitrariness' of the measure, the Court looks at the legal basis of the measure in domestic legislation. The measure adopted by a national authority is arbitrary if there is a "lack of clear legal basis for the domestic authorities' decisions."[46] Moreover in recent case law the Court also considered the 'quality' of the law, particularly

[42] JACOBS *supra* note 5 at 528
[43] DIJIK *supra* note 4 at *922*
[44] *Id*.
[45] *M.D.U. v Italy*, appl. 58540/00, ECHR, 28.01.2003
[46] *Krasnov and Skuratov v. Russia* , nos. 17864/04 and 21396/04, 19 July, 2007

considering the clarity of the law and its interpretation by the authorities.[47] Thus the Court added a new element in the analysis of arbitrariness or proportionality of measures. The Court has not addressed, in its case law, the formalities and administrative issues that can affect or condition the right to vote.

As it has been mentioned, the Court makes a distinction between "active" and "passive" rights under Article 3: "active"-right to vote and "passive"-right to stand for elections. The distinction is also made in the scope of limitations of these rights. The "active" electoral rights are granted more protection than the "passive" electoral rights. The case law of the Court has established the scope of acceptable limitations of these rights and stated the wide margin of appreciation of the Member States to regulate in this regard. At the same time the Court has stated that limitations of these rights should not be excessive and arbitrary. The mentioned position of the Court has been summarized in the Grand Chamber judgment in the Zdanoka case:

"[W]hile the test relating to the "active" aspect of Article 3 Protocol No. 1 has usually included a wider assessment of the proportionality of the statutory provisions disqualifying a person or a certain group of persons from the right to vote, the Court's test in relating to the "passive" aspect of the above provision has been limited largely to a check on the absence of arbitrariness in the domestic procedures leading to disqualification of an individual form standing as a candidate."[48]

Nevertheless, the general approach is the same: the measures should not be arbitrary, unreasonable or unjustifiable. The Court did not find Greek regulation on limiting civil servants to stand for elections as arbitrary or disproportionate in the case of *Gitonas v. Greece*. The Court explained its position by the fact that candidates holding public office may enjoy some prestige among ordinary citizens due to their position, thus influence on their free choice. The Court noted that such provisions for disqualification serve for the purpose of ensuring

[47] *Kovach v. Ukraine*, no. 39424/02, § 57-59, ECHR 07 Feb., 2008
[48] *Ždanoka v. Latvia* [GC], no. 58278/00, §115(e), ECHR 16 Mar., 2006-IV

proper functioning of democratic institutions. They are important for ensuring equality among candidates and exist in several Council of Europe member states. [49]

A similar approach was adopted in the case of *Ahmed v. the United Kingdom*. Here the Court found no violation of Article 3 with the regulations preventing local civil servants holding 'politically restricted posts'. The Court found that these regulations have legitimate aim "to secure the political impartiality of senior officers."[50]

In the *Podkolzina v. Latvia* case the Court once more stated that the states have a wide margin of appreciation in regulating electoral rights. It noted further that such regulations also should be considered in the light of specific political and historical events. Nevertheless, the Court also noted that based on the essence of the Convention the rights provided should be concrete and effective and not theoretical or illusory. The states should provide guarantees for the objectivity and legal certainty and procedural fairness in the application of such limitations:

"The right to stand as a candidate in an election, which is guaranteed by Article 3 of Protocol No. 1 and is inherent in the concept of a truly democratic regime, would only be illusory if one could be arbitrarily deprived of it at any moment. […] [E]stablishing eligibility conditions in the abstract, the principle that rights must be effective requires the finding that this or that candidate has failed to satisfy them to comply with a number of criteria framed to prevent arbitrary decisions. In particular, such a finding must be reached by a body which can provide a minimum of guarantees of its impartiality. Similarly, the discretion enjoyed by the body concerned must not be exorbitantly wide; it must be circumscribed, with sufficient precision, by the provisions of domestic law. Lastly, the procedure for ruling a candidate ineligible must be such as to guarantee a fair and objective decision and prevent any abuse of power on the part of the relevant authority.[51]

1.2.3. Residency requirement as a limitation of the right to stand for elections

The case law of the Court shows that different limitations and restrictions to stand as a candidate have been found compatible with Article 3. In case of *M v. the United Kingdom* the

[49] *Gitonas and Others v. Greece*, appls. 18747/91; 19376/92 ; 19379/92 ECHR, 01.07. 1997surpa note 26, para. 40
[50] DIJIK, *supra* note 4 at 925
[51] *Podkolzina v. Latvia*, no 46726/99, § 35, ECHR 09 July, 2002

Court found legitimate to limit the persons being members of one legislature to be able to stand as a candidate for another one. Prohibiting dual citizens to be elected to the parliament was also considered compatible with Article 3, as well as requirement to provide certain number of signature for registration as a candidate or to pay deposits.[52]

It should be noted that most of the Court's judgments on passive voting rights are against Eastern European states which are considered as emerging democracies.[53] Thus the Court's approach is accurate in interference with the discretion of states in regulating and taking appropriate political arrangements. The main focus of the Court in considering restrictions on passive voting rights is "to check on the absence of arbitrariness in the domestic procedures leading to disqualification of an individual from standing as a candidate."[54]

In the scope of the current research it is important to elaborate on Court's position on the residency requirement for candidates. The Court found that the residency requirement for candidates is in general compatible with Article 3 of Protocol No. 1. This approach has been explained by the statement that: "a non-resident citizen is less directly or less continually concerned with his country's day-to-day problems and has less knowledge of them".[55] The Court has emphasized that there should be continual link between a candidate and a state. This will make effective the involvement of that person in political life of the state. In the *Melnychenko v. Ukraine* case the Court considered compatibility of residency requirement for the candidates under Ukrainian legislation with Article 3 of Protocol No. 1. Ukrainian legislation required five year continuous residency for registration of candidates. The applicant was denied registration on the reasoning that he actually lived abroad and had a refugee status.

[52] *Asensio Serqueda v. Spain* appl. 23151/94, ECHR, 09 May, 1994, and Sukhovetskyy v. Ukraine appl. 13716/02, ECHR, 01.Feb, 2005
[53] DAVID HARRIS, MICHEAL O'BOYLE, ED BATES AND CARLA BUCKLEY *LAW OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS*, 719 (Harris et al eds., 2nd ed., Oxford University Press, 2009)
[54] *Melnychenko v. Ukraine* , no. 17707/02, § 59, ECHR 2004-X
[55] *Hilbe v. Liechtenstein* (dec.), no. 31981/96, ECHR 1999-VI

Here again, the Court stated that the residency requirement could be legitimate. The rationale of such a strict requirement could be driven by the state's interest to ensure democracy and to ensure that the voters were properly informed about candidates' qualifications before electing them as their representatives. Another rational could be to make sure that candidates were familiar with the issues in the country and with the work of the parliament.[56] In discussing certain limitations, it should be done in the light of political evolution of the country. Thus some requirements in one state may be in violation of Article 3 of Protocol No. 1, while the same requirement in other state may be compatible with Article 3. However, the Court has also restated several times that rights provided by the Convention and its Protocols should be interpreted and applied by the member states in such manner as to make them practical and effective, otherwise these rights will become just theoretical or illusory.

In the Melnychenko case the court referred to the residency requirement for the candidates for the first time. In its judgment the Court mentioned that residency requirement in regard to voting rights was not a per se violation of Article 3. This requirement could be justified on few grounds, such as an assumption that non-resident citizens are less involved and less concerned with the country's everyday problems, or that the decisions adopted by the elected bodies would not directly affect non-residents, etc. Furthermore, the Court noted that eligibility criteria to stand for elections may be even stricter than for voting rights.[57] Thus it can be implied that residency requirement for candidacy rights will not be considered a violation of Article 3 per se.

However, in Melnichenko the Court once more stated that interpretation and application of Convention rights should be effective and practical. The rights provided by Article 3 and particularly the right to stand as a candidate, would be ineffective if "one could be arbitrary

[56] *Menlnychenko v. Ukraine* no.17707/02, para 51
[57] *Id.*

deprived of it at any moment".[58] The Court further stated that though States have wide margin of appreciation in defining eligibility criteria for candidates, sufficient procedural guarantees should be provided to prevent arbitrariness. The Court also stated that in consideration of violation of Article 3 because of residency requirement, case by case approach must be adopted. Thus in each case all relevant circumstances and facts should be considered. In this case, the Ukrainian authorities failed to consider special circumstances of applicant's absence from the Country and applied the residency requirement in a formalistic and arbitrary manner to reject registration of the applicant.[59] Considering all relevant facts and implementation of the residency requirement by the Ukrainian authorities, the Court found violation of Article 3. [60]

1.3. Other International Documents: Soft Law

In regard to other international documents on electoral rights, it is worth to mention organs of the Council of Europe such as European Commission for Democracy through Law (hereinafter referred as Venice Commission) as well as Organization for Security and Cooperation in Europe (hereinafter referred as OSCE) documents on elections and electoral rights.

The right to universal and equal suffrage without discrimination on any grounds is stated in the OSCE Copenhagen document of 1990 on Human Dimension[61] (hereinafter referred as Copenhagen document) and in the Venice Commission Code of Good Practice in Electoral Matters.[62] Though mentioned documents are not binding, they are providing thorough interpretation of electoral rights and setting standards for democratic elections. The Court often referrers to these documents while interpreting electoral rights guaranteed by the Convention.

[58] *Id.* para. 61
[59] *Id*.
[60] *Id*.
[61] OSCE *Document of the Copenhagen Meeting of the Conference on Human Dimension* of CSCE, 1990
[62] Code of Good Practice in Electoral Matters *supra* note 39, para. I.1.1.c

In the preamble of Copenhagen document OSCE member states recognize the important role of elections in creation of political pluralism, development of democratic institutions and rule of law. Member States also acknowledge that the right to free elections is a fundamental human right and it should be universal, equal, free and secret. In order to classify elections democratic, electoral processes should be transparent, fair and accountable.[63] Though it is states' discretion to establish election system for national legislative bodies and other elected officials, according to paragraph 7.2 of Copenhagen document at least one chamber of legislature must be elected through direct elections. Moreover even in case of indirect elections states should ensure will of electors, political pluralism and other elements for democratic elections.[64] It can be stated that the Copenhagen document expressly states the central role of electoral rights and elections in the creation of democratic state.

In OSCE/Office of democratic institutions and human rights (hereinafter referred as OSCE/ODIHR) document on "Existing commitments for democratic elections in OSCE participating states" the principles stipulated in Copenhagen document are further developed.[65] Particularly it explains the elements of electoral rights such as universality and equality of vote, and right to stand for elections. Particularly paragraphs 5.1 to 5.4 state that universality and equality of vote requires that all adult citizens should have the right to vote without any discrimination based on any ground such as social or economic condition, political views, national or ethnic origin etc. The right to vote may be suspended or withdraw only in certain cases prescribe by law, such as mental incapacity or criminal conviction. However, withdrawal or suspension should be based on judicial decision and in criminal cases it should be proportional to the gravity of the offence.[66]

[63] Copenhagen document, *supra* note 61, para. 7
[64] *Id*. para. 6
[65] OSCE/ODIHR *Existing commitments for Democratic Elections in OSCE Participating States*, Warsaw, 2003
[66] *Id.* para 5

Part 6 of the "Existing commitments for democratic elections in OSCE participating states" describes the right to stand for elections, stating that participating states should ensure the right of every citizen to seek public office. Paragraph 6.3 of the mentioned document states that: "No additional qualification requirements, beyond those applicable to voters, may be imposed on candidates except, for certain offices, concerning age and duration of citizenship and/or residence…".[67] It can be seen from the wording of the given provision, that requirements for candidates to stand for elections should not be more restrictive and burdensome as not to curtail the nature of the right. It is further explored that reasonable registration requirements, such as personal information, statements on certain statuses (membership in a party, financial situation) may be established. However these and other requirements should be necessary for election administration and should not be "unduly burdensome or potentially discriminatory".[68]

The OSCE document on "Existing commitments for democratic elections in OSCE participating states" also stipulates and explains requirements for election administration, voting procedure, campaign and campaign financing, complaint and appeal procedures etc.

Another soft law document that is worth to discuss is the "The Code of Good Practice in Electoral Matters" (hereinafter referred as Code of Good Practice) adopted by the Venice Commission. [69] It is to be mention that Venice Commission is a Council of Europe advisory body, which has been established in 1990 with the purpose to provide legal assistant to Central and Eastern Europe countries. It consists of independent experts who conduct analysis and deliver legal opinions on legislation important for democratic functioning of states. The member states of the Venice Commission are Council of Europe Member States, however other states also may become member to the Commission.

[67] *Id*. para 6.3
[68] *Id*. para. 33
[69] Code of Good Practice in Electoral Matters *supra* note 39, para. I. 1.1.c.

In general remarks to the Code of Good Practice the Venice Commission highlights the principles of 'European electoral heritage' and their interconnection with democratic state and rule of law. Particularly it states that the five core principles of Europe's electoral heritage are base for the establishment of representative government and democracy. On the same time these principles can be implemented "if certain basic conditions of a democratic state based on rule of law, such as fundamental rights, stability of electoral law and effective procedural guarantees are met."[70]

Giving thorough guidelines on elections, the document explores five core principles of Europe's electoral heritage. These principles are universal, equal, free, secret and direct suffrage.[71] According to the paragraph 1.1 universal suffrage means that everyone has the right to vote and stand for elections. However, this principle may be subject to certain conditions such as age, nationality, residence. Though right to vote should be subject to minimum age limitation, it should be acquired at the age of majority. Higher minimum age requirement may be stated for the right to stand for elections. Nationality requirement may apply for national elections, however states should provide non-citizens with right to vote in local elections. It is further stated, that electoral rights may be withdrawn. The grounds for withdrawal of these rights should be prescribed by law and may be imposed only by the court decision. It is also stated that stricter conditions may be required for the restriction of right to vote than for the right to stand for elections.[72]

It is important to mention that regarding the residency requirement for the electoral rights, the Code of Good Practice states that residency requirement may be established both for voters and for candidates. However it should be underlined that, further in the paragraph 1.1(c) it is stated

[70] *Ib*. para 2
[71] *Id*., para I.3
[72] *Id*. para. 1.1(d)

that residency requirement may be imposed only for local or regional elections.[73] The required residence length should not exceed six months. A longer period of residence may be required only for the protection of national minorities. For example, in the *Polacco and Garofalo v. Italy* case, only those persons who had been continuously residing in the Trentino-Alto Adige Region for at least four years were eligible to vote for the regional council elections.[74] Thus it can be stated that for the national elections, such as elections to the parliament and presidential elections, residency should not be required as an eligibility criteria.

Conclusion

From the discussion of this chapter it can be seen that electoral rights are provided by both UN and CoE instruments, particularly ICCPR and ECHR. It has been presented that the rights to vote and stand for elections are not absolute under both jurisdictions and may be subject to limitations. However these limitations should be imposed in such a way as not to impair the essence of the rights. As it has been presented under the ECHR, the Court gives distinction to 'active' and 'passive' electoral rights. At the same time there is a distinction also between the scrutiny of limitations to 'active' and 'passive' rights. Though stating wide margin of appreciation of states in imposing limitations, the Court's general approach is that in any case these limitations should not be discretionary and arbitrary. The same approach was stated by the Court regarding residency requirement for candidates to elections.

Further, non-binding documents, such as OSCE Copenhagen Document, Existing commitments for democratic elections in OSCE participating states and Code of Good Practice in Electoral Matters have been discussed. As it has been presented, these documents state that there should be no residency requirement for the candidates to national elections.

---

[73] *Id*. para 1.1(c)

[74] *European Commission of Human Rights, Polacco and Garofalo v. Italy*, no. 23450/94, Sep.15, 1997.

Based on the discussion of this chapter, it could be stated that there is an inconsistency between the set standards of the Court and the Committee on the one hand, and the OSCE and Venice Commission on the other hand. In their interpretation of the right to universal suffrage, and particularly right to stand for elections, the Court and the Committee has stated that this right can be legitimately limited and the permanent residence requirement for candidates cannot be considered as a violation of the right per se. While the OSCE and Venice Commission stated in their documents that no limitation such as permanent residence should be required for national elections.

As for the comparison table 1 of the annex 1 can be presented. Table 1 includes the list of 18 EU Member States among 28 that have presidential post (excluding Estonia, Latvia, and Lithuania as a post-Soviet Countries they are included in Table 2). Among these 18 countries, only Bulgarian Constitution has 5 year residence requirement as an eligibility requirement for president candidates. In almost all EU countries the constitutions stipulate only citizenship (without any time restrictions) and minimum age[75] requirements which shall serve as the common requirements for the highest post of the state in democratic societies. All EU member states are also members of Venice Commission.[76] Whilst among fifteen post-Soviet countries, which are also Venice Commission member states, only three countries have no residency requirement. Only Lithuania has less than 10 year residence requirement.[77]

In the following chapters the national legal framework on electoral rights and their implementation will be discussed, with the emphasis on permanent residence requirement for candidates to national elections.

[75] The minimum age for the president is 35 years in almost every country
[76] List of Venice Commission member states see: http://www.venice.coe.int/WebForms/members/countries.aspx
[77] See, Table 2, Annex 1

Chapter 2: Right to Vote and Stand for Elections under National Legislations: Armenian and Georgian Legal Frameworks

Introduction

Armenia and Georgia as two post-Soviet countries were deprived from democracy for about 70 years. The democratization process in these countries started after the collapse of Soviet Union. After gaining independence both Armenia and Georgia took a path on creation of democratic state which would be based on rule of law and respect for human rights. More than 20 years have passed and both countries are still in transition period and still need to undergo substantial reforms for establishment of effective democracy.

To understand the current state of political rights in Armenia and in Georgia it will be useful to give a short overview of democratization processes in these countries after the collapse of the Soviet Union. This chapter will particularly discuss elections in Armenia and in Georgia after their independence. Legislative framework providing election rights will be presented and the reforms of electoral legislation will be discussed.

2.1. Electoral Rights under Armenian legislation

2.1.1. Short Overview of Democratization processes in Armenia after the collapse of the Soviet Union

In Armenia the starting point of democratic movement can be considered start of Nagorno-Karabagh movement. In 1988 mass demonstrations took place in Yerevan and in other regions of the country. The demonstrators were demanding unification of Armenia and Armenian populated region of Nagorno-Karabagh, which was an autonomous region of Azerbaijan at that time. The demonstrations became larger and of a permanent nature after the official request of

Nagorno-Karabakh to reunion with motherland Armenia in February 1988, which was denied.[78]

A leadership group called "Karabagh Movement" emerged in summer 1988, which later established "Armenian National Movement" party (hereinafter referred as ANM) and became the main opposition to Communist party. The movement, which in the beginning was more of a national nature, now became also political. As one of the main goals was independence and democratization of Armenia. Moreover, it was considered as the only way to achieve unification with Nagorno-Karabagh, free from any imposed will from USSR.[79]

In May 1990 parliamentary elections took place and the new established ANM party, won 59 seats in Supreme Council of Armenia (before the independence the legislative and the supreme state body was the Supreme Council of the Armenian Soviet Socialist Republic, which existed till 1995 adoption of the Constitution). Still gaining majority in the Parliament, Communist party formed a coalition with ANM, leader of which Levon Ter-Petosyan became the speaker of Supreme Council.[80] On August 23, 1990 the new elected Parliament adopted the Declaration of Independence of Armenia which entered into force after the referendum on September 21, 1991. Meanwhile an armed conflict started between Armenian and Azerbaijan armed forces in Nagorno-Karabagh, which lasted till 1994 and was terminated by ceasefire agreement signed in Bishkek.

After the independence in October 1991, the first presidential elections took place. The ANM leader Levon Ter-Petrosyan won the elections with 83% of votes in favor. Before the elections the Law on Presidency was adopted, which can be considered as one of the first laws passed

[78] Joseph Masih and Robert Krikorian, *Armenia at the Crossroads*, Amsterdam, the Gord.& Breach Pub. Gr.,(1990)

[79] Mark Malkhasian, *Gha-ra-bagh! The Emergence of the National Democratic Movement in Armenia* 72, Detroit, Wayne State Uni. Press (1996)

[80] *History of Armenian Parliaments (Brief Glimpses)*, Official Website of the National Assembly of the Republic of Armenia (Aug. 13, 2013), http://www.parliament.am/parliament.php?id=parliament&lang=eng

after the independence. In 1992 the newly elected President established a commission to draft the Constitution, which was finalized in 1995. On July 5, 1995 the Constitution was adopted by national referendum.[81]

Collapse of the USSR and, almost simultaneously started, armed conflict with Azerbaijan draw Armenia into complicated social-economic situation. At the same time the leaders of ANM transformed into a political elite that excluded the new emerging opposition groups form participation in political life. Moreover, form 1994 government openly started oppressions against opposition, accusing one of the opposition parties Armenian Revolutionary Fraction with terrorism and drug trafficking.[82]

In the 1995 parliamentary elections, the ruling party, ANM, gained the majority of seats in Parliament. A year after, in the 1996 presidential elections acting President Levon Ter-Petrosyan won with 51,75% of votes casted. Before the elections, there was an increased discontent against ruling power. After the announcement of election results the opposition leader V. Manukyan (former Prime Minister) boycotted the results of the elections and led demonstrations and rallies centralized mainly in capital Yerevan. However, the governmental forces, with the help of militia, oppressed demonstrations and kept their position.[83] The election observation mission deployed by OSCE/ODIHR declared the elections not meeting OSCE commitments and democratic standards.[84] This can be considered a breaking point when the true democratization path was undermined. After this point the takeover of power using different electoral frauds and violations became part of politics of the ruling elite.

---

[81] Gerard Libaridian, *The Challenge of Statehood: Armenian Political Thinking since Independence* 40, Cambridge, B.C.B. (1999)
[82] *Id*. at 158-159
[83] *Id*.
[84] OSCE/ODIHR *Final Report on Armenian Presidential Elections Sept. 22, 1996*, (Sept.24, 1996), http://www.osce.org/odihr/elections/armenia/14149

In 1998 due to contradictions and conflict between Ter-Petrosyan and his team members, the President resigned. In extraordinary presidential elections in 1998 acting Prime Minister Robert Kocharyan became the second President of Armenia defeating opposition leader Karen Demirchyan, who had been widely believed to win the elections.[85] OSCE/ODIHR and other international organizations stated that the 1998 elections did not meet the requirements for democratic elections. International and national observers reported on numerous election violations (vote buying, ballot stuffing, intimidations, etc).[86]

Before the 1999 parliamentary elections political situation in the country had changed. One of the most influential politicians Defense Minister Vasgen Sargisyan announced about creating coalition with one of the opposition leaders Karen Demirchyan. They participated in the elections with "Unity" alliance (Peoples' Party leaded by K. Demirchyan and Republican Party leaded by V. Sargisyan) and won a majority of seats in the National Assembly. The OSCE/ODIHR election observation mission noted that these elections were a step forward to OSCE commitments and international standards. However a number of key issues, mainly legislative and administrative, were still to be addressed.[87]

On October 27, 1999 a terrorist act was adopted in the National Assembly, which changed the whole political situation and political course in the country. During the session of the National Assembly an armed group broke into the building and assassinated the Speaker of Parliament K. Demirchyan and Prime Minister V. Sargisyan (several other MPs were killed or injured). This tragic event resulted in complicated political situation and enabled so called "Karabagh

[85] Levon Ter-Petrosyan *Paterazm te Khaghaghutyun, Lrjanalu Pahy (War or Peace? Time for Thoughtfulness),* Hayastani Hanrapetutyun, Nov. 2, 1997, quoted in Harutyunyan, 172-173.
[86] OSCE/ODIHR, *Final Report on Armenian Presidential Elections March 16 and 30, 1998*, (Apr.9, 1998), http://www.osce.org/odihr/elections/armenia/14192
[87] OSCE/ODIHR, *Final Report on Armenian Parliamentary Elections May 30, 1999*, (July30, 1999), http://www.osce.org/odihr/elections/armenia/14203

clan" (leaded by President Kocharyan and Defense Minister S. Sargisyan) to take over the power.[88]

In 2003 presidential elections R. Kocharyan "kept" the power and was elected for the second term. And again OSCE/ODIHR and other international observers qualified elections as not democratic and noted number of serious violations, such as oppression of opposition, intimidations, vote buying, abuse of administrative resources, etc. [89] One of the strong opposition candidates Raffi Hovhannisyan was not allowed to participate in elections. The Central Election Commission rejected his registration based on the 10 year permanent residence requirement.[90] Parliamentary elections of the same year were not characterized better than previous elections. As stated in the OSCE/ODIHR final report, Armenian elections once more fell short in international standards for democratic elections.[91] Although by that time Armenia had become a member of the Council of Europe and deepened its cooperation with other international organizations, in internal political life there was a lack of commitment and will in creation of real democracy and rule of law.

Following parliamentary elections in 2007 and Presidential elections in 2008 lack any significant progress in respect of democratic elections in line with international standards. Though at that time a number of legislative reforms had been done and Armenian authorities declared their commitment to hold free and transparent elections, elections were far from being democratic. According OSCE/ODIHR final report, the 2007 parliamentary elections were held mostly in line with OSCE and other international standards for democratic elections. However

---

[88] Razmik Panosyan, *The Diaspora and the Karabagh Movement: Oppositional Politics between the Armenian Revolutionary Federation and the Armenian National Movement*, in *The Making of Nagorno- Karabagh: from Secession to Republic*, 155, *ed.* Levon Chorbajian , New York, P.M. (2001)

[89] OSCE/ODIHR, *Final Report on Armenian Presidential Elections, February 19and March 5, 2003*, (Apr.28, 2003), http://www.osce.org/odihr/elections/armenia/14054

[90] The case of Raffi Hovhannisyan will be discussed in detail in the next chapter.

[91] OSCE/ODIHR, *Final Report on Armenian Parliamentary Elections, May 25, 2003*, (Jul.31, 2003), http://www.osce.org/odihr/elections/armenia/69964

there were remaining important issues that required proper solutions before upcoming presidential elections in 2008. Such questions as campaign financing, transparency of election administration, candidate registration were underlined by observers as issues requiring due consideration.[92]

On February 19, 2008 the fifth presidential elections were held. Though pre-election period was assessed positively, post-election events and developments undermined the integrity of the whole election processes and once more did not meet OSCE and international standards. Particularly, election campaign, vote counting, transparency and accountability of administrative bodies were assessed as inefficient and ineffective.[93] Prime Minister S.Sargisyan (Kocharyan's fellow team member) was elected as a President by 52.8% of votes. Joined opposition leader ex-President Levon Ter-Petrosyan was the second (21.5%). After the elections day and announcement of results, mass demonstrations and peaceful protests were commenced in the Yerevan city center. However on March 1, 2008 a confrontation of governmental and opposition forces occurred and resulted losses of human lives and mass arrests of opposition mostly on political grounds.[94] The international organizations and especially human rights organizations gave their negative opinion on the situation in the country. OSCE, Council of Europe and other organizations strongly recommended Armenian authorities to take immediate measures for establishing rule of law and respect of human rights.[95]

The next parliamentary elections in 2012 were held under new Electoral Code. Before the adoption OSCE/ODIHR and Venice Commission issued expert opinion on the draft Electoral

[92] OSCE/ODIHR, *Final Report on Armenian Parliamentary Elections , May 17, 2007* (Sept. 10, 2007), http://www.osce.org/odihr/elections/armenia/26606

[93] OSCE/ODIHR, *Final Report on Armenian Presidential Elections, February 19, 2008*, (May 30, 2008), http://www.osce.org/odihr/elections/armenia/32115

[94] *Id*.

[95] OSCE/ODIHR, *Post-election Interim Report on Armenian Presidential Elections, (*Feb.19-March 3, 2008), http://www.osce.org/odihr/elections/armenia/31027

Code. Thought significant improvements have been introduced, some issues still require proper solutions. Parliamentary elections in 2012 were characterized as a step forward to democratic elections, however low level of confidence in integrity of electoral processes, number of campaign violation cases, deficiencies in candidates' registration, inaccuracies of voters lists as well as ineffective complaint and appeal procedures were noted as flows of the election process.[96]

As it can be seen from the reports of OSCE/ODIHR election observation missions to Armenian elections, none of the nine national elections was characterized as democratic and meeting international standards and requirements. In the 90s and in the beginning of the 2000s violations were more gross and obvious. Vote buying, ballot stuffing and intimidations were common practice of pro-governmental entities. Such issues as inaccuracies in voters' lists and misuse of administrative resources still haven't been properly addressed. Though the legal framework has been amended, legislative flows give room for hindrance of democratic election in line with international standards. Legislative framework will be discussed more detailed in the following sub-chapter.

2.1.2. Right to vote and stand for elections

In 1995 the Constitution of the Republic of Armenia was adopted which established the constitutional structure of the government based on a separation of powers. According to the general foundation of the constitutional order of Armenia, the power belongs to the people who exercise it through elections of their representatives and referenda. The President of the Republic and the members of the National Assembly as well as the representatives of local self-governments shall be elected based on universal, equal and direct suffrage. [97]

[96] OSCE/ODIHR, *Final Report on Armenian Parliamentary Elections, May 6, 2012*, (June 26, 2012), http://www.osce.org/odihr/91643

[97] RA Constitution art 2 and 3

On November 25, 2005 amendments to the Constitution were adopted through national referendum. Though many substantial changes have been introduced in the field of human rights, provisions regulating electoral rights and requirements for the candidates for the President of the Republic and deputies for the National Assembly haven not been changed. Article 30 of the Constitution of the Republic of Armenia[98] stipulates electoral rights for citizens of Armenia who attained the age of 18 (maturity), stating that every citizen has the right to participate in the elections and referenda.

The right to vote and stand for elections further is elaborated in the Electoral Code of the Republic of Armenia (hereinafter referred as Electoral Code), which has been adopted in May 2011.[99] The Electoral Code provides legal framework for electoral rights and system, administration of elections. Though many changes have been made, provisions regarding requirements for voting and candidacy rights remain unchanged as in the Constitution, despite recommendations presented in the joint opinion on draft Electoral Code by the Venice Commission and OSCE/ODIHR, which will be discussed in more details later.[100]

According to part 1, Article 2 of the Electoral Code: "[c]itizens of the Republic of Armenia, having attained the age of eighteen as of the day of voting, shall have the right to vote in the Republic of Armenia. Persons not holding the citizenship of the Republic of Armenia shall have the right to vote at local self-government elections in case of being, prior to the voting day, registered for at least six months in the population register of the community where elections are held."[101] It can be seen form the Article 2 that the first sentence of it reflects the Constitutional provision stated above, providing right to vote to eighteen year old Armenian

[98] RA Constitution as of amended on November 25, 2005,non-official translation available at: http://www.parliament.am/legislation.php?sel=show&ID=1&lang=eng

[99] RA Electoral Code, AL-164-N, (2011), non-official translation available at: http://www.legislationline.org/topics/country/45/topic/6

[100] Final joint opinion on Electoral Code of Armenia *supra* note 3

[101] RA Electoral Code art.2

citizens. Moreover, the article provides voting rights also to non-citizens, however only for local elections.

Stipulating general electoral rights, the third part of the Article 30 of Constitution, however states limitation to these rights, saying that the right to vote and stand for elections shall be revoked for persons who are found incompetent by the court and who are sentenced to imprisonment, while serving the sentence.[102] This provision is reflected in the part 3 of Article 2 of the Electoral Code. Part 5 of the article gives possibility to citizens who are not registered in Armenia to realize their voting right at national elections, if they are included in special supplementary voting list. Mentioned provision, inter alia, defines national elections stating that: "national elections are the elections of the President of the Republic, as well as the elections to the National Assembly under the proportional electoral system." [103]

The Electoral Code stipulates the principles of equal, direct suffrage and secrecy of the ballot,[104] which are elaborated further in Articles 3-5. Particularly under equality Article 3 states that participation in elections shall be on equal grounds and electors shall have equal right to vote and to be elected irrespective on grounds, such as national origin, gender, race, religion language, political or other views. [105] It should be noted that the mentioned provision ensures equality not only for voters but also for candidates. However, it can be seen from the wording of the article that the grounds for discrimination are exhaustive, the provision provides a closed list which can be considered as a flow for providing real equality and 'prohibition of discrimination' on any grounds. It should be noted that social origin or situation, is not included in the list which is very important in realization of political rights, such grounds as citizenship and residence are also excluded (these grounds are often used for excluding certain people

[102] RA Constitution art.30
[103] RA Electoral Code art.2
[104] *Id*. art.1.1
[105] *Id*. art.3

from elections). While the OSCE Copenhagen document of 1990 on Human Dimension[106] and "The Code of Good Practice in Electoral Matters"[107] of the Venice Commission state that the right to universal and equal suffrage should be without discrimination on any grounds.

As it can be seen, the criteria for the realization of voting rights in national elections are citizenship and age of maturity. No special requirement of residency is prescribed by law. While, in the case of criteria for candidacy rights the picture is different.

2.1.3. Candidates Registration: Residency Requirement

According to Article 50 of the RA Constitution the President of the country is elected in direct elections for 5 years term. As stated in the paragraph 2 of Article 50 "Every person having attained the age of thirty five, having been a citizen of the Republic of Armenia for the preceding ten years, having permanently resided in the Republic for the preceding ten years, and having the right to vote is eligible to be elected as President of the Republic."[108] This provision is reflected also in the Article 77 part 1 of the Electoral Code. The given provision stipulates criteria for the candidates to President of the Country. Among other requirements, to be eligible to stand for elections the candidate should be citizen of Armenia for ten years and permanently reside in Armenia for the preceding ten years.[109]

According to article 63 of the RA Constitution the National Assembly of Armenia consists of 131 deputies and is elected for 5 years.[110] Article 64 stipulates criteria for candidates to deputy of National Assembly: "Any person having attained the age of twenty five, having been a citizen of the Republic of Armenia for the preceding five years, having permanently resided in the Republic for the preceding five years, and having the right to vote, may be elected a

[106] Copenhagen document of 1990 on Human Dimension *supra* note 61, point 7.3 and 7.5
[107] The Code of Good Practice in Electoral Matters *supra* note 39
[108] RA Constitution art.50
[109] RA Electoral Code art. 77.1,
[110] RA Constitution art 63

Deputy."[111] The given provision is reflected in the Article 105 of the Electoral Code. Here again, among others a citizenship and permanent residency for five year is required as an eligibility criteria for candidates.

As it can be seen from the wording of two mentioned articles, the law establishes a minimum citizenship and permanent residency length to be eligible to stand for the national elections. Here I would like to pay more attention to the residency requirement. The equality clause of the Electoral Code can be recalled again. As it has been mentioned, Article 3 gives a close list of discrimination grounds, not mentioning permanent residence, which can be and often is used as a ground for discrimination (and abused) against candidates in national elections. While, both Copenhagen document and The Code of Good Practice in Electoral Matters state that discrimination on any grounds should be eliminated. The paragraph 1.1(c) of the Code of Good Practice in Electoral Matters indicates that no length of residence should be required for candidates in national elections.[112] Moreover, according to paragraph 15 of the UN General Comment 25: "[…]Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation."[113] As it is discussed in the first chapter there is no clear stated international requirement regarding citizenship as it is stated for residency requirement. The OSCE and Venice commission has stated in their documents that no limitation such as permanent residence should be required for national elections. Just to mention here that almost all EU states has no residency requirement for candidates to the post of the President, as it is presented in the table 1, and the citizenship requirement is stated

[111] RA Constitution art 64
[112] Code of Good Practice in Electoral Matters *supra* note 39, para I. 1.1.c.
[113] General Comment No. 25 supra note 9, para. 15,

without any time restriction. It can be inferred, that citizenship is a legitimate requirement. However it is worth to mention that length of citizenship should not be excessive.[114]

Chapter 15 of the Electoral Code regulates candidate nomination and registration for the President of the Republic. Candidates for the president can be nominated by political parties or through self-nomination.[115] Article 79 of the Electoral Code stipulates necessary procedures and documents that should be provided to the Central Electoral Commission (hereinafter referred as CEC) for the registration of candidates. According to point 3 of part 4 to the article inter alia a statement should be presented: "[..] attesting that the candidate has been a citizen of the Republic of Armenia for the last ten years, which shall also contain a note about not holding the citizenship of another State by the citizen and a statement attesting that the candidate has been permanently residing in the Republic of Armenia for the last ten years."[116] According to part 5 of the given article the authorized stated body shall issue the above mentioned statement within a three day period after receiving a request on that. The request shall be denied and the authorized body shall not issue the statement in the case when personal data of the applicants do not meet necessary requirements mentioned in Article 77(1) of Electoral Code.

According to Article 81 the registration of the candidate for the President is carried out by the CEC. Where there are any objections raised by a CEC member regarding the registration of a certain candidate, it will be done by voting. The statement on registration of the candidate shall be published within a three day period. Article 82 stipulates rejection of the registration of the candidate, according to which the registration of a candidate shall be rejected by the CEC if: "[…] (1) the candidate does not have a right to be elected; (2) documents submitted for

[114] Joint Final Opinion on Electoral Code of Armenia *supra* note 3
[115] RA Electoral Code art. 78
[116] RA Electoral Code art. 79

registration are incomplete or falsified."[117] Part 2 of the mentioned article states that in the case of any objection on the registration of a candidate raised by the CEC member, the registration shall be put to vote and shall be rejected by at least two-thirds of votes of the total number of CEC members.[118] According to Article 83 of the Electoral Code the registration of the candidate may be declared invalid if after the registration certain facts became known rendering the candidate to stand for elections or if presented documents have been falsified.[119]

Article 84 of the Electoral Code stipulates procedures to appeal against CEC decision on rejecting the registration of a candidate for the President or declaring it invalid. According to Article 84 the appeal against CEC decision on rejecting or declaring invalid the registration of a candidate may be brought to the Administrative Court of the Republic of Armenia. Based on the judgment of the Court the CEC previous decision may be declared invalid and the candidate may be registered or re-registered.[120]

Chapter 20 of the Electoral Code regulates elections to the National Assembly according to which National Assembly is composed of 131 deputies elected under proportional (ninety deputies) and majoritarian (forty one deputies) electoral systems.[121]

Article 105 of the Electoral Code stipulates the right to be elected as a deputy: "Anyone having attained the age of twenty-five, not holding the citizenship of another State, having been a citizen of the Republic of Armenia for the last five years, permanently residing in the Republic in the last five years and having the right of suffrage shall have the right to be elected as a deputy of the National Assembly of the Republic of Armenia."[122] It can be seen form the

[117] RA Electoral Code art.82
[118] *Id.*
[119] RA Electoral Code art 83
[120] RA Electoral Code art.84
[121] RA Electoral Code art.104
[122] RA Electoral Code art.105

article that it sets criteria for candidates. For the candidates to the National Assembly inter alia a five year of permanent residence in Armenia is required.

Under proportional electoral system candidates to the National Assembly can be nominated by political parties and alliances of political parties in their electoral lists. A candidate can be nominated only in one electoral list.[123] Article 107(1) stipulates restrictions of nomination of candidates: "Members of the Constitutional Court, judges, prosecutors, officers of the Police, the National Security, the Judicial Acts Compulsory Enforcement Service, rescue, tax and customs authorities, penitentiary institutions, as well as military servicemen may not be nominated as a candidate for a deputy to the National Assembly."[124]

Stipulating procedures for the registration of nominations, point 6 of Article 108(3) of the Electoral Code states that "a statement certifying that candidates included in the electoral list of a political party have been citizens of the Republic of Armenia for the last five years, not holding the citizenship of another State and have been permanently residing in the Republic of Armenia for the last five years"[125] shall be presented. The CEC shall approve the form of the statement. The later shall be issued by the authorized state body within a three-day period. In the case when the data of the applicant do not meet the requirements set in Article 105 of the Electoral Code, the authorized state body shall refuse to issue the statement.[126] According to article 109, one of the grounds to reject the registration of the political party's electoral list or a candidate in the list may be falsified or incomplete documents.[127] The registration of the electoral list or a candidate may be declared invalid if after the registration certain facts are reviled such as falsification of documents, the candidate does not have the right to be

[123] RA Electoral Code art.106
[124] RA Electoral Code art.107
[125] RA Electoral Code art.108(3) point 6
[126] *Id.* part 4
[127] RA Electoral Code art.109

elected.[128] The decisions of the CEC on rejecting or declaring invalid the registration of the electoral list of the political party or a candidate therein may be appealed according to the procedures prescribed in the Armenian Administrative Procedure Code. The CEC decision may be declared invalid and the electoral list or a candidate may be registered by the court judgment.[129] The same requirements and procedures are prescribed for the nomination of candidates under the majoritarian electoral system with the difference that the registration and following procedures shall be done by constituency electoral commissions instead of CEC.[130]

As it can be seen form the presented articles, the certificate on permanent residence for the candidates for president of the Republic and deputies to the National Assembly shall be provided by the authorized state body. The procedure of the issuing the certificate are regulated by Law on State Registration of Population and few bylaws, particularly, Governmental decision N1231-n (adopted 14.07.2005) on introduction of the State Population Registry System in the Republic of Armenia and Decision of Central Electoral Commission N51-N (adopted on 29.07.2011) on Approving Form of the statement for the candidates on being a citizen and permanent resident of the Republic of Armenia.[131]

Article 7 of the Law on State Registration of Population established the obligation of a citizen to inform about his/her place of residence and gives a definition of permanent residence: "To be included in the Register, the resident of the RA is obliged in accordance with the procedure and timelines defined by this law, provide the local state register with the address of his/her permanent place of residence (habitation), […]. Permanent place of residence (habitation) is considered the territory, where the resident has a right to reside, which he considers and declares as his habitation. In case of changing the place of permanent residence (habitation),

[128] RA Electoral Code art.110
[129] RA Electoral Code art.112
[130] RA Electoral Code art.114-119
[131] Non-official translations of mentioned acts were provided by OSCE/ODIHR election observation mission to Armenia

the person is obliged to inform in a written form the local state register in seven-day period, where his/her new habitation is located. The resident can be registered in only one habitation."[132] Part 2 of the given article states that in case of leaving Armenia or residing in other country for more than six months citizens of Armenia are obliged to inform about that consular or diplomatic representative of Armenia in the respective country.[133] However there are no other legislative provisions in this regard, what will be the remedies if a citizen fails to inform about his temporary residence or how that fact can be checked by other means. As it can be seen form the definition of the 'permanent residence' given by the mentioned article, the permanent residence is the place where the person has the legal right to reside (habitat) and not the actual place of habitation.

According to the Articles 79.5 and 108.4 of the Electoral Code, the state authorized body shall issue the statement on permanent residence, the Governmental decree N1231-N designates RA Police as an authorized state body to maintain state population registry. However neither the Code itself, nor the above mentioned legislation defines which department of the RA Police should be responsible for the maintaining state population register, as well as issuing statements on permanent residence of candidates for president of the Republic and deputies to the National Assembly. As a common practice the statement on permanent residence is issued by the Passport and Visa Department of the Police (hereinafter referred as PVD). In practice, to get the statement a candidate shall file a request to territorial branch of PVD of his/her residence, which shall issue the statement based on the data in state population registry. However there is no certain mechanism on checking data or how the fact of residence should be checked beside the note in state population registry. Moreover, there is no provision on counting the required 5-year and 10-year residence period for the candidates, especially in

[132] RA Law on State Register of the Population of Armenia, art.7.1, AL-419-N (2002)
[133] *Id.* part 2

cases when the potential candidate has been abroad for certain time period during counting period. The legislation does not stipulate how long a potential candidate should be abroad for being denied the statement of permanent residence (e.g. 3 months, 6 months or more than 6 months) and to become disqualified for standing as a candidate. The electoral legislation does not stipulate any provisions to appeal decision of the PVD not to issue the statement. This decision may be appealed on general grounds stated in the Law on Fundamentals of Administration and Administrative Proceedings (within the time period stated by the Code).[134] As we know and as it will be discussed more detailed later, in electoral disputes the prompt discussion of the disputes is one of the important elements of effectiveness of remedies. It can be seen that there is a clear regulatory gap in the legislation, which leads to arbitrariness and abuse of candidacy rights.

According to the Electoral Code the CEC is authorized and responsible state body for elections administration. To effectively realize its responsibilities and to ensure uniform application of electoral legislation, CEC is authorized to adopt decisions and regulations that are binding for administrative bodies involved in electoral processes.[135] However, the CEC has not fulfilled its responsibility to regulate existing inconsistency and legislative gap in electoral processes. Moreover, as stated in the OSCE/ODIHR final report on the 2012 parliamentary elections, the CEC stated that it has no such power to regulate inconsistency of legislation regarding procedures on issuing statement on residency of candidates by PVD.[136]

The issue of the residency requirement has been addressed in the "Joint Final Opinion on Electoral Code of Armenia" by the Venice Commission and OSCE/ODIHR. In paragraphs 37-38, it states that the 10 year and 5 year of citizenship and residence requirement for the

[134] RA Law on Fundamentals of Administration and Administrative Proceedings, chap.10, AL-41-N (2004), regulates complaint and appeal procedures of administrative acts.
[135] RA Electoral Code art.36.2, 49.1.4, 49.1.7 and 49.1.14
[136] Final Report on Armenian Parliamentary Elections May 6, 2012 *supra* note 96

candidates of the President and deputies to the National Assembly are excessive and disproportionate. Particularly it states that "Except in very specific situations, which do not appear to be present in Armenia, these restrictions are not justified by the need to protect national or democratic interests." [137] As it can be seen from the wording of the joint final opinion, the citizenship and residency requirement for candidates to national elections was considered excessive. However, Armenian authorities did not consider this recommendation when adopting the Electoral Code.

Furthermore, as we have seen there is a clear legislative and regulatory gap for issuing statement on residency. There is no clear statement on authorized state body which shall issue this statement, no clear regulations on how the statement should be issued and no special mechanisms for appeal. Imposing an excessive and disproportional requirement on potential candidates, State authorities failed in establishing procedures for fulfilling this requirement which often results in arbitrariness. The most worrying is that most of the time this arbitrariness is used against opposition candidates, as it will be discussed later.

2.2. Electoral Rights under Georgian legislation

2.2.1. Short overview of democratization processes in Georgia

As a third jurisdiction Georgian experience shall be presented. The democratization process in Georgia as in most of the former Soviet countries started with the collapse of Soviet Union and raise of nationalist movement. First Parliamentary elections were held in October 1990, where Round Table and Free Georgia political parties, which created nationalist bloc, gained the majority (54% against 29.6% of Communists). As in Armenia, in Georgia 1990 elections were assessed to be fair and free.[138] In May 1991 Zviad Gamsakhurdia, leader of Round Table party,

[137] Joint Final Opinion on Electoral Code of Armenia *supra* note 3

[138] Jonathan Wheatley, *Elections and Democratic Governance in the Former Soviet Union: The Case of Georgia*, Berl. Ost. (2004)

won the first presidential elections receiving 86% of votes. However, soon he was removed from the office because of the increased pressure of opposition.[139] The common character of 'free and fair' elections in Georgia and in Armenia was new independent states driven by nationalist movements, where the major goal was a break with the Communist regime.

After Gamsakhurdia's resignation the power to rule the country was temporarily passed to a Military Council, formed by three political leaders of the time (Jaba Ooseliani, Tengiz Kitovani and Tengiz Sigua). The Military Council declared its commitment to continue the democratization process in the country and embarked on legislative reforms. In 1992 the Constitution of 1921 was restored and a new electoral law was passed. The former first secretary Eduard Shevarnadze was invited to head the State Council, which replaced the Military Council. The State Council functioned till parliamentary elections in October 1992. The newly adopted Election Law and elections ensured representation of more than 20 parties in the Parliament. E. Shevarnadze was elected as a Chairman of the Parliament by separate elections and became the head of the state. The 1992 parliamentary elections were assessed generally free and fair.[140] However, the conflict situation in the country between governmental and separatist forces (Zviadists led by former President Gamsakhurdia), which broke into a civil war, undermined democratization process in the country. The state of emergency declared in 1993 resulted in number of human rights violations.[141]

Next elections were held in 1995 under an amended Election Law. By that time pro-Shevarnadze political elite had emerged, which consolidated power in its hands. In the 1995 parliamentary elections the ruling-party, the Citizens' Union of Georgia won the majority of seats. In the presidential elections, held in the same year, Shevarnadze was elected President

[139] *Id.*
[140] US Department of State, *Georgia Human Rights Practice 1993*, January 1994, http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_eur/Georgia.html
[141] *Id.*

with 74.32% of the votes. International observers, particularly OSCE assessed both elections mostly free and fair, with exception of electoral violations in Atchara.[142]

In late 1990s the power became more centralized in the hands of the ruling elite or so called 'oligarchs'[143]. Drawing parallel with the situation in Armenia in the same period, it can be stated that in both countries after the first years of independence almost the same scenario happened. Newly emerged political elite, which used to be opposition to communist regime and leader of nationalist and liberation movements, concentrated power in its hands and set a goal to keep that power by any means.

However, in contrast to Armenia, in Georgia during 1995-1998 a formalization of civil society took place. A number of local and international NGOs, relatively free media started to influence not only public opinion but also policy making in the country. Moreover, some of influential figures of Citizens' Union of Georgia (Z. Zhvania Chairman of Parliamet and M. Saakashvili Minister of Justice) were considered as reformers within ruling party and supporters of civil society.[144] In 1999 Parliamentary elections a number of NGO and civil society representatives were elected as members to Parliament. OSCE/ODIHR assessed elections as step forward comparing to previous elections. However, ongoing situation in Abkhazia and South Ossetia and failure of elections in these regions, as well as some cases of intimidations and violations undermined the integrity of electoral processes. As stated in the OSCE/ODIHR final report 1999 elections failed to fully meet OSCE commitments.[145]

Presidential elections in 2000 again failed to meet international requirements for democratic elections though by that time a number of amendments of election legislation were made.

---

[142] Wheatley, *supra* note 138

[143] *Id.*

[144] *Id.*

[145] OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections October 31and November 14, 1999*, (Feb. 7, 2000), http://www.osce.org/odihr/elections/georgia/parliamentary_1999

OSCE/ODIHR final report stated such violations as "interference by State authorities in the election process; deficient election legislation; not fully representative election administration; and unreliable voter registers".[146] Moreover, most of the international observers doubted the legitimacy of elections, particularly whether the 50% voter turnout was ensured.[147]

Attempts of the ruling elite to keep the power by non-democratic elections, increasing corruption and usurpation of administrative resource brought opposition (formed by civil society) to streets and mass demonstrations took place in October 2001. Resigned Chairman of Parliament Z. Zhvania and ex-Minister of Justice M. Saakashvili formed reformers' group within CUG and joined opposition as a separate force from the party. In the parliamentary elections of 2003 the ruling elite had no other way to keep the power but by fraud and violations.[148] The OSCE/ODIHR election observation mission stated about systematic and widespread violations during the whole electoral process, which affected election results. The opposition boycotted election results and started mass demonstrations and rallies mostly centralized in Tbilisi. Overwhelming demonstrations in front of the Parliament building (so called "Rose Revolution") resulted in resignation of President Shevarnadze and annulment of the parliamentary election results under proportional system. [149]

Extraordinary presidential elections were called on January 4, 2004. These elections can be compared to elections in 1991 and 1992 in some sense, as due to the political situation of the country there was no need for election fraud, and the victory of opposition could not be questioned.[150] The OSCE/ODIHR election observation mission stated: "The 4 January 2004 extraordinary presidential election in Georgia demonstrated notable progress over previous

[146] OSCE/ODIHR, *Final Report on Georgian Presidential Elections April 9, 2000*, (June 9, 2000), http://www.osce.org/odihr/elections/georgia/presidential_2000
[147] Wheatley, *supra* note 138
[148] *Id.*
[149] OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections November 2, 2003*, (Jan. 24, 2004), http://www.osce.org/odihr/elections/georgia/22206
[150] Wheatley, *supra* note 138

elections, and in several respects brought the country closer to meeting OSCE commitments and other international standards for democratic elections."[151] The elections were held under an amended legal framework consisting of a general and newly adopted Unified Election Code. Nevertheless, a number of issues were mentioned that needed prompt solution. As in all previous elections, most parts of Abkhazia and South Ossetia did not participate in elections, which raised concerns of international observers. With significant difference Mikhail Saakashvili was elected as a President.[152]

Following the annulment of election results and the presidential elections, on March 28, 2004 partial repeat parliamentary elections under proportional system took place. These elections were assessed as the most democratic elections after independence of Georgia. As stated in OSCE/ODIHR election observation report: "[…] the election process was brought in closer alignment with OSCE commitments and other international standards for democratic elections."[153]

However, change of political situation and democratic elections were not the end point and did not ensure stability in political life. In November 2007 a newly formulated opposition block organized mass demonstrations against Saakashvili and his team and demanded constitutional changes. As a result Saakashvili resigned on November 25 and new presidential elections were scheduled on January 5, 2008. As stated in the OSCE/ODIHR final report, though elections in generally met OSCE and other international standards for democratic elections, significant issues were noted that require urgent solutions.[154] During the campaign opposition was claiming mistrust in election administration and fairness of the process. By controversial and

[151] OSCE/ODIHR, *Final Report on Georgian Extraordinary Presidential Elections 4 January 2004*, (Feb.28, 2004), http://www.osce.org/odihr/elections/georgia/24600
[152] *Id*. at 18
[153] OSCE/ODIHR, *Final Report on Georgian Partial Repeat Parliamentary Elections 28 March 2004*, (June 23, 2004), http://www.osce.org/odihr/elections/georgia/34196
[154] OSCE/ODIHR, *Final Report on Georgian Extraordinary Presidential Elections 5 January 2008*, (Mar.24,2008), http://www.osce.org/odihr/elections/georgia/66641

split decision of Central Election Commission election results were approved and Saakashvili was elected for the second time.[155]

After the extraordinary presidential elections, the situation in the country remained tense between the opposition and the ruling government (United National Movement party). The dialog started between two forces after the presidential elections did not bring any significant result and in March of the same year the political situation again deteriorated. Opposition presented its demands for changes, including electoral reforms. Though the Constitution and the Unified Election Code were amended, the main demands of opposition were not addressed. As a result of increasing pressure of the opposition, President Saakashvili called early Parliamentary elections on May 21, 2008. Ruling United National Movement got absolute majority (119 seats), United Opposition got only 17 seats, two other parties got 6 seats each in the new elected Parliament.[156]

Though 2008 Parliamentary elections were characterized as the most competitive elections in Georgia after independence, nevertheless international observers expressed number of serious concerns relating both electoral legislation and administration of elections. Misuse of administrative recourses and inconsistence and ambiguity of legislation affected integrity of the whole election process. Particularly, right before the elections on March 2008 a number of amendments were introduced to the electoral legislation. Provisions regarding parliamentary election system were amended in the Constitution, according which 75 Members of Parliament should be elected under proportional and other 75 under majoritarian electoral system.[157] Amendments to the campaign regulations enabled misuse of administrative resources and created unequal playing field for the participants. Moreover, the main concern expressed by the

[155] *Id.*

[156] OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections 21 May 2008*, (Sep.9, 2008), http://www.osce.org/odihr/elections/georgia/33301

[157] Before this amendment, 100 MP were elected under proportional and 50 MP under majoritarian electoral system.

OSCE/ODIHR election observation mission was that these amendments were adopted without considering opposition's opinion and right before elections, which contradicted to principles of democratic elections.[158]

The next parliamentary elections were called by President Saakashvili on October1, 2012 according to the relevant Constitutional provisions. The parliamentary elections were held under the new Election Code adopted in 2012. The Code addressed number of recommendations that were presented by OSCE/ODIHR reports on previous elections and Venice Commission and OSCE/ODIHR in their joint opinion on draft Code. However, again as in 2008 the legislation was amended less than a year before the elections, which again fell short with international standards.[159] OSCE/ODIHR election observation mission assessed the 2012 parliamentary elections as an important step forward to democratic elections, though several key issues still required to be addressed. Though electoral legislation was amended, still it provided opportunity for misuse of administrative resources and participation of state officials in campaign while holding the office. Cases of violence and intimidation mostly against opposition were observed during the campaign.

Prior to elections political situation in the country was relative stabile and calm. The most popular contestants were the ruling United National Movement and the joined opposition coalition 'Georgian Dream'. After elections day, supporters of Georgian Dream organized demonstrations and rallies and demanded annulment of results in several districts. Under the pressure of opposition in some districts re-elections were held. The opposition gained majority

[158] Code of Good Practice in Electoral Matters *supra* not 39, para.65 states that amendments of the electoral system should be done more than a year before elections
[159] *Id.*

in the new elected Parliament by 85 mandates and the United National Movement got 65 mandates.[160]

As it can be seen from the above discussion, almost the same scenario happened in Georgia as in Armenia after the first years of independence. Despite first democratic elections, in both countries newly emerged political elites adopted fraudulent and abusive electoral practice to hold the power. In Georgia, in contrast to Armenia, there was a revolutionary change of power in 2003, however, it did not bring immediate changes in democratization process of the country. As stated by L. A. Mitchell in "Compromising democracy: state building in Saakashvilli's Georgia", after the Rose Revolution Saakashvili and the new government was more concerned to rebuild the state by economic than democratic reforms.[161] Though some of the Georgian elections were assessed positively, none of them was considered as fully meeting international requirements for democratic elections.

2.2.2. Legislative Framework of electoral rights in Georgia

After the collapse of the Soviet Union Georgia acquired its independence and launched the process of democratization of the country. Its new Constitution was adopted in 1995 and amended several times. However provisions relating to electoral rights have been amended only by the last changes. Article 28 of the Constitution of Georgia states that: "Every citizen of Georgia who has attained the age of 18 shall have the right to participate in referendum or elections of state and self-government bodies. Free expression of the will of electors shall be guaranteed."[162] The second part of the given article states restriction on electoral rights for persons who are recognized legally incapable or sentences to imprisonment with exception to

[160] OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections 1 October 2012* (Dec.21, 2012), http://www.osce.org/odihr/98399

[161] Lincoln A. Mitchell *Compromising democracy: state building in Saakashvili's Georgia*, 28 No2, Cent. Asian Surv. 171-183 (2009)

[162] Constitution of Georgia art.28, (1995), English version is available at: http://www.legislationline.org/documents/section/constitutions/country/29

persons imprisoned for less grave crimes.[163] According to Article 29 any citizen meeting legislative requirements have a right to hold any state position. However second provision of the given article states that dual citizens are not eligible for the positions of the President, the Prime Minister and the Chairman of the Parliament.[164] Constitutional provisions are further elaborated in the Election Code of Georgia which was adopted in 2012.

As in the Armenian Constitution, the Georgian Constitution stipulates general provisions for elections of the President of the country and deputies to the Parliament. However, the Georgian Constitution provides more room for organic law. Article 49 of the Georgian Constitution stipulates the structure of the Parliament, which shall consist of 150 deputies elected under mixed proportional and majoritarian systems. Article 49.2 states that: "A citizen, who has attained the age of 21, having the right to vote, may be elected a member of the Parliament."[165] The given provision has been amended in 2012 reducing the age limitation from 25 to 21 and does not stipulate any other requirements for the candidates but the citizenship and age criteria. Comparing to relevant provision of the Armenian Constitution it can be seen that the Georgian Constitution stipulates fewer requirements for candidates than Armenian Constitution.

The new Election Code of Georgia was adopted in 2012. Prior to the adoption, the Venice Commission and the OSCE/ODIHR issued a joint opinion on the draft Code. The draft has been changed based on the recommendations and comments presented in the joint opinion. Before the joint opinion, Article 110(1) of the draft Code stipulated 10 year residence requirement for candidates of members to the Parliament (the old Election Code also stipulated 10 year residence requirement).[166] The joint opinion stated that such a length of residence was

[163] Constitution of Georgia art.28.2, the last part of the provision was amended on 27.11.2011 following the recommendations of Venice Commission and OSCE/ODIHR
[164] Constitution of Georgia art.29
[165] Constitution of Georgia art.49.2
[166] Venice Commission and OSCE/ODIHR, *Joint Opinion on Draft Election Code of Georgia*, Dec.1,2011, Point 28

excessive and disproportional.[167] After the recommendation to reconsider this requirement the residency requirement for the candidates of members to the Parliament, has been reduced to 2 years. Article 111(1.2) states as follows: "1. Any citizen of Georgia with the right to suffrage, who has attained the age of 21 and speaks Georgian, may be elected as a Member of Parliament of Georgia. 2. A citizen, who has not resided in Georgia over the last 2 years, and is not on a consular registry of Georgia in any other country, may not be elected as a member of the Parliament of Georgia."[168] Articles 115 and 116 of the Election Code of Georgia stipulate procedures for the registration of candidates for members to Parliament under proportional and majoritarian systems respectively. According to the mentioned articles, among other necessary personal information, address (place of registration) shall be included in the application for the registration of candidates.[169] Article 117 of the Election Code requires check party lists and documents of candidates for the registration. The registration of the candidate shall be declined and a candidate shall be de-registered if submitted documents and application do not comply with the requirements, particularly: "a) the data specified in the applications and documents are incomplete or incorrect."[170]

According to Article 69 of the Georgian Constitution the President of the country is the head of state. Article 70.2 states that: "Any person may be elected as the President of Georgia if he/she is a citizen of Georgia, has the right to vote, has attained the age of 35, has lived in Georgia for at least 5 years and has resided in Georgia for last 3 years by the Election Day.."[171] Before the amendment of the Constitution in 2011, the Constitution stated quite high residency requirement for the candidates for presidency (15 years of residency). But as it was mentioned,

---

[167] *Id.*

[168] Election Code of Georgia art. 111, (2012), non-official English translation available at: http://www.legislationline.org/topics/country/29/topic/6

[169] Election Code of Georgia art.115(10.d), 116(4.f)

[170] *Id.* art.117(5.a)

[171] Constitution of Georgia art.70.2

based on the recommendations of the Venice Commission and OSCE/ODIHR in the join opinion on Election Code of Georgia, this requirement has been changed. Article 96 of the new Election Code stipulates the same requirement for the candidates for the President of Georgia.[172] According to Article 98.3 for the registration of a candidate of the President among personal information place of registration and length of residency in Georgia shall me mentioned.[173] The registration of the candidate shall be declined if the personal data presented by the candidate is incorrect or incomplete (including data on residence).[174]

The Election Code of Georgia does not require a special statement for residence period in the country. The residency and the place of residence of candidates are verified based on the note in the passport. Comparing to Armenia it can be stated, that in Georgia the candidates are exempt from undue bureaucracy and possible abuses as the regulation is much simple.

Conclusion

Democratization process in Armenia and in Georgia started after the collapse of the Soviet Union in late 1980s beginning of 1990s. The first elections in newly independent states were free and fair. However, soon after change of power and organization of new political structure, ruling elites usurped the power. Non-democratic elections became a tool to keep their position. Most of the elections in both countries were assessed as 'not meeting international standards for democratic elections'. To hold 'free and fair' elections was a decision of ruling elites based on strategic calculations rather than a proof of real democracy.

As it has been mentioned the constitutions in both countries were adopted in 1995 which provided general provisions for electoral rights. These provisions were further elaborated in the Electoral Codes. As it has been presented, under Armenian legislation 5-year and 10-year

[172] Election Code of Georgia art.96.2
[173] *Id* art.98.3
[174] *Id* art.100.3

residence requirement is set for candidates to members of Parliament and the President of the state respectively. From the discussion of legal regulations it can be seen that there is a legislative and regulatory gap which may result in violations of candidacy rights.

In contrast to Armenia, Georgian legal framework has been amended more frequently. Considering the recommendations of Venice Commission and OSCE/ODIHR, Constitutional provisions of residency requirement for candidates to national elections have been gradually reduced by recent amendments. This change found its reflection also in the new adopted Election Code of Georgia.

Drawing parallels between democratization processes of two countries, it can be seen that Georgian government was able to change political recourse of its predecessors, though not immediately. As an evidence amendments to the Constitution and new Election Code can be mentioned.

In contrast, the Armenian ruling elite still uses all available means to keep the power. Manipulation of elections became a common practice. Inconsistency of the legislation and regulatory gaps give room for such manipulation and violation of electoral rights.

Chapter 3: Implementation of the Residency Requirement and Available Remedies for the Protection of Candidacy Rights

Introduction

In the previous chapters, the legislative frameworks of the electoral rights in Armenia and Georgia have been discussed. As I have mentioned there is a legislative and regulatory inconsistency in Armenian legislation regulating residency requirement for candidates in national elections. This legislative gap leaves a room for arbitrariness and violation of candidacy rights.

As the main objective of this research is to elaborate on electoral rights in Armenia and their implementation, this chapter will cover only Armenian cases. Cases when the residency requirement has been used against certain persons to eliminate their participation in national elections will be discussed.

The second part of the chapter will discuss available remedies for the protection of electoral rights. The effectiveness of these remedies will be discussed in light of Article 13 of the European Convention on Human Rights.

3.1. Case Study

During the drafting period of the Constitution, when the articles of the Constitution were under discussions, Articles 50 and 64 were also widely debated. In the early 1990s three main factors were essential for the adoption of residency requirement for candidates to national elections in Armenia: diaspora, newly established republic, Nagorno-Karabakh conflict.

The total Armenian population living worldwide is estimated to be a little more than 10 million,[175] but only about 3,018,854 live in Armenia.[176] Such a huge diaspora that is spread all

[175] Armenian Diaspora .com portal (visited 23/10/2013), http://www.armeniadiaspora.com/population.html,

over the world triggered a legislative response. The second factor was also seriously taken into consideration. A person who wanted to run for presidency had to be a citizen and to have lived and been actively involved in the political life of the country from the first days of the newly established Armenian Republic. As the Constitution was adopted in 1995, this meant that counting form the independence in 1991, the minimum requirement should have been at least 5 years. The last factor was of great importance for Armenia and was taken into consideration while drafting the corresponding article: the fate of Nagorno-Karabakh. The war in Karabakh became one of the main issues of concern for the independent Armenia and for the people in charge. A person that had not been present in the country form the beginning of Nagorno-Karabakh movement in late 1980s and consequently had not participated in the national and independence movement, in any way could not be eligible for the highest post of the state. [177] Considering that the movement started in 1987-1988 here came additional 5 years. So in 1995, the ruling power considered 10 year of residence in Armenia reasonable timeframe to meet abovementioned goal. These were the main arguments for the 10 years and 5 years citizenship and residence provisions circulated in the Constitutional Court of Armenia during the hot debates while drafting the Articles 50 and 64.

The rationale behind the excessive citizenship and residency requirements stipulated in the Constitution of Armenia was "protection" of the state and the will that the potential candidates for national posts (President and Members of Parliament) should be well aware of the situation in the country. One of the reasons was that after independence a big number of Armenians living abroad started to return to their homeland. However, another, hidden reason behind these provisions might be the fact that among these returnees, there were some who engaged in

[176] Armenian Statistical Service of the Republic of Armenia, *2011 Population Census of the Republic of Armenia* (Oct. 2011), http://www.armstat.am/en/?nid=337

[177] All the information is taken from the interview by the author with professor Felix Tokhyan, member of Constitutional Court of Armenia, on 27.08.2013, who relies in his statements on the '*travaux préparatoires'* in the archives of the Constitutional Court

politics and soon became strong political figures, creating unwanted competition for those in power.

One such example was the "Armenian Revolutionary Fraction". This party was one of the oldest Armenian parties, founded back in 1890, and has been the bearer of nationalist ideologies ever since. Though the party was banned in Soviet Armenia, it was very active in the Armenian diaspora. After the independence in 1990, the leaders of the party returned to Armenia and got involved in politics quite actively.[178] However, soon after that, in 1994 the first President Levon Ter-Petrosyan started repressing the Armenian Revolutionary Fraction, and the functioning of the party was suspended and some of the leaders were imprisoned.

Another example is US-born Raffi Hovhannisyan, who came to Armenia in the late 1980s and was active in the independence movement from the very beginning. He was the first minister of foreign affairs of Armenia in 1991-1992. However, after holding the position for a year, Hovhannisyan differed with the political policy of the ruling elite, resigned and became member of the opposition.[179]

In the presidential elections of 2003, Hovhannisyan was among the candidates for presidency, but his candidacy was rejected. The official justification was that he did not meet the 10 year citizenship and residence requirement. He filed a suit hoping to get the court reverse on the grounds that he has lived in Armenia since 1991 and all his applications to be granted citizenship were rejected.[180] Hovhannisyan first applied for citizenship on September 23, 1991 but his application remained unanswered. He sent a new application in November 1991 and again he did not get a reply. He made another attempt in July 6, 1995, then repeated it in December of the same year, but again he received no answer. After the adoption of the law on

[178] *History of Armenian Revolutionary Federation-Dashnakcutyun*, ARMENIAN REVOLUTIONARY FEDERATION-DASHNAKCUTYUN(Oct.20,2013), http://www.arfd.info/background/

[179] *Raffi Hovhannisyan's biography*, RAFFI (Oct.15,2013), http://www.raffi4president.am/

[180] Aghavni Harutyunyan, *The Inaction of the President Has Been Challenged 12 Years Later,* AZG DAILY, Jan. 9, 2003 at 2

Armenian citizenship in late 1996, he renewed his application, sending it to president's administration on July 7, 1997. Such applications were sent also in 1998 and 2000. It was only in 2001 that President Kocharyan granted Armenian citizenship to Hovhannisyan, almost four months after surrendering his U.S. passport. On December 25, 2002 Hovhannisyan sent a demand-letter to the President, requesting to annul the decision of the President on granting him citizenship in 2001 and recognize his citizenship from 1991, when he first had applied for citizenship. However his request remained unanswered.[181]

On January 8, 2003 Raffi Hovhannisyan filed a suit and on January 9 the Court of First Instance of the Center and Nork-Marash district of Yerevan, chaired by Judge Saro Aramyan, decided to turn down his claim on recognizing the "inaction of the President of Republic of Armenia as illegal and granting him citizenship from 1991". Few days later he filed a claim to the appellate court and on January 17 the Court of Appeals affirmed the verdict of the Court of First Instance. Before that, on January 15, the Central Election Commission (CEC) voted by seven in favor with two abstentions not to register Hovhannisyan as a candidate for presidential elections in February. The CEC based that decision on documentation presented by the Police certifying that Hovhannisyan became a citizen of the Republic of Armenia in August 2001 and did not meet the 10 year citizenship and residence requirement.[182] After this decision, Hovhannisyan refrained from participation in the 2008 presidential elections, too, as again he still would not meet the requirements. I should mention that Raffi Hovhannisyan was one of the candidates in the 2013 presidential elections and came in second.

According to Armenian legislation the President grants the citizenship.[183] Such decision can have many legal and sometimes even personal motives including political such as the elimination of possible competitors. Besides the citizenship the other mandatory requirement

[181] *Id.*
[182] *Id.*
[183] RA Constitution art.55, part 15

which can be manipulated even more easily is the 10 years of residency. In the case of citizenship a passport can solve the dispute, though Raffi Hovhannisyan's case obviously proves that even this requirement can serve as a tool to eliminate competition. But the 10-year residency provision can be more dangerous. Considering that there is a clear legislative and regulatory gap in the legislation, as it has been presented, it can be and is used for the benefit of a group of people. The wording of this requirement is very vague and it is not even clear who should calculate it and in what way it should be calculated, as it has been discussed in the previous chapter.

Another example will show the possible manipulation of this requirement, from the opposite side, in favor of the ruling elite's candidate. In the 1998 presidential elections, acting Prime Minister Robert Kocharyan was elected as the second President of Armenia. Before his election, there was a debate whether he was eligible to stand as a candidate.

Kocharyan came to Armenia and became Prime Minister only in 1997. Before that he lived in Nagorno-Karabagh and from 1994 to 1997 was the first President of the Independent Republic of Nagorno-Karabagh.[184] Before the declaration of independence, Nagorno-Karabagh was the territory of Azerbaijan. As it can be seen, Kocharyan has resided neither de facto, nor de jure in Armenia for 10 years. However, at that time Kocharyan was member and the only favorable candidate of ruling elite. A special group of legal experts was established to assess if Kocharyan could be eligible for presidential elections. [185] After the 'positive' opinion of the expert group, Kocharyan was registered as a candidate and was elected as a President. As it can be seen, in Kochryan's case, the 10-year citizenship and residence requirement was again manipulated, this time for the advantage of those in power.

[184] *Robert Kocharyan's Biography*, RA GOVERNMENT, (Oct.14,2013), http://www.gov.am/am/prime-ministers/info/99/

[185] Interview of R. Kocharyan with A1+ tv reporter, (1998), http://www.youtube.com/watch?v=HiFZpd3xZsU

The residency requirement was used against opposition candidates again during the 2012 Parliamentary elections. According to the final report of the OSCE/ODIHR election observation mission, registration was denied to five candidates because they did not meeting the 5-year residence requirement. All of them were opposition candidates.[186] One of those candidates was Khachatur Sukiasyan former Member of Parliament and fellow of opposition leader ex-President Levon Ter-Petrosyan. It is worth to mention, that the 'tool' once used by Ter-Petrosyan against potential competitor, now has been used against his team-members.

K. Sukiasyan was elected as a Member of Parliament for three consecutive times 1999-2003, 2003-2007 and 2007.[187] However in the 2012 Parliamentary elections his registration as a candidate under majoritarian electoral system was rejected by the Territorial election commission (hereinafter referred as TEC).

Sukiasyan and his family have been involved in economic life of Armenia since the beginning of independence. By the end of the 1990s his family owned several factories and businesses. Sukiasyan was the only family member who entered politics, though he was not a member of any political party. In 2007 he was again elected as a Member of Parliament under majoritarian election system, however he put his mandate down, before the end of the term. In the 2008 presidential elections Sukiasyna openly supported opposition candidate Ter-Petrosyan and was actively involved in the election campaign. He was one of the opposition team-members boycotting election results and active participant of rallies and demonstrations.

After the tragic events of March 1, 2008 when government and opposition forces confronted[188] and the repression of the opposition by use of force, the government started oppressions against opposition leaders, including Sukiasyan and his family. One of the big factories belonging to Sukiasyan's family was illegally confiscated. Despite his immunity as a deputy, a number of

[186] Final Report on Armenian Parliamentary Elections 06 May 2012 *supra* note 96

[187] *Khachatur Sukiasyan's biography*, RA NATIONAL ASSEMBLY (Oct.25, 2013) http://www.parliament.am/deputies.php?sel=details&ID=840&lang=eng

[188] Events of March 1, 2008 are discussed in the second chapter more detailed.

charges were brought against Sukiasyan. Later none of them was found well-grounded and his case was closed. However, at that time Sukiasyan left the country for several months. After his return he put down his mandate in September 2009.[189] Events following the presidential elections and oppressions because of political views attracted the interest of the international community. Due to heavy international criticism for political oppressions the charges against Sukiasyan were taken off.

According to Article 50 part 1.10 of the Electoral Code, the registration of candidates to members of the National Assembly under majoritarian electoral system is done by corresponding Territorial election commissions. On March 7, 2012 Sukiasyan filed an application to No10 TEC to register him as a majoritarian candidate. The application was made with all necessary attachments, including statement on residing in the country for past five years issued by the territorial department of the Police PVD on March 6, 2012. However, on March 15, 2012 the territorial department of PVD sent a letter to N10 TEC asking to ignore the statement issued on March 6, 2012 and to consider the information that Khachatur Sukiasyan has not been permanently residing in Armenia for the last 5 years.[190] As a result the registration of Sukiasyan as a candidate under majoritarian electoral system was rejected.

They based this decision on media sources alleging that Sukiasyan was abroad for several months after the events of March 1, 2008. However, the Police or PVD did not take any further steps to clarify or establish for how long Sukiasyan was residing abroad (allegedly for 10 months) and what were the reasons why he left. As it was mentioned Sukiasyan and his family were repressed because of their political views. Sukiasyan left the country for several months (for around 4 months as he stated) to avoid illegal actions of police and prosecution against him. He did not leave the country to work or to reside abroad. According to Article 12.1(e) of

[189] *Announcement of Armenian National Congress on 17.03.2012,* A1+(Oct.26,2013), http://www.a1plus.am/am/politics/2012/03/17/hak

[190] Complaint of Khachatur Sukiasyan field to TEC and CEC on 17.03.2012, CEC official web-page http://www.elections.am/

Armenian Law on Rules of Procedures of the National Assembly the powers of the deputy may be terminated if "he/she is regarded to be absent from more than half of the voting during one regular session without any good reason".[191] As it was mentioned Sukiasyan put his mandate down, his powers were not terminated. This means that he was not absent from the works of the Parliament for 10 months, which will include 2 consecutive sessions. Furthermore, even if he stayed abroad for 10 months, this would only constitute 18% of the entire time period that the potential candidate is required to reside in the country. According to Article 23.1 of the Civil Code of Armenia "The place of residence is the place where a citizen permanently or primarily lives."[192] Based on the above discussion, it can be stated that Sukiasyan permanently resided in the country as he primarily lived Armenia for the last 5 years.

On March 17, 2012 Sukiasyan filed a complaint to No10 TEC requesting to ignore the PVD 15.03.2012 letter and to register him as a candidate based on his application of March 07, 2012. The TEC rejected his complaint and did not register him as a candidate. On the same day Sukiasyan filed another complaint to the CEC, starting an administrative procedure against No10 TEC and seeking to get him registered as a candidate according to Article 46.6 of Electoral Code. The CEC took a very formalistic approach in this case. Particularly it rejected the complaint against the No10 TEC decision, stating that the applications on the registration of candidates should be presented to the corresponding election commission and it is outside the competence of the CEC to register a majoritarian candidate. The CEC also stated that there are no grounds for instigating administrative procedure against No. 10 TEC. [193] The CEC used vague and deliberate interpretation of Article 46.6 wording, without referring to other relevant provisions of the Electoral Code.

---

[191] RA Law on Rules of Procedures of the National Assembly art.12 part 1.e, AL-308 (2002), non-official translation is available http://www.parliament.am/legislation.php?sel=show&ID=38&lang=eng

[192] RA Civil Code of Armenia art.23, AL-239 (1998), non-official translation available at: http://www.parliament.am/legislation.php?sel=show&ID=1556&lang=eng

[193] Central Election Commission Decision N60-A Mar. 21,.2012

Here again, it is worth mentioning that the electoral legislation does not provide any provision on how to count the 5-year or 10-year permanent residence period for candidates to national elections. No time restrictions are specified for potential candidates on how much time they can spend abroad. Following the logic of the Armenian authorities applied in the Sukiasyan case, if a person has spent his/her annual vacations abroad (5 months in total for the last 5 years) he/she is most likely not eligible to stand for national elections. As it can be seen from the above discussion, the 5-year residence requirement was used to ban opposition candidate form participation in elections.

It is worth here to refer to Article 3 of Protocol No. 1 of the ECHR and its interpretation by the Court. As it was discussed in the first chapter, the rights provided under this article should be practical and effective. The European Court of Human Rights has stated in the case *Melnichenko v. Ukraine* that the rights provided by Article 3 and particularly the right to stand as a candidate, would be ineffective if "one could be arbitrary deprived of it at any moment".[194] In the Melnichenko case the Court once more stated that States should provide sufficient guarantees against arbitrariness. It also stated that reasons and circumstances of the absence of the person should be taken into consideration by authorities. Similarly to the Melnichenko case, Sukiasyan left the country because of political repressions. However, in contrast to Melnichenko, who resided abroad for more than a year and got a refugee status, Sukiasyan left Armenia for a few months and at that time he was still Member of Parliament. It can be stated that Sukiasyan's rights under Article 3 of Protocol No. 1 were violated.

As it can be seen from the above discussion the constitutional and legislative norms on citizenship and residence requirements for the candidates to national elections do not serve to the original purpose. These provisions became a deliberate tool in the hands of the ruling elite to eliminate potential and strong opposition. Both Hovhannisyan's and Sukiasyna's cases aptly

[194] *Melnychenko v. Ukraine, supra* note 54

demonstrate this. It was mentioned that Hovhannisyan came to Armenia in the late 1980s and was involved in the Karabagh movement from the very begining. Moreover he was holding one of the important state positions and contributed to the establishment of Armenian statehood. Despite this, after becoming an opposition leader, citizenship and residence requirement became a tool in the hands of the government to curb Hovhannisyan's political aspirations. Citizenship and residence requirement was used against Hovhannisyan to eliminate him from participation in presidential elections as a strong candidate. The same happened in Sukiasyan's case, when a person who was elected as a deputy to National Assembly for 3 consecutive times, was arbitrary banned from the participation to Parliamentary elections. As it has been discussed there were 'grounds' for high citizenship and residency requirements for Armenia in the 1990s. This was the way of thinking in 1995 and it could serve as a justification for these provisions to be included in the Constitution, but it cannot be justifiable for Armenia in 2013.

3.2. Remedies for the violation of voting rights

3.2.1. Available remedies under Armenian legislation

One of the important elements in assessing effectiveness and accessibility of a right is remedies provided to protect that right. The remedies provided for the protection of voting rights under Armenian legislation are regulated by several laws: the Electoral Code, the Law on Fundamentals of Administration and Administrative Proceedings, the Administrative Procedure Code and the Law on the Constitutional Court. As it can be seen legal remedies for voting rights are not consolidated in one legal act (the Electoral Code) which in some cases creates overlapping jurisdiction in consideration of complaints and appeals. Particularly, according to procedures described by Article 46 of the Electoral Code, decisions, actions or inaction of an election commission may be appealed before superior election commission. Decisions, actions or inaction of the CEC may be appealed before the Administrative Court, except for decisions

on national election results. The CEC decisions on the results of national elections may be challenged only before the Constitutional Court.[195] Chapter 25 of the Administrative Procedure Code regulates proceedings and consideration of cases on electoral violations, stating general jurisdiction for such cases. The Code does not state any requirement for applicants to lodge complaint first to corresponding election commission, then to the Administrative Court, thus creating overlapping jurisdiction with election commissions.[196] It should be highlighted that according to Article 150.1 of the Administrative Procedure Code, the decisions of the Court on electoral matters are final and cannot be appealed to higher court and enter into force after publication.[197]

According to Article 45.1 of the Electoral Code, administrative due process should be applied when discussing complaints and appeals by the election commissions.[198] At the same time, Article 46.1 states that the decisions, actions or inaction of election commissions may be appealed only by individuals whose personal electoral rights have been violated. This means, that no other interested person (proxy, observer, etc) may loge an application on violation of candidacy rights or voting rights of citizens except of those whose rights have been violated. In this regard the OSCE/ODIHR Election Observation Mission for the 2012 Parliamentary elections stated in its final report that such a regulation unduly restricted the scope of people who could seek judicial remedies for violations of general electoral rights.[199] At the same time Article 144 of the Administrative Procedure Code states that every physical or legal person, who finds that a decision, action or inaction of a state authority violates the rights provided by the Armenian legislation, may turn to the Administrative Court.[200] However, applying lex

[195] RA Electoral Code art.46
[196] RA Administrative Procedure Code chap. 25, AL-269 (2007)
[197] *Id.* art.150.1,
[198] RA Election Code art.45 part 1
[199] Final Report on Armenian Parliamentary Elections 06 May 2012 *supra* note 96
[200] RA Administrative Code art.144

specialis principle (Article 46.1 of Electoral Code) the Administrative Court rejects the consideration of most of the complaints, stating that applicants do not have standing.[201] As it can be seen there is an inconsistency between Electoral Code, which restricts the scope of standing in electoral matters to only those, whose personal rights have been violated and the Administrative Procedure Code, according to which every person has a standing before the Administrative Code. Both the Electoral Code and the Administrative Procedure Code establish a 3-day period for filing an application after the discovery of a violation, except for applications on voting results and re-counting (the Electoral Code provides shorter deadline for these cases). The complaints on registration or de-registration of candidates and party lists should be considered in a 5-day period.[202] In general the 5-day period for the consideration of complaints by the court may be seen as reasonable. However, on electoral matters and especially in cases on candidacy rights a shorter time period should be established. This may be justified by the requirement of creating equal playing field for candidates especially during campaign period. According to Article 46.8 the burden of proof is shared between the applicant and respondent election commission: each of the parties should substantiate their positions.[203]

Article 46.11 states that applications on repealing the registration of a candidate may be filed a day prior to elections day. According to the second provision of the given article "[…] the decision of the constituency electoral commission on registration of a candidate may be appealed against before the Central Electoral Commission within three days starting from the day when the applicant learnt or was reasonably obliged to learn about the violation, but not later than the day preceding the voting day."[204] As it can be seen the provision clearly establishes the jurisdiction of the CEC to consider appeals on registration of candidates. As we

[201] Final Report on Armenian Parliamentary Elections 06 May 2012 *supra* note 96
[202] RA Administrative Code art.146.5 and 46.12
[203] RA Electoral Code art.46.8
[204] RA Electoral Code art.46.11

have seen, in the Sukiasyan's case, the CEC rejected the consideration of the appeal using a vague interpretation of these provisions of the Electoral Code.

As stated in the final report of the OSCE/ODIHR election observation mission to the 2012 Armenian parliamentary elections, the complaints and appeals procedure provided by the legislation is unduly complex. Another issue highlighted by the mission, is the formalistic approach that the election commissions and courts adopted when considering electoral complaints and appeals. During the 2012 Parliamentary elections the CEC received around 500 complaints, consideration of most of which was rejected on technical and overly formalistic grounds. Only a very small number of cases were considered by the CEC, most of which were also rejected, without proper consideration. The same approach was used by the Administrative Court, which rejected consideration of almost all 24 complaints it received, four of which were on candidates' registration.[205]

3.2.2. International requirements for the effective remedies

The complexity of the complaints and appeals procedure, the legislative norm that the court decisions are final and cannot be appealed and the manner of administrative bodies when considering electoral complaints and appeals usually leave stakeholders without effective legal remedy. This is contrary to Paragraph 5.10 of the OSCE 1990 Copenhagen Document which states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".[206] Moreover it is contrary to principles set out in international human rights documents like the Universal Declaration of Human Rights and the European Convention on Human Rights. Article 8 of the Universal Declaration states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the

[205] Final Report on Armenian Parliamentary Elections 06 May 2012 *supra* note 96

[206] OSCE 1990 Copenhagen Document on Human Dimension *supra* note 61, point 5.10

constitution or by law."[207] Article 13 of the ECHR states that: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."[208] Article 21 of the Universal Declaration and Article 3 of Protocol No. 1 of the ECHR provide the right to vote and stand for elections, as it was discussed in the first chapter. These rights are also enshrined in the fundamental rights of citizens provided by the Armenian Constitution.

The European Court on Human Rights pays attention to several elements when assessing 'effective remedies' provided for the protection of the rights protected under the Convention. First of all proper remedies should be provided on the national level. International remedies should be used only as a last resort. The remedy is not required to be exclusively judicial.[209] This means that administrative bodies (in our case election commissions) or other organs that consider the dispute and give a redress may be considered as a proper remedy.

Most importantly the remedy should be 'effective' not only in law but in practice as well. This means that the statement of available remedies in legislation is not enough to claim that there are effective remedies. This does not mean that a favorable outcome for the applicant should be ensured, however: "[t]he respondent State will be expected to identify the remedies available to the applicant and to show at least a prima facie case for their effectiveness. So where respondent States cannot put forward an example of a relevant remedy, they are unlikely to satisfy the Court that there is an effective remedy available."[210]

In the case Akson v. Turkey, the Court stated that "the remedy required by Article 13 must be 'effective' in practice as well as in law, in particular in the sense that its exercise must not be

[207] Universal Declaration of Human Rights *supra* note1, art.8
[208] European Convention on Human Rights *supra* note 19 art.13
[209] DIJIK *supra* note 4 at135
[210] *Ib.*

unjustifiably hindered by the acts or omissions of the authorities of the respondent State."[211] The remedies that in general are unenforceable or discretionary cannot be considered effective under Article 13. The absence of a right to challenge the court decision before a higher court also may be in violation of Article 13.[212]

As it was presented, the election commissions and the Administrative Court rejected the consideration of the vast majority of complaints they had received. The very small number of cases that were taken into proceedings had been rejected without due consideration. Moreover, almost in all cases the superior election commission or the court upheld decisions of lower instances. According to the Administrative Procedure Code, the court decisions on electoral matters are final and cannot be appealed in the higher courts. It can be seen that practical implementation of complaints and appeals procedures prescribed by law left the applicants without 'effective' remedy as required by Article 13, as well as other international human rights documents.

Conclusion

In 1995 when the Constitution was adopted, there were 3 main reasons to establish the 10-year and 5-year citizenship and residence requirement for the candidates to national elections. These reasons were diaspora, newly established republic, Nagorno-Karabakh conflict. However, as it can be seen from the above presented cases, these requirements became a deliberate tool in the hands of ruling power to eliminate competition. The arbitrary interpretation and implementation of the residency requirement became a common practice of election administration bodies.

---

[211] *Aksoy v. Turkey* , 18 December 1996, § 95,ECHR, Reports of Judgments and Decisions 1996-VI

[212] PHILIP LEACH, *Taking a Case to the European Court of Human Rights*, 393-395 (Oxf.Uni.Press, 2nd ed. 2005)

The right to stand for elections may be practical and effective if there are remedies provided for the protection of this right. As it was discussed Armenian legislation prescribes complaints and appeals procedure for the protection of violated electoral rights. However, this procedure is unduly complex and leaves stakeholders without proper protection of their rights.

To assess the effectiveness of available remedies for the protection of the electoral rights international standards have been discussed. Requirements of Article 13 of the ECHR for the 'effective remedies' have been presented. According to the Court interpretation the remedies that in general are unenforceable or discretionary cannot be considered effective under Article 13. The absence of a right to challenge the court decision before a higher court also may be in violation of Article 13. Based on the discussion of the relevant part of the chapter it can be stated that remedies provided under Armenian legislation fell short in meeting international requirements for effective remedies.

Conclusion

In the ambit of civil and political rights the electoral rights have a paramount importance. The importance of these rights is addressed by such human rights organizations as United Nations and Council of Europe. The UN International Covenant on Civil and Political Rights and the CoE European Convention on Human Rights (which are among the most important human rights documents) state that everyone has the right to free elections.

This research showed the development of electoral rights and its interpretation given by international organizations. Based on the interpretation of electoral rights they are divided into active (right to vote) and passive (right to stand for elections) electoral rights. Despite the importance of electoral rights, these rights are not absolute and may be subject to limitations. However these limitations should be imposed in such a way as not to impair the essence of the rights. Such limitations may be age, citizenship, residency requirements, criminal conviction, etc.

The research focused on the residency requirement as a limitation of candidacy rights and showed what implications it may have on the right to free elections. For this purpose comparative analysis of international, Armenian and Georgian legislations and regulations has been conducted. Such an analysis enabled me to present and to evaluate the right to free elections in the light of three different jurisdictions, as well as to discuss contradictions and inconsistencies among the relevant pieces of legislation.

First, the international prospective of the residency requirement has been presented. I argued that there is an inconsistency between the interpretations given by the various UN and CoE bodies. In the UN perspective, residency requirement may be legitimate limitation only in regional elections. No such requirement should be imposed for national elections. While the

European Court of Human Rights has stated that residency requirement for candidates to national elections is not a violation of the Article 3 of the Protocol No. 1 of the ECHR per se, and it will consider the compatibility of limitations on a case by case basis. Second, the research has shown that there is also inconsistency between the case law of the European Court of Human Rights and other documents adopted by the CoE and other regional organizations. Particularly the OSCE Copenhagen Document, the OSCE/ODIHR Existing Commitments for Democratic Elections in OSCE participating states and the Venice Commission Code of Good Practice in Electoral Matters clearly state that there should be no residency requirement for the candidates to national elections.

For the elaboration of national legislations first the democratization processes in Armenia and Georgia has been discussed. The emphasis has been given to election practices in both countries after their independence in 1991. As the research has shown, both countries had relatively similar developments in their political life in the 1990s. In both countries electoral violations had become a tool in the hands of the political elite to keep their power. Manipulation and abuse of electoral legislation were common practice. It can be stated that the political situation in the country has a direct reflection on the electoral practices and electoral legislation and vice versa.

However, the situation has changed from the beginning of 2000s. After the Rose Revolution in Georgia, the country took slow but decisive steps towards establishing democracy and rule of law. Starting from 2003 the electoral legislation, including relevant provisions of the Georgian Constitution, have been amended several times. The new Election Code was adopted in 2012, which heavily reflected recommendations issued by Venice Commission and OSCE/ODIHR. One of the important amendments is the substantial reduction of residency requirement for candidates to national elections. Particularly, permanent residence requirement for members to

the Parliament has been reduces from 10 to 2 years, and for the candidates for the President it has been reduced from 15 to 3 years.

While in Armenia no real change has happened in political life since independence, and any attempt to change the political situation has ended with failure and reproduction of the ruling elite. Moreover, as it has been presented, the legislation has become a deliberate tool in the hands of the government to use it for its benefit. The electoral legislation of Armenian specifies a 10-year and a 5-year residence requirement for candidates to presidential and parliamentary elections, respectively. Residency requirement for candidates is stipulated in the Armenian Constitution. Constitutional stipulation of this requirement makes it hard to change: any amendment to the Constitution may be done only by referendum. As it has been presented most of the EU states do not have such constitutional provision.

10-year and 5-year residency time period has been considered excessive by international organizations. The thorough analysis of the legislation has shown that there are clear legislative and regulatory gaps regarding residency requirement. First of all the legislation does not provide clear definition of permanent residence. There is no designated authority, clearly stated, which is responsible for issuance of statements on residence, and as a matter of practice the Passport and Visa Department of Police is in charge of it. Further, there is no regulation how the required residency period should be counted. These and other shortcomings give room for discretionary and abusive implementation of electoral norms. The presented cases have shown that the government uses residency requirement mainly against opposition to eliminate strong competition.

Another aspect of the electoral law that has been discussed is the effectiveness of available remedies. The electoral rights may be considered real and practical if there are effective remedies for their protections. To assess the effectiveness of remedies provided under

Armenian legislation comparative analysis of relevant provisions and requirements of Article 13 of the ECHR has been done. As a result, it has been stated that remedies available under Armenian legislation do not meet international requirements and may not be considered as effective.

To conclude, it may be stated that the 10-year and 5-year residence requirement for candidates is over restrictive and disproportional, and does not meet international standards for democratic elections. The practical implementation of this requirement is often used by the authorities against certain group of people to eliminate strong competition. This is contrary to the case law of the European Court of Human Rights and may result in violation of Article 3 of the Protocol No. 1 of the ECHR. Moreover, the available remedies for the protection of violated electoral rights do not meet the requirements of Article 13 of the ECHR and leave the stakeholders without effective protection of their rights.

As a core of civil and political rights, electoral rights should be effective and accessible. The importance of the right to free elections should be considered not only in the scope of human rights, but also in the scope of ongoing democratization processes in the country. Consideration of mentioned shortcomings and conclusions may be further elaborated. It may be useful especially now, when Armenia has lunched on discussions and drafting of new Constitutional amendments.

Annex 1

Table 1: Constitutional Requirement on Residency for the President Candidates of EU Countries[213]

Country	**Residency Requirement**
Austria	No
Bulgaria	5 year
Croatia	No
Cyprus	No
Czech Republic	No
Finland	No
France	No
Germany	No
Greece	No
Hungary	No
Ireland	No
Italy	No
Malta	No
Poland	No
Portugal	No
Romania	No
Slovakia	No
Slovenia	No

Table 2: Constitution Requirement on Residency for the President Candidates of Former Soviet Countries[214]

Country	**Residency Requirement**
Armenia	10 years
Azerbaijan	Longer than 10 years
Belarus	10 years
Estonia	No
Georgia	3 years
Kazakhstan	Not less than 15 years
Kyrgyzstan	Not less than 15 years
Latvia	No

[213]All the data are taken from the constitutions of the EU countries in the table, Latvia, Lithuania and Estonia (Baltic States) are excluded from Table 1 and included in the Table 2 as former soviet countries. All EU countries which do not have presidents according to their Constitutions are not included in the Table

[214]All the data are taken from the constitutions of the post USSR Republics

Lithuania	Not less than 3 years
Moldova	At least 10 years
Russia	Not less than 10 years
Tajikistan	At least 10 years
Turkmenistan[215]	-
Ukraine	10 years
Uzbekistan	At least 10 years

[215]The wording of the Article 55, Chapter 3 of the Constitution is not clear:" The President must be a citizen of Turkmenistan, a Turkmen not younger than forty years of age, and resident in Turkmenistan…"

Bibliography

1. Dijk P., *Theory and practice of the European Convention on Human Rights*, edited by Hoof F, et al., 4th edition, Antwerp-Oxford, 2006
2. Joseph S., *The International Covenant on Civil and Political Rights*, edited by Schultz et al., 2nd edition, Oxford University Press, 2004
3. Jacobs F. G, White, and Ovey, *The European Convention on Human Rights*, 5th edition, Oxford University Press, 2010
4. Leach Ph., *Taking a Case to the European Court of Human Rights*, Oxford University Press, 2nd edition, 2005
5. Golunok S., *Right to free elections: Emerging guarantees or two layers of protection*, Netherlands Quarterly of Human Rights, vol.27/3, 2009
6. Nijhoff M. , *Council of Europe, Collected Edition of 'Travaux preparatories' of the European Convention on Human Rights,* V, The Huge/Boston/London, 194, 1979
7. Marks S., *The European Convention on Human Rights and its 'Democratic society'* British Yearbook of International Law, 1996
8. Masih J., Krikorian R., *Armenia at the Crossroads*, Amsterdam, the Gordon and Breach. Publishing Group, 1990.
9. Malkhasian, Mark. *Gha-ra-bagh! The Emergence of the National Democratic Movement in Armenia.* Detroit: Wayne State University Press, 1996
10. Libaridian G., *The Challenge of Statehood: Armenian Political Thinking since Independence*, Cambridge, Cambridge: Blue Crane Books,1999
11. Panosyan R., *The Diaspora and the Karabagh Movement: Oppositional Politics between the Armenian Revolutionary Federation and the Armenian National Movement: in The Making of Nagorno- Karabagh: from Secession to Republic*, edited by Chorbajian L., 155-177. New York: Palgrave Macmillan, 2001
12. Wheatley J., *Elections and Democratic Governance in the Former Soviet Union: The Case of Georgia,* Berlin Osteuropa, 2004
13. Lincoln A. Mitchell L. A., *Compromising democracy: state building in Saakashvili's Georgia*, , Central. Asian Survey. vol. 28 No2, 2009
14. Harutyunyan A., *The Inaction of the President Has Been Challenged 12 Years Later, published in* Azg Dayly, 09/01/ 2003
15. United Nations Universal Declaration of Human Rights, 1948

16. United Nations International Covenant on Civil and Political Rights, 1966

17. European Convention of Human Rights, 1950

18. UN Human Rights Committee *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service*, 1996
19. European Commission for Democracy Through Law, *Code of Good Practice in Electoral Matters*, 2002.

20. OSCE *Document of the Copenhagen Meeting of the Conference on Human Dimension of CSCE*, 1990
21. OSCE/ODIHR, *Existing Commitments for Democratic Elections in OSCE Participating States*, 2003
22. Constitution of the Republic of Armenia ,1995 amended as of 2005
23. Electoral Code of the Republic of Armenia, AL-164-N, 2011
24. RA Civil Code of Armenia, AL-238
25. RA Administrative Procedure Code, AL-269, 2007
26. European Commission for Democracy Through Law & OSCE/ODIHR, *Joint Final Opinion on the Electoral Code of the Armenia* , 2011
27. RA Law on State Register of the Population of Armenia, AL-419-N, 2002
28. RA Law on Fundamentals of Administration and Administrative Proceedings, AL-41-N, 2004
29. RA Law on Rules of Procedures of the National Assembly, AL-308, 2002
30. Central Election Commission Decision N60-A, 2012
31. Constitution of Georgia, 1995
32. Election Code of Georgia, 2012
33. Venice Commission and OSCE/ODIHR, *Joint Opinion on Draft Election Code of Georgia*, 2011
34. OSCE/ODIHR *Final Report on Armenian Presidential Elections Sept. 22, 1996*
35. OSCE/ODIHR *Final Report on Armenian Presidential Elections March 16 and 30, 1998*
36. OSCE/ODIHR *Final Report on Armenian Parliamentary Elections May 30, 1999*
37. OSCE/ODIHR *Final Report on Armenian Presidential Elections, February 19and March 5, 2003*
38. OSCE/ODIHR *Final Report on Armenian Parliamentary Elections, May 25, 2003*

39. OSCE/ODIHR *Final Report on Armenian Parliamentary Elections , May 17, 2007*
40. OSCE/ODIHR *Final Report on Armenian Presidential Elections, February 19, 2008*
41. OSCE/ODIHR *Post-election Interim Report on Armenian Presidential Elections 2008*
42. OSCE/ODIHR *Final Report on Armenian Parliamentary Elections, May 6, 2012*
43. OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections October 31and November 14, 1999*
44. OSCE/ODIHR, *Final Report on Georgian Presidential Elections April 9, 2000*
45. OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections November 2, 2003*
46. OSCE/ODIHR, *Final Report on Georgian Extraordinary Presidential Elections 4 January 2004*
47. OSCE/ODIHR, *Final Report on Georgian Partial Repeat Parliamentary Elections 28 March 2004*
48. OSCE/ODIHR, *Final Report on Georgian Extraordinary Presidential Elections 5 January 2008*
49. OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections 21 May 2008*
50. OSCE/ODIHR, *Final Report on Georgian Parliamentary Elections 1 October 2012*
51. Case Gillot et al v. France, Communication No 932/2000 France. 26/07/2002. CCPR/C/75/D/932/2000
52. Case of Mathieu-Mohin and Clerfayt v. Belgium, ECHR judgment of 02/03/1987
53. Case of Podkolzina v. Latvia, ECHR judgment of 09/07/2002,
54. Case of Gitonas and Others v. Greece, ECHR judgment of 1/07/1997
55. Case of Hirst v. United Kingdom (No 2), ECHR, Grand Chamber judgment of 6/10/ 2005
56. Case of Russian Conservative Party of Entrepreneurs and Others v. Russia, ECHR judgment of 11/01/2007
57. Case of X v United Kingdom, decision of February 1979
58. Case of Zdanoka v. Latvia, ECHR, Grand Chamber judgment of 16/03/ 2006
59. Cases of W, X, Y and Z v. Belgium, ECHR, judgment of 30/05/1975
60. Case of X v. Belgium, ECHR, ECHR, judgment of 06/02/1968
61. Case of Melnychenko v. Ukraine, ECHR, judgment of 19/10/2004
62. Case of Vito Sante Santoro v. Italy, ECHR judgment of 01/07/2004

63. Case of Guliyev v Azerbaijan, ECHR judgment of 27/05/2004
64. Case of Boškoski v. "the former Yugoslav Republic of Macedonia", ECHR judgment of 02/09/2004
65. Case of Krasnov and Skuratov v. Russia, ECHR judgment of 19/07/2007
66. Case of Kovach v. Ukraine, ECHR judgment of 07/02/2008
67. Case of Asensio Serqueda v. Spain, ECHR judgment 09/05/1994
68. Case of Sukhovetskyy v. Ukraine, ECHR judgment 01/02/2005

Case of Hilbe v. Liechtenstein, ECHR judgment 07/09/1999

69. Case of European Commission of Human Rights, Polacco and Garofalo v. Italy, ECHR decision of 15/09/1997
70. Case of Aksoy v. Turkey , ECHR, Reports of Judgments and Decisions 18/12/1996
71. Armenian Statistical Service of the Republic of Armenia, *2011 Population Census of the Republic of Armenia*, 2011
72. Personal interview with Felix Tokhyan, member of Constitutional Court of Armenia, on 27/08/2013
73. Official web-page of Armenian Revolutionary Federation-Dashnakcutyun, *History of Armenian Revolutionary Federation-Dashnakcutyun*, (visited 20/10/2013), http://www.arfd.info/background/
74. Official web-page of the RA Government, *Robert Kocharyan's Biography*, (visited Oct.14,2013), http://www.gov.am/am/prime-ministers/info/99/
75. Official web-page Raffi Hovhannisyan, *Raffi Hovhannisyan's biography*, (visited 15/10/2013), http://www.raffi4president.am/
76. Official web-page of RA National Assembly, *History of Armenian Parliaments (Brief Glimpses)and Khachatur Sukiasyan's biography*, (visited 13/08/2013, 25/10/ 2013)
77. Official web-page Central Election Commission, *Complaint of Khachatur Sukiasyan field to TEC and CEC on 17.03.2012*, (visited 18/09/2013) http://www.elections.am/
78. Interview of R. Kocharyan with A1+ tv reporter,1998, (visited 15/10/2013) http://www.youtube.com/watch?v=HiFZpd3xZsU
79. Announcement of Armenian National Congress on 17.03.2012, published in A1+ (visited 26/10/2013), http://www.a1plus.am/am/politics/2012/03/17/hak

80. US Department of State, *Georgia Human Rights Practice 1993*, January 1994, http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_eur/Georgia.html
81. ArmenianDiaspora.com portal (visited 23/10/2013), http://www.armeniadiaspora.com/population.html,